



NETWORK-EAST

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INCLUSIVE GREEN ECONOMY
AFRICA

09th/November/2021

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



Dear Sir/Madame,

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

1. Introduction

On Wednesday November 3, 2021, the clerk to parliament published a public announcement in the *Daily Monitor* newspaper through which parliament invited members of the public wishing to submit memoranda on the East African Crude Oil Pipeline –EACOP- (Special Provisions) Bill, 2021 that is currently under consideration by the committee on Environment and Natural Resources to submit the memoranda.

The Inclusive Green Economy Network-East Africa (IGEN-EA) saw the above-mentioned public notice and hereby submits this memorandum that contains proposals to address gaps and weaknesses in the EACOP (Special Provisions) Bill, 2021.

IGEN-EA is a network of registered Ugandan and East African civil society as well as private sector leaders whose main objective is to promote green economic development in Uganda and the region. Particularly, the network is focused on promoting the green economic sectors of clean energy, organic small-scale farming, fishing, tourism and agro-forestry.

The network's membership includes some of the biggest civil society and associations or fora that represent the interests of the aforementioned groups in Uganda, East Africa and Africa in general.

The comments contained in this memorandum therefore pertain to the gaps and weaknesses as they relate to the above groups.

1. Preliminary remarks

This memorandum was compiled shortly after the president, H.E. Yoweri Kaguta Museveni, delivered remarks at the climate change Conference of Parties (COP 26) on November 2, 2021 in Glasgow, UK.

In his remarks, the president underscored the importance of protecting environmental resources such as forests and wetlands by noting that:

“In Uganda, ... irresponsible actors [had destroyed the environment and had], committed the following sins:

- (i) Invading the forests that covered 45% of Uganda’s land area in 1900AD. These now only cover 12.4% of Uganda’s land area.
- (ii) Invading the wetlands (swamps).
- (iii) Invading shores of the lakes and the banks of the rivers ...”

The president underscored the need to address the climate change crisis by the following being done:

- Remove the use of coal — [which contributes] 37% [of carbon emissions].
- Target removing automobiles, industrial fuels, etc. — [which contribute] much of the 45% [of carbon emissions].
- Remove dangerous farming practices like allowing cow-dung to decompose outside — [which contributes] 18.4% [of carbon emissions].
- Dealing with inefficient combustion engines [to] minimise ozone layer eating gases.

IGEN-EA is in agreement with the president that clean energy solutions and good farming practices should be prioritised to address the climate change crisis, which has affected Uganda.

IGEN-EA is of the view that parliamentary discussions on the EACOP (Special Provisions) Bill, a bill that is antithetical to the above-stated presidential and indeed global ambitions to reduce reliance on and use of fossil fuels, isn’t in the best interests of Uganda. It is estimated that the EACOP alone will produce over 34.3 million metric tonnes of carbon per year for the next 30 to 40 years. The crude oil to be transported by the EACOP will be drawn from the Tilenga and Kingfisher oil fields and together, the three intertwined oil projects will result in the production of over 100 million metric tonnes of carbon per year for the next 30 to 40 years. So, like coal, oil projects must be avoided.

In addition, IGEN-EA, which represents the interests of various stakeholder interests such as small-scale farmers including those affected by the EACOP project, notes with concern that consultations on the EACOP (Special Provisions) Bill, 2021 have been rushed –five working days were given to the general public to review and submit comments on the bill. Further, the bill is not accessible at districts, sub-counties, parishes and villages to enable stakeholders especially directly affected communities/people to review and make comments on it. This will undermine the legitimacy of the bill if it is passed into law. Specific comments related to the clauses in the bill are shared in the table below.

2. Gaps and weaknesses in the bill

No.	Provision in the bill	Issue	Recommendation
1.	<p>Clause 1 on policies and principles states the purpose of the bill as being: "... 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 East African Crude Oil Pipeline Company (EACOP) in Uganda ..."</p>	<p>The bill is being discussed by parliament after the IGA and HGA were signed. This is unusual as the bill should have been enacted before the agreements were signed to guide the provisions in the agreements. Moreover, the above situation violates the powers of parliament to make laws. Parliament is now being compelled to make a law that is only in line with the said EACOP agreements and not for the good of the people of Uganda. In effect, the executive used the EACOP to usurp the powers of parliament to make laws freely.</p> <p>In addition, the general Ugandan public including small-scale farmers, tourism operators, foresters, fisherfolk and others in the green economy that have been or will be affected by the EACOP's impacts do not have access to the IGA and HGA.</p> <p>Yet various clauses in the bill including clause 1, 40 and others emphasize that the bill is aimed at enabling implementation of the IGA and HGA.</p> <p>Without access to those agreements, small-scale farmers, tourism operators, foresters, fisherfolk and others in the green economy and the general public cannot be sure that their interests will be served by the EACOP Bill or make appropriate comments to ensure a good EACOP law. Yet all Uganda's laws and especially laws regulating oil and other fossil fuels should be enacted</p>	<p>Parliament should halt consultations on the EACOP (Special Provisions) Bill, 2021 until government makes public the IGA, HGA, Shareholders Agreement (SHA) as well as the Tariff and Transportation Agreement (TTA) for the EACOP project.</p> <p>Further, the purpose of the Bill should not be about enabling compliance and operationalization of the EACOP agreements. The objective of the bill should be to make a law that can help the country guard against the risks of the EACOP project such as pollution and others that come with oil exploitation.</p>

		<p>with maximum care for them to serve Ugandans by promoting equity and social justice.</p> <p>A law made amidst secrecy cannot transform Uganda and/or improve the lives of the people.</p>	
2.	<p>Clause 2 on defects in the existing laws states that “...some of the matters agreed upon in the IGA and HGA which are necessary for the effective implementation of the project are either not covered or are inconsistent with the existing laws”.</p>	<p>In addition to the concerns stated above about the lack of public access to the IGA and HGA, it is concerning that the Ugandan government signed agreements that are inconsistent with Uganda’s laws.</p> <p>Uganda’s laws are aimed at protecting her peoples and all agreements should be negotiated and concluded in line with existing laws and not on conditional future laws.</p>	<p>Before parliament passes the EACOP (Special Provisions) Bill, 2021, the Minister of Energy should present to parliament the Ugandan laws that are inconsistent with the IGA and HGA and show how this inconsistency affects Ugandans.</p>
3.	<p>Clause 3(d) on remedies to deal with the defects states that “the bill seeks to grant and protect the land rights of the project including the enabling of government to support the project in the acquisition of land”.</p>	<p>This clause prioritises the protection of the project’s land rights at a time when the project proponents have failed to respect the rights of the people whose land is being compulsorily acquired for the EACOP project in ten districts in Uganda. The majority of these people are small-scale farmers.</p> <p>Four years after they were informed in 2018 that their land would be acquired for the EACOP project, the people are yet to be compensated. Yet through cut-off dates that were set in 2019, the people, especially farmers, were stopped from using their land to grow perennial food and cash crops.</p> <p>It is unfortunate that the Ugandan government, which should be protecting people’s land rights, is prioritising the EACOP project’s rights instead.</p>	<p>The bill should provide for how the land rights of the EACOP-affected people will be protected by the EACOP project developers for the 66 years that the developers will have access to the land.</p> <p>The bill should provide incentives and penalties for adherence or non-adherence to clauses on protecting the EACOP-affected people’s land rights respectively.</p>

<p>4.</p>	<p>Clause 3(m) states that the bill seeks to give supremacy over other laws on issues specifically covered by the bill.</p>	<p>This clause is worrying as it does not state and recognise that the 1995 Uganda Constitution is supreme over the bill.</p> <p>Under Article 26, the Constitution guarantees citizens’ right to own land and to receive prompt, fair and adequate compensation before citizens’ land is compulsorily acquired by government.</p> <p>The constitution also provides Ugandans with the right to live in a clean and healthy environment.</p> <p>While clause 46 of the bill provides that the Constitution is supreme and takes precedence over the EACOP (Special Provisions) Bill, the fact that this clause comes later on in the bill might lead to many Ugandans being led to believe that the bill supersedes the Constitution.</p> <p>It is also unfortunate that the EACOP bill is being made supreme over other key legislation such as the wildlife laws, water laws, land laws, climate change laws and others yet the negative impacts of oil projects on nature remain the worst in the world especially in Africa. What is the rationale for making the EACOP Bill superior to other key laws?</p>	<p>Clause 3(m) should be deleted from the bill. Only the Constitution should be accorded the position of a supreme law.</p> <p>If clause 3(m) is to be retained, it should be revised to provide that the EACOP Bill is inferior to laws on the environment, forest protection, wildlife protection and management, climate change, land and livelihoods.</p>
<p>5.</p>	<p>Clause 10(3) states 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</p>	<p>This clause gives the EACOP project developers too much power that may be abused. Knowing that they could violate conditions in Environmental and Social Impact Assessment (ESIA) certificates of approval for instance and they take “reasonable steps to correct the violation” and this doesn’t lead to</p>	<p>This clause should be rewritten to provide that project authorisations may be refused at the time of renewal per the conditions set out in various permits or certificates of approval.</p>

	<p>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>cancellation of authorisations or permits, the developers may become lax and violate ESIA and other permits.</p> <p>This would negatively affect small-scale farmers, tourism operators, fisherfolk and others who need a clean and healthy environment to earn a livelihood.</p> <p>Oil project impacts are real and any law to regulate such projects must be strict. There is need to avoid provisions such as the current clause 10(3) that could deter compliance to prevent or minimise oil impacts.</p>	<p>This way ESIA certificate conditions which provide that certificates of approval may be revoked if certain conditions are violated will maintain the force of the law, including in the EACOP (Special Provisions) Bill, 2021.</p> <p>There is also need to add a provision under clause 10 that states that any violation relating to environment, wildlife, community livelihoods and other critical biodiversity shall be sufficient ground to deny project authorisations.</p>
6.	<p>Clause 10(4) states 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; 25 Bill No.29</p> <p>(b) any granting or enforcement of any security interest in relation to the EACOP project in favour of any finance party or any agent or trustee of the finance party; or</p> <p>(c) any transfer of any direct or indirect ownership interests in the project company which does not contravene section 41 and the Host Government Agreement.</p>	<p>This clause is problematic for the reasons stated above. There is no reason why an Act of Parliament should be conditioned to a mere agreement. As highlighted above, it was in bad faith on the executive’s part to sign agreements and thereafter come to parliament to enact a law.</p> <p>Moreover, should the Ugandan government decide to pursue investment in clean energy over the EACOP project to align itself with the country’s climate change ambitions, government would be bound by this clause to avoid any cancellations.</p>	<p>The clause should be rewritten to state that a project authorisation may be terminated based on the terms and conditions set out in various permits and relevant laws.</p> <p>Further, a provision allowing Uganda to choose clean energy development over the EACOP to address climate change should be inserted in the bill. This clause will enable government to cancel projects such as the EACOP when it becomes necessary to transit to clean energy and save the world from the climatic change impacts of oil activities.</p>
7.	<p>Clause 42 on the provision of electricity states that “Notwithstanding sections 29, 30, 31 and 53 of the Electricity Act, 1999-</p>	<p>This clause goes against Uganda’s Nationally Determined Contributions (NDCs) on climate change which among others are seeking to increase clean energy use</p>	<p>This clause should be deleted and replaced with a clause mandating the EACOP project developers to use clean energy to reduce the burning of fossil fuels.</p>

	(a) the project company shall have the right to receive and use electrical power generated from excess associated gas by the upstream project at Tilenga or Kingfisher for pumping, heating and other operational purposes solely in connection with the transport of petroleum through the EACOP system, including the right to construct and operate any necessary infrastructure, in accordance with arrangements jointly agreed with the Electricity Regulatory Authority ...”	in Uganda to address climate change.	Already, the developers have indicated that they would be willing to use solar energy to reduce the EACOP project’s carbon footprint.
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3. 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.

4. Conclusion

IGEN-EA is concerned that measures to protect green economic sectors such as agriculture, fisheries, tourism, forestry and clean energy which employ over 70% of Uganda’s laborforce and contribute over 30% to Uganda’s GDP amidst the EACOP project have not been articulated in the bill. Neither have climate change considerations.

Parliament should not pass the bill until all the concerns stated in this memorandum are addressed.

Thank you,

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Diana Nabiruma,
Co-ordinator, IGEN-EA

IGEN EA signatories

1. 350Africa
2. Association for the Conservation of Bugoma Forest
3. Africa Institute for Energy Governance
4. Centre for Sustainability Innovation and Research
5. Civic Response on Environment and Development
6. Eastern and Southern Small-scale Farmers Forum
7. End Plastic Pollution
8. Food Rights Alliance
9. International Fund for Animal Welfare
10. Lake Albert Children and Women Advocacy Development Organization
11. Laudato Si Movement
12. Natural Resource Conservation Network
13. Natural Justice
14. Navigators of Development Association
15. Oil Refinery Residents Association
16. Uganda Community Tourism Association
17. Uganda Fridays for Future
18. Uganda National Renewable Energy and Energy Efficiency Alliance
19. Powershift Africa
20. Women for a Green Economy Movement