

AFRICA INSTITUTE FOR ENERGY GOVERNANCE

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March 7, 2022

The Chairperson, Natural Resources Committee,
Parliament, Kampala-Uganda



Dear Sir/Madam,

RE: A MEMORANDUM OF PROPOSALS ON THE ELECTRICITY AMENDMENT BILL 2022

In reference to the above matter.

This is to submit as **attached our memorandum of proposals and recommendations** on the Electricity Amendment Bill 2022.

We also request that if it pleases your committee, you invite us to meet and make a physical presentation to you on **14 March 2022 at 11am** or any other date and time of your choice.

Africa Institute for Energy Governance (AFIEGO) is an incorporated public policy research and advocacy none profit making company limited by guarantee dedicated to influencing energy policies for the common good and national and regional development.

The attached memorandum of proposals on electricity amendment Bill 2022 is product of consultations we conducted in the districts of Hoima, Buliisa, Kikube and Masindi where we gathered stakeholders' views on the required electricity legal reforms.

In addition to these attached comments, AFIEGO and partners are ready to work with parliament to conduct further consultations across the country.

Yours faithfully,

Dickens Kamugisha, CEO-AFIEGO
dkamugisha@afiego.org

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)



March 7, 2022

The Chairperson,
Natural Resources Committee,
Parliament of Uganda,
Kampala (U).

Dear Sir/Madam,

**RE: MEMORANDUM OF PROPOSALS ON THE ELECTRICITY (AMENDMENT) BILL
2022**

Introduction

We believe that the ongoing process to amend the Electricity Act 1999 will enable parliament improve and strengthen the legal, policy and institutional electricity sector framework to meet the national, regional and global targets. This will in effect help Uganda to maximize electricity benefits for social and economic transformation.

In particular, a good electricity law will help Uganda to achieve her national and international targets and obligations including Goal 7 of the Sustainable Development Goals (access to affordable, reliable, sustainable and modern energy for all), the objectives of the Sustainable Energy for All (SE4ALL), the 2016 Paris Agreement on Climate Change, the National Development Plan, Vision 2040, the 2016 Compact Agreement between Uganda the UK governments, and others.

In recognition of the important role the electricity sector plays in Uganda, the undersigned signatories take this opportunity to thank you and your team for sparing time to consult the public on this Bill.

Below are our proposals aimed at supporting your committee and parliament at large to make a good electricity law for Uganda:

General observations

First, there is need for an independent, comprehensive - study of the country's current electricity sector situation. Since the enactment of the 1999 Electricity Act, that is being amended, Ugandans do not know the successes and failures of this law. They do not know the levels of electricity accessibility, affordability, reliability and sustainability and how the gender question in the sector been addressed during this time.

In absence of a comprehensive report, it will be difficult for Parliament to enact a law that addresses the aforementioned concerns. The Electricity Regulatory Authority (ERA) and Ministry of Energy and Mineral Development (MEMD) should therefore justify the relevancy of the Electricity Amendment Bill by using evidence-based research.

The study should provide information on the performance of both government and private entities and projects including the 2005 UMEME concession, ESKOM's management of Kira and Owen Falls dams, Bujagali Energy Limited (BEL)'s management of Bujagali dam, the Rural Electrification Agency's performance in distributing power to rural areas, the effectiveness of the free connection policy, the role and relevancy of the Uganda electricity generation, transmission and distribution companies, the effectiveness of the Electricity Disputes Tribunal (EDT), ERA, among others.

What happened to previous investigations in the electricity sector including the Gen. Salim Saleh Committee report of 2009? A few years back, Parliament also investigated challenges in the electricity sector and made recommendations. Was anything done? The President further directed the Inspector General of Government to investigate the questionable Umeme concession. What were the results?

Without evidence-based research, the proposed amendment may not address the above systemic failures. We need to first know why the cases of electricity theft and vandalism are increasing. Why the government has failed to make electricity tariffs affordable. What plans are in place to support off-grid solar services for the poor amidst increasing deemed energy.

In general, Parliament must ensure that the current Electricity (Amendment) Bill 2022 addresses the following unanswered questions:

- How can the country and the citizens maximize the benefits of generation, transmission, distribution, rural electrification, regulation and other relevant electricity services in Uganda?
- What is the return on investment for major electricity projects in the country?
- What is the impact of deemed electricity on a developing country like Uganda?
- What is the major obstacle hindering ERA from effectively executing her mandate?
- How does the government plan to balance renewable energy, especially off-grid solar, with the question of access to grid power and deemed power?

- What electricity affirmation action is needed for critical services such as health centers, schools, clean water, among others?
- What is the impact of unaffordable electricity tariffs on the behavior of power consumers and efforts to conserve the environment?
- How does ERA and government plan to end secrecy and corruption in the processes of Power Purchase Agreements (PPAs)?
- Why are cases of selective and/or closed bidding increasing in the electricity sector?
- Why has government not put in place an electricity policy to guide electricity sector planning?
- What are the plans to empower the Electricity Disputes Tribunal (EDT) to effectively serve the entire country?

Below are our specific comments and recommendations on the Electricity (Amendment) Bill 2022:

Weaknesses in the Bill			
No.	Provision in the Bill	Issue/comment	Recommendation
1.	Clause 4: amendment of section 10 of the 1999 Act	<p>Clause 4(qb) is good to ensure that ERA regulates what it can measure. However, the clause remains shallow because it fails to specify the nature of consultancies and studies, and what happens to the reports.</p> <p>Considering the investments being made in the electricity sector including the \$2.4 billion in Karuma and Isimba dams, Bujagali dam's \$1.1 billion, transmission lines, rural electrification and free connections, numerous government and private companies in generation and distribution, the law should obligate ERA to undertake specific studies and be more accountable.</p>	<p>The amendment should require ERA to undertake studies and do the following:</p> <ul style="list-style-type: none"> • Present quarterly and annual electricity sector performance reports to parliament.
2.	Clause 5: amendment of section 22 of the Act	<p>It's unfortunate that the fees charged on licensees by ERA is being increased from 0.3% to 0.7% without any scientific basis.</p> <p>This is not necessary and in a country suffering high levels of corruption, it</p>	<p>We recommend that:</p> <ul style="list-style-type: none"> • ERA gets its funding from the consolidated fund to strengthen its independence.

		<p>can be a big obstacle which may encourage the regulator to connive with the licensees.</p> <p>Let ERA always face Parliament to justify its funding yearly.</p>	<ul style="list-style-type: none"> The charges on the licensees should be paid to the consolidated fund.
3.	Clause 14: amendment of section 56 of the Act	<p>Clause 14(3) is a good amendment but it fails to set a timeframe within which ERA must put in place regulations governing cases where anyone with a license for generation can sell directly to distributors, transmitters, and/or consumers.</p>	<p>We recommend the following:</p> <ul style="list-style-type: none"> ERA shall within six months of coming into force of this amendment put in place regulations for guiding generators to sell electricity directly to distributors, transmitters and or consumers. <p>The regulations shall among other things provide for the following:</p> <ul style="list-style-type: none"> Generators in isolated places must supply power to will consumers directly before selling power to the grid. Government shall construct min grids for isolated areas.
4.	Clause 17: amendment of section 83	<p>The words (without lawful excuse) waters down the essence of the provision. If maintained, it will undermine the implementation of the provision. What is a lawful excuse vs unlawful excuse? What is the objective of this?</p>	<p>We recommend that:</p> <ul style="list-style-type: none"> The words “without lawful excuse” should be deleted. The clause should provide that any failure to comply with a

			<p>license by the licensee is breach.</p> <ul style="list-style-type: none"> Any licensee aggrieved by a decision of ERA can appeal to the Tribunal for redress.
5.	Clause 15: amendment of section 75 of the Act	<p>The requirement for generators to pay royalties to local governments for renewable energy generation is suspect. Why is this limited ONLY to renewable energy? If this is not well sought out, it may discourage generation of renewables.</p> <p>Second, why is it left at the mercy of the local governments and ERA?</p> <p>There is need for certainty.</p>	<p>We recommend the following:</p> <ul style="list-style-type: none"> A generator of electricity to sell to the grid shall pay a royalty of 2% to the local government where the plant is located. A generator of renewable electricity intended to be used not through the grid shall not pay any royalty. ERA shall within 12 months of enacting this Act put in place regulations for the payment of royalties to local governments.
6.	Clause 20: Theft of electricity	<p>There is need to understand the categories of people involved in stealing electricity. It does not make sense to impose penalties which will not be enforced but instead will only be used by enforcers to cheat the suspects.</p> <p>In criminal cases where the punishments are heavy, the suspects are entitled to a lawyer at the expense of the state. What will happen to suspects in electricity cases?</p>	<p>We recommend:</p> <ul style="list-style-type: none"> Any person convicted of stealing power shall face imprisonment for a term not less than 2 years or a fine of not less than one thousand currency points or both. Without prejudice to the above provision, the tribunal shall have the powers to determine the punishment for any

		<p>It will be the poor suspects vs rich licensees and this will not promote justice.</p> <p>Every punishment must be commensurate to the offence committed.</p>	<p>person convicted of stealing electricity.</p>
7.	Clause 21: General penalty	<p>Clause 21 serves no purpose. Clauses 19 and 20 cater for all offences.</p>	<p>Clause 21 should be deleted.</p>
8.	Clause 22: Amendment of section 93	<p>The clause does not define the qualifications of the tribunal members.</p>	<p>We recommend that the chairperson of the tribunal should be at the level of High court judge, the secretary at the level of Grade One magistrate grade one.</p> <p>Other members should be appointed from the Uganda Law Society, power consumers' association, Uganda Human Rights Commission, MEMD.</p> <p>Other proposals:</p> <ul style="list-style-type: none"> • The tribunal members should serve a period of six (6) years and can be renewed for only one more term. • The security of tenure for a member of the tribunal shall be equal to a judge of the High court. • The tribunal shall hold its hearings in different parts of the country to cases in those areas.

			<ul style="list-style-type: none"> • The tribunal shall have registries at every district where aggrieved people can file their cases. • Any case filed at the tribunal shall be completed and decision made within six (6) months from the date of filing.
9.	<p>Clause 29: Insertion of new section 112A- Immunity from suit.</p> <p>No action, suit, prosecution or any other proceeding may be brought or instituted personally against a person who is or was a member of the tribunal or employee of tribunal in respect of any act done or omitted to be done in good faith in the discharge of any function under this Act."</p>	<p>The clause should define what is good faith and clarify on what is bad faith.</p> <p>The clause encourages impunity within the tribunal because people will make calculated mistakes and hide behind this immunity.</p>	<p>We recommend:</p> <ul style="list-style-type: none"> • The clause should clearly define what "good faith" is and under what circumstances can the proceeding be brought or instituted against a member and staff of the tribunal. • Any member or staff of the tribunal convicted of corruption in the affairs of the tribunal shall face imprisonment for a term not less than two years or a fine of five hundred currency points or both. • All members of the tribunal other than the chairperson and secretary shall be recruited by the Judicial Service Commission.

10.	<p>Clause 30. Insertion of new section 118A. The principal Act is amended by inserting immediately after section 118, the following- “118A.Procedures for dealing with complaints from consumer. (1) A person aggrieved by a decision or action of a licensee may apply to the licensee for redress. (2) A licensee shall establish procedures for dealing with complaints from its consumers or potential consumers of the Licensee’s service.</p>	<p>The clause fails to provide that licensees will establish grievance-handling committees where power consumers will be represented.</p>	<p>We recommend:</p> <ul style="list-style-type: none"> • Every licensee must establish a grievance-handling committee in every parish where it is operating. • Every committee must include two (2) representatives from the local power consumers. • ERA shall pay to the consumer representatives 20,000/ per sitting of the committee. • A representative of the power consumers shall serve a term of three (3) years on the committee.
11.	<p>Clause 31: substitution of clause 119-power to make regulations</p>	<p>The current clause does not specify the timeframe within which the regulations will be put in place by the authority in consultation with the minister. It also does not require the authority and the minister to consult the public in the process of making the regulations.</p> <p>There is also no justification why the authority should make the regulations. The authority should concentrate on regulation and allow the minister to make the regulations in consultation with the minister.</p>	<p>We recommend:</p> <ul style="list-style-type: none"> • The minister, in consultation with the authority, to put in place regulations within the first 12 months from the date of the enactment of this Act. • The minister must ensure stakeholder consultations in the process of formulating the regulations.

		These are huge weaknesses.	Among other things, the regulations will also prescribe the following: <ul style="list-style-type: none">• Penalties to a licensee who installs a faulty meter;• Disconnects a consumer without following procedure,• As government official who fails disclose a power purchase agreement,• To disclose a power supply license.
	Gaps in the Bill 2022	Recommendations	
1.	The Bill is silent about the transparency in the negotiation and signing of agreements such as power purchase agreements (PPAs), implementation of PPAs and others. The secrecy in the PPAs processes promotes impunity and corruption in the electricity sector.	This Bill should include a clause to provide that all PPAs processes, supply licenses and other electricity contractual documents shall be open to the public.	
2.	The Bill is silent about counterfeit/ substandard equipment such as yaka meters, electric wires, poles and others that are a danger to consumers and the public.	The Bill should include a clause providing for: <ul style="list-style-type: none">• A penalty for any licensee who installs counterfeit equipment and equipment not approved by the UNBS.• Compensation to the affected person/people by the licensee.	
3.	The Bill is silent on protection of health centers from power disconnections.	<ul style="list-style-type: none">• A clause should be inserted providing against power disconnections of public health facilities by licensees.• If any health centre fails to pay for the power consumed, the liability will be imposed on the accounting officer of that health centre and the Secretary to the Treasury in the ministry of finance.	

		<ul style="list-style-type: none"> • The Ministry of Finance has the powers and obligation to pay for all power Bills of public health facilities. • A licensee who fails to recover the Bills for power consumed has a right to bring action against the accounting officer of the responsible health facility and the Secretary to the Treasury.
4.	<p>The Bill is silent on land acquisition. In many cases, government officials mishandle land acquisition processes by failing to acquire land before the commencement of dams, transmission lines and others which results into high compensation figures and delays of government projects.</p> <p>In addition, UETCL is notorious for using people's land for transmission lines and doesn't/take long to compensate them.</p>	<p>The Bill should contain a clause requiring the following:</p> <ul style="list-style-type: none"> • Before commencement of dams and big transmission lines projects, there must be evidence that land where the dam is to be built and transmission line is to be constructed is acquired. • Any person who allows commencement of construction of a dam/s and transmission line/s before securing the required land commits an offence.
5.	The Bill is silent about the constant electrocution of the citizens and damage to property.	The Bill should include a clause providing that a licensee must compensate any person who suffers electrocution and property damage due to power faults including power surges, faulty meters, wires, among others.
6.	The Bill does not have any clear clause to provide for investments in off-grid solar and renewable energy services.	The Bill should have a clause requiring investment in off-grid solar for rural households instead of grid power.
7.	The Bill does not indicate the source of funding to the tribunal to effectively perform its work. For the electricity disputes tribunal to deliver its mandate, it requires secure and sufficient funds.	The Bill should include a clause empowering the tribunal to get its funds directly from the consolidated fund.
	The Bill does not provide against selective and closed bidding. There is an emerging trend where government is avoiding open bidding for some major projects. This undermines competition.	<p>The Bill should include a provision that:</p> <ul style="list-style-type: none"> • Any power project above \$1 million must go through open bidding. • Any person who fails to ensure open bidding in power projects commits an offence.

Conclusion

We thank you once again and hope that the committee will consider our proposals and consult the wider public. Effective public consultation will help Parliament enact a good electricity law for the good of Ugandans.

Parliament should ask government to introduce an electricity policy to help electricity sector planning. It's unfortunate that the Act is being amended before the policy is in place!

Thank you,

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Dickens Kamugisha,

Chief Executive Officer, AFIEGO

About AFIEGO: Africa Institute for Energy Governance (AFIEGO) and our partners working to influence energy policies to benefit the poor and vulnerable citizens as well as promote national socio-economic development.

We, once again, thank you and your committee members for consulting the public on the Electricity (amendment) Bill 2022.

Signatories

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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