The East African Crude Oil Pipeline: New risk developments

In February, TotalEnergies (Total) and China National Offshore Oil Company (CNOOC) announced that they have reached a Final Investment Decision (FID) on the East African Crude Oil Pipeline (EACOP) and associated projects, over 15 years after commercial oil was discovered in Uganda. The project loan for this proposed 1,445-kilometre heated pipeline from Hoima in Uganda to the port of Tanga in Tanzania is, however, yet to reach financial close.

The full range of environmental, human rights, and climate risks and impacts associated with the project, as well as the commercial and reputational risks it poses, are set out in our three previous EACOP Finance Risk Briefing papers and updates. The documents can be found here:

- Finance Risk Briefing, November 2020
- Finance Risk Update, August 2021
- Finance Risk Update No. 2, January 2022

Taken together, these briefings detail the project's unacceptable risks and impacts to local communities through physical and economic displacement, threats to livelihoods and income generating activities; grave risks to critical water resources and biodiversity, including protected ecosystems; and unacceptable climate harm.

This briefing note sets out significant developments of interest to banks, investors and insurers that may be considering or exposed to the project or its backers, that have emerged since our last Risk Update in January 2022.

1. Project updates

Final Investment Decision taken
On 1st February 2022, the Final Investment Decision (FID) was reached on the Lake Albert Resources Development Project by the President of Uganda, the Vice-President of Tanzania, the Chairman and CEO of Total, and representatives of CNOOC, the Uganda National Oil Company (UNOC) and the Tanzania Petroleum Development Corporation (TPDC). The Lake Albert Resources Development Project encompasses the Tilenga and Kingfisher upstream oil projects in Uganda and the construction of the EACOP through Uganda and Tanzania. The parties plan for first oil production by 2025.

As the FID was signed, the Petroleum Authority of Uganda conceded that production-sharing agreements had been amended to give Total and CNOOC a larger share of the profits when oil prices are low. The Economist, which reported the news, characterised the move as meaning the oil companies have, in effect, "passed on some of the financial risks of a global transition to low-carbon energy to the Ugandan government."

EACOP Project-Affected People
Source: Amis de la Terre France, 2020

Uncertainty on EACOP Project Loan size

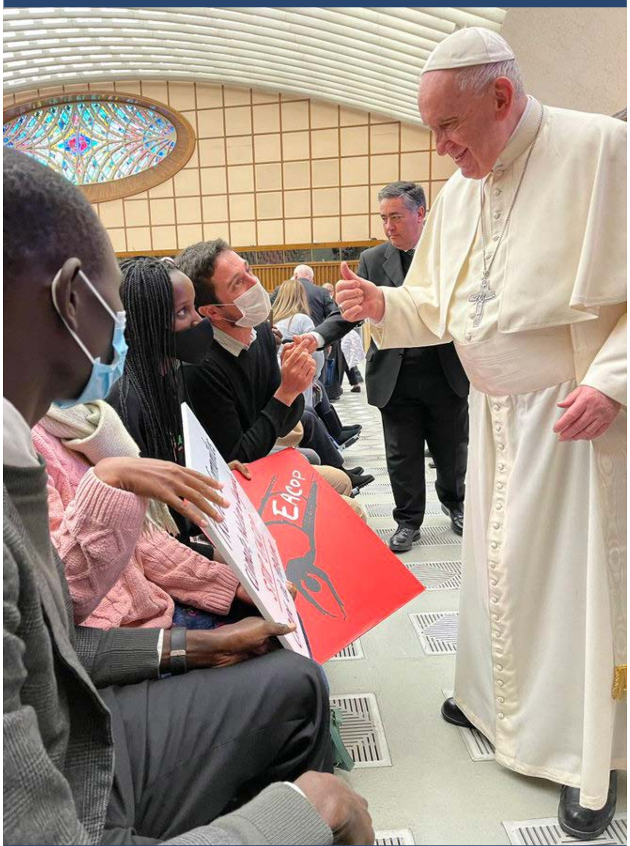
Unusually for such a project, FID was taken without financial close being reached on the EACOP project finance loan. The EACOP still requires this project loan in order to proceed, although Total is now unclear on the size of loan it is seeking. Total stated at its 2022 AGM that the project would be financed with a debt amount of "$2-3 billion." (PDF, French only, p44) This contrasts with its statement at the previous year's AGM that the debt portion would be $3 billion (PDF, French only, p37). A debt-to-equity ratio of 60:40 (which implies a $3 billion project loan) was also reported in a statement to Uganda's parliament in April 2021. This suggests Total is preparing to revise down the debt proportion of its EACOP financing plans in response to low levels of interest from lenders.

Reputational risk grows as opposition continues to build

In March, a delegation of Ugandan advocates travelled to Europe to talk to politicians, financiers, the media, the public and others about the EACOP and its impacts. They visited France, Rome, Brussels, Geneva and Germany, and met with Emmanuel Macron's diplomatic adviser and representatives of the Ministry of Foreign Affairs, French banks, several UN special rapporteurs in Geneva and with the Pope in Rome.

Following the visit, eighteen French parliamentarians from seven parliamentary groups spoke out against the EACOP project in an article in Le Monde. Further, Pope Francis and the Vatican also expressed concerns about the EACOP project. The EACOP was also discussed at the Laudato Si' Week in May. Laudato Si' is a collaboration between the Vatican and an international coalition of Catholic organisations and individuals. World-renowned economics professor Jeffrey Sachs spoke during a webinar on Fossil Fuels, Violence and the Climate Crisis, together with StopEACOP coordinator Omar Elmawi. Professor Sachs has also previously called directly on the Tanzanian Foreign Minister to halt the project in a speech in October 2021.

Also in May, Total's annual shareholder meeting was blocked by hundreds of climate activists who were protesting against the company's continued commitment to new fossil fuel projects, including the EACOP. As a result of the blockade, shareholders were unable to enter the venue and the company was forced to move its meeting online. Concerts have also been held in Kenya, Uganda and DR Congo to raise awareness of the enormous risks posed by the EACOP.



A Ugandan delegation meets Pope Francis at the Vatican, March 2022.
Source: LaudatoSi Movement Uganda

Local businesses lose out on EACOP contracts

The French multinational Bolloré Logistics has won the contract to be the main logistics supplier for the EACOP, leaving only subcontracting jobs for local firms, lending weight to the scepticism of local communities about promises that benefits from the projects will accrue to Ugandan businesses. The Bolloré Group has been in the news for alleged corruption, illegal practices and land grabbing and widespread human rights violations through its subsidiary SOCFIN.

Non-Ugandan firms, including GCC Services of the United Arab Emirates, have also been contracted to provide services such as catering for the Tilenga project, which Uganda had previously committed to ring-fence for Ugandans. Moreover, the 2021 EACOP (Special Provisions) Bill that was passed into law by Uganda's parliament in December 2021 has various provisions that undermine participation of Ugandan firms in the oil and gas sector. All this points to profits from the project being largely repatriated out of Uganda, while frontline communities suffer the pipeline's impacts.

EITI asks Uganda to publish oil, mining contracts or be penalised

As reported in our August 2021 update, several key agreements around the EACOP have not been made public, contravening Uganda's and Tanzania's commitment to contract transparency as signatories to the Extractive Industries Transparency Initiative (EITI). Now, as reported in June, the EITI Uganda chapter has made clear that continued refusal to disclose documents could lead to penalties being imposed on Uganda's oil and mining sectors by the initiative, including Uganda's possible suspension from the EITI.

2. Finance and insurance updates

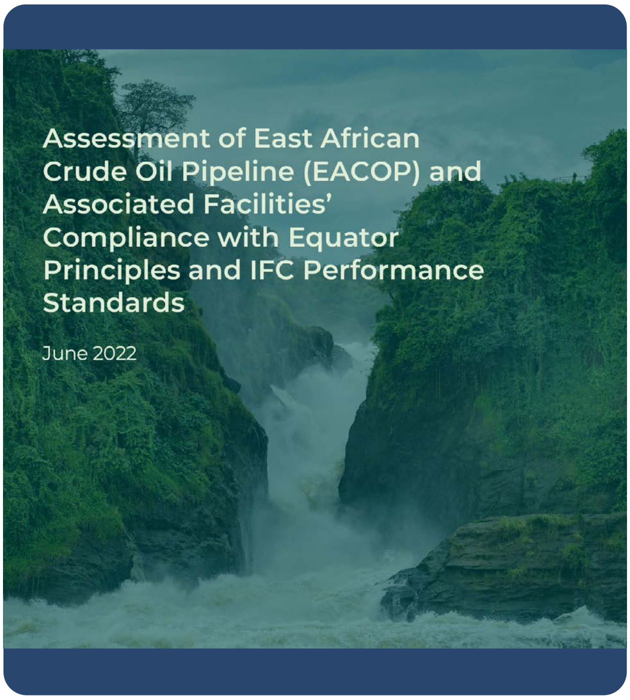
Equator Principles analysis of EACOP details non-compliance

A new analysis of the EACOP and its related oil extraction projects on compliance with the Equator Principles, the banking sector's voluntary standards for managing environmental and social risks, raises several conflicts with the standards. These include breaches of IFC Performance Standards 3, 4, 5 and 6, as a result of harassment of human rights defenders, farmers facing restrictions on how they use their land, years of delays to the compensation process, low-cost water crossings raising pollution risks, and harms to natural resources including Ramsar wetlands and the Murchison Falls National Park.

The briefing paper, by Africa Institute for Energy Governance (AFIEGO), Inclusive Development International and BankTrack, also highlights the incompatibility of financing the project with commitments made by adopting banks in the Preamble of the Equator Principles, including to "support the objectives of the Paris Agreement". The project sponsors – Total, CNOOC, UNOC and TDPC – have committed to ensure that the EACOP, together with the Tilenga oil field as an associated project, will meet the requirements of the Equator Principles.

Number of banks ruling out direct finance up to 20

The list of commercial banks distancing themselves from the EACOP project continues to grow. In February, South African banks ABSA, FirstRand, Nedbank and Investec all confirmed they will not finance EACOP, isolating Standard Bank as the only South African lender associated with the project. In May, Deutsche Bank also made it known to the media that it was not financing the pipeline, while the Financial Times reported that US banks JPMorgan Chase, Citigroup, Wells Fargo and Morgan Stanley would also not join the project loan. This brings the total number of banks to have made clear they will not finance the project to 20, including all of Total's seven largest financiers.



Affected people directly appeal to banks

Banks which continue to be involved in the project, or have not publicly distanced themselves from it, continue to come under pressure. In April, an African People's annual general meeting was organised to urge more banks and insurers not to back the EACOP.

In May and June, 2,591 households whose land is being acquired for the EACOP project and whose livelihoods have been disrupted by the Tilenga and Kingfisher oil projects in Uganda and the Democratic Republic of Congo (DRC) wrote to 15 banks linked to the project.[1] They outlined the human rights violations that they have suffered because of the project, and called on the banks to support clean energy instead of fossil fuel projects through which communities' rights are abused. In addition, on 12th May, 36 EACOP-affected people from Mubende district petitioned Stanbic Bank and Absa calling on the banks to distance themselves from the project.

1 The banks were Standard Bank, Industrial and Commercial Bank of China (ICBC), Sumitomo Mitsui Banking Corporation (SMBC), Standard Chartered, Bank of America, Mitsubishi UFJ Financial Group, Agriculture Bank of China, Bank of China, China Construction Bank, China International Capital Company, Goldman Sachs, Overseas Chinese Banking Corporation, Natixis, BBVA and, Satander. The letter was also sent to Golder Associates as consultants to the project loan.

Four European Export Credit Agencies (ECAs) turn down EACOP funding

As well as commercial banks, several Export Credit Agencies have turned down support for the project. In November 2020, Upstream reported that "Total and the governments in Kampala and Dodoma are looking to largely finance the pipeline through European export credit agencies (ECAs), most likely from France, Italy, Germany and the UK." Since then, the ECAs from all four countries have confirmed that they would not support EACOP.

Most recently, in May, the Italian ECA, SACE, which had previously been reported to be interested in providing support for the project, turned down a request to support it. In April, Germany's Euler Hermes confirmed in a letter to Ugandan civil society that it is not involved in financing the project, and "not currently undertaking any evaluation of the project". And in February, the French Minister of Environment confirmed that France would not provide any financial support to EACOP. French President Emmanuel Macron later told activists that he would stop any remaining public financing for the project. The UK ECA had already ruled out supporting the project in early 2021. In addition the European Commission has been quoted as saying it "does not support the financing of oil projects in Africa".

Actiam divests from Total over EACOP

In April, Dutch asset management company Actiam stated it has divested from Total completely, with a responsible investing expert for the firm citing "alarm bells" from EACOP as a reason for the decision. The divestment followed extensive engagement with Total, but Actiam remained concerned regarding the project's impacts and risks, including regarding the risk of oil spills. An engineer consulted by Actiam warned that the project could pollute critical clean water supplies, stating; "There will be spills. You can't avoid that, and that's not really an accusation but an engineering reality."

Eight insurers steer clear, Marsh hired as broker

In April, the world's largest reinsurer, Munich Re, made a public commitment that it would not insure the EACOP pipeline, joining Hannover Re, SCOR, Swiss Re, Axa, and Zurich. Since then Allianz and Beazley have also committed not to insure EACOP, bringing the total to eight.

In May, the Bureau of Investigative Journalism and the Financial Times revealed that US insurance broker Marsh McLennan is arranging the insurance coverage for EACOP, despite more than 100 of its staff signing on to an internal petition citing the "disastrous consequences" for the climate and the company's reputation. A petition to the CEO of Marsh McLennan requesting that the company withdraw brokerage services has, at the time of writing, over 16,000 signatories.

In April, 100 civil society organisations from around the world sent an open letter calling on Lloyd's of London, the world' largest insurance market, to withhold support for EACOP. Youth climate activists affiliated with Fridays for Future in the UK have begun publicly protesting daily outside of Lloyd's headquarters in London over its failure to respond to the letter and to civil society's concerns over EACOP.

"There will be spills. You can't avoid that, and that's not really an accusation but an engineering reality."

3. Legal risk updates

Legal challenge at the East African Court of Justice (EACJ) continues

In November 2020, a court case was filed at the East African Court of Justice (EACJ) aiming to nullify the agreements for the EACOP's construction. The petitioners also filed an application for a temporary injunction to stop the project. The hearing on the application for a temporary injunction was due to take place on 2nd March 2022. However, the Solicitor General of Tanzania argued that the EACJ cannot hear the application before it addresses the issue as to whether the EACJ has the jurisdiction to hear the main case. The EACJ adjourned the hearing until the issue of jurisdiction and other preliminary objections are resolved.

There are no clear timelines for the next hearing or for the conclusion of this case. Lawyers for the civil society applicants consider this "a marked departure from the principle of prevention which requires the earliest possible intervention to protect the environment rather than look to repairing the damage once it is done", according to media reports. The case is ongoing and, alongside several other pending cases, continues to pose a risk to the project, adding to the already substantial risk of stranded assets and inability to repay loans.

New lawsuit against Total at the Paris judicial court

In March 2022, Greenpeace France, Friends of the Earth France and Notre Affaire à Tous, supported by ClientEarth, filed a lawsuit at the Paris judicial court against Total, arguing that the company's 'reinvention' ad campaign breaks European consumer law, as it falsely portrays the company as on track to address the climate crisis. According to the claimants, Total's advertising to French consumers is deceptive as it gives a false picture of the company's plans to reach "carbon neutrality" or "net zero".

In fact, as Oil Change International's May 2022 "Big Oil Reality Check" report shows, Total's climate plans are "grossly insufficient compared to the bare minimum required for limiting warming to 1.5°C." The company continues to pursue new oil and gas exploration and to approve new extraction projects, and even to accelerate this expansion. According to the lawsuit, Total's 'ambition' to become carbon neutral is liable to be taken at face value by consumers, and therefore violate bans on misleading practices under consumer protection law, the European Unfair Consumer Practices Directive, as implemented in France.

This new lawsuit comes in addition to the existing legal action being pursued against Total's projects in Uganda and Tanzania in France by six civil society groups – Amis de la Terre France, Survie, AFIEGO, CRED, NAPE and NAVODA – under the country's Duty of Vigilance legislation. In this case, following the court decision in December 2021 that it should be heard in front of a civil court, in favour of the civil society claimants, a new hearing will take place on 12th October before the Court of Justice in Paris. This means that the case will finally be judged on its merits after more than three years of procedural delays.

4. Human rights impact updates

Continued intimidation and harassment

On 23rd February 2022, a petition carried by the Ugandan NGO Oil and Gas Region Human Rights Defenders Association (ORGHA) and signed by more than 250 Human Rights Defenders (HRD) and oil affected communities was delivered to the Chairperson of the Uganda Human Rights Commission. The signatories call for an end to surveillance, intimidation and harassment of HRDs and journalists in Uganda, as well as members of ORGHA, Afiego, Navoda and all other CSOs in the country.

On 26th February 2022, the house and office of Yisito Kayinga Muddu was raided by unidentified gunmen and four laptop computers, two tablets, a cellphone handset and important files were taken. Muddu, the Programmes Coordinator of Community Transformation Foundation Network (COTFONE), is a renowned human rights defender working with communities affected by the EACOP project in Lwengo, Rakai, Kyotera, Sembabule, and Gomba districts in Uganda.

According to Muddu, some of the stolen files contained grievance statements from persons affected by the EACOP project, which were being prepared to be taken to court. In addition, Muddu notes that prior to the burglary, he had received threats through anonymous callers cautioning him against his activism while strangers were seen surveilling his home and taking pictures of his house a few days before the incident. His family narrowly escaped after hiding in the banana plantation behind the house. They have relocated and Muddu is now seeking police protection. This continues a pattern of intimidation and harassment that has marked the project's development to date.

In addition, civil society groups such as AFIEGO and the Oil Refinery Residents' Association (ORRA) that defend the rights of the EACOP-affected people continue to face threats. In May 2022, the groups' field officers were the subject of verbal threats from security officers in the Albertine Graben. The officers warned the AFIEGO and ORRA staff to desist from campaigning against fossil fuel developments.

Letter of UN Special Rapporteurs to Ugandan authorities

On 24th January 2022, the UN Special Rapporteur on Human Rights Defenders and other UN experts sent a letter to the Government of Uganda expressing their concerns regarding the harassment and intimidation of human rights defenders and NGOs working in the oil and gas sector in Uganda. It refers to the arrest and detention of Mr. Joss Kaheero Mugisa and Mr. Robert Birimuye, as well as six members of AFIEGO, in October 2021. The letter points to the fact that the arrests, acts of intimidation and judicial harassment seem to be directly related to their human rights activities and identifies these incidents as being part of a broader pattern of intimidation and harassment of CSOs in Uganda who have raised concerns around the oil and gas projects.

The Special Rapporteurs requested the Ugandan government to respond within 60 days, to provide information on the factual and legal basis for the arrests and detention of the mentioned HRDs and to indicate measures taken by the Government "to ensure that human rights defenders and NGOs are able to carry out their legitimate and peaceful activities in an enabling environment, free from threats, attacks, reprisals and acts of intimidation, of any kind". The Government did not respond to the communication within the 60 day period. The letter follows previous letters by UN Special Rapporteurs to the Government of Uganda from September 2021 and July 2021 regarding suppression of civil society groups and arbitrary arrests of HRDs, to which the Government has also failed to respond.

Land acquisition and compensation

In March 2022, Ugandan media reported that the compensation process for the EACOP project had started, and in May it was reported that 41% of Project Affected People (PAPs) had been compensated. Uganda's constitution provides that affected people should be paid promptly, yet communities have now been waiting for compensation for over three years, since valuation cut-off dates were placed on their properties by Total in May and June 2019. The communities, numbering over 20,000 people in 3,000 households in Uganda alone, have also faced limitations on how they can use their land all this time.

Moreover, the communities' grievances remain unaddressed. For instance, PAPs from Southern Uganda's Kyotera district complained to Total in an April 13th letter regarding low compensation rates for their crops. They also called for an end to the underhand methods being used to compel people to accept low compensation as well as the intimidation they face when they air grievances. They requested a meeting with Total, which has still not taken place.

In order to accelerate the land acquisition process, the Ugandan government has approved the use of compulsory land acquisition on 'absentee land users and land owners', under the Land Acquisition Act of 1965. According to Total and CNOOC, these land users and owners could not be traced for valuation of their land and compensation. However, the use of the Land Acquisition Act is controversial – parts of the act were ruled unconstitutional by the Constitutional Court in 2014 and it is pending amendment. The Petroleum Authority of Uganda argues companies will not be breaking the law if they acquire the land after depositing compensation with the courts, however this is likely to be open to dispute.

5. Conclusion

The environmental, human rights, and climate risks and impacts posed by the EACOP project, as well as the commercial and reputational risks, that we have set out in our previous Risk Briefings and Updates, have not diminished with the passage of time. These briefings also present a clear picture of the growing global outcry against the development of the EACOP. The abandonment of the project by a growing number of leading banks and insurers clearly illustrates the reputational, material and financial risks that all institutions involved in EACOP will face.

For these reasons, we continue to urge banks and (re)insurers that have not done so to publicly commit not to provide financing or underwriting support for the EACOP or associated oil projects. Banks that are signatories to the Equator Principles are further advised that the project finance loan for the EACOP presents several apparent breaches with the Principles, making the project ineligible for support by EPFIs.

As almost all major financiers of Total have now made publicly known that they are unlikely to join the EACOP project loan, attention is turning to other means for the project companies to proceed with financing the pipeline's construction.

In light of this, banks and investors that are exposed to Total and to CNOOC, e.g. through general-purpose lending or equity positions, should note that they are exposed to the project's risks and impacts as it develops, and should urgently engage with these companies regarding its risks and impacts. We continue to view these risks as unmanageable and advise financiers of Total to engage robustly for an end to the project, alongside a definitive commitment to end new fossil fuel exploration and production and phase down existing fossil fuel activities in line with the 1.5ºC threshold that climate science demonstrates is essential to limit the worst impacts of the climate crisis.

Contact

Banks and other financial institutions wishing to confidentially discuss the issues raised in this update can contact us via the following channels.

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This update has been written by BankTrack and is endorsed by: Africa Institute for Energy Governance, Both ENDS, Inclusive Development International and Just Share.