



BAR HUMAN RIGHTS
COMMITTEE OF
ENGLAND & WALES

TRIAL OBSERVATION REPORT

The East African Crude Oil Pipeline (EACOP) Appeal before the East African Court of Justice (EACJ)

*Center for Food and Adequate Living Rights (CEFROHT), Africa
Institute for Energy Governance (AFIEGO), Natural Justice Kenya,
and Center for Strategic Litigation Limited*

Appellants

V

*Attorney General of the Republic of Uganda, Attorney General of the
United Republic of Tanzania, and Secretary General of the East
African Community*

Respondents

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Written by

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About the Bar Human Rights Committee of England and Wales

The Bar Human Rights Committee of England and Wales (BHRC) is the independent, international human rights arm of the Bar of England and Wales, working to protect the rights of advocates, judges, and human rights defenders around the world. BHRC is concerned with defending the rule of law and internationally recognised legal standards relating to human rights and the right to a fair trial. It is autonomous of the Bar Council.

Our vision is for a world in which human rights are universally protected, through every government and state actor's adherence to international law obligations and internationally agreed norms.

Our mission is to protect and promote international human rights through the rule of law, by using the international human rights law expertise of some of the UK's most experienced human rights barristers.

Our Executive Committee and members predominantly offer their services pro bono, alongside their independent legal practices, teaching commitments and legal studies.

BHRC members are primarily barristers called to the Bar of England and Wales, as well as pupil barristers, legal academics, and law students. Our members include some of the UK's foremost human rights barristers, legal practitioners, and academics.

Executive Summary

The Bar Human Rights Committee of England and Wales (BHRC) has been closely following the proceedings in the East African Crude Oil Pipeline (EACOP) case before the East African Court of Justice (EACJ).¹ This report follows a recent BHRC visit to observe an EACJ hearing in Arusha, Tanzania to monitor the ongoing appeals proceedings.

On 15 November 2024, the Appellate Division of the EACJ was scheduled to hear an appeal from the four East African civil society organisations (CSOs) that are the claimants in the case.² The outcome of the hearing was an adjournment to 25 February 2025 for procedural reasons, further delaying the outcome of the appeal. This report outlines BHRC's observations and concerns regarding the proceedings and the broader human rights context surrounding the EACOP litigation.

Background to EACOP

The ongoing construction of the 1,455km-long EACOP pipeline is designed to transport oil from the Kabaale pumping station in Hoima district in Uganda to a marine storage terminal in Tanga district on the Tanzanian coast. EACOP is a partnership between TotalEnergies and the Ugandan and Tanzanian state oil companies, with a minority shareholding from the Chinese state-owned China National Offshore Oil Corporation.³

EACOP has come under intense scrutiny for its potential environmental and human rights impacts in recent years, contradicting TotalEnergies' claims to be a responsible energy major. Activists in Uganda and Tanzania opposing the project have reported intense repression, in which TotalEnergies has been implicated.⁴ The project has faced increasing international opposition from leading NGOs and has been scrutinised by UN Rapporteurs⁵ and in French courts.⁶

¹ Website of the East African Crude Oil Pipeline (EACOP), <https://www.eacop.com/>

² EACJ Cause List, https://www.eacj.org/?page_id=4952

³ EACOP Shareholders, <https://www.eacop.com/our-shareholders/>

⁴ Global Witness, <https://globalwitness.org/en/campaigns/land-and-environmental-defenders/eacop/>

⁵ Letter dated 24 October 2023 from the Special Rapporteur on the situation of human rights defenders; the Special Rapporteur on the promotion and protection of human rights in the context of climate change; the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, and the Special Rapporteur on the rights to freedom of peaceful assembly and of association, <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=28552>

⁶ Reuters, <https://www.reuters.com/business/energy/totalenergies-faces-second-lawsuit-over-uganda-oil-projects-2023-06-27/?ref=the-wave.net>

Critics highlight several concerning issues: by the completion of the project, at least 12,000 families are expected to have lost their homes and land for a project that will create only 300 permanent jobs; oil drilling is planned in Uganda's Murchison Falls National Park, home to diverse wildlife; the pipeline will traverse 200 rivers and 12 protected forests, risking water contamination and reduced access to drinking water for millions; and about 2,000 km² of protected wildlife habitat will be affected, threatening endangered species like chimpanzees and elephants. In sum, EACOP's construction entails drilling for crude oil in some of the most environmentally sensitive areas of East Africa with questionable benefits for Ugandan and Tanzanian communities.

TotalEnergies, meanwhile, champions its identity as a responsible energy provider and its ethical commitment to developing EACOP in a responsible manner, claiming to apply and comply with all national and international laws and standards in its host countries.⁷ It has carried out environmental and social impact assessments since at least 2017 and these assessments have continued to emphasise the positive economic benefits of the development.⁸

EACJ Proceedings

In 2020, Ugandan and Tanzanian activists brought proceedings before the EACJ to seek injunctive relief in the hope of preventing EACOP from going ahead. The EACJ is a treaty-based judicial body of the East African Community established in 2001 to ensure adherence to law in the interpretation, application, and compliance with the East African Community Treaty of 1999. It consists of two divisions—a First Instance Division and an Appellate Division—and has jurisdiction over matters related to the interpretation and application of the Treaty. The partner states of the East African Community are Burundi, Kenya, Rwanda, South Sudan, Tanzania, Uganda, the Democratic Republic of the Congo and Somalia.⁹

The four CSOs engaged in the current EACJ appeal proceedings are:

1. Africa Institute for Energy Governance (AFIEGO) - Uganda
2. Centre for Food and Adequate Living Rights (CEFROHT) - Uganda
3. Natural Justice (NJ) - Kenya

⁷ Website of TotalEnergies <https://totalenergies.com/company/identity/ethics>

⁸ Website of Total Energies, https://totalenergies.com/sites/g/files/nytnzq121/files/documents/2021-03/Eacop_esia_executive-summary-Uganda.pdf

⁹ See EACJ, About Us, https://www.eacj.org/?page_id=19 and EAC, Partner States <https://www.eac.int/eac-partner-states>

4. Centre for Strategic Litigation (CSL) - Tanzania

The Appellants' complaint was originally filed in November 2020 seeking an injunction against the EACOP development on the basis that the host states' agreement to the project failed to adhere to regional and international laws and agreements. This legal framework included the Treaty for the Establishment of the East African Community (EAC), the Protocol for Sustainable Development of the Lake Victoria Basin, the Convention on Biological Diversity and the UN Framework Convention on Climate Change.

The First Instance Division of the EACJ issued a ruling in November 2023 that dismissed the CSOs' original petition on procedural grounds in relation to provisions on limitation, finding that the 2020 complaint had been submitted out of time. The Appellants then sought to have this ruling overturned on appeal to the Appellate Division of the EACJ.

BHRC Trial Observation

BHRC's decision to observe this hearing was reflective of several factors:

1. The regional and global significance of the EACOP project and the widely recognised potential for disastrous human rights and environmental impacts.
2. Concerning reports of harassment, intimidation, arbitrary arrests, assaults, and other abuses against residents, environmental defenders and human rights activists opposing the EACOP project.¹⁰
3. The legal potential for the EACOP case to set an important precedent regarding the enforcement of regional treaties and protocols within the East African Community.
4. The high level of civil society and broader public interest in the case, evidenced by the interest of EACOP-affected individuals in travelling from Uganda to EACJ hearings to witness the proceedings.

Travelling to Arusha as a trial observer on behalf of BHRC, Tom Hamilton attended the pre-hearing meetings of all appellant legal teams on 14 November 2024. He observed the CSOs working on the preparations for the appeal, discussing the legal strategy and concerns about the case with lawyers representing the CEFROHT, AFIEGO, Natural Justice Kenya, and the Center

¹⁰ Business & Human Rights Resource Centre, <https://www.business-humanrights.org/en/latest-news/uganda-human-rights-watch-releases-report-detailing-attacks-against-defenders-resisting-eacop/>

for Strategic Litigation Limited. He met Ugandan and Tanzanian activists at the EACJ on 15 November 2024 prior to the hearing and conducted informal interviews with them about the progress of the case. Subsequent to the hearing he was able to discuss the significance of the case with several of the dozens of project-affected persons who had travelled to the Arusha hearing from Uganda and who were watching proceedings from the public area of the courtroom. He debriefed with the claimant advocates following the hearing in order to further understand the reasons for the adjournment and the causes of the defective record of proceedings.

The BHRC wrote to the EACJ prior to the hearing to explain that the BHRC trial monitoring programme intended to observe the appeal proceedings from the public area of the courtroom and noting the independent and impartial status of a BHRC observer.

EACOP Appeal Proceedings

At the hearing on 15 November 2024, the Tanzanian government made an application to dismiss the appeal in full, on grounds that the Court's record of proceedings from the First Instance Division was incomplete. The defect was a small number of documents from the First Instance proceedings that, while admittedly available to the parties since those proceedings, had not been correctly placed on the record.

After hearing legal argument from the parties, the judges rejected the request for dismissal of the case. The bench nonetheless considered that the defect could not be cured at court, despite the documents being readily available, and instead adjourned the hearing, ordering the appellants to file the relevant materials by 29 November 2024.

The outcome of the hearing was therefore as follows:

1. The Court emphasised that both parties shared responsibility for ensuring the complete record was filed.
2. The Court recognised the public interest in the case and the importance of hearing it on its merits.
3. The appeal was adjourned to allow the CSOs to file the required documentation before the Court.

Concerns over the EACJ Proceedings

Procedural delay

The adjournment of the EACJ hearing on 15 November 2024 was clearly a significant disappointment to the CSOs' legal teams and the project-affected persons, many of whom had travelled a great distance to attend the hearing.

Currently, the construction of the EACOP pipeline is approximately half finished.¹¹ This means that an injunction could still have a significant impact on the project and lends greater urgency to the need for the Appellate Division of the EACJ to make a determination on the appeal.

After observing the appellate hearing, the BHRC is concerned that the additional delay caused by the adjournment may have been avoidable – the issue of the missing documents could have been raised by the parties prior to the hearing. Alternatively, it may have been open to the EACJ judges to permit, *in curia*, the submission of the small number of documents in open court, and the appeal could have proceeded. All parties appeared to accept that they had access to the First Instance documents while preparing for the appeal hearing.

The adjournment of the appeal means a further delay to the EACOP proceedings of more than three months, in addition to the existing delay that had been caused by the First Instance Division's negative dismissal decision in November 2023.

The BHRC is concerned that the adjournment could have been avoided and BHRC urges the EACJ to ensure the expeditious hearing of the EACOP appeal in order to consider the claimants' request for injunctive relief. Delays such as this contribute to the challenges facing East African civil society in accessing regional justice mechanisms, particularly when confronting large-scale development projects.

Urgency of Addressing Human Rights and Environmental Impacts

EACOP-affected individuals who attended the hearing expressed hope for urgent and fair consideration of their concerns, underscoring the ongoing direct impacts of the case on local communities.

¹¹ Pipeline Journal, 14 November 2024, <https://www.pipeline-journal.net/news/east-african-crude-oil-pipeline-construction-hits-new-milestone>

Although the BHRC takes no position on the merits of the case, in considering the impact of procedural delay it recognises what is at stake for the EACOP claimants. The pipeline project is said to pose significant environmental risks that threaten to degrade critical water resources and wetlands and cut through sensitive biodiversity hotspots. The claimants also point to the significant contribution to carbon emissions, raising concerns about the project's compatibility with international climate commitments. The project is claimed to be likely to displace more than 100,000 people, many of whom have not received compensation or have been compensated poorly.

The delay occasioned by the adjournment can only worsen the invidious position in which many of the EACOP-affected persons find themselves today.

Targeting of Human Rights Defenders

The BHRC expresses its concern over reports indicating that NGOs working on EACOP-related issues face increasing difficulties, including threats, funding challenges, and pressure to soften their advocacy messages. The BHRC is particularly concerned about the alarming context in which anti-EACOP advocates are being targeted in Uganda for expressing their views.¹²

There has been a documented increase in the harassment and arbitrary arrests of human rights defenders and activists voicing concerns about the pipeline. Dozens have been arrested and a range of rights violations associated with EACOP's land acquisition project have been reported including inadequate compensation.

The BHRC notes with grave concern the arrest of Eron Kiiza, one of the lawyers in the EACOP proceedings and involved in anti-EACOP advocacy, in Uganda on 7 January 2025.¹³ Kiiza was sentenced to nine months in prison for contempt of court under questionable circumstances, including a lack of due process. Although Kiiza was not arrested directly in relation to a case connected to EACOP, his arrest highlights the serious concerns about the targeting of human rights defenders in Uganda, including retaliation against those challenging the EACOP project. Kiiza's detention, moreover, has a direct impact on the EACJ hearing on 25 February 2025 in that he will be unable to participate in representing the claimants. This may be particularly impactful,

¹² Global Witness, <https://www.globalwitness.org/en/press-releases/concern-grows-for-tanzanian-communities-opposing-totalenergies-oil-pipeline/?ref=the-wave.net>

¹³ See International Bar Association, *Uganda: IBAHRI and LAL issue statement expressing grave concern for hasty conviction of lawyer Eron Kiiza* <https://www.ibanet.org/Uganda-IBAHRI-and-LAL-issue-statement-expressing-grave-concern-for-hasty-conviction-of-lawyer-Eron-Kiiza>

bearing in mind that he was amongst the most vocal of the claimant advocates at the EACJ hearing on 15 November 2024 in making submissions resisting the adjournment on behalf of the CSOs.

Conclusions and Recommendations

While the 15 November 2024 hearing resulted in an adjournment rather than a substantive ruling, the continuation of the EACOP case nonetheless represents an important step in the ongoing legal challenge to the pipeline project. The EACJ judges' decision to allow the appeal to proceed, despite procedural complications, suggests a commitment to hearing the case on its merits. As the drilling for crude oil and construction of the pipeline project continues, there is great urgency to consider the claimant's request for injunctive relief that could prevent some of the rights violations and environmental harms outlined above.¹⁴

The BHRC recommends:

1. The EACJ should seek to ensure that the EACOP case proceeds expeditiously and is heard on its merits, given the significant public interest and potential environmental and human rights impacts.
2. Specifically, the BHRC urges the EACJ to ensure the expeditious hearing of the EACOP appeal at the next scheduled date of 24 February 2025 in Kigali, Rwanda. The parties have now had ample time to address any remaining defects in the case record, such that this should not be a barrier to proceeding on the merits. Further procedural delays would undermine the effectiveness of the EACJ in addressing urgent environmental and human rights issues.
3. East African Community member states should take immediate steps to protect environmental defenders and lawyers working on EACOP-related issues from harassment, intimidation, and arbitrary arrest.
4. The international community should closely monitor threats to lawyers working for the EACOP claimants and call for the immediate release of Eron Kiiza and any other individuals detained for their legitimate human rights work.

¹⁴ Petroleum Authority of Uganda, 'EACOP Project Update', YouTube <https://www.youtube.com/watch?v=8pLtqGI6DxE>

5. Civil society organisations should be allowed to operate freely and without undue pressure in their advocacy related to the EACOP project.
6. The governments of Uganda and Tanzania, along with the project developers, should ensure fair and adequate compensation for all displaced individuals and communities.

The BHRC will continue to monitor developments in this case and the broader human rights situation surrounding EACOP advocacy. We urge all stakeholders to prioritise human rights and environmental protection in the pursuit of economic development.