



November 9, 2021

The Clerk to Parliament,
Parliament of Uganda,
Kampala (U).



Dear Sir/Madam,

**MEMORANDUM OF PROPOSALS ON THE EAST AFRICAN CRUDE OIL PIPELINE
(SPECIAL PROVISIONS) BILL, 2021**

A. Introduction

Africa Institute for Energy Governance (AFIEGO) and our partners working to promote environmental conservation and community livelihoods amidst the oil and gas risks in Uganda take this opportunity to thank parliament for consulting the public on the East African Crude Oil Pipeline –EACOP- (Special Provisions) Bill, 2021.

The main objective of our comments is to support parliament to enact a good law for the regulation of the EACOP project to avoid the environmental, social and economic risks and dangers of the project.

Below is a summary of our comments.

B. Gaps and weaknesses in the EACOP Bill

No.	Clause from the EACOP Bill	Gaps and weaknesses in the bill	Recommendation
1.	Clause 2: Defects in the existing law	Clause 2 of the bill provides that "The EACOP Project in Uganda will be regulated by several laws including the Petroleum (Refining, Conversion Transmission and Midstream Storage) Act, 2013 and the various laws on environment, land, tax, insurance and immigration among others. However, some of the	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

		<p>matters agreed upon in the [Inter-governmental agreement] IGA and [Host Government Agreement] HGA which are necessary for the effective implementation of the project in Uganda are either not covered by the existing law or are inconsistent with the existing law.”</p> <p>While the above is stated in the bill, the provisions in the existing law(s) that are inconsistent with what was agreed on in the IGA and HGA and will not apply to the EACOP project or are to be harmonised by the EACOP law are not stated in the bill.</p>	<p>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 into a law.</p> <p>Where it is found that the inconsistencies between the EACOP Bill and provisions in the current laws are important for the protection of Ugandans, the EACOP Bill should be harmonised with existing laws with provisions in the existing laws being prioritised over those in the EACOP Bill.</p>
2.	<p>Clauses 3(c), 6(3)(a): Government authorisation</p>	<p>The bill has several clauses aimed at ensuring that authorisations for the EACOP project are provided in a timely manner. Some of these clauses include 3(c) which provides that the bill seeks to “ensure that the EACOP project obtains the required authorisations in a timely manner”.</p> <p>Clause 6(3)(a) provides that “Where the project company or any key project party requires a consent or other project authorisation from the State or any state authority to grant to the finance parties or any agent or trustee of the finance parties, in relation to limited or non-recourse project finance debt or bond financing for the EACOP project ... the required consent or other project authorisation shall not be unreasonably withheld or delayed”.</p>	<p>Parliament should not allow any provision in the bill that allows companies or anyone else to stampede government for authorisation.</p> <p>To ensure the above, the bill should define the timeframes within which authorisations related to clause 6(3) should be provided by government.</p>
3.	<p>Clause 5: Transportation tariff</p>	<p>Clause 5(2) provides that “Notwithstanding section 35 (b), (c) and (d) of the Petroleum (Refining,</p>	<p>The bill should empower the state to provide approval for transportation tariffs.</p>

		<p>Conversion, Transmission and Midstream Storage) Act" 2013, the tariff determined in accordance with subsection (1) (a) shall not be subject to further approval by any State authority.”</p> <p>This clause removes any government discretion as regards approving future adjustments to the transportation tariff. This is problematic as the Ugandan government should maintain oversight over the EACOP project including approving the tariffs to be charged for transporting Uganda’s crude oil to protect Ugandans’ interests.</p>	<p>As it happens in the electricity sector where the Electricity Regulatory Authority (ERA) approves the electricity tariffs on a quarterly basis, the EACOP Bill should also empower the Petroleum Authority of Uganda (PAU), in consultation with a multi-stakeholder committee and with public participation, to approve or refuse to approve the EACOP transportation tariff.</p>
4.	Clause 6: Security	<p>Clause 6(5) of the bill states that, “Section 50 of the Petroleum (Refining, Conversion, Transmission and Midstream Storage) Act, 2013 shall not apply to the EACOP Project.”</p> <p>Section 50 of the Petroleum (Refining, Conversion, Transmission and Midstream Storage) Act, 2013, provides that, “(1) Where the Government requires removal of a facility, any lien, charge or encumbrance on the facility shall lapse. (2) Subsection (1) applies where the Government takes over the facility under section 51, except that in such cases, rights of use established with the consent of the Minister shall remain in force.”</p> <p>Clause 6(5) is troublesome as it waives government’s capacity to take over the EACOP even in public interest.</p>	<p>Clause 6(5) should state that Section 50 of the Petroleum (Refining, Conversion, Transmission and Midstream Storage) Act, 2013 shall apply to the EACOP Project.</p>
5.	Clause 10: Project authorisations	<p>Clause 10 (1) provides that “Where the project company or a project participant has applied for an extension; renewal or re-issuance of a project authorisation within the period specified under the terms and conditions of the project authorisation and Ugandan law, the project authorisation shall be deemed to continue in force and shall not expire or terminate, until the end of the period during which the relevant</p>	<p>Parliament should not allow any provision in the bill that allows companies or anyone else to stampede government for authorisation.</p> <p>To ensure the above, the bill should define the timeframes within which authorisations</p>

		<p>state authority is reviewing the application.”</p> <p>These clauses appear to suggest that companies will be justified to put pressure on the government to move more quickly to provide authorisation for the EACOP project.</p> <p>This could deny government agencies the time they need to review permits or licenses to ensure compliance.</p>	<p>related to clause 10(1) should be provided by government.</p>
6.	<p>Clauses 10: Project authorisations</p>	<p>Clauses 10(3) and 10(4) are troubling. Clause 10(3) provides that “The renewal of a project authorisation shall not be refused 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, at the time of renewal, the applicant has and continues to violate Ugandan law under which the project authorisation is issued or any condition in the project authorisation and has not corrected or taken reasonable steps to correct the violation after notification by the relevant state authority”</p> <p>Clause 10 (4) provides that “A project authorisation shall not be subject to termination, lapse, revocation or suspension for any reason other than a reason specified in the Host Government Agreement the relevant project authorisation or Ugandan law including-</p> <p>(a) an occurrence of force majeure” among others.</p> <p>The clauses are troubling as the Ugandan government should have broad authority to refuse renewal of the project, and violating the law should be a valid reason for denying the renewal. This clause does not appear to be limited to just the first renewal either.</p>	<p>This clause 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.</p>

<p>7.</p>	<p>Clause 10: Authorisations</p>	<p>Clause 10(8) provides that, “Notwithstanding section 15 (2) of the Petroleum (Refining, Conversion, Transmission and Midstream Storage) Act, 2013 and regulation 60 (4) and 82 (1) of the Petroleum (Refining, Conversion, Transmission and Midstream Storage) Regulations, 2016- (a) any alteration or deviation to the approved pipeline route, which is not of a substantial nature shall not require the approval of the Authority; and (b) any change or modification to the pipeline installations, which is not of a substantial nature shall not require the approval of the Minister”.</p> <p>This clause allows deviations and modifications of the pipeline, if they are not substantial, without government approval of the authority. The bill does not however define who determines which changes are substantial or not.</p>	<p>The bill should set parameters to determine what substantial modifications are and in what instances, considered substantial, that the EACOP project developers should seek authorisation from government to make modifications.</p>
<p>8.</p>	<p>Clause 11: Retroactive application, especially on land rights</p>	<p>The bill attempts to make this law applicable to activities undertaken since 1 January 2016. This appears to be an attempt to apply this law to land disputes as well as other activities undertaken since 2016. The retroactive application is specific to clause 11(1) which addresses land rights, and clause 38, which applies to activities related to this project undertaken before the Host Government Agreement became effective.</p>	<p>This clause encroaches on the powers of parliament to make laws. It is dishonest on the part of the executive to enter into obligations without consulting parliament and later come to parliament to endorse such as actions. This weakens the powers of parliament.</p> <p>In the first place, how did the executive enter into contracts that were inconsistent with the existing laws? How sure was the executive that parliament would accept to make a law to legalize the otherwise irregular and or illegal contracts?</p> <p>Government should not stampede parliament. Why make a law that goes back to</p>

			<p>2016 and yet the objective of the bill talks about 2021 contracts?</p> <p>This clause should be rewritten to provide that the all provisions in the bill shall take effect when the EACOP Bill is enacted into law by parliament and is signed by the president.</p>
9.	Clause 11: Land rights	<p>Clause 11(2) of the bill states that the Uganda Land Commission or other relevant state Authority shall grant land rights to enable the project company to undertake all project activities.</p> <p>However, the bill does not make provisions to stop the ongoing land rights abuses against the over 20,000 people whose land is being acquired for the project in ten districts in Uganda.</p> <p>Further, clause 10 (5) provides that “For the avoidance of doubt, no other event or circumstance, including breach of a land rights instrument related to the EACOP project shall constitute grounds for termination of any land rights instrument related to the EACOP project.”</p> <p>The clause could be abused by the project company by failing to comply with conditions in the land rights instrument well knowing that strict measures won’t be taken against the project company to enable compliance.</p>	<p>The bill should provide that the Land Commission or other relevant state Authority shall grant land rights to enable the project company to undertake all project activities after fulfilling the requirements under Article 26 of the constitution and the land rights instrument, breach of which entitles any aggrieved party compensation including termination of the project.</p>
10.	Clause 30: Non-interruption of project activities	<p>Clause 30 of the bill limits government’s ability to require stop transportation of Uganda’s crude oil via the EACOP when the need arises.</p>	<p>This clause should be adjusted to provide that government will retain power to stop any activity in cases of emergencies and no liability will arise.</p>

		<p>Clause 30(3) and (4) even seem to limit the government’s ability to stop activities due to emergencies.</p> <p>Clause 30(3) provides that “Where there are reasonable grounds for the State to believe that the project activities have given rise to an emergency, or to a situation where an emergency is imminent" the State may interrupt the relevant project activities in Uganda only to the extent and for the length of time necessary to remove or avoid the emergency and in that case, the State shall-</p> <p>(a) as soon as is reasonably practicable, give notice to the project company of the interruption, giving reasonably full details of the reasons for the interruption and all other pertinent information;</p> <p>(b) allow the project company sufficient time to ensure the safe reduction or interruption of transit flow, if applicable;</p> <p>(c) consult with the project company as to possible actions that may be taken by the appropriate party, reflecting the nature of the emergency in order to remedy the relevant situation so as to avoid or reduce the time or severity of any interruption” among others.</p> <p>The above measures are stringent and may compromise government’s ability to act quickly in case of emergencies.</p>	
11.	<p>Clause 35: Decommissioning</p>	<p>The provisions found in clause 35 governing decommissioning seem inadequate to ensure there will be sufficient funds to cover decommissioning costs. One problem is that payments to a decommissioning fund are not required until five years after the first oil date. If the pipeline only operates for five years or less, there would be no fund to cover the decommissioning costs. The section requires the company to pay for the costs of implementing the decommissioning plan, but it could be hard to recover these</p>	<p>The clause should provide that payments into the decommissioning fund shall begin from the first year of oil production.</p>

		costs after the project has ended – particularly if the project proves to be unprofitable.	
12.	Clause 39: Import and export	<p>Clause 39(1) provides that “Notwithstanding sections 3 and 4 of the External Trade Act and without prejudice to the requirements of section 12, there shall be no restriction on import, export, re-import, re-export or movement of goods, including petroleum, materials, supplies, technology and equipment related to the origin of those items or the persons contracted to provide them for the EACOP project.”</p> <p>This clause is antithetical to Uganda’s national content aspirations. The clause also seems to favour foreign importers seeking to find a ready market for their EACOP-related goods in Uganda.</p>	This clause should be rewritten to provide that the Minister of Trade may restrict the importation of relevant EACOP-related goods that are found on the local market.
13.	Clause 42: Provision of electricity	<p>Clause 42 grants the project company the right to receive and use electrical power generated from gas associated with related petroleum projects. This also includes the right to construct and operate required infrastructure – and this would include obtaining land rights as well. It can also use petroleum from the EACOP system to generate electricity.</p> <p>These rights seem problematic in many ways. The clause attempts to create a right to generate electricity which seems to supersede any other electricity needs for the communities around the project. This may also reduce the petroleum that is accounted for, thus reducing petroleum payments that would go to the government and help citizens.</p>	The EACOP bill should provide that the Electricity Act, 1999 shall apply to the electricity requirements for the EACOP project.
14.	Schedule 2: Tax provisions	The ten-year (plus) corporate income tax exemption found in Schedule 2 is troubling. It speaks of the project proponents seeking to ensure that they	Any tax exemption provisions in the EACOP Bill should be deleted.

		<p>cover their backs and gain from the project at the expense of Ugandans more so at a time when the world is increasingly reducing use of fossil fuels like oil to address climate change concerns.</p> <p>Similarly, the exemptions on the Value Added Tax, customs, import duties and stamp duties as well as the exemption from making contributions to the National Social Security Fund, found in the Schedules, are a bad deal for Uganda. They protect the project proponents and not Ugandans.</p>	
15.	<p>The bill is silent about the access to information relating to the different agreements signed (HGA, IGA and others) and other information.</p> <p>The bill is also silent about the application of Extractive Industries Transparency Initiative (EITI).</p>		<p>This bill should provide for the application of EITI and should create liability for violation of EITI principles including that on contract transparency. This is in line with the Uganda National Oil and Gas Policy, 2008.</p>
16.	<p>The bill is also silent on climate change. Uganda, like the rest of the world, cannot ignore the dangers of climate change. There is need for the bill to recognise that the EACOP project is a high risk climate change project and things can change for the worst. Who takes responsibility if the world decides to stop oil projects?</p>		<p>The bill should clearly state how issues of climate change shall be handled and who bears the risk if the project cannot proceed due to climate change concerns.</p>

C. Concerns related to national content provisions in the EACOP Bill

Ugandan National Content laws are superceded by the 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 they are applicable to the pipeline project, through clause 12(2), the EACOP Bill subsequently doubles back on that assurance by stating that fulfillment of the national content provisions in the HGA will constitute compliance with Uganda’s national content laws. In other words, the national content provisions in the HGA, which has never been disclosed to the public, replace Ugandan law.

There is no guarantee that National Content plans for EACOP will propose meaningful or effective targets: Under clause 13(1) of the EACOP Bill, the project company is required to submit national content plans to the Petroleum Authority of Uganda (PAU) for approval. However,

there are no assurances that these plans will meet the minimum requirements set out in Uganda's national content regime for the midstream petroleum sector. The fact that the Bill uses "content plan" instead of "content programme" suggests that the requirements in the HGA are less comprehensive than Ugandan law.

This is because Uganda's national content regulations for midstream petroleum-related activities require operators to provide detailed implementation plans for the procurement of Ugandan goods and services, employment of Ugandans, and technology transfer. See the Petroleum (Refining, Conversion, Transmission and Midstream Storage) (National Content) Regulations, 2016, hereinafter "Midstream National Content Regulations".

Under clause 14(3), the EACOP Bill forsakes these important benchmarks and instead outlines a set of ambiguous principles that govern national content plans for the EACOP project. The project company will have unfettered discretion to set its own performance standards and indicators, which are likely to be weaker than what is required in the law and regulations.

The project company will not be required to forecast procurement needs: Advance disclosure of contracting opportunities enables Ugandan companies to prepare for and successfully bid to provide goods and services to entities operating in the petroleum sector. For that reason, Regulation 9 of the Midstream National Content Regulations requires all petroleum licensees, contractors, and subcontractors to submit to PAU a "list of all anticipated contracts and subcontracts which will be bid for or executed in the upcoming quarter." Clauses 16(3) and 19 of EACOP Bill however inexplicably exempt the project company, and presumably all subcontractors, from this important forecasting requirement during construction and operations phases.

The EACOP Bill substitutes an ad-hoc reporting scheme for established procurement reporting requirements: Detailed and accurate reporting ensures that petroleum licensees and contractors are doing their best to contribute to Ugandan national content goals in the petroleum sector. Reporting also enables PAU to measure progress and hold entities accountable when these efforts fall short. Regulation 15 of the Midstream National Content Regulations contain numerous reporting requirements, including a provision requiring all licensees, contractors, and subcontractors to submit quarterly reports describing all contracts and subcontracts exceeding \$100,000 awarded in the previous quarter. Among other things, these reports must identify the name of successful contractors and vendors; the primary location of work; and the estimates of national content. *Id.*

Under clause 16(2) of the EACOP Bill, the project company is required to provide quarterly reporting to PAU during the pipeline construction phase. However, clause 16 (3) of the EACOP Bill exempts the project company from complying with reporting standards set out under regulation 15 of the Midstream National Content Regulations. Instead, the company is only required to meet reporting standards set out in the HGA, which has never been disclosed to the public.

Contractors and sub-contractors must advance national content goals independent of the project company: Clause 17 (3) of the EACOP Bill is poorly drafted and appears to exempt contractors and direct/indirect subcontractors from full compliance with national content requirements. Instead, they are allowed to "piggyback" on the project company's national content plan and shift responsibility for reporting to the project company, as well. This scheme

circumvents clear efforts by lawmakers, as reflected in the Midstream National Content Regulations, to engage and encourage contractors and subcontractors in independent efforts to improve Ugandan participation in the petroleum sector. See regulation 2 of the Midstream National Content Regulations which provides that the “The licensee, contractor, subcontractor, and other entity involved in midstream operations in Uganda shall consider and incorporate national content as an important element of their overall midstream operations.”

Certain procurement activities have been exempted from National Content obligations by the Host Government Agreement: 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.

Contractors must be encouraged to unbundle contracts: Uganda’s national content regime expressly recognizes 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. See regulation 11(3) of the Midstream National Content Regulations. Otherwise, Ugandan businesses cannot compete with large, international petroleum firms. Clause 26 of the EACOP Bill puts Ugandan business at a sharp disadvantage, however, because it does not require unbundling of contracts during the construction phase of the pipeline project. Clause 26 of the Bill should be replaced with the following provision under regulation 11(3)) of the Midstream National Content Regulations: “Every licensee, contractor and subcontractor shall, where possible and feasible, provide additional and timely information, reduce the size and complexity of the scope of works by unbundling of contracts and formulate work packages which are affordable to Ugandan companies, registered entities and Ugandan citizens.”

The project company will be allowed to bring expatriates for management-level positions, to the detriment of Ugandans: 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. See regulation 21(2)(e) of the Midstream National Content Regulations. 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 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 to the Midstream National Content Regulations. To protect Ugandans, clause 27 of the EACOP Bill should be removed from the bill and the HGA should be publicly disclosed.

General recommendation on national content clauses: The EACOP Bill should explicitly state that provisions in the Midstream National Content Regulations supercede provisions in the EACOP Bill to protect Ugandans. Any provision in the EACOP Bill that goes against provisions in the Midstream National Content Regulations should be deleted from the bill.

D. Conclusion

We call upon parliament to seriously consider the critical environmental, social and economic implications of the EACOP project and the entire oil sector in Uganda, East Africa and the world at large. It must be noted that the legality of the EACOP project is currently being challenged at the East African Court of Justice and we hope that parliament will take judicial notice of the court process.

We also hope that parliament recognises that the EACOP project is intertwined with the Tilenga and Kingfisher projects as well as the oil refinery and as such, the impacts of Uganda's entire oil sector must be considered in their entirety to make a befitting legal framework.

Thank you,



Dickens Kamugisha,
Chief Executive Officer, AFIEGO

Signatories

1. Africa Institute for Energy Governance (AFIEGO)
2. African Initiative on Food Security and Environment (AIFE)
3. Center for Constitutional Governance (CCG)
4. Community Transformation Foundation Network (COTFONE)
5. Centre for Citizens Conserving (CECIC)
6. Centre for Energy Governance (CEG)
7. Citizens Concern Africa (CICOA)
8. Environment Governance Institute (EGI)
9. Guild Presidents Forum on Energy Governance (GPFOG)
10. Oil Refinery Residents Association (ORRA)
11. Oil and Gas Region Human Rights Defenders Association (OGRHA)
12. Women for a Green Economy Movement (WoGEM)
13. World Voices Uganda (WVU)
14. Youth for Green Communities
15. Association for oil-affected youth

