

AFIEGO's JOURNEY OF CLIMATE CHANGE LITIGATION IN THE EACOP CASE

*Defense of project affected
communities and the environment at the
East African Court of Justice-EACJ*



Overview

- The EACOP case (History of dispute, ESG raised and the legal significance of the dispute)
- The role of NGOs in bringing this type of litigation against corporations
- How litigation can be used to highlight the link between climate change and experiences of the people
- Challenges faced in climate change litigation

The EACOP case

Uganda discovered 1.4 billion barrels of economically recoverable oil reserves in 2006 and quickly embarked on extraction plans with the hopes of immense economic boon. Being a land locked country with means too modest to carry out oil extraction and refinery activities, oil production licenses were issued to the French Firm Total S.E (currently TotalEnergies SE), UK firm Tullow and Chinese firm China National Offshore Oil Corporation (CNOOC). However, Tullow withdrew from the venture and currently production licenses are only held by TotalEnergies and CNOOC.

In May 2017, Inter-Governmental Agreements (IGA) were signed between the government of Uganda and the government of the Republic of Tanzania followed by Host Government Agreements (HGA) as the legal framework for the East African Crude Oil Pipeline (hereinafter referred to as 'EACOP').

The EACOP is a planned 1,442 km pipeline which will be used to transport crude oil across Uganda and Tanzania for export to international markets. The project is to be executed by the East African Crude Oil Pipeline Limited which is a UK- incorporated company with CNOOC holding 8% stake in it. Other shareholders of the EACOP company include; TotalEnergies, Uganda National Oil Company (UNOC) and Tanzania Petroleum Development Corporation (TPDC). However, news of the EACOP project has steered debates among environmentalists and human rights advocates criticizing the project for its environmental, social and human rights impacts.

It should be noted that the project is intended to traverse reserves and protected areas, posing a number of threats to a unique and delicate ecosystem that harbors multitudes of ~~protected~~ wildlife, birds, tree and plant species. Communities living near the planned pipeline are facing grave disruption to their livelihoods due loss of land and more is yet to come due to environmental degradation once the pipeline is operational.

Legal dispute

On November 6, 2020 Africa Institute for Energy Governance (AFIEGO) along with three Centre for Food and Adequate Living Rights, Natural Justice and Centre for Strategic Litigation filed a case at the EACJ against Attorney General of Uganda, Attorney General of the United Republic of Tanzania and the Secretary General to the East African Community.

The case was filed to contest the legality of the agreements and procedures surrounding the EACOP project, the primary concerns revolve around the failure to conduct a proper Environmental and Social Impact Assessment (ESIA) and the neglect of required Human Rights Impact Assessments (HRIA) before signing the Host Government Agreement (HGA) and Inter-Governmental Agreement (IGA).

The CSOs assert that these oversights contravene both national laws and the East African Community (EAC) Treaty.

The CSOs also argue that these contraventions if not addressed will have adverse human rights and environmental impacts i.e.;

- Disruption of livelihoods of the over 100,000 EACOP affected persons
- Displacement of communities along the pipeline route
- Loss of land by project affected persons without fair adequate and prompt compensation
- Loss of biodiversity since the pipeline will traverse through protected areas such as forests, water bodies, game reserves and etc.
- Environmental degradation from likely oil spills, high levels of emissions and etc
- The climate will be negatively impacted by the huge emissions the production and transportation of crude oil is projected to cause.

Legal significance of the EACOP case

1. Enforcement of Regional Treaties and Protocols

The CSOs argue that the EACOP project violates several regional and international agreements, including:

- The Treaty for the Establishment of the East African Community
- The Protocol for Sustainable Development of the Lake Victoria Basin,
- The African Charter on Human and Peoples' Rights,

By bringing this case, the CSOs seek to hold the East African Community (EAC) member states accountable for adhering to these commitments, thereby reinforcing the applicability and enforcement of such treaties within the region.

2. Jurisdictional Clarifications of the EACJ

The case has prompted the EACJ to examine its jurisdiction, particularly concerning environmental and human rights issues. In November 2023, the First Instance Division of the EACJ dismissed the case, citing a lack of jurisdiction and deeming the filing time-barred. The plaintiffs have appealed this decision, arguing that the court misinterpreted EAC laws and procedural requirements.

The outcome of this appeal could set a precedent regarding the EACJ's authority to adjudicate on matters involving environmental protection and human rights within the community and give clear explanations regarding the time imitiation for bringing cases to the EACJ.

3. Advancement of Environmental and Human Rights Jurisprudence

The CSOs contend that the EACOP project poses significant environmental risks, such as threats to protected areas, wetlands, and biodiversity, and could lead to human rights violations, including loss of livelihood, inadequate public participation and insufficient impact assessments. Addressing these concerns at the EACJ underscores the importance of integrating environmental and human rights considerations into large-scale infrastructural projects, potentially influencing future jurisprudence in these areas.

4. Implications for Public Participation and Consultation

The case highlights the necessity for meaningful public participation and consultation in the planning and execution of major projects. The plaintiffs allege that the EACOP project lacked effective public engagement in ESIA studies and failed to conduct comprehensive Human Rights and Climate Impact Assessments. A favorable ruling for the CSOs could reinforce the legal requirement for inclusive stakeholder engagement in development initiatives.

5. Influence on Future Infrastructure Projects

The legal proceedings surrounding the EACOP project may ~~serve~~ as a benchmark for evaluating the compliance of future infrastructure projects with environmental and human rights standards. It emphasizes the necessity for project developers and governments to align projects with the existing legal frameworks and uphold the rights of affected communities.

The role of NGOs/CSOs in bringing ESG litigation against corporations

- **Advocacy and Awareness**

NGOs and CSOs often spearhead efforts to raise public awareness about corporate activities that may harm the environment or violate human rights. Through conducting research, publishing reports, and engaging with the media, they highlight issues that might otherwise remain unnoticed. This advocacy is crucial in mobilizing public opinion and garnering support for legal actions against corporations.

- **Strategic Litigation**

Organizations frequently engage in strategic litigation, aiming to bring about significant legal and social changes. They may file lawsuits directly against corporations or support affected communities in seeking legal redress. For instance, NGOs have been instrumental in climate change litigation, holding companies accountable for their environmental impact.

- **Capacity Building and Support**

NGOs and CSOs provide essential support to communities and individuals affected by corporate misconduct. This includes offering legal assistance, facilitating access to justice, and building the capacity of local communities to advocate for environmental protection.

- **International Collaboration and Standard Setting**

NGOs and CSOs often collaborate across borders to tackle transnational corporate misconduct. They engage with international legal frameworks and institutions to set standards and hold corporations accountable on a global scale. The involvement of civil society in environmental litigation has been key to holding companies accountable, as seen in cases where NGOs have submitted amicus briefs to influence court decisions in environmental matters.

- **Representation of Affected Communities**

NGOs and CSOs often act on behalf of communities that lack the resources or capacity to challenge powerful corporate entities. By filing lawsuits, they provide a voice to marginalized groups, ensuring that their concerns are addressed in legal forums.

- **Collaboration and Coalition Building**

These organizations frequently collaborate to strengthen their legal challenges. By forming coalitions, they pool resources, share expertise, and present a united front against corporate misconduct.

How litigation can be used to create a link between climate change and the negative experiences/challenges in communities

- **Framing legal arguments around climate-related harms**

Lawsuits should argue that emissions and other actions from corporations contribute to climate change, leading to specific environmental damage such as flooding, droughts, or heatwaves.

Frame the issue as a violation of fundamental human rights, such as the right to life, health, and a clean environment.

- **Linking corporate actions to localized impacts**

Use climate science to establish a clear link between greenhouse gas emissions and the specific challenges faced by communities. Use attribution science to quantify the extent to which climate change exacerbates natural disasters like hurricanes or wildfires.

- **Highlighting disproportionate impacts on marginalized communities**

Emphasize that certain communities such as indigenous groups, peasants and etc. are more vulnerable to climate change impacts due to their reliance on natural ecosystems for survival or lack of resources to adapt to climate change. Cases should focus on tangible losses (e.g., homes, farmland, livelihoods) and intangible damages (e.g., cultural heritage, displacement) resulting from climate change.

- **Using legal precedents and international frameworks**

Reliance on international agreements, such as the Paris Agreement, to hold governments and corporations accountable for failing to meet climate commitments. Strategic lawsuits should aim to establish legal precedents that recognize the link between climate change and community impacts, paving the way for future cases.

- **Forcing accountability through corporate disclosure**

Litigation should compel corporations to disclose the risks their activities pose to the environment and communities, thereby holding them accountable for misleading practices.

- **Advancing adaptation and mitigation strategies**

Lawsuits should demand for adaptation and mitigation measures for challenges faced by climate change such as improved flood defenses or relocation assistance for coastal communities impacted by rising sea levels.

- **Raising public awareness**

Litigation should bring public attention to the lived experiences of affected communities, fostering a broader understanding of how climate change exacerbates social and economic challenges.

Challenges faced in climate change litigation

- **Establishing legal standing**

NGOs and CSOs often face hurdles in proving their right to bring a case to court. Courts may require a direct, tangible interest in the matter, which can be difficult for organizations representing broader environmental concerns.

- **Proving causation**

Demonstrating a direct link between a corporation's actions and specific environmental harm is complex. Climate change involves numerous contributors, making it challenging to attribute responsibility to a single entity.

- **Resource constraints**

Litigation is resource-intensive, requiring substantial financial investment and legal expertise. NGOs and CSOs often operate with limited budgets, making it difficult to sustain prolonged legal battles against well-funded corporate entities.

- **Strategic lawsuits against public participation (SLAPPs)**

Corporations may file counter-lawsuits intended to intimidate and silence critics through costly and lengthy legal proceedings. These SLAPPs can deter NGOs and CSOs from pursuing legitimate environmental litigation due to the fear of financial and legal repercussions.

- **Navigating complex legal frameworks**

Climate litigation often involves intricate legal and scientific issues, requiring NGOs and CSOs to navigate complex national and international laws. This complexity can pose significant challenges, especially for organizations lacking specialized legal expertise.

- **Political and public pressure**

Engaging in high-profile litigation can subject NGOs and CSOs to political backlash and public scrutiny, potentially affecting their operations and funding. For example, activists at COP29 faced restrictions and challenges in staging demonstrations, reflecting the broader pressures faced in environmental advocacy.