

**PART IV:**

**REGULATING SOCIAL AND**

**ENVIRONMENTAL IMPACTS**



## Chapter 28:

# Making the case for gender and environmental considerations in the regulatory framework relating to the Uganda-Tanzania crude oil pipeline project

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### 1 Introduction

Uganda recently started the process of extracting her oil and gas reserves in the Albertine Graben region in the western part of the country. An oil refinery is to be set up at source but Uganda will also export crude oil to other countries through a seaport. Uganda is, however, a landlocked country and can only access the sea routes through a neighbouring country with a coastline. The nearest seaports for Uganda are along the Kenyan and Tanzanian coastlines. Kenya's port of Mombasa has been traditionally preferred by the Ugandan business community, and currently handles much of Uganda's exports and imports.<sup>1</sup> The initial negotiating process for the construction of the crude oil pipeline was between Uganda and Kenya. Construction of the Uganda-Kenya crude oil pipeline would tap into already existing bilateral relations between the two countries.<sup>2</sup> After protracted negotiations, which eventually failed, Uganda started fresh negotiations with the United Republic of Tanzania. The Uganda-Tanzania negotiations yielded positive results. The two countries agreed to construct the pipeline – known as the East African Crude Oil Pipeline (EACOP) – from Uganda to the seaport of Tanga in the United Republic of Tanzania's territory.<sup>3</sup>

Construction of the EACOP raises pertinent environmental and gender issues. It will, of necessity, involve excavation of soil to create a path and this will affect the environment and gender relationships along the way. While EACOP will create employment opportunities for citizens of Uganda and the United Republic of Tanzania as well as those of other countries, there are attendant environmental and social costs. These include pollution of the environment, sexual abuse and exploitation and gender discriminatory practices. This chapter links human rights and the environment focusing particularly on gender equality and the right to a clean and healthy environment. It relies heavily on ecofeminism to analyse the identified concerns. Ecofeminism

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1 Nakaweesi (2017).

2 Musisi & Muhumuza (2016).

3 Ibid.

combines environmental, human rights and gender analyses to elicit clear findings and construct succinct conclusions and recommendations that can be relied upon by pipeline countries to address the concerns identified in the construction of the EACOP. Regarding the methodology, the chapter relied on a qualitative desk review approach to obtain information that was analysed using a gender and human rights approach.

### 1.1 Factual aspects about EACOP

Once completed, the pipeline will transport crude oil from Kabaale in Hoima district, western Uganda to Chongoleani Peninsula near the Port of Tanga in the United Republic of Tanzania.<sup>4</sup> The 24-inch diameter Crude Oil Pipeline will cover a distance of 1,445 km buried pipeline. Only 20%, about 298 km of that distance is in Uganda. It will have six pumping stations, two pressure reduction stations and a marine export terminal at the Port.<sup>5</sup> The pipeline runs from the proposed pumping point at Kabaale through the districts of Kakumiro, Kyankwanzi, Mubende, Gomba, Ssembabule, Lwengo to Rakai at the border of Tanzania.<sup>6</sup> Uganda shall be the source of the crude oil, while the United Republic of Tanzania shall only be used as a conduit to the seaport. The crude oil pipeline will not wholly be operated and managed by the governments of the two countries. It will be constructed and operated by the Government of Uganda through the National Oil Company, a pipeline company with shareholding from the Uganda National Oil Company, the Tanzania Petroleum Corporation and three Oil Companies, namely; CNOOC, TOTAL and Tullow.<sup>7</sup> The private companies shall have commercial interests on account of the hefty sums of money injected in the project in the construction of the crude oil pipeline. Moreover, the governments of the two pipeline countries see the construction of the pipeline as an economic venture that will stir economic development in the countries.<sup>8</sup>

From a political angle, the construction of the EACOP is likely to strengthen the long-standing political ties between the two countries. It will also contribute to the reduction of institutional and legal trans-border bottlenecks between the two countries, non-tariff and tariff barriers and separate legal requirements for environmental and social assessments. The non-tariff barriers likely to be encountered relate to on-spot checkpoints for goods transported between Uganda and the United Republic of Tanzania for the construction and maintenance of the pipeline and free movement of labour between the countries. The tariff barriers include taxes imposed on import and export materials and other goods intended for use in the construction of the EACOP.

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4 Kwasiga (2017).

5 Isabalija (2017).

6 Musisi (2017).

7 Kwasiga (2017).

8 Ibid.

With regard to the environment, land degradation, air and water pollution along, and within the vicinity of the pipeline route are likely to occur.

## 1.2 The problem

The ideal scenario in the construction of the EACOP would have been for the project planning process to have incorporated the involvement of the public in the design and subsequent stages of implementation. This, however, was not the case because of the hasty manner in which the project was moved from the initial Uganda-Kenya route to the Uganda-Tanzania route. It was equally not possible to transfer and apply the results of the feasibility environmental and social assessments conducted for the earlier planned Uganda-Kenya route, because they were route specific, and would not suit the new Uganda-Tanzania route. The possibility of ignoring, at the very initial stage, serious environmental and gender concerns cannot be overlooked in such a situation. Indeed, the hasty manner in which the final agreements were arrived at between the governments implies that key environmental, gender and other social concerns were not adequately taken care of in the project conception. There are political and commercial interests embedded in the project cycle of the EACOP. These need to be catered for without compromising environmental and gender equality standards.

Gender and social concerns related to discriminatory labour practices, sexual abuse and exploitation, resettlement practices, denial of land rights, which must be taken care of in projects like EACOP are not yet clear to those that will be adversely affected by the project. Noteworthy is the fact that oil extraction and transportation endanger the traditional culture and livelihood of indigenous peoples.<sup>9</sup> This is within a context where women are not adequately represented in national and regional levels of governance in the two countries. Their interests could, therefore, not have been fully taken care of in the initial project design, and may continue to be ignored in the implementation of the project.<sup>10</sup>

Compounding the problem at hand is the fact that the two countries do not have similar political ideologies, economic, cultural and social values that could be used as a basis to ensure harmonious progress in the design and implementation of the EACOP. Their environmental and gender policies, laws and institutions regarding aspects of the EACOP differ.<sup>11</sup> The East African Community framework, which would have provided a harmonisation point in this respect, is yet to be fully agreed upon by all partner states.

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9 Degteva (2006).

10 Amanda et al. (2006).

11 The harmonisation process of the policies and development strategies in the East African Community has not been achieved as required by the provisions of Article 71(1)(e) of the 1999 Treaty for the establishment of the East African Community.

Lastly, though Uganda's economy is growing, it has a long history of political turmoil from which it aspires to recover very quickly.<sup>12</sup> On the other hand, the United Republic of Tanzania is moving from a nationalised economy to a more liberal economic setup, and is yet to fully come to terms with that changing reality.<sup>13</sup> These factors will affect the implementation of EACOP.

## 2 Theoretical framework

This chapter relies heavily on ecofeminism to analyse the environmental and gender aspects of the EACOP. Ecofeminism is a preferred paradigm because it combines ecological, social and gender concerns of a project such as EACOP. It is also preferred because of its ability to unravel the negative impacts of the development model crafted within the ambit of capitalism which thrives on the mythology of male dominance. Hoch for instance avers:<sup>14</sup>

unleashing the father's voice is more threatening to the *status quo* than unleashing the mother's voice not because it is more powerful than the mother's voice – but because of the way patriarchy itself positions mothers and fathers. The mother's situation is viewed first and foremost through the lens of gender. The target of her rage and the focus of her attempts for change is generally the system of male domination. For the fathers, however, the enemy to be organised against is not – initially – so clear.

Based on Hoch's analogy of the male mythology, it becomes clear that the father's enemy is not clear and maybe fear of women's power to influence the situation if given an opportunity. Due to that fear, fathers essentially intimidate and keep women far away from any decision-making arenas concerning the environment they live in. Ecofeminism can be used to unpack and repackage the EACOP project and to shed light on the motivation and underlying concerns of political leaders of the two project countries.<sup>15</sup> Imbuing EACOP with environmental and gender considerations is critical for its successful completion and ultimately, its operation.

It is the central argument of this chapter, therefore, that from a theoretical perspective, only ecofeminism, also known as ecological feminism, can provide clear guidelines and possible solutions to the likely negative effects of the EACOP. Ecofeminism is based on the integration of the ecology and feminism perspectives and their multi-dimensional approaches into a project cycle. The term ecofeminism was coined in 1974 by Francoise d'Eaudbonne, a French feminist in *Le féminisme ou la mort* (feminism or death). d'Eaudbonne called on women to lead an ecological revolution and

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12 Uganda National Planning Authority (2013: 2).

13 Ibhwah & Dibua (2003).

14 Hoch (2015).

15 Atwijkire (2017).

establish new relationships between humanity and nature as well as men and women.<sup>16</sup> The ideology of ecofeminism as propounded by d'Eaubonne adopts a methodology that interrogates the socially constructed relationships between men, women and nature. Moreover, it emphasises the ways both nature and women are treated within a patriarchal setting. Patriarchy, the bedrock of the mythology of male dominance, objectifies women and nature and places them in subordinate positions in society.<sup>17</sup> Ecofeminism is based on four pillars: there are vital connections between the oppression of nature and women; understanding these connections is necessary to understanding the two veins of oppression; feminist theory must include an ecological perspective; and ecological problems must include a feminist perspective.<sup>18</sup> Ecofeminism holds that male domination of women parallels the domination of nature by the human race. That undesired domination leads to gender discrimination and environmental destruction.

A clear understanding of the problematic relation between nature and the human race makes it possible for project planners to stress the need for a more interdependent worldview of development, environment and gender. This is very relevant in the construction of the EACOP, which touches the ‘nerves’ of the two socially dominated aspects – the women and nature.

The governments of Uganda and the United Republic of Tanzania have put in place policies, laws and even invoke principles of international law to mitigate the possible adverse impacts of construction of a crude oil pipeline. That notwithstanding, it cannot be ignored that EACOP will be constructed amidst uncertain agitations for promoting the well-being of the peoples in the region. For example, it is acknowledged in the EAC Vision 2050 that the extractive industry in the region has not been beneficial in promoting the well-being of the people:<sup>19</sup>

as a result, the mining (extractive) industries contributed a higher percentage of industry’s share of GDP of the Partner States. However, this contribution is not equivalent to the value of the products that result from mining activities, nor does it contribute to job creation and employment on an equivalent scale. This is because Africa as a whole, through the multinational corporations that have been given the mining rights, continues to export ores and raw materials instead of finished products. Moreover, the exploitation of mineral resources has historically been a source of disputes instead of being a source of development resources for the region, mainly to the benefit of multinational corporations and their private share.

The realisation of the minimal benefits to be anticipated from the oil and gas exploitation in Uganda, therefore, must be understood against a clear background that exportation of crude oil will largely benefit foreign interests, not those of Ugandans or the people of the United Republic of Tanzania. It is equally clear, at the same time, that the project will inevitably affect the integrity and harmony of the environment along its course. The project will arguably destabilise the social, gender, economic and

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16 Ling (2014).

17 Dobscha (1993).

18 Ibid.

19 East African Community (2016).

cultural order of the people living along its route. The pipeline project may equally have similar transboundary impacts in non-project countries far beyond the territorial boundaries. Some of the negative impacts on gender and the environment will fall between the cracks of the policy and regulatory mechanisms made to accommodate the new venture of oil and gas exploitation and transportation because they have not been factored in. Moreover, some adverse impacts are inevitable in the industrialisation and modernisation drives. Ling rightly asserts that:<sup>20</sup>

with the acceleration of industrialisation and modernisation process, ecological problems have become global problems and key issues which constrain the development of nations. In the internal social ecological systems, gender division and gender inequality have also become important factors that constrain the development. How to effectively overcome the ecological crisis and solve gender conflicts are theoretical problems as well as practical problems.

From a theoretical perspective, therefore, ecofeminism can provide clear guidelines and possible solutions to the likely adverse impacts of EACOP on the environment and gender.

In contrast, the ideology of patriarchy, which portends that nature can be harnessed or controlled and that human beings are separate from, and superior to the environment, is incapable of providing comparable benefits to humanity.<sup>21</sup> The polarised positions taken by adherents of ecofeminism and those of patriarchy regarding the relationship between humanity and nature clarifies why in the EACOP project design, only the dominant view prevails – economic considerations. Being an economic venture, EACOP could not have been fronted from a humanist perspective, because doing so would elicit criticisms on the need to start the project. At whatever cost, the pipeline has to be constructed because it is presented as a project that will improve the well-being of the people in the two pipeline countries. The relationship between humanity and nature, which allows humans to do things to the environment that they would not do if they conceived it as being part of the entire system of which humans are only one part, comes on board much later.<sup>22</sup> In this respect, the ecofeminism perspective bridges the gap between humans and the environment within a male-dominated space, where the law, a reflection of the dominant class, and necessarily, patriarchs, becomes a handy tool to be used in the fight for rights of the unsuspecting victims of the EACOP. Moreover, ecofeminism critiques the trends in modern industrial civilisation and tries to rebuild the cultural values of the society so as to obtain the liberation of women and nature from male domination.<sup>23</sup> An analysis of the regulatory framework for the EACOP using an ecofeminism perspective has several advantages. It provides clear avenues through which improvements can be made in the law to ensure that the environment is not degraded wantonly, and secondly, that women, who are equally

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20 Ling (2014: 104-108).

21 Broumas (2017).

22 Dobscha (1993: 36-40).

23 Ling (2014: 104-108).

oppressed by the male-dominated society become key players in the design and implementation of the EACOP.

Regarding ventures harnessing the environment on a large scale, ecofeminism becomes a suspicious paradigm, especially because of the symbolic role that women would be asked to play in an ecological crisis emanating from the constructs of the ideology of patriarchy.<sup>24</sup> This would require that the EACOP regulatory framework mainstream gender in all its parameters. Gender mainstreaming, largely advocated for within the realm of ecofeminism is not a mere matter of convenience, it is a human rights issue. In this regard, Williams avers:<sup>25</sup>

gender mainstreaming is a strategy which aims to bring about gender equality and advance women's rights by infusing gender analysis, gender-sensitive research, women's perspectives and gender equality goals into mainstream policies, projects and institutions. Instead of having segregated activities for women, or in addition to targeted interventions to promote women's empowerment, it brings the focus on women's issues and gender equality into all policy development, research, advocacy, legislation, resource allocation, planning, implementation and monitoring of programs and projects. Gender mainstreaming is intended to be transformative, changing the very definition and discourse of development to include gender equality as a means and an end. With gender fully integrated, therefore, 'the stream' itself will change direction.

From Williams' averments, for EACOP to be successfully undertaken, project designers and planners need to use a properly conceived and crafted gender mainstreaming strategy. The United Nations Economic and Social Council (ECOSOC) defined the strategy for gender mainstreaming:<sup>26</sup>

in addressing the inequality between men and women in the sharing of power and decision-making at all levels, Governments and other actors should promote an active and visible policy of mainstreaming a gender perspective in all policies and programmes so that before decisions are taken, an analysis is made of the effects on women and men, respectively.

The main elements of the gender strategy are: accountability, results-based management for gender equality, and oversight through monitoring, evaluation, audit and reporting. It also includes: capacity development, coherence, coordination and knowledge information management.<sup>27</sup> According to the ECOSOC, key principles of a gender mainstreaming strategy are:<sup>28</sup>

issues across all areas of activity should be defined in such a manner that gender differences can be diagnosed – that is, an assumption of gender-neutrality should not be made; responsibility for translating gender mainstreaming into practice is system-wide and rests at the highest levels; accountability for outcomes needs to be monitored constantly; gender mainstreaming also requires that every effort be made to broaden women's participation at all levels of decision-making; gender mainstreaming must be institutionalised through concrete steps, mechanisms and processes in all parts of the system; gender mainstreaming does not replace the need for targeted, women specific policies and programmes or positive legislation, nor does it substitute for gender

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24 Dobscha (1993: 36-40).

25 Williams (2004: 3).

26 ECOSOC (1997).

27 United Nations Entity for Gender Equality and the Empowerment of Women (2018).

28 ECOSOC (1997).

units or focal points; and clear political will and the allocation of adequate and, if need be, additional human and financial resources for gender mainstreaming from all available funding sources are important for the successful translation of the concept into practice.

Implementation of a well-designed gender mainstreaming strategy will help to ensure that EACOP meets its intended objective. That is largely because:<sup>29</sup>

mainstreaming a gender perspective is the process of assessing the implications for women and men of any planned action, including legislation, policies, or programmes, in all areas and at all levels. It is a strategy for making women's as well as men's concerns and experiences an integral dimension of the design, implementation, monitoring and evaluation of policies, and programmes in all political, economic and societal spheres so that women and men benefit equally and inequality is not perpetuated. The ultimate goal is to achieve gender equality.

From the foregoing narrative, and in order for the EACOP to benefit women and men equally, gender concerns must be institutionalised through concrete steps, mechanisms and processes in whole project design and implementation. There must be political will manifested in the political statements made, and in the actual implementation cycle of the EACOP. All these must be budgeted for and adequate resources allocated in design, implementation and eventually, benefit sharing of the proceeds of the project.<sup>30</sup>

### 3 The regulatory framework

Construction of the EACOP will be guided by multi-layered environmental and socio-gender regulatory frameworks. The East African Community Treaty as well as other regional and international legal frameworks will also be relevant. The term environment is defined in the Treaty for the Establishment of the East African Community and national laws of Uganda and the United Republic of Tanzania as:<sup>31</sup>

the natural resources of air, water, soil, fauna and flora, ecosystems, land, the man-made physical features, cultural heritage, the characteristic aspects of the land scape, and the socio-economic interaction between the said factors and any living and non-living organisms.

The East African Community Treaty obligations regarding construction projects and gender concerns will help to fill the gaps in the national regulatory frameworks and act as a monitoring and compliance tool. Moreover, the use of the name 'EACOP' imports a responsibility on part of the East African Community partner states' organs to assume responsibility for overseeing the project's compliance with the Community regulatory framework. Indeed EACOP construction is likely to avoid serious negative effects to the environment and human beings if the two project countries adhere to the normative demands in their national laws as well those in regional and international

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29 Ibid.

30 Chief Executives Board for Coordination (2006).

31 Treaty for the Establishment of the East African Community, Article 1 (1999); Section 3 Environment Management Act of the United Republic of Tanzania (2004) and Section 1 of the National Environment Act, Cap. 153, Laws of Uganda.

treaties to which they are a party. Adherence to the law will create a conducive environment for the free movement of goods and services, at least in the short run.<sup>32</sup> In the wildlife protected areas, EACOP will, however, disrupt the free movement of wildlife.<sup>33</sup> It is clear that in case of an oil spill, the spillage will degrade the environment in a manner that is likely to pose a great threat to humanity, the ecosystems and flora and fauna.<sup>34</sup> Oil spillage is a serious problem because its impacts are long-term and recurrent.<sup>35</sup> As much as the construction of the EACOP and its subsequent maintenance are likely to have negative transboundary environmental effects and affect humans, the worst impacts will be felt by vulnerable members of the community such as women. Indeed, the laws of the two project countries require that gender considerations are taken into account. Gender as a concept of social construction:<sup>36</sup>

describes the social experiences, norms, values, and subjective position that people use to describe their experience of ‘masculinity’ and ‘femininity’. Gender is distinguishable from sex, which refers to biological or bodily traits that distinguish ‘men’ and ‘women’.

On the historical gender imbalances, the Constitution of the Republic of Uganda, 1995 provides:

Article 32 (1): Notwithstanding anything in this Constitution, the State shall take affirmative action in favour of groups marginalised on the basis of gender...;

Article 33 (5): Without prejudice to article 32 of this Constitution, women shall have the right to affirmative action for the purpose of redressing the imbalances created by history, tradition or custom.

The legal barriers may not have been fully addressed by the two governments as they sought to accommodate the commercial interests of the private companies in the project. These include non-adherence to the requirements of environmental impact assessment for the EACOP and gender concerns in resettlement and employment under the project. Compliance with these requirements is important if EACOP is to provide the anticipated economic and political gains to the peoples of Uganda and the United Republic of Tanzania.

In order to rationalise the political, economic, social, cultural, environmental and gender aspects of the EACOP, Uganda and the United Republic of Tanzania must undertake comprehensive environmental and social reforms that will help them to forestall or mitigate the adverse effects of the project. Environmental and socio-legal reforms may, however, be regarded as irrational by the political and economic actors behind the construction of the oil pipeline because they may delay the implementation of the project. Those legal reforms must, however, be initiated, and operationalised at every stage of the EACOP, including the decommissioning stage. That has to be done

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32 Adejoh (2014).

33 WWF & CSCO (2017: 3).

34 Ibid.

35 Adekola & Igwe (2014).

36 Zelvallos (2013).

notwithstanding the fact that from a political and economic angle, such legal reforms may be regarded as concerns of the pessimist environmentalists and feminist protagonists. Regarding pessimism, Pinker asserts:<sup>37</sup> “[I]rrational pessimism is driven by a morbid interest in what can go wrong – and there are always more ways of things to go wrong than to go right”.

Indeed, the economic and political domains cannot on their own predetermine what can go wrong with the EACOP without the input of the pessimist environmentalists and ecofeminists. The latter’s contribution is very important at an early stage of the construction of the EACOP. The reason for taking this strong position is that oil and gas exploration, extraction and transportation have great potential to endanger the terrestrial and marine environments. They also have potential to disrupt traditional occupations, gender perceptions and roles, culture and livelihood of the indigenous people. The danger of political and economic motivations overriding these considerations should not be underestimated. Such reasonably foreseen danger must be stemmed by the law at the earliest opportune time. The legal framework for EACOP in this chapter is presented at two levels, the national legal frameworks and the transboundary legal framework. The national legal framework is pivotal in this case because Uganda and the United Republic of Tanzania are required under international law to ensure that their activities do not affect areas beyond their territorial boundaries negatively.<sup>38</sup> Uganda being the originator of the crude oil to be transported through the EACOP to the seaport of Tanga in the United Republic of Tanzania, must put in place a strong regulatory framework to contain the anticipated adverse environmental and gender impacts of the pipeline. In similar vein, the United Republic of Tanzania must put in place similar regulatory measures. The regulatory framework advocated for in this chapter is one based on the known international legal principles enshrined in the various environmental and human rights instruments. These principles are discussed in the ensuing sections of this chapter.

### 3.1 International principles regarding transportation of crude oil through a pipeline

International legal principles regarding sustainable harnessing of the environment include a human rights perspective. For example, the Declaration of the United Nations Conference on the Human Settlement adopted at Paris in 1972 recognises that men (and women) are both the creature and moulder of the environment. It also recognises that humanity derives its physical sustenance, intellectual, moral, social and spiritual

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37 Pinker (2018).

38 See the *Trail Smelter case (United States v. Canada)*, Arbitral Tribunal, 3 U.N. Rep. Int’l Arb. Awards 1905 (1941).

growth from the environment. States parties to this Declaration recognise the fact that through science and technology, men (and women) have the power to transform the environment in countless ways, and on an unprecedented scale. It is the duty of man (and woman), however, to safeguard the non-renewable resources of the earth. This requires that humanity does not harm the environment when undertaking activities such as the excavation of the soil for construction of the crude oil pipeline.

On its part, the Rio Declaration, adopted at Rio de Janeiro in 1992, establishes a new and equitable global partnership regime. It creates new levels of cooperation among states, key sectors of the global economies, the society and even the people. The Rio process puts in place frameworks that form the basis for future cooperation among states in the field of environmental management.<sup>39</sup> It recognises that humanity has a right to development, but further that such development should be arrived at equitably in order to meet the developmental and environmental needs of the present and future generations.<sup>40</sup> Environmental processes are part of sustainable development advocated for in the Rio Declaration.<sup>41</sup> In regard to the discussion on the transboundary environmental impacts of the EACOP, the Rio Declaration emphasises that developing countries should strive to avoid degradation of their fragile ecosystems. In the case of Uganda and the United Republic of Tanzania, women are identified as being at the centre of environmental degradation.<sup>42</sup> They are also key players in implementing measures to avert the degradation.<sup>43</sup> This recognition is in line with what ecofeminism alludes to – women are best suited to protect nature, because women and nature are vulnerable to abuses by the patriarchal society.

In the Word Conservation Strategy, 1980, states acknowledge that conservation of the environment and development are interdependent, and none ought to be taken a stride ahead of the other. This view was further elaborated in the World Commission on Environment and Development (WCED), also known as Our Common Future in 1987.<sup>44</sup> WCED observed that the concept of sustainable development does not imply absolute limitations on the present state of technology and social organisation. It partly concluded that technology and social organisation ought to be managed and improved to make way for a new era of economic and social transformation, noting that sustainable development is not a fixed state of harmony. Rather, it is a process of change in which the exploitation of resources, the direction of investments, the orientation of technology and institutional change are made consistent with the future. Consequently, the concept of sustainable development becomes a handy tool to the governments of Uganda and the United Republic of Tanzania when constructing the EACOP. The two

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39 Preamble, Rio Declaration (1992).

40 Principle 3, Rio Declaration (1992).

41 Principle 4, Rio Declaration (1992).

42 National Environment Management Authority (2006); United Republic of Tanzania (2007).

43 UNDP (2015).

44 WCED (1987).

governments should be mindful of the duty incumbent upon them, and ensure that the construction of the pipeline does not unduly disrupt the integrity and harmony of the environment and the socio-economic activities of the people living on, or near the path of the EACOP. In so doing, they must put in place adequate policy, legal and institutional mechanisms to guide and monitor implementation of the task of construction of the pipeline in a sustainable manner. The latter shall include the obligation not to ignore gender considerations during all phases of the pipeline.

Another important international law principle relevant to the construction of the EACOP is that of permanent sovereignty over natural resources. This principle was adopted by the United Nations General Assembly in its resolution 1803 (XVII), and given prominence in principle two, of the Rio Declaration. The principle states:

[s]tates have, in accordance with the Charter of the United Nations and principles of international law, the sovereign right to exploit their own natural resources pursuant to their own environmental and development policies, and the responsibility to ensure that activities within their jurisdiction and control do not cause damage to the environment of other states or areas beyond the limits of national jurisdiction.

In their activities during the construction of the EACOP, therefore, Uganda and the United Republic of Tanzania should at all times be mindful of their rights and obligations under international law to freely exploit natural resources within their territories. They should be equally mindful, that such a right goes hand in hand with an obligation to ensure that their acts do not injure the ecosystems and flora and fauna in the pipeline area. In practical terms, and within the confines of the concept of sustainable development, Uganda and the United Republic of Tanzania are not only bound not to cause harm to environments beyond their territorial jurisdictions, but are also under a similar obligation not to do so within their territorial jurisdictions. Such obligations stem from the principles of intergenerational and intra-generational equity.

The principle of intergenerational equity and its sister principle of intra-generational equity are premised on an understanding that the present generation owes a duty to its own members and generations yet unborn to preserve the diversity and quality of the planet's life-sustaining environmental resources. These principles were succinctly elaborated upon in the case of *Juano Antonio Oposa and others v. The Honourable Fulgensio S. Factoran and another*, where the court entertained an action by minors on their own behalf and that of generations yet unborn.<sup>45</sup> The action was brought to court through the minors' respective parents together with the Philippine Ecological Network Incorporated, seeking to stop the destruction of the country's forest cover at a rate that would deny both the petitioners and generations yet unborn of the right to benefit from that forest. A discussion of international environmental principles, which are now part and parcel of the national laws of the EACOP countries, cannot be

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<sup>45</sup> Supreme Court of the Philippines Philippines' Constitutional Rights, Intellectual Rights, Intergenerational Standing G.R No. 101083.

concluded without mentioning the *locus standi* and precautionary principles.<sup>46</sup> Each of these two principles forms the rubric of contemporary environmental law and even the struggle for gender equity in the handling of large projects such as the construction of the EACOP. These principles were tested and elaborated upon in the English case of *R v. Secretary of States and Industry ex parte Duddridge*, where the court came to a conclusion that they are intended to prevent serious harm to the environment in circumstances such as those surrounding the construction of the EACOP.<sup>47</sup> The precautionary principle, in particular, calls for the undertaking of environmental assessments at all stages of a project of the magnitude of the EACOP. Under the Ugandan legal regime for sustainable utilisation of the environment, environmental assessments are mandatory for large projects, whose impacts are likely to fundamentally alter the environment. They are also undertaken to forestall disruption of social, economic and gender roles of the project-affected communities.<sup>48</sup>

### 3.2 Regional and national regulatory framework for the EACOP

Uganda and the United Republic of Tanzania are founding members of the East African Community which was established in 1999. Article 4(1) of the Treaty for the Establishment of the East African Community, 1999, provides:

the Community shall have the capacity, within each of the Partner States, of a body corporate with perpetual succession, and shall have power to acquire, hold, manage and dispose of land and other property, and to sue and be sued in its own name.

This form of legal status enables organs of the Community to operate within the territorial jurisdictions of Partner States with limited restrictions. In furtherance of this, Article five, which spells out the objectives of the Treaty *inter alia* provides:

- (3) For purposes set out in paragraph 1 of this Article and as subsequently provided in particular provisions of this Treaty, the Community shall ensure:
  - (b) the strengthening and consolidation of cooperation in agreed fields that would lead to equitable economic development within the Partner States and which would in turn, raise the standard of living and improve the quality of life of their populations;
  - (c) the promotion of sustainable utilisation of the natural resources of the Partner States and the taking of measures that would effectively protect the natural environment of the Partner States;

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46 See Article 50 Constitution of the Republic of Uganda, which gives *locus standi* to any affected person or any other person, to sue for enforcement of rights.

47 *United Kingdom Queen's Bench Division* (4-10-1994).

48 Uganda National Environment Act Cap. 153 (Uganda), Sections 19-23; the Environmental Impact Assessment Regulations, 1998 (Uganda); see also Section 81 of the Environment Management Act (2004) of the United Republic of Tanzania on the rationale for environmental impact assessments.

(e) the mainstreaming of gender in all its endeavours and the enhancement of the role of women in cultural, social, political, economic and technological development.

Objectives of the East African Community Treaty in regard to a shared vision of the partner states are reinforced by the operational principles of the same Treaty. One of the operational principles of the Community provided for in Article 7(1)(g) is the principle of complementarity, whereby partner states undertake to complement each other's endeavours. This form of complementarity is what is exhibited in the construction of the EACOP, where Uganda and the United Republic of Tanzania are working together to promote the well-being of the people in each of the two countries by pooling their resources together for the success of the project. Indeed, in Article 111 of the Treaty, the partner states recognise that development activities, such as the construction of the crude oil pipeline, may have negative impacts on the environment leading to the degradation of the environment and depletion of natural resources and that a clean and healthy environment is a prerequisite for sustainable development. The partner states, therefore:

- (a) agree to take concerted measures to foster cooperation in the joint and efficient management and sustainable utilisation of natural resources within the Community;
- (b) undertake, through environmental management strategy, to cooperate and co-ordinate their policies and actions for the protection and conservation of the natural resources and environment against all forms of degradation and pollution arising from developmental activities.

National frameworks in each of the partner states reinforce the highlighted provisions of the Treaty for the establishment of the East African Community.

At the national level, in regard to mainstreaming women in all aspects of development, Article 33(4) of the Uganda Constitution provides: "women shall have the right to equal treatment with men and that right shall include equal opportunities in political, economic and social activities".<sup>49</sup> This provides a basis for an integrated environmental and gender consideration commitment. For instance, the Final Draft of Uganda's Revised National Environment Management Policy (NEMP), 2014 provides:<sup>50</sup>

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49 See also Article 9(g) of the Constitution of the United Republic of Tanzania, 1997 which provides: "the Government and all its agencies provide equal opportunities to all citizens, men and women alike without regard to their colour, tribe, religion, or station in life".

50 See also Section 105 of the United Republic of Tanzania Environment, 2004 which provides: "(1) Where a mineral or petroleum resource is identified and before specific details are planned or a hydro-electric power station is planned or a major water project is planned, the Ministry responsible for mining, energy or water shall carry out a Strategic Environmental Assessment. (2) The strategic environmental assessment provided for Under sub-section (1), shall assess the area marked for development including the following: (a) baseline environmental conditions and status of natural resources; (b) identification of ecologically sensitive and protected areas; (c) identification and description of communities around the area; (d) existing socio-economic conditions; (e) existing economic activities and infrastructure; (f) power stations; (g) infrastructure and resources required to service these development; potential environmental and social impacts of mining or petroleum development or hydro-electric power or (h) any major water projects; and (i) recommendations for land reclamation and limitations on development in different areas".

significant achievements have been made during the implementation of the NEMP (1994) some of which include the following:

established a system for sound management of environmental aspects of oil and gas throughout the petroleum value chain through; development of sensitivity atlases, environment monitoring plan, Strategic Environment Assessment (SEA), Environment Impact Assessment (EIA) and Audit processes, public education and awareness, establishment of an office in the Albertine Graben, regular monitoring and inspections, oil waste management and review of environment legislation to include aspects of oil and gas.

It suffices to note that Uganda's first comprehensive environmental management policy was concluded in 1994 long after the process of oil and gas exploration and exploitation had commenced. The policy has, because of that reason, been reviewed to cater for the revived oil and gas activities in the country, which now include transportation. Its ambit, however, does not extend to areas beyond the country's territorial boundaries. It, however, complements efforts in the United Republic of Tanzania and those under the Treaty for the establishment of the East African Community to complete the full picture of environmental assessments for the EACOP.

In regard to avoiding pollution of the area along the EACOP, the Constitution of the Republic of Uganda, 1995, under objective XXVII provides:<sup>51</sup>

- (i) The State shall promote sustainable development and public awareness of the need to manage land, air and water resources in a balanced and sustainable manner for the present and future generations.
- (ii) The utilisation of the natural resources of Uganda shall be managed in such a way as to meet the development and environmental needs of present and future generations of Ugandans; and, in particular, the State shall take all possible measures to prevent or minimise damage and destruction to land, air and water resources resulting from pollution or other causes.

In order to ensure that activities such as those related to the construction of the EACOP do not harm the health of Ugandans, the Constitution, under Article 39 provides: “[E]very Ugandan has a right to a clean and healthy environment”. This right is justiciable and can be enforced by either the affected person or any other person or organisation under the provisions of Article 50 of the Constitution. Article 50 of the Constitution of Uganda on enforcement of rights and freedoms by courts provides:<sup>52</sup>

- (1) Any person who claims that a fundamental or other right or freedom guaranteed under this Constitution has been infringed or threatened, is entitled to apply to a competent court for redress which may include compensation.
- (2) Any person or organisation may bring an action against the violation of another person's or group's human rights.

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51 See also Section 106(1) of the United Republic of Tanzania Environment, 2004, which provides: “It shall be an offence for any person to pollute or permit any other person to pollute the environment in violation of any standards, prescribed under this Act or any other written law prohibition of pollution regulation a segment of the environment”.

52 See also Article 9 of the United Republic of Tanzania's Constitution, 1997, which provides: “The state authority and all its agencies are obliged to direct their policies and programmes towards ensuring – (a) that human dignity and other human rights are respected and cherished; (b) that the laws of the land are upheld and enforced”.

(3) Any person aggrieved by any decision of the court may appeal to the appropriate court.

The National Oil and Gas Policy, 2008, which is the operational policy for oil and gas ventures in the country has a key provision on safeguarding the environment. It provides:<sup>53</sup>

the opportunity to exploit indigenous oil and gas resources means that oil and gas activities are going to become an important sector of development in the country. This sector has the potential to significantly impact the already existing sectors and can be an important engine for poverty reduction and sustainable development. It can also create negative economic and social impacts if not managed properly. Governance, the economy, the environment and subsequently human development will be impacted upon by an emerging oil and gas sector in the country. Many of the areas with the potential for petroleum production in the country also coincide with areas of important biodiversity like national parks, water bodies, game and forest reserves among others. Due consideration will therefore be necessary so as to ensure harmony between developing the country's oil and gas resources and conserving its rich biodiversity.

This policy further recognises that:

oil and gas activities in the country can impact the environment from several angles. They may affect human beings, wildlife and biodiversity, together with the associated tourism. Transboundary water resources and the economy of the Albertine Graben ecosystem where production is anticipated may also be affected. Furthermore, the corridor in which any pipelines or other transport systems will pass will also be affected. This policy considers environmental protection to include both the physical and social aspects and seeks to mitigate typical forms of environmental damage and hazards associated with oil and gas exploration, development and production.

The Oil and Gas Policy enjoins the Government of Uganda to learn from experiences of other countries in regard to handling the oil and gas resources, particularly in relation to socio-economic, and environmental aspects of the industry. It provides:

experience from some countries shows that oil and gas producing regions may attract labour and threaten other sources of productivity thus leading to the abandonment and collapse of other sectors of the economy. It is therefore possible that large numbers of people may move to the Albertine Graben where oil and gas activities are likely to be concentrated despite the area being largely a wildlife and biodiversity protected area.

The National Oil and Gas Policy, however, does not specifically mention gender considerations as one of the key areas that need to be taken care in the oil and gas sector. This is a grave omission, because gender considerations are a prerequisite to proper implementation of any policy regarding the management of natural resources as clearly articulated within the ecofeminism perspective. In regard to health concerns, the policy provides: "this policy recognises several potential causes of negative impacts on human health from oil and gas activities. Oil spills can contaminate water sources leading to sickness and disease". This provision provides a firm basis for undertaking environmental and social assessments for the EACOP, within the territorial jurisdictions of Uganda and the United Republic of Tanzania. The Petroleum Supply Act, 2003 for

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53 See also the National Petroleum Policy for the United Republic of Tanzania, Draft 2, 2014 which provides: "To explore, produce and utilize the country's petroleum resources in an effective and efficient manner that ensures lasting benefit to the nation as well as minimizing negative impacts to the society and environment".

Uganda, under Section 6(2)(a) empowers the Minister to promote the increase of opportunities for regional petroleum trade and encourage a diversity of supply sources, routes and means of transportation. This provision, read together with those of other petroleum-related policies and laws in Uganda and the provisions of the Treaty for the establishment of the East African Community can be relied on to ensure that construction of the EACOP is undertaken with care and caution to meet the environmental and gender concerns of the peoples of Uganda and the United Republic of Tanzania. Another important law in the oil and gas sector is the Petroleum (Refining, Conversion, Transmission and Midstream Storage) Act, 2013 (Uganda). This Act provides for additional and particular health, safety and environment regulations not sufficiently regulated in other laws. It defines transmission of oil to:

mean transportation of petroleum products but not for distribution to consumers or retailers or transportation of petroleum commodities through pipelines, including transit pipelines and pipelines originating from outside Uganda connected to and with its inlet or outlet flange at a refinery or gas conversion facility in Uganda.

This definition caters for the EACOP, which is intended to connect Uganda's crude oil from the point source to the port of Tanga, in the United Republic of Tanzania for export.

#### 4 Conclusion

From the foregoing discussion, it is fair to conclude that the EACOP will be constructed largely under the guidance of the political leadership of the two countries. The form of guidance given is motivated by providing improved conditions of living for the peoples in the two countries, which also helps to capitalise on the political gains and capital for the incumbent presidents. The regulatory framework in place is not adequate to handle all aspects of a transboundary nature for the construction of the EACOP. There are, however, good environmental and gender principles in place at the national, regional and international levels, to guide the construction process of the EACOP. The ecofeminism perspective provides a clear theoretical framework to guide the process of mainstreaming gender concerns in the process of constructing the EACOP. Based on this conclusion, the author recommends that the governments of Uganda and the United Republic of Tanzania comprehensively review the regulatory framework of EACOP to include the omitted environmental and gender aspects. The review should seek to identify gaps in the framework and align the project cycle to gender and environmental imperatives to ensure that they are not trumped by industrialisation and modernisation paradigms.

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