The East African Crude Oil Pipeline: New risk developments

As of the start of 2022 , the Final Investment Decision for the East African Crude Oil Pipeline (EACOP) has still not been reached, and financial close on the estimated $3 billion project finance loan that the project will need is not yet in place. Meanwhile, adverse impacts connected with the project continue to mount. Since our last Risk Update on the project in August 2021, there have been several important new developments, which are set out in this briefing note for banks.

Intimidation and arrests: Most alarmingly, the situation for civil society advocates in Uganda, and especially those working to assist oil-affected communities, has worsened significantly. In October 2021, several instances of arrests and judicial harassment occurred, detailed here by ProtectDefenders.eu. This included the arrest (and later release) of six members of our partner organisation Africa Institute for Energy Governance (AFIEGO), including its director; a representative of project-affected peoples, Mr. Robert Birimuye; and the chair of the community-based Oil and Gas Human Rights Defenders Association (ORGHA), Mr. Joss Kaheero Mugisa, who spent 54 nights in jail and is still awaiting trial. Police also closed the local offices of AFIEGO in Buliisa, along with the offices of OGHRA and another organisation, Navigators Of Development Association (NAVODA), which are on the same premises. These actions and arrests are part of a pattern of harassment and persecution by the Ugandan authorities.

They follow a move by Uganda's NGO Bureau in August 2021 through which the bureau ordered 54 non-governmental organisations (NGOs) to halt operations. The order affects many organisations working on accountability and transparency in the oil sector, including AFIEGO. The NGO Bureau has no authority over AFIEGO and there is no legal basis for its order. The move has been condemned by, among others, the International Commission of Jurists, which described it as an "assault on the critical work of civil society", and three UN Special Rapporteurs have written to Uganda expressing concern and calling for an explanation. The UN Rapporteurs had already raised concerns following the May 2021 arrest of AFIEGO's Maxwell Atuhura.

Compensation problems continue: As noted in our earlier update, communities have faced restrictions on the use of their land since as early as March 2018, and are still awaiting the compensation they are due. A petition by representatives of the Project Affected People (PAPs) in two districts, Lwengo and Kyotera, was sent to TotalEnergies on 5th November 2021. Supported by partners such as AFIEGO and COTFONE, the PAPs made several demands including asking for compensation for the loss of income experienced as a result of the land use restrictions.

Moreover, several PAPs across the ten districts affected by the EACOP are refusing the compensation offered to them, considering it derisory. A powerful Floodlight investigation details some of their stories. For example, one man vowed never to accept the 39,715 Ugandan shillings (£8.30) he was offered for his land. Another accepted the compensation that he was offered although his land was undervalued, feeling he no longer had the energy to seek help and "had no alternative".

Total on trial in France: complaint to be heard in civil court, in victory for civil society claimants: On 15th December 2021, France's highest court ruled to resolve procedural issues in favour of six civil society groups - Amis de la Terre France, Survie, AFIEGO, CRED, NAPE and NAVODA - in their case against Total and its oil projects in Uganda and Tanzania. The ruling resolves the question of whether the case should be heard in front of a civil court, as favoured by the CSOs, or a commercial court, as argued by Total. The case is the first legal action based on the law on the duty of vigilance of transnational corporations. It will now return to the civil court, and will finally be examined on its merits after two years of delay, with the next hearing expected within a few months.

CAO complaint details non-compliance with IFC Performance Standards: In October, three organizations representing thousands of people in Uganda filed a complaint to the IFC's Compliance Advisor Ombudsman (CAO) for indirectly backing the EACOP via an insurer in which it invests. The complaint is of particular interest to banks considering financing the EACOP as it provides extensive detail of the project's non-compliance with the IFC Performance Standards (see Section III, from page 14). The areas of non-compliance detailed in the complaint include:

- Shortcomings of Project-Related Assessments and Consultation Processes (PS1, PS5),
- Risks Associated with Improper Handling of Hazardous Waste and Oil Spills (PS3; PS4),
- Retaliation Against Human Rights Defenders (PS4),
- Improper Land Valuation, Acquisition and Compensation Processes and Significant Land Use Restrictions (PS5), and
- Impacts and Risk of Irremediable Harm to Protected Areas and Natural Resources (PS6).

In November, the CAO determined the complaint was not eligible for further consideration, because the IFC's client had not yet provided insurance for the pipeline, and therefore there was no active, formal link connecting the IFC to the oil project. The insurance firm has publicly stated its intention to insure the pipeline, and the complainants will continue to monitor the project status and re-file when the transaction occurs.

Ugandan EACOP legislation weak and lacking in transparency: The East African Crude Oil Pipeline (EACOP) (Special Provisions) Bill, 2021 was approved by Uganda's parliament in December. The bill needed to be enacted to pave "the way for FID", according to the Petroleum Authority of Uganda (PAU). However, the bill has many gaps and weaknesses. These include clauses which seek to: give the bill supremacy over other important laws such as the 2019 National Environment Act, the 2019 Uganda Wildlife Act and the 2021 Climate Change Act; weaken the capacity of Ugandan agencies to enforce compliance to environmental and other laws; weaken national content provisions from previous laws; and give tax incentives to the EACOP project developers at the expense of Ugandans.

Overall, the bill is too weak to protect or address environmental, community land rights and climate change concerns. It prioritises the interests of the EACOP project developers at the expense of Ugandans' social and economic wellbeing. Moreover, the Ugandan parliament has also raised concerns as regards the bill. At the second reading of the bill on December 7, 2021, a minority report by Ugandan MPs noted that the process of review of the bill was non-compliant to parliament's rules of procedure, did not enable affected community participation in review of the bill and others. This will undermine the legitimacy of the law, when the bill is enacted.

The Public Finance Management (Amendment) Bill, 2021 was also approved in December. The purpose of the bill is to enable the Uganda National Oil Company (UNOC) to retain a portion of oil revenues meant for the Ugandan government, to enable the company to meet its financial obligations, including under agreements related to the EACOP. According to local media, in December 2021, MPs suspended consideration of the bill as the fundamental agreements for the EACOP, on which the bill is based, have not been made public. The agreements include the Intergovernmental Agreement (IGA), Host Government Agreement (HGA) as well as Transportation and Tariff Agreement (TTA). Publish What You Pay Uganda has also called for the publication of these key agreements. The bill ultimately passed despite these agreements remaining unpublished.

More governments commit to end fossil fuel finance: During the Glasgow climate summit, some 39 governments and development financial institutions committed to "end new direct public support for the international unabated fossil fuel energy sector by the end of 2022, except in limited and clearly defined circumstances that are consistent with a 1.5°C warming limit and the goals of the Paris Agreement." The countries included the US, Canada, UK, France, Germany, Spain, Italy and the Netherlands, and is expected to include the provision of export credits.

The UK has already ruled out finance for EACOP. Since we expect that the EACOP project sponsors have already approached other export credit agencies for support, the decision at COP does not improve the project's prospects for securing finance.

Conclusion: Banks should avoid financing the EACOP and challenge Total on its impacts.

As we have argued in our two finance risk briefings to date on the subject, this project creates severe risks to local people through physical displacement, threats to incomes and livelihoods and ongoing harassment; unacceptable risks to water, biodiversity and natural habitats; and will create unacceptable climate harm.

11 large private sector banks, all financiers of Total and CNOOC and signatories to the Equator Principles, have already made clear they will not finance the EACOP pipeline. We continue to urge banks to answer the call made by over 260 civil society organisations in March 2021, and:

- Publicly commit not to participate in financing the EACOP project or associated oil projects;
- Engage with the governments of Uganda and Tanzania and other financiers to promote an energy future for East Africa that does not rely on oil or other fossil fuels, but rather on clean energy alternatives; and
- Demand that Total acts immediately to provide full, fair and adequate compensation to people already affected by the pipeline for the impacts to their land, in accordance with international human rights standards.

See also:

Crude Risk: Risks to banks and investors from the East African Crude Oil Pipeline, November 2020

Open letter: Urgent call not to finance the East African Crude Oil Pipeline, March 2021

The East African Crude Oil Pipeline: New risk developments, August 2021

BankTrack, January 2022

With additional input from AFIEGO, Inclusive Development International