

## November 2021; Issue 11

### EACOP BILL: UNDERSTANDING THE NATIONAL CONTENT AND OTHER GAPS IN THE BILL



AFIEGO and our IGEN-EA partners after presenting on gaps and weaknesses in the 2021 EACOP Bill to the Environment and Natural Resources Committee of parliament this month.



Kyotera district EACOP project-affected people and others presenting a petition to TotalEnergies over intimidation and low compensation rates among others. The EACOP Bill does not address the affected people's challenges.

#### In this newsletter:

- Teetering on unsure ground: EACOP Bill undermines local content aspirations
- Pictorial of our activities
- Lobbying
- In the media
- Upcoming events



After the *Daily Monitor* newspaper published the [story](#), *Uganda surrenders airport for China cash*, on November 25, 2021, one of our partners contacted us. He asked if it was true that Uganda had lost its sole international airport to China.

The question got us discussing the details of the aforementioned story which included the following:

- The Ugandan government borrowed over \$ 200m (\$hs 713 billion) from the Exim Bank of China to expand Entebbe International Airport.
- To facilitate acquisition of the loan, in March 2015, a financing agreement with up to 13 'toxic' clauses was signed between the Government of Uganda (GoU) and the Exim Bank of China.
- Among the toxic clauses included Uganda waiving its sovereign immunity over Entebbe International Airport among others. This implies that the airport could be attached in case of failure to service the \$200 million loan.
- Others included necessitating the opening of an Escrow account into which the Uganda Civil Aviation Authority (CAA) deposits all the money it makes.
- Yet others included CAA having to have its annual and monthly budgets approved by the Exim Bank of China and others.

The *Daily Monitor* reported that despite government efforts to renegotiate the agreement in 2019 to remove the toxic clauses therein, the Exim Bank of China had refused to change the agreement.

Instructively, the newspaper noted that the

level of government scrutiny prior to signing of the financing agreement was wanting. None of the officials from the Ministry of Finance, Attorney General's office and others who reviewed or signed the agreement weeded out the toxic clauses.

Parliament, which approved the loan request, was also faulted for failing to scrutinise the financing agreement to prevent pawning of Entebbe International Airport. Meanwhile, CAA indicated that it only learnt about the toxic clauses during implementation of the financing agreement.

Why are we retelling this story? Well, this month, the Environment and Natural Resources (ENR) Committee of parliament has been reviewing the East African Crude Oil Pipeline (EACOP) (Special Provisions) Bill, 2021. On November 3, 2021, the clerk to Parliament published a notice in the *Daily Monitor* calling upon members of the general public to submit memoranda on the 2021 EACOP Bill.

Clause 1 of the 2021 EACOP Bill states that the purpose of the bill is to "...enable certain provisions of the Intergovernmental Agreement [IGA] signed between the Republic of Uganda and the United Republic of Tanzania and the Host Government Agreement [HGA] signed between the Republic of Uganda and the East African Crude Oil Pipeline Company Limited to facilitate development of the ... EACOP in Uganda ..."

The IGA and HGA on which the 2021 EACOP Bill is based are not publically available however. Yet parliament was being stampeded to conclude debate on the bill this month (November) to give the secret EACOP project agreements the force of the law. How unfortunate!

Much like CAA woke to a secret financing agreement through which its independence was clipped and through which Uganda could lose its national assets, Ugandans could wake to find themselves subject to EACOP agreements whose contents they have no clue about.

This is unacceptable especially when one recalls that Ugandans are suffering energy sector injustices because of secret or bad agreements. The Bujagali dam, UMEME and others are some such agreements.

Ugandans have failed to enjoy affordable electricity because secret or bad Bujagali and UMEME agreements, which facilitated corruption, were signed.

In our **Word from CEO and Partners**, we discuss the above as well as the gaps and weaknesses in the 2021 EACOP Bill. We make recommendations to strengthen the bill if Ugandans are to avoid the debacle we are seeing around Entebbe International Airport.

In our **pictorial** section, we bring you some of the activities that we and our partners implemented this month. For instance, alongside our partners under the Inclusive Green Economy Network-East Africa (IGEN-EA), we appeared before the ENR committee of parliament and presented our memoranda on gaps and weaknesses in the EACOP Bill.

In addition, we supported journalists from various media houses to document the challenges being faced by families that have been affected by the EACOP and Hoima Sugar Ltd's project in Bugoma forest.

Furthermore, we supported representatives from the EACOP-affected districts of Lwengo and Kyotera to petition TotalEnergies to end intimidation, harassment as well as delayed and unfair compensation.

In addition, we supported the Save Bugoma Forest Campaign (SBFC) local taskforce to organise a community meeting through which they prepared for the Bugoma forest boundary opening exercise that commenced this month (November).

This month, the local taskforce and community members also held a meeting with the Ministry of Lands officials who are engaged in the Bugoma forest boundary opening exercise.

In our **lobbying** section, we bring you the memoranda on gaps and weaknesses in the EACOP Bill that we and our civil society as well as IGEN-EA partners submitted to parliament.

We also bring you the petition to TotalEnergies by the EACOP-affected people of Lwengo and Kyotera districts.

In **in the media** section, we bring you some of the articles that were written by staff and partners and were published by the media.

We also bring you stories that were published following staff being interviewed by the media.

We hope you will enjoy the newsletter.

## **Editorial team:**

**Diana Nabiruma**

**Rachael Amongin**

**Balach Bakundane**

## TEETERING ON UNSURE GROUND: EACOP BILL UNDERMINES LOCAL CONTENT ASPIRATIONS

National or local content!" That is one buzzword that Ugandans have heard since the Ugandan government made the decision to commercialise the country's 6.5 billion barrels of oil.

For those who may not have heard about national or local content as it applies to Uganda's oil and gas sector, here is a loose definition: national content refers to the employment of Ugandans in the oil and gas sector. It also refers to the provision of goods and services to the oil sector by Ugandans.

To enable the above, the Ugandan government put in place various oil laws through which it prioritised Ugandans' participation in the form of employment as well as provision of goods and services in the oil and gas sector.

Excited by the national content promises, youth filled classrooms, both in Uganda and abroad, to study oil and gas courses.

Elvis A. was one of these youth. He joined the Uganda Petroleum Institute, Kigumba (UPIK) in 2017. He studied for a diploma in oil and gas engineering. When he left school in 2019, he hoped to start working in an oil and gas company. Despite his best efforts, he failed to get an oil and gas job. First, he worked in a dairy selling milk and today, he works as a welder! There are many youth like Elvis.

The business community has not fared any better. Now that agreements relating to the East African Crude Oil Pipeline (EACOP) project were signed in April 2021 and construction of the pipeline is expected to commence, there is more fanfare about national content in the oil and gas sector.

Before the EACOP construction can commence however, the Ugandan government is engaged in processes to put in place the EACOP (Special Provisions) Bill, 2021. The bill is currently before the Environment and Natural Resources (ENR)

Committee of parliament for review. This month, interested stakeholders submitted views on the bill.

AFIEGO and our partners submitted our views on the EACOP Bill before parliament on November 12, 2021. In our review of the bill, we identified a number of gaps and weaknesses, including those that will undermine the country's national content aspirations, and we present these below.

### NATIONAL CONTENT GAPS

**(a) Ugandan national content laws superceded by EACOP HGA:** The EACOP Bill circumvents existing Ugandan law and regulations governing national content in the petroleum sector.

Although clause 12(1) of the EACOP Bill mentions these laws and even declares that they are applicable to the EACOP project, clause 12(2) of the EACOP Bill states that fulfilment of the national content provisions in the Host Government Agreement (HGA) will constitute compliance with Uganda's national content laws. National content provisions in the HGA, which has never been disclosed to the public, replace Ugandan law.

**(b) No requirement to forecast procurement needs:** Advance disclosure of contracting opportunities enables Ugandan companies to prepare for and successfully bid to provide goods and services to oil and gas companies. For that reason, Regulation 9 of the 2016 Midstream National Content Regulations requires all petroleum licensees, contractors, and subcontractors to submit to the Petroleum Authority of Uganda (PAU) a "list of all anticipated contracts and subcontracts which will be bidden for or executed in the upcoming quarter."

Clauses 16(3) and 19 of EACOP Bill however exempt the EACOP project developers, and presumably all subcontractors, from this important forecasting requirement during construction and



operations phases. This will undermine Ugandans' capacity to supply goods and services to the oil sector.

**(c) Certain procurement activities exempted from national content:** Clause 21 of the EACOP Bill exempts procurement of "critical intragroup expertise" for services identified in an appendix in the HGA from national content obligations. Similarly, clause 22 of the EACOP Bill permits the project company to procure international project finance services without regard to national content obligations. These activities are governed by the HGA, which has not been disclosed to the public.

**(d) Not required to unbundle contracts:** Uganda's national content regime expressly recognises that Ugandan businesses have better access to contracting opportunities in the petroleum sector if large-scale contracts are broken apart or "unbundled" into smaller packages. Otherwise, Ugandan businesses cannot compete with large, international petroleum firms.

Clause 26 of the EACOP Bill puts Ugandan businesses at a sharp disadvantage however because it does not require unbundling of contracts during level 1 of the construction phase of the EACOP.

**(e) Employment of expatriates:** Under Uganda's Midstream National Content Regulations, licensees, contractors, and subcontractors cannot apply for work permits for expatriates unless they submit evidence that Ugandan nationals are not qualified for the job.

Moreover, under regulation 21(2) (f) of the Midstream National Content Regulations, employers are required to prepare a training plan for the replacement of expatriates with Ugandan citizens. These requirements help ensure that Ugandans gain access to management-level positions in the petroleum sector.

The EACOP Bill however erodes these important

protections. First, clause 27(1) declares that the project company "shall be entitled to mobilise management staff in accordance with the Host Government Agreement." As mentioned numerous times above, the HGA has never been disclosed to the public. There are no assurances that the HGA adequately protects skilled job opportunities for Ugandans.

In addition, under clause 27, the EACOP Bill permits the project company to freely bring in expatriate employees without having to justify the need and without any plan to train Ugandans for higher-level employment opportunities, in direct contradiction of the Midstream National Content Regulations.

Other national content gaps in the bill can be viewed [here](#), starting on page 9.

## OTHER GAPS

The other gaps in the bill are summarised below.

- **Clause 1 of the bill** undermines the powers of parliament as the legislature is expected to rubberstamp and pass a law to give effect to the secret IGA and HGA that government signed in 2017 and 2021. The IGA and HGA were signed with the government of Tanzania and the EACOP project developers respectively. In effect, parliament is being stampeded to pass a law whether it is for the benefit of Ugandans or not.

- **Clause 2 of the bill** fails to mention the provisions in the existing Ugandan law(s) that are inconsistent with what was agreed on in the IGA and HGA. Yet the bill is aimed at ironing out these inconsistencies.

- **Clause 3(m)** states that the bill seeks to give supremacy over other laws on issues specifically covered by the bill. Clause 46 provides that the Constitution is supreme over the EACOP Bill. Other important laws such as the 2019 National Environment Act, 2019 Uganda Wildlife Act, 2021 Climate Change Act, national content laws and others are inexplicably relegated for the

EACOP Bill. This is unacceptable as it undermines environmental conservation efforts.

- **Clause 5** removes any government discretion and authority as regards approving future adjustments to the EACOP transportation tariff.
- **Clause 6(5)** waives government's capacity to take over the EACOP even in public interest.
- **Clause 10(3)** waives government's capacity to refuse to renew any EACOP project permit on "the ground that, at the time of the renewal, the project company or other project participant has violated any Ugandan law or any condition in the project authorisation, except where ..." This clause could undermine adherence to environmental, water and other permits necessary for protection of the environment amidst oil risks.
- **Clause 11** attempts to make the bill, when enacted, applicable to activities undertaken since January 1, 2016. The retroactive application is specific to clause 11(1) which addresses land rights among others. This appears to be an attempt to apply this law to land disputes as well as other activities undertaken since 2016.
- **The bill is silent** or does not make provisions to stop the ongoing land rights abuses against the over 20,000 people whose land is being acquired for the EACOP project in ten districts in Uganda.
- **Clause 30** limits government's ability to stop transportation of Uganda's crude oil via the EACOP when the need arises.
- **Clause 35** seems inadequate to ensure that there will be sufficient funds to cover decommissioning costs. Payments to a decommissioning fund are not required until five years after the first oil date.
- **The ten-year (plus)** corporate income tax exemption found in Schedule 2 is troubling.

## RECOMMENDATIONS

In light of the above, Ugandans should demand that parliament does the following:

- (i) Parliament should task the Ministry of Energy** to present the IGA and HGA to the public as well as all the current laws that are inconsistent with the EACOP bill. This should be done before parliament debates and enacts the EACOP bill into a law.
- (ii) Parliament should ensure that clause 5 empowers** government to provide approval for future transportation tariffs.
- (iii) Clause 6(5) should empower government** to take over the EACOP in public interest if need arises.
- (iv) Clause 10(3) should be rewritten** to provide that the Ugandan government shall have broad authority to refuse renewal of the project where laws and conditions for permits or licenses or certificates are violated.
- (v) Clause 11 should provide** that all provisions in the bill shall take effect when the EACOP Bill is enacted into law by parliament and is signed by the president.
- (vi) The Bill should make** provisions for the protection of the land rights of the EACOP-affected people.
- (vii) Clause 30 should** be adjusted to provide that government will retain power to stop any activity in cases of emergencies and no liability will arise.
- (viii) Clause 35 should provide that payments** into the decommissioning fund shall begin from the first year of oil production.
- (ix) Any tax exemption** provisions in the EACOP Bill should be deleted.

**By CEO and partners**

## Pictorial of our activities

**November 1, 2021**

AFIEGO supported the Save Bugoma Forest Campaign (SBFC) local taskforce to organise a meeting in Kikuube district.

The meeting enabled the taskforce to prepare communities to participate in the Bugoma forest boundary opening exercise that is taking place this month (November).



**November 3, 2021**

AFIEGO participated in a meeting with UN Human Rights officials in Kampala.

During the meeting, we discussed the arrest of six AFIEGO staff by the Uganda police in October 2021. It is hoped that such discussions will help improve the civic space in Uganda.



**November 8, 2021**

AFIEGO worked with our partners to support the representatives of the EACOP-affected people of Lwengo and Kyotera districts to submit a petition to TotalEnergies in Kampala.

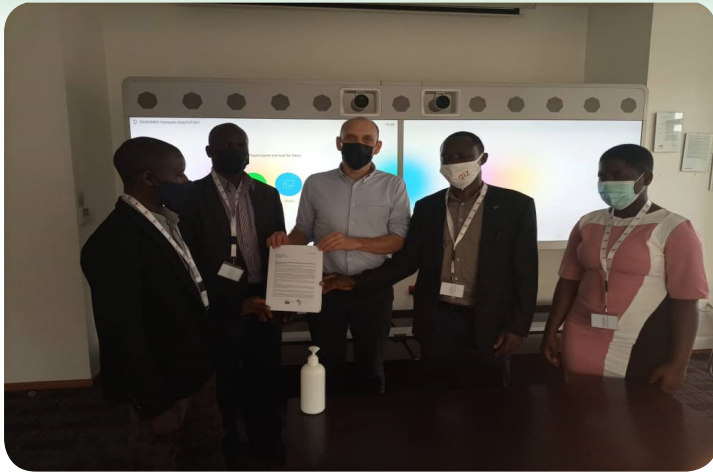
The petition listed the compensation grievances that the affected people need TotalEnergies to address.

**November 12, 2021**

AFIEGO and our IGEN-EA partners presented our memoranda of proposals to fill gaps and weaknesses in the EACOP Bill to the Environment and Natural Resources Committee of parliament in Kampala.

Some of these gaps and weaknesses are captured in the *Word from CEO and Partners* in this newsletter.





**November 15-30, 2021**

AFIEGO supported the media to document and report on the impacts of oil projects on communities in Uganda.

The media engaged oil-affected communities in seven districts in Uganda to enable sharing of their experiences to end the human rights abuses against the affected communities.

**November 26, 2021**

Following advocacy by AFIEGO and our SBFC partners, the Ministry of Lands alongside the National Forestry Authority (NFA) commenced on processes to open the Bugoma forest boundaries.

The Ministry of Lands and NFA officials involved in the exercise met with various stakeholders including the SBFC local taskforce.

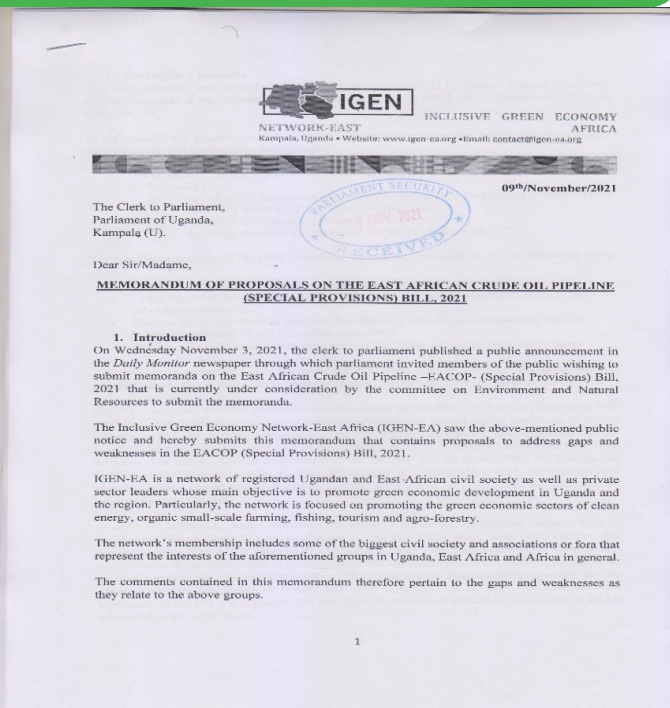
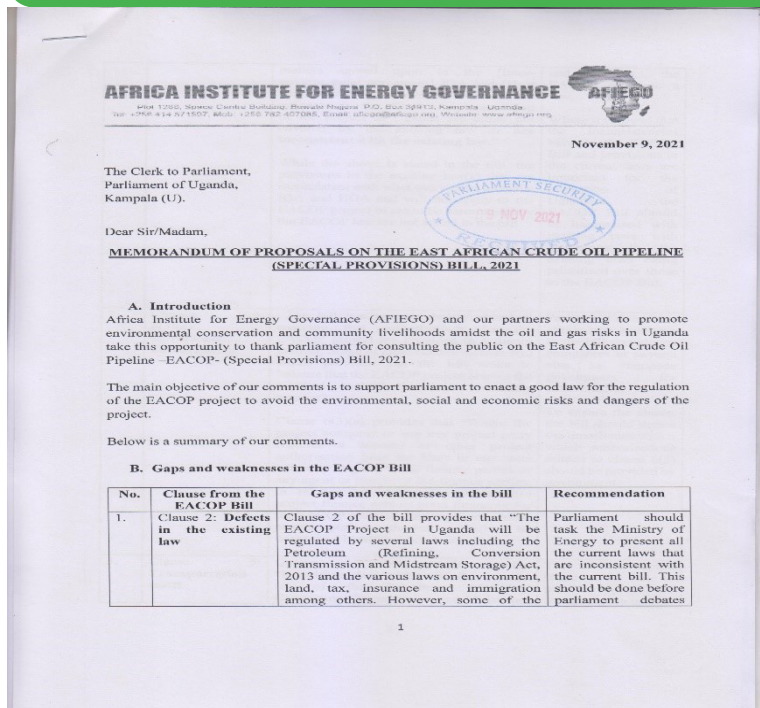




# Lobbying

This month, AFIEGO and our civil society partners compiled and submitted a memorandum of proposals to fill gaps in the EACOP Bill. The memorandum was submitted to parliament. With our IGEN-EA partners, we also compiled and submitted a memorandum of proposals to fill gaps in the EACOP Bill to parliament.

Furthermore, AFIEGO supported the EACOP-affected people from Lwengo and Kyotera districts to petition TotalEnergies to end intimidation and the compensation challenges faced by the people.



## Gaps in the EACOP Bill, 2021

### Clause 2: Defects in the existing law

**Provision:** Clause 2 of the bill provides that "The EACOP Project in Uganda will be regulated by several laws. However, some of the matters agreed upon in the IGA and HGA which are necessary for the effective implementation of the EACOP are either not covered by the existing law or are inconsistent with the existing law."

**Weakness:** The provisions in the existing law(s) that are inconsistent with what was agreed on in the IGA and HGA are not stated in the bill.

**Recommendation:** Parliament should task the Ministry of Energy to present all the current laws that are inconsistent with the current bill. This should be done before parliament debates and enacts the EACOP bill in to a law.

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November 3, 2021

Mr. Martin Tiffen  
The Executive Director,  
TotalEnergies F&P (U) B.V.,  
Kampala (U).

Dear Sir,

**RE: PETITION TO TOTALENERGIES: ADDRESS KYOTERA & LWENGO EACOP PAPS' GRIEVANCES**

We the people whose land and property is being compulsorily acquired for the East African Crude Oil Pipeline (EACOP) project in Lwengo and Kyotera districts.

Together with our civil society partners, Africa Institute for Energy Governance (AFIEGO) and Community Transformation Foundation Network (COTFONE), we are writing this petition to you with the hope that you will address the challenges that we have faced since the compulsory land acquisition processes for the EACOP oil project commenced in Kyotera and Lwengo districts.

The grievances that are contained herein were derived from discussions and meeting with the EACOP project-affected persons (PAPs) and community-based monitors/human rights defenders who monitor and report the grievances being experienced by the EACOP PAPs. The meetings and discussions, which AFIEGO and COTFONE organised alongside other partners, took place in October and August in Kyotera, Lwengo and the Greater Masaka region.

Before the grievances are discussed, a historical background highlighting the process of compulsory land acquisition for the EACOP project in Kyotera and Lwengo districts is discussed below.

**BACKGROUND**

As you are aware, in 2018, TotalEnergies informed the people whose land is being acquired for the EACOP in Kyotera and Lwengo that their land and other property was going to be compulsorily acquired for the EACOP project.

A cut-off date through which the project-affected persons (PAPs) were stopped from using their land to grow non-fast maturing crops and to set up new developments was set as at May 2019.

A census of the affected people was conducted. A total of 10,89 PAPs (524 and 565) people were/are affected by the EACOP project in Kyotera and Lwengo districts respectively. Further, a valuation exercise in which the affected households' property was assessed was conducted in 2018.

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# In the media

This month, staff, research associates, and youth champions wrote newspaper articles that were published in the leading newspapers. The media also published articles from the media interviews we held this month. Some of the published articles are captured below.

BY WILSON KUTAMBA

**KYOTERA.** Locals in Kyotera, Lwengo and Sembabule districts, who were displaced by the oil pipeline project have raised a red flag over disparities in compensation rates.

Mr Salongo Gyagenda said his neighbour's cassava garden was rated at Shs3,000 per plant while his was valued at Shs1,000 by the government chief value.

"The government didn't consider our consent in valuing the pieces of land, neither were price rates uniform even in the neighbourhood," he said.

Mr Gyagenda accused the government of failure to compensate project affected persons three years later.

Mr Ivan Katende, a resident of Kabusirabo Village in Lwengo, said his plans to set up a coffee plantation project hit a snag after his land was earmarked for the pipeline project and he is yet to receive compensation.

Mr Katende appealed to the government to speed up the compensation process, saying many elderly beneficiaries have since died.

Mr James Bbale, a resident of Kabusirabo village, Kito Sub-county, said they were asked to open bank accounts and they have since accumulated bank charges.

He also revealed that government's decision to take up the land for the pipeline project has increased up domestic violence and misunderstandings among orphans over ownership rights.

Mr Josiah Mukasa, a resident of

## Locals decry varying compensation rates

Sembabule District, accused the government of undervaluing of their properties.

According to Mr Muddu Yisito, the coordinator of Community Transformation Foundation Network (COTFONE), a network of community-based organisations in Masaka sub-region, the compensation process has been marred with impunity and corruption.

"Some PAPs (project affected persons) are intimidated and arrested by police when they interact with media or CSOs," he said.

Ms Diana Nabiruma, the senior communications officer at Africa Institute for Energy Governance (AFIEGO), said it's unfortunate that some compensation will not enable PAPs to replace the land or assets they lost.

"Total and all joint venture partners in Lake Albert project indicate that they will adhere to the basic international practices of In-

ternational Finance Corporation (IFC) and one of the principles of IFC is that PAPs should be left in the same position or a better one than they were found. However, this is not reflected among PAPs," she said.

Ms Stella Amony, the spokesperson of East African Crude Oil Pipeline (EACOP), said compensation rates are issued by the district and approved by the chief governor/valuer.

"EACOP is aware of the grievances of some PAPs about specific crop rates (notably coffee and banana in Kyotera) and has engaged the authorities on this matter," she said.

On the issue of bank accounts charges, Ms Amony said in October EACOP commenced the process of opening bank accounts for PAPs with Centenary Bank.

"Compensation will be paid into these PAP bank accounts. Prior to that, EACOP has never requested PAPs to open bank accounts. All Centenary Bank account charges will be paid by EACOP for a two-year period from bank account opening. The project will start PAP Entitlement Briefings and signing of Compensation Agreements shortly. Payment will take place immediately thereafter," she explained.

editorial@ug.nationmedia.com

### ISSUE

Mr Salongo Gyagenda said his neighbour's cassava garden was rated at Shs3,000 per plant while his was valued at Shs1,000 by the government chief value.

## Pipeline affected persons petition Total over intimidation, compensation

The Independent

November 18, 2021

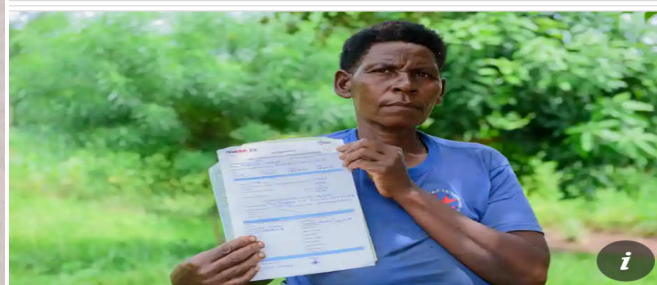
NEWS



PAPs in Kyotera.

**Kyotera, Uganda | THE INDEPENDENT |** More than 1,000 people affected by the East African Crude Oil Pipeline in Kyotera and Lwengo districts have petitioned Total Energies E&P Uganda, for an intervention to address grievances stemming from the land acquisition process.

The 1,443km East African Crude Oil Pipeline will transport Uganda's crude oil from Hoima in Uganda to the Chongoleani peninsula near Tanga port in Tanzania. It is envisaged to be the longest heated pipeline in the world, crossing through 10 districts in Uganda, a distance of 296 kilometres, and 25 districts in Tanzania covering eight regions.



### Floodlight

## 'No power to stop it': optimism turns to frustration over east Africa pipeline

Promised an income, those affected by \$20bn oil project are losing their land and resources instead

Alex Tumuhimbise in Kijungu for Floodlight and Internews' Earth Journalism Network

Sun 7 Nov 2021 10.00 GMT



A bumpy, mud-spattered road leads deep into Kakumiro district in western Uganda, where the longest

## POPULARISE MINING AND MINERAL BILL, 2019

EDITOR: Last week, the media reported about the gold mining activities in Busia district threatening the education of children in the area. It is noted that about 45% of the children below 18 years are engaged in gold mining.

The massive engagement of the ongoing school children has created a big worry among the leaders in Busia and Karamoja districts. They said when schools reopen, most of the children are likely drop out because they are already used to daily earnings from the gold mining sector.

The failure by the Government to implement the Mining and Mineral Bill, 2019 has increased the rate of child labour in the artisanal mining sector.

This is likely to result in sexual abuse, particularly sex exploitation of girls, including drugs and alcoholism.

In addition to the above, child labour is also likely to result in physical abuse that involves corporal punishment and emotional maltreatment, such as blaming, belittling, verbal attacks, rejection, emotional and physical neglect, among others.

The law needs to be implemented because child labour and sexual abuse, coupled with the low payments among the mining workers, have become a big challenge in Busia and the Karamoja sub-region, where there is artisanal mining.

In my opinion, the implementation of the law is the only solution to the above challenges.

Therefore, I call on the energy ministry to implement the Mining and Mineral Bill, 2019, which will ensure the framework for equity and human rights and eradicate child labour in the mining industry.

Kato Paul  
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at the Africa  
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## Upcoming events

December 1-8, 2021; Hoima: Stakeholder review meetings on outcomes of AFIEGO's projects

December 10, 2021; Kampala and Kikuube: Engaging Ministry of Lands and National Forestry Authority to involve stakeholders in the Bugoma forest boundary opening

December 15, 2021; Kampala: Staff workshop on project outcome harvesting

December 20, 2021; Kampala: AFIEGO Board members' end-of-year meeting

December 28, 2021; Hoima: Radio talkshow on challenges faced by EACOP project-affected persons

### About Africa Institute for Energy Governance (AFIEGO)

AFIEGO is a non-profit company limited by guarantee that was incorporated under Uganda's Companies Act. AFIEGO undertakes public policy research and advocacy to influence energy policies to benefit the poor and vulnerable. Based in Kampala-Uganda, the non-profit company was born out of the need to contribute to efforts to turn Africa's clean 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 clean 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 clean energy resources for socio-economic development

#### Our Mission

To promote energy policies that benefit poor and vulnerable communities