



Memorandum on the East African Crude Oil Pipeline (EACOP) (Special Provisions) Bill, 2021

I. About the Organisations

The Uganda Association of Women Lawyers (FIDA Uganda) is a non-governmental organisation whose mandate is the promotion of gender equality, women's human rights and socio-economic justice. FIDA Uganda exercises this mandate through her work guided by three objectives including; enabling women in Uganda access quality and affordable legal services as a means to achieve human rights, gender equality and sustainable development; promoting social accountability, rule of law and gender responsive governance at local national and regional levels; and promoting accountability for the enactment and implementation of legal and policy frameworks for women's socio-economic justice.

FIDA-Uganda is a member of the Uganda Consortium on Corporate Accountability (UCCA)-a Civil Society Consortium on Corporate Accountability aimed at enhancing accountability by Corporations, States, International Financial Institutions and Development Partners for violations or abuses of Economic, Social and Cultural Rights (ESCRs). The UCCA has a current membership of twenty-three (23) organisations specializing in different areas of socio-economic rights protection. These include four founding members; the Initiative for Social and Economic Rights (ISER), the Public Interest Law Clinic at Makerere University Law School (PILAC), Legal Brains Trust (LBT) and the Center for Health Human Rights and Development (CEHURD). The other members are; Twerwanaho Listeners Club (TLC), Rural Initiative for Community Empowerment-West Nile (RICE-WN)- RICE-WN also sits on the Steering Committee representing the Community Based Organisations, Southern and Eastern Africa Trade Information and Negotiations Institute (SEATINI), Ecological Christian Organisation (ECO), Navigators of Development Association (NAVODA), Buliisa Initiative for Rural Development Organisation (BIRUDO), Action Aid International (AAU), International Accountability Project (IAP), Uganda Association of Women Lawyers (FIDA-U), Teso Karamoja Women Initiative for Peace (TEKWIP), Karamoja Development Forum (KDF), Centre for Economic, Social and Cultural Rights in Africa (CESCRA), Lake Albert Children and Women Advocacy Development Organisation (LACWADO), World Voices Uganda (WVU), Akiina Mama Wa Africa (AMWA), Bank Information Center (BIC), Food Rights Alliance (FRA) and Center for Food and Adequate Living Rights (CEFROHT).



II. A Brief Overview

a. Context of Business and Human Rights

The actions of business enterprises can affect people's enjoyment of their human rights either positively or negatively. Indeed, experience shows that enterprises can and do infringe human rights where they are not paying sufficient attention to this risk. Enterprises can affect the human rights of their employees and contract workers, their customers, workers in their supply chains, communities around their operations and end users of their products or services. They can have an impact – directly or indirectly – on virtually the entire spectrum of internationally recognized human rights.

The East African Crude Oil Pipeline (EACOP) is a business enterprise that will transport crude oil from Kabaale, Hoima district to Tanga Port in Tanzania. At 1,443 kilometres, the EACOP will be the longest, heated, buried crude oil pipeline in the world. In Uganda, the EACOP project will take 2,740 acres of land in linear formation. It will cover 296 kilometres through Hoima, Kikuube, Kakumiro, Kyankwanzi, Mubende, Gomba, Sembabule, Lwengo, Kyotera and Rakai districts, impacting 3,792 people.'

With the above hindsight, it is important that we have adequate regulation to ensure that business enterprises do not negatively affect people's enjoyment of human rights.

b. Gender and Business and Human Rights

Human rights and gender have been aptly provided for in the international and national legal frameworks that guide Ugandan legal systems. Specific to the nature of the EACOP Bill as a proposed law that seeks to fully define the legal and regulatory framework for the EACOP Project in Uganda, it is imperative that a business and human rights lens is applied in the drafting of this law. Business and Human Rights is guided globally by the United Nations Guiding Principles on Business and Human Rights (UNGPs) renowned as the three pillar 'Protect, Respect and Remedy' Framework. These Guiding Principles are grounded in recognition of: (a) States' existing obligations to respect, protect and fulfil human rights and fundamental freedoms; (b) the role of business enterprises as specialized organs of society performing specialized functions, required to comply with all applicable laws and to respect human rights; (c) the need for rights and obligations to be matched to appropriate and effective remedies when breached. These Guiding Principles apply to all States and to all business enterprises, both transnational and others, regardless of their size, sector, location, ownership and structure.

Uganda has domesticated these guiding principles in her National Action Plan on Business and Human Rights. Under this framework, the pillar of protection of human rights guides that Uganda should set out clearly the expectation that all business enterprises domiciled in her territory and/or jurisdiction respect human rights throughout their operations. This prescription of expectations of businesses by governments also includes guidance to business enterprises on respecting human rights with clear indication of expected outcomes and sharing best practices. Governments are advised on appropriate methods, including human rights due diligence, and how to consider effectively issues of



gender, vulnerability and/or marginalization, recognizing the specific challenges that may be faced by indigenous peoples, women among other groups.

Gender specific human rights concerns that need to be looked out for in business include; gender diversity in the work place (women today have acquired requisite education to be in the sector and they ought to be fairly considered for roles even and especially for executive/board positions, addressing gender based violence in the workplace (workplace sexual harassment as well as provision of remedy and support for victims), gender sensitivity in community engagement practices (assessments, activities and remedies), finally ensuring to give fair chance to women-owned/run businesses in the supply chain (evaluating current supply chain with a gender lens, developing gender-sensitive criteria for qualified vendors to improve outreach to and development of women-owned businesses, monitor and sustain progress towards a more gender-diverse supply chain). Gender is thus imperative in business rights and more guidance may be found [here](#).

It is important to note that while the oil and gas sector definitely affects women, existing legislation has made little to no effort on including gender aspects as has for instance been noted with the Petroleum (Exploration, Development and Production) Act, 2013 (only two sections: S. 17(3) on having three women on board and S. 126 on consideration of gender in training and employment). The EACOP bill is an opportunity to create a more gender just legal framework, that can give due consideration of the unique gender concerns and facilitate growth for Ugandan women instead of exacerbate already existing adverse circumstances.

This memorandum seeks to evaluate the extent to which corporate actors will be accountable and ensure that women's social and economic rights and gender justice concerns are provided for in the East African Crude Oil Pipeline (EACOP) (Special Provisions) Bill, 2021 that will guide Uganda's oil and gas business.

III. General Comments

- a. **Policy and Principles of the Bill:** The Bill clearly states that the matters agreed upon in the Inter-Governmental Agreement and Host Government Agreement 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. This is a challenge because the Agreements signed onto by the Government of Uganda should have been in conformity with Ugandan Laws. For example, Clause 11 of the Bill is couched in very broad terms. The use of the words "Notwithstanding any Ugandan law" and provisions of clause 46 on supremacy of EACOP subordinates all laws of the country including (by implication) the Constitution. This is even so despite the proviso contained in Clause 46 saving the supremacy of the Constitution. This runs against the established principle that the supremacy of the Constitution over all other laws of the country enacted prior and subsequent to its promulgation. This principle is



enshrined in Article 2 of the Constitution. The Land Act specifically was enacted pursuant to Article 237 of the Constitution. The Land Act, as such, was enacted to reflect the spirit of the Constitution. Due to their derivation from the Constitution, the overriding clauses of the Bill would be unconstitutional.

Furthermore, by subordinating all other (land) laws to EACOP Bill, the government risks to subordinate the policy objectives underpinning the provisions of the other laws. The Land Act of 1998 for example aims at addressing historical injustices suffered by occupants prior to its promulgation. Sustainable implementation of EACOP requires harmonization of the bill with existing laws and not subordinating it to them.

- b. **Access to Remedy.** The Bill does not provide for access to remedy or accountability mechanisms for acts done by the employees or ‘project participant’. Further, a **grievance management process** that will address issues affecting project affected persons in rehabilitation and resettlement, issues during the implementation of the project and after is not provided for. In addition, the Petroleum Authority of Uganda has noted that the grievance management process will comprise local government officials and project affected persons – however there is no mention of gender consideration in setting up this mechanism or clear provision on how it will be constituted and operated.

We recommend that a clause on a grievance mechanism for issues concerning the EACOP project is included in the Bill. Further, it is our submission that having clear provision for a gender just grievance management process guided by Pillar Three of the UNGPs, clearly stipulating how it will work, jurisdiction in relation to the EACOP among other issues will go a long way in resolving issues faced by women that have been noted since 2016.

Commentary on Specific Provisions

Clause	Contents of the Clause	Comment	Proposal
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<p>Clause 4</p>	<p>Interpretation In this Act- "project participant" means each investor, operator, contractor, shipper, finance party and off taker;</p>	<p>No definition for 'project affected persons'</p> <p>The bill endeavours to define project actors including investors, contractors, shippers, off takers among others but does not offer a definition of 'project affected persons' who are the over 3000 people affected by the project.</p> <p>The lack of a definition infers that they are not recognised as persons affected in any way.</p>	<p>The Bill should include a specific definition of 'project affected persons.'</p> <p>This definition provides legal recognition for communities and individuals whose way of life, livelihood and rights may be specifically impacted by the project even though they are not considered under the defined 'project participant'.</p> <p>This would cover women who have been recorded as greatly affected by the project.</p>
<p>Clause 4</p>	<p>Interpretation In this Act- 'labour standards' means-- (b) the following internationally recognised labour rights agreements and standards-- (i) – (viii)</p>	<p>International labour standards offer guidance in the drafting on national laws and supplement where needed. The listed labour standards fall short in covering issues that affect women that work in the oil and gas industry. Specifically; sexual harassment at work, lack of comprehensive maternity protection, consideration for workers with family responsibilities (both women and men).</p> <p>International Labour Organisation Conventions and recommendations on these issues ought to be included in the list of guiding labour standards in order to have a more gender just bill. In the instance of Conventions yet to be ratified, such international law will offer guidance in the execution of the project.</p>	<p>The Bill should include the following ILO Conventions and recommendations:</p> <p>Maternity Protection Convention, 2000, No. 183, and Recommendation No. 191. This convention aims to promote equality of all women in the workforce and the health and safety of the mother and children. This convention guides on issues such as maternity related health concerns, breastfeeding mothers, maternity leave, employment protection and non-discrimination on basis of maternity status.</p> <p>While Sections 47 and 48 of the Uganda Employment Act, 2006 provide for maternity leave, the Act is silent on breastfeeding, paid maternity leave, maternity related health needs, leave for illnesses and or complications arising from pregnancy or child birth without looming notice</p>



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			<p>of dismissal. The ILO Convention can offer guidance if included in the act.</p> <p><u>Workers with Family Responsibilities Convention, 1981, No. 156, and Recommendation No. 165;</u> This Convention and Recommendation applies to men and women workers with responsibilities in relation to their dependent children, where such responsibilities restrict their possibilities of preparing for, entering, participating in or advancing in economic activity. This Convention and recommendation will offer guidance on how the activities of EACOP can be organised to ensure that terms and conditions of employment are such as to enable workers with family responsibilities to reconcile their employment and family responsibilities; by for instance providing for flexible work hours, rest periods, holidays, consideration for special needs of workers arising out of family responsibilities in scheduling work and job transfers; among other aspects.</p> <p><u>Violence and Harassment Convention, 2019 (No. 190) and Recommendation No. 206.</u></p> <p>Due to the absence of clarity on issues concerning harassment at work (see limitations of Section 7 of the Employment Act, 2006 that limits sexual harassment to perpetration by ‘the employer or the employer’s representative’ and yet it can be among employees or even employees</p>
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			<p>harassing employers), this Convention needs to be included for guidance in activities of the EACOP project</p> <p>The convention offers guidance on 'violence and harassment' in the world of work which refers to a range of unacceptable behaviours and practices, or threats thereof, whether a single occurrence or repeated, that aim at, result in, or are likely to result in physical, psychological, sexual or economic harm, and includes gender-based violence and harassment. It captures violence and harassment occurring in the course of, linked with or arising out of work:</p>
<p>Clause 10</p>	<p>Project Authorisations [<i>bold and underlining emphasis ours</i>]</p> <p>10 (3) 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, <u>the applicant has and continues</u> to violate Ugandan law under</p>	<p>The remedy of delay or rejection of project renewal in the event of violations that have occurred before and could cause harm is negated by this clause.</p> <p>For instance, for some human rights abuses and violations of prior compensation before taking land from the communities including women, adverse impacts on the natural resources such as wells, forests, grazing and farm land as a result of already concluded actions/violations may not be considered as reason to delay or deny renewal of project authorisation. Such violations have been noted to have drastic effect on the climate and in turn exacerbate living conditions of which women bear the brunt.</p> <p>This should allow the ability to refuse renewal of project</p>	<p>This clause should be revised to reclaim the power of renewal and denial of renewal of project authorisations as a possible action the state can use in holding the EACOP project accountable in case of such violations.</p> <p>This need not need violations to be in continuation or allow such denial of renewal to also be dependent on notice from the relevant state authority. The Clause ought to provide for renewal following compliance with all Ugandan laws without any other conditions.</p> <p>Clarification should also be offered on what constitutes 'reasonable steps to correct the violation'</p>



	<p>which the project authorisation is issued or any condition in the project authorisation and <u>has not corrected or taken reasonable steps to correct the violation after notification by the relevant state authority.</u></p>	<p>authorisation until such violations are resolved whether the violations are still ongoing or not, or whether a relevant state ministry has notified, in the event that no ‘reasonable steps to correct the violation’ have been taken.</p>	
Clause 10	<p>10 (4) 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– (a) – (c)</p>	<p>The section fails to provide for the impact of gross human and environment rights violation.</p> <p>Lessons from various oil and gas undertakings (Such as the Social and Economic Rights Action Center & the Center for Economic and Social Rights v. Nigeria (Communication No. 155/96)) demand that Ugandan laws on the sector including this EACOP Bill provide resultant effect of such gross human rights and environmental rights violations.</p>	<p>The Clause should have gross human rights and environmental rights violations as a possible reason for termination, lapse, revocation or suspension of project authorisation.</p>
Clause 11	<p>Clause 11 on land rights</p>	<p>The EACOP project is anticipated to cover 296 kilometres through Hoima, Kikuube, Kakumiro, Kyankwanzi, Mubende, Gomba, Sembabule, Lwengo, Kyotera and Rakai districts. It is estimated to impact 3,792 people whose land rights will be affected.</p> <p>Unfortunately, the section on land rights does not provide for the respect of the application of</p>	<p>It is important that the bill recognises the various existing laws on the principles of Free Prior and Informed Consent (FPIC) as guided by International Labour Convention No. 169 Concerning Indigenous and Tribal Peoples in Independent Countries (ILO C169) and the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP). Legal provisions for FPIC in this EACOP bill will secure rights of</p>



		<p>existing laws on compulsory acquisition, the principles of free prior and informed consent, prompt prior and fair compensation. All of which offer fair consideration for the concerns of the people expected to be impacted by the project.</p>	<p>communities, a more consultative and people centered collective decision-making process on how to prevent negative impacts of the project. Providing for FPIC will also secure the rights of persons whose land rights have already been affected considering the bill intends to retrospectively legitimise acts done as far back as 2016 (Clause 38 – Early Project Activities).</p> <p>Provision should be made for co-existence of communities with the project (and regulations made) and for access to land that is intrinsic to communities’ livelihood such as land where to fetch firewood, wells, cultural spaces et cetera.</p> <p>Recognition of women as persons with property rights that ought to be respected and engaged in all discussions and on issues concerning land rights for the EACOP project. This will better align the bill with the progressive provisions in the 1995 Uganda Constitution on women’s rights.</p>
<p>Clause 14(3)</p>	<p>Principles for developing and implementing national content plans 14 (3) – Each National Content Plan shall – (c) – reflect principles for</p>	<p>The Clause ought to guard against discrimination, especially on the basis of gender.</p>	<p>It is important include to Clause 14(3)(c)(v) ‘...on equal opportunity basis also includes this phrase “<i>without discrimination on any basis.</i>”</p>



	(v)- employment and training of Ugandan and Tanzanian citizen;		
Clause 14 (3) (c)	Principles for developing and implementing national content plans 14 (3) – Each National Content Plan shall – (c) – reflect principles for -	Need to add a provision requiring consideration of gender in allocation of national content in the project supply chain and procurement processes. Such legislation will ensure that national content in terms of contracting suppliers for the provision of services is not given to only men as is renowned in the oil and gas industry. It will ensure that the EACOP project supply chains and procurement processes are alive to gender concerns and thus ensure that women, too, can benefit from the affirmative action of national content requirements aimed at ensuring benefits for all Ugandan businesses and workers. This could ensure benefits for Ugandan women who usually benefit least from such project and yet they do most of the economic activities in the areas where the pipeline is expected to pass.	Add provision on this to read: <i>(suggestion in bold)</i> 3) Each national content plan shall- (c) reflect the principles for- (ix) gender sensitive supply chain and procurement processes
Clause 14(3)(c)(iv)	supplier development for Ugandan and Tanzanian companies, registered entities and citizens;	In addition to supplier development, this subsection should make provision for mandatory due diligence in supply chains to address any human and environmental rights concerns in the project’s supply chains	Adjust provision to reflect that such supplier development will be followed by the completion of mandatory due diligence processes such that it reads: (3) Each national content plan shall- (c) reflect the principles for-



			(iv) due diligence informed supplier development for Ugandan and Tanzanian companies, registered entities and citizens;
Clause 46	Clause 46 – Supremacy of this Act	This is an irregularity. Furthermore, it invalidates laws that have secured women’s concerns such as the Employment Act and Land Act.	This provision should note that this bill is subject to existing law. The Ugandan Laws relating to Land Rights and Labour Rights flow from the Constitution. In order for Parliament to operationalise the provisions of the Constitution, the Laws relating to Land Rights and Labour rights were enacted. Placing this Bill above them is inconsistent with the Constitution.

Conclusion

The operationalisation of the EACOP Bill ought to address the negative impacts that result from the project implementation of such development projects. It is important that this Bill is subject to the existing legal and policy frameworks in Uganda, especially with regard to the protection of the rights of Persons Affected by the EACOP Project.

Sincerely,

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