

# Crude Risk: Risks to banks and investors from the East African Crude Oil Pipeline

The much delayed Final Investment Decision (FID) on the controversial East African Crude Oil Pipeline (EACOP) is now expected before the end of this year, with construction due to commence in 2021. Without the successful completion of EACOP, Total and CNOOC Ltd will not be able to begin commercial production at two oil fields in the Albertine Graben in Uganda. Debt financing (amounting to approximately \$2.5bn) for the EACOP, to which the Equator Principles will apply, is yet to be finalised. Stanbic Bank Uganda (a subsidiary of South Africa's Standard Bank) and Japan's Sumitomo Mitsui Banking Corporation have reportedly been appointed lead arrangers and advisors to the project,<sup>1</sup> with China's ICBC also on board as an advisor.<sup>2</sup>

Both the oil extraction and the EACOP pose serious environmental and social risks throughout Uganda and Tanzania. These risks include physical and economic displacement and the impacts of a mismanaged and delayed compensation process; threats to livelihoods from oil spills; the loss or destruction of sites of spiritual value; and significant habitat disturbance to nearly 2000km<sup>2</sup> of protected

wildlife habitat. The EACOP also poses significant climate risks. Accordingly, the project is facing widespread resistance. A global petition against the project gained over 1 million signatories. Members of civil society and journalists who have highlighted these risks have been intimidated and even arrested. This has led to scrutiny from UN Special Rapporteurs. Controversy is likely to follow Total - already facing court proceedings in France<sup>3</sup> - and the financial institutions backing the project as it progresses.

The Dakota Access Pipeline was a stark and painful lesson for financial institutions about the commercial materiality of the social and environmental risks from oil pipeline construction. This briefing outlines the risks the companies and banks could face from the EACOP, and provides questions to help them and their shareholders to understand those risks and whether a decision to proceed with or finance the EACOP is in their long-term interests. We consider that many of these risks and impacts are unacceptable and incapable of being adequately mitigated, and that financial institutions should avoid financing the pipeline.

## Major risks for banks and investors

- Human rights impacts including apparent breach of IFC Performance Standard on displacement and risk to livelihoods
- Stranded Asset Risk, and incompatibility with the Paris Agreement
- Risk to key waterways from spills and open cut trenching
- Severe biodiversity impacts with activity in a national park and several Ramsar Wetlands of International Importance
- Highly controversial both with Ugandan and global civil society



## 2. Human Rights risks

### Apparent breaches of IFC Performance Standard 5 on displacement

According to a recent human rights impact assessment carried out by Oxfam, “...*significant human rights and environmental risks remain and need to be urgently addressed.*”<sup>5</sup>

5,300 hectares of land will be needed for construction and operation of the pipeline, which means that around 14,000 households will lose land. Of these, roughly 200 households in Uganda and 330 households in Tanzania will have to be resettled, and approximately 3,200 to 3,500 households in Uganda and 9513 households in Tanzania will be economically displaced, which means they will lose land essential to their livelihoods.<sup>6</sup>

Total committed to apply international best practices in its land acquisition process. Compliance with the IFC Performance Standards, also required under the Equator Principles, requires that when displacement is unavoidable, risks to affected people should be mitigated through replacement land, compensation for lost assets at replacement cost, resettlement support and a range of other measures to, at a minimum, restore the livelihoods and living standards of affected persons. Such measures must be designed and implemented with appropriate disclosure of information, consultation and informed participation of those affected.<sup>7</sup>

The valuation and compensation process for land taken by the project has been characterised by delays, insufficient provision of information to communities, harassment and irregularities. Affected people have stated that they had only a basic understanding of the project’s stakeholder engagement process, and felt that the project subcontractors had pressured them into signing valuation forms without ensuring their full understanding of this process. Community representatives also report having been harassed, forced to sign different forms without clear explanation, stamp and sign empty forms, and fill valuation forms using a pencil but sign in ink.<sup>8</sup>

**“The valuation and compensation process for the project has been characterised by delays, insufficient provision of information to communities, harassment and irregularities.”**

Oxfam refers to a “generalized concern about the lack of information around issues that really matter to the communities...”<sup>9</sup> Communities are also concerned about the loss or destruction of land and structures of spiritual value, such as sacred sites, graves, and cemeteries. According to Oxfam, while Total and its partners confirm they have presented mitigation plans on this issue “... based on information collected during community consultations, this information does not seem to have reached everyone or have been clearly understood...”<sup>10</sup>

These information gaps persist despite the number of meetings and outreach efforts that Total and its contractors/partners have undertaken. The ongoing mistrust and concerns among the affected communities despite Total's efforts suggest that the risks to human rights cannot be adequately addressed.

### Questions for Total/EACOP

- How will Total/EACOP ensure that the climate of harassment and intimidation reported by affected communities is addressed in a manner that ensures that all households can freely accept or reject compensation and resettlement options, as required by the IFC Performance Standards and under the Equator Principles?
- Will Total/EACOP conduct an audit of past compensation processes to ensure that all affected households were able to make informed decisions in the absence of duress?
- How will Total/EACOP ensure that sacred sites, including cemeteries, are not affected by the project or otherwise treated in a manner that respects local cultural and religious traditions?

### Impacts of delayed compensation

Two years after announcing the valuation cut-off dates in Tanzania, and one year in Uganda, compensation has still not been paid, and there is no certainty around when it will be paid as the process will only recommence once a FID is made.<sup>11</sup> The delays in paying compensation and the restrictions on using the land have severely impacted people's livelihoods. While growing seasonal crops is allowed, some households are afraid to lose their harvest if they have to vacate the land at short notice. Others have claimed they are not allowed to farm cash crops. Many affected households in Uganda have decided to quit agriculture.<sup>12</sup> There is also concern that the replacement lands will have inadequate agricultural productivity. Oxfam reports that Total recognises this risk and affected people will be able to visit the offered land in advance,<sup>13</sup> but replacement land is scarce and it is unclear if Total's suggested measures are sufficient to mitigate the risk.

### Questions for Total/EACOP

- How will Total/EACOP ensure that communities are compensated or freed from restrictions on the use of their land in the event of further delays to FID?
- Will the eventual compensation take into account the economic losses and other adverse impacts of the delays communities have already suffered?
- How will Total/EACOP ensure that all displaced households will be offered relocation to land of comparable size and with comparable agricultural productivity?

## Spill Risk to Water and Livelihoods

In both countries, the EACOP will pass through critical sources of water for local communities. According to Oxfam, “Along the route, most villagers rely on a percentage of groundwater to meet their daily water needs.” For example, roughly half of the water in Nkwae and Ntondo villages in Singida region of Tanzania comes from the ground, according to an affected community member from Ntondo village.<sup>14</sup> Approximately 460 km of the pipeline will be within the freshwater basin of Lake Victoria<sup>15</sup>, Africa’s largest lake, which directly supports the livelihoods of more than 40 million people in the region. The risks of pipeline spills are significantly exacerbated by the fact that its planned trajectory crosses the Rift Valley, one of the most geologically active regions of the world. Over 300 seismic events with a magnitude greater than 4.5 were registered in this region in the past 20 years.<sup>16</sup>

In addition to spill risk, the EACOP poses significant risks of degrading or polluting these water sources where pipes are buried under them.<sup>17</sup> Rather than using horizontal directional drilling to cross watercourses, which is considered industry best practice, Total and its partners have opted for the lowest cost option, open cut trenching, for almost all water crossings. According to experts this technique has the potential for significant negative impacts, particularly to wetlands. They state that “this seems to be ignored and the [Environmental and Social Impacts Assessment (ESIA)] report does not make clear that the proposed technology is acceptable and for what reasons.” The expert reviewers conclude that “the issue is strongly underrated and specific plans and alternatives should be presented...”.<sup>18</sup>

### Question for Total/EACOP

- Have all the recommendations of the expert review of the Uganda ESIA, including in relation to water and wetland crossing techniques been adopted? If Total/EACOP plan to proceed with the low cost option of open cut trenching, how will they mitigate the risks that experts have identified?

## Free, Prior & Informed Consent and impacts on cultural rights, including for Indigenous Peoples

Finance for the EACOP will need to comply with the Equator Principles, which state, among other things, that “All Projects affecting Indigenous Peoples will be subject to a process of Informed Consultation and Participation...”<sup>19</sup>

Total has agreed to ensure compliance with the IFC Performance Standard on Indigenous Peoples, including on Free, Prior and Informed Consent (FPIC). However, Oxfam reports a lack of Indigenous consultation to date.<sup>20</sup> With the FID imminent, it’s essential that any bank considering financing the construction of the EACOP independently evaluate the FPIC process and its outcomes and satisfy itself as to their adequacy before proceeding with finance.

Communities that are particularly vulnerable to the impacts of the EACOP on cultural ways of life linked to agriculture, fishing and hunting, include the Barbaig, Sandawe, Ndorobo, Maasai, Akie, and Taturu – Indigenous tribes that depend on nature for their livelihoods, and the Bagungu, who identify as Indigenous, and who reside in different parts of the Albertine region along the shores of Lake Albert.

### Question for Total/EACOP

- Will Total/EACOP publicly report on how they have ensured Indigenous peoples’ right to FPIC is respected and human rights impacts are addressed?

### Questions for banks

- Will banks engage directly with affected communities and with other stakeholders to ensure their decision-making is based on information from a range of sources rather than just the borrower(s)?
- How will banks ensure compliance with the Equator Principles including on the issue of FPIC?

### 3. Climate impact and Stranded Asset risk

Successful completion of the EACOP will unlock commercial production at two oil fields in the Albertine Graben in Uganda, adding to reserves of unburnable carbon. The pipeline will carry 216,000 barrels of crude oil per day at 'plateau production' according to the project's website. According to our calculations this oil is likely to result in CO2 emissions of over 33 million tonnes each year, significantly greater than the current combined emissions of Uganda and Tanzania.<sup>21</sup>

Financing this project will undermine other work by investors, regulators, and some of the same banks to address climate risk. In a 2019 report, the Carbon Tracker Initiative identified 3 of the blocks as among the top 15 projects which were not viable under the IEA's Sustainable Development Scenario.<sup>22</sup> Continued investment in this project appears to be at odds with Total's own statement that it "*is investing in low-breakeven oil assets,...*"<sup>23</sup>. Financiers may wish to examine the viability of the Tilenga field - and accordingly EACOP - under various oil demand scenarios.

#### Question for Total

- What is Total's assumed break-even price for the Tilenga project? How does this project fit within its strategy to pursue low-breakeven cost projects?

#### Questions for banks

- Is financing the EACOP consistent with the bank's climate policies and any commitments to align with the Paris Agreement, including under the Principles for Responsible Banking?

## 4. Increasing controversy and allegations of intimidation

Over 1 million people have signed an international petition opposing EACOP<sup>24</sup> and protests have taken place at Standard Bank. French NGOs have commenced legal proceedings against Total in France under the French Duty of Vigilance law.<sup>25</sup>

Members of civil society and journalists who speak up about the social and environmental consequences of projects including EACOP and the Tilenga project have been intimidated and even arrested. On the 15th and 16th of September 2020, three journalists and six environmental activists were arrested by police in Hoima, Uganda.<sup>26</sup> The journalists and activists had called for public mobilisation against a large-scale sugarcane cultivation in Bugoma Forest on the day the arrests began, and they had also warned about the impacts of EACOP and the Tilenga project on the forest. The police department spoke publicly of a “preventive arrest”. By September 17th, all of the arrested individuals were released and ordered to leave the oil region.

Such events are inviting international scrutiny. UN Special Rapporteurs on human rights have written to Total and the government of Uganda.<sup>27</sup>

### Question for Total/EACOP

- How will Total/EACOP ensure that they can carry out this project in compliance with international best practice standards, and avoid accusations of complicity in breaches of human rights and civil liberties, in an environment in which opponents of the project and journalists face harassment and persecution?

## 5. Biodiversity impacts

Extraction at the oil fields in Albertine Graben will most directly impact the Murchison Falls National Park, posing a serious threat to biodiversity and rare and endangered species. Important tributaries of the Nile flow nearby, and oil spills and other pollution affecting the river could have profound impacts. Pollution of these rivers could put severe pressures on all users - from individuals, to businesses and governments - leading to an increase in cross-border conflicts.

Nearly 2,000 square kilometres of protected wildlife habitats will be negatively impacted by the EACOP project.<sup>28</sup> Although the official EACOP route starts in Hoima, which lies outside the Murchison Falls National Park in Uganda, a feeder pipeline will be constructed<sup>29</sup> that will run from Total's Tilenga oil field, which is partly situated in the National Park,<sup>30</sup> to the EACOP starting point.

The pipeline and associated infrastructure, including a feeder pipeline and road, will encroach on the vulnerable Bugoma Forest Reserve, home to large groups of Eastern chimpanzees.<sup>31</sup> From Hoima, EACOP subsequently runs through the Taala Forest Reserve. In all, some 500km<sup>2</sup> of wildlife corridors for the Eastern Chimpanzee and African Elephant are likely to be severely degraded.<sup>32</sup>

In Tanzania, the pipeline will run through key biodiversity areas including the Biharamulo Game Reserve and Wembere Steppe Key Biodiversity Area. Biharamulo Game Reserve hosts a diversity of animals such as lions, buffalo, elands, lesser kudu, impalas, hippos, giraffes, zebras, and roan antelopes.<sup>33</sup> The Wembere steppe is an important habitat for seasonal birds.<sup>34</sup> As with chimpanzees, the EACOP "is likely to lead to severe disturbance, fragmentation and increased poaching within wildlife habitats and corridors for elephants".<sup>35</sup>

Two important Ecologically or Biologically Significant Marine Areas (EBSAs), the Pemba-Shimoni-Kisite site and the Tanga Coelacanth site, are at high risk given the huge amount of oil to

be transferred offshore at the Tanga Port.<sup>36</sup> These EBSAs host several Marine Protected Areas (MPAs) as well as Mangrove Forest Reserves, coral reefs and waters rich in wildlife including dugongs, sea turtles, dolphins and occasionally whales.<sup>37</sup>

### Ramsar Wetlands

Both components of the project will directly impact several Ramsar Wetlands of International Importance. Oil extraction will take place within the Murchison Falls-Albert Delta Wetland System, a Ramsar site that plays an important role for wildlife in the National Park and is a spawning ground for indigenous fish species. The pipeline will also run near or through a number of Ramsar sites that lie just west of Lake Victoria, including Mabamba Bay, the Lake Mburo-Nakivali System, the Lake Nabugabo System, the Nabajuzi System, and the Sango Bay-Musambwa Island.<sup>38</sup> Several potential financiers have policies restricting them from financing operations that adversely impact Ramsar sites.

#### Question for Total/EACOP

- What specific mitigation measures will be taken to protect elephants and chimpanzees?

#### Question for banks

- Would financing the EACOP breach existing bank policies on biodiversity protection and/or Ramsar sites?

## 6. Failure to disclose key documents

Total has declined to disclose key documents which would allow stakeholders and financiers to assess the adequacy of risk assessment, management and mitigation efforts. These include emergency response plans for oil spills and the full human rights impact assessment it carried out for both Uganda and Tanzania. Oxfam reported that during the public consultations Total was unable, for legal reasons, to share the Tanzania ESIA document during the public consultation, stating this was the responsibility of the government of Tanzania.<sup>39</sup> At the same time both the expert reviewers and respondents to Oxfam's study report a tendency to emphasise the positive aspects of the project. According to experts: "Positive impacts seem to be presented (far too) rosy. The negative impacts are only mentioned in a very superficial and reassuring way (unspecified numbers of negative impacts only), without explaining why the reassurance is justified."<sup>40</sup>

Relying solely on the internal and company-appointed expert reviews of critical risk assessment and management plans is high-risk for any funder of a controversial project. This is acknowledged by Principle 7 of the Equator Principles which requires an independent review of key risk assessments and stakeholder engagement. A robust mechanism of independent review and oversight should include external verification of data provided by the company with affected communities and should be published for review by stakeholders.

### Question for banks:

- Is the approval by an independent expert(s) appointed by the Arranger of the human rights impact assessments, oil spill response plans, biodiversity impact assessments and mitigation plans and other environmental and social impact management plans a precondition to financial close?

**“The negative impacts are only mentioned in a very superficial and reassuring way ... without explaining why the reassurance is justified”**

## Conclusion

Oil development and pipeline projects, with their lynchpin role in adding to the reserves of unburnable carbon and their local social and environmental impacts, are increasingly sources of controversy and material risk for financial institutions. As the FID for EACOP moves closer, international scrutiny and opposition is building. The project risks significant human rights impacts to local people through physical displacement and threats to incomes and livelihoods; unacceptable risks to water, biodiversity and natural habitats; as well as unlocking a new source of carbon emissions that will either prove financially unviable or produce unacceptable climate harm. Financial institutions should question whether the various risks are being adequately assessed, mitigated, and managed.

### Questions for Total/EACOP

- How will Total/EACOP ensure that the climate of harassment and intimidation reported by affected communities is addressed in a manner that ensures that all households can freely accept or reject compensation and resettlement options, as required by the IFC Performance Standards and under the Equator Principles?
  - Will Total/EACOP conduct an audit of past compensation processes to ensure that all affected households were able to make informed decisions in the absence of duress?
  - How will Total/EACOP ensure that sacred sites, including cemeteries, are not affected by the project or otherwise treated in a manner that respects local cultural and religious traditions.
  - How will Total/EACOP ensure that communities are compensated or freed from restrictions on the use of their land in the event of further delays to FID?
  - Will the eventual compensation take into account the adverse impacts of the delays communities have already suffered?
- Are Total/EACOP satisfied that all displaced households will be offered relocation to land with comparable agricultural productivity? If not, how does it plan to address the potential food security and livelihood issues arising for displaced persons?
  - Have all the recommendations of the expert review of the Uganda ESIA including in relation to water and wetland crossing techniques been adopted? If Total/EACOP plan to proceed with the low cost option of open cut trenching how will they mitigate the risks that experts have identified?
  - Will Total/EACOP publicly report on how they have ensured Indigenous peoples' right to FPIC is respected and human rights impacts are addressed?
  - How will Total/EACOP ensure that it can carry out this project in compliance with international best practice standards and avoid accusations of complicity in breaches of human rights and civil liberties in an environment in which opponents of the project and journalists face harassment and persecution?
  - What specific mitigation measures will be taken to protect elephants and chimpanzees?
  - What is Total's assumed break-even price for the Tilenga project and how does it fit within its strategy to pursue low-breakeven cost projects?

## Questions for banks

- Would financing EACOP be consistent with the banks' climate policies and any commitments to align with the Paris Agreement including under the Principles for Responsible Banking?
- Is the approval by an independent expert(s) appointed by the Arranger of the human rights impact assessments, and oil spill response plans, and other environmental and social impact management plans a precondition to financial close?
- Will banks engage directly with affected communities and with other stakeholders to ensure the bank's decision-making is based on information from a range of sources rather than just the borrower(s)?
- How will banks ensure compliance with the Equator Principles including on the issue of FPIC?
- Would financing EACOP breach existing bank policies on biodiversity protection and/or Ramsar sites?

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## Endnotes

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