



## FACTSHEET: EACOP APPEAL CASE AT THE EAST AFRICAN COURT OF JUSTICE

Judges and lawyers during hearing of a case at the East African Court of Justice



EACOP-affected people during a court appearance

## 1. Introduction

On December 13, 2023, four civil society organisations (CSOs) from Uganda, Kenya and Tanzania filed an appeal at the East African Court of Justice's (EACJ) Appellate Division.

The appeal was filed to challenge the dismissal of a court case that the four CSOs had filed seeking compliance of the East African Crude Oil Pipeline (EACOP) to the requirements of regional and international human rights standards. The court case was dismissed by judges at the EACJ's First Instance Division, or lower court.

The above were sought because the CSOs argued that the EACOP project violates key regional not to mention international agreements and laws. The violations would undermine the social, environmental and livelihood rights of hundreds of millions of East Africans, the CSOs argued in the court case.

They also observed that the violations would encumber the East African states, which are some of the most vulnerable to climate change, from taking action to address the climate crisis.

The case, Reference No. 39 of 2020, was filed in November 2020 by Africa Institute for Energy Governance (AFIEGO)-Uganda, Center for Food and Adequate Living Rights (CEFROHT)-Uganda, Natural Justice (NJ)-Kenya and Centre for Strategic Litigation (CSL)-Tanzania.

Following dismissal of the aforementioned case by the First Instance Division of the EACJ in November 2023, the above four organisations filed the appeal in December 2023.

The appeal was filed against the following respondents: the Attorney Generals of Uganda and Tanzania as well as the Secretary General of the East African Community (EAC).

This factsheet has been produced to raise stakeholder awareness about the appeal case that was filed by AFIEGO, CEFROHT, NJ and CSL at the Appellate Division of the EACJ in December 2023.

The appeal case is set to be heard at the EACJ's Appellate Division in Arusha, Tanzania, on November 15, 2024.



*EACOP-affected people stand to benefit from the successful litigation of the appeal and the case that was filed at the First Instance Division of the EACJ in November 2020*

## 2. Background

On November 6, 2020, AFIEGO, CEFROHT, NJ and CSL filed a court case at the EACJ.

**They challenged the legality of actions related to the EACOP, arguing as follows:**

(a) That the signing of key agreements by the governments of Uganda and Tanzania for the development of the EACOP through protected areas, with adverse impacts on livelihoods, biodiversity, climate and socio-economic aspects, violates the provisions of the EAC Treaty and relevant international laws. The agreements, such as the Host Government Agreement (HGA) were initiated in 2020 and signed in 2021 by the governments of Uganda and Tanzania as well as the EACOP project developers.

(b) That signing of key agreements such as the HGA and Intergovernmental Agreement (IGA) between the governments of Uganda and Tanzania before the approval of the Ugandan EACOP Environmental and Social Impact Assessment (ESIA) report was a violation of the EAC Treaty. The IGA was signed in 2017 between the governments of Uganda and Tanzania. The EACOP Ugandan ESIA report was approved in 2020.

(c) That the signing of the HGA by Uganda and Tanzania without notification, submission and approval of the ESIA report for the EACOP project by the EAC Secretary General and Council of Ministers violated provisions of the EAC law.

(d) That the implementation of the EACOP project would have irreparable and irreversible damage to several delicate and protected ecosystems.

**The CSOs further averred that the development and operation of the EACOP violate key laws including:**

(a) The East African Community Treaty;

(b) Protocol for Sustainable Development of the Lake Victoria basin;

(c) Convention on Biological Diversity (CBD);

(d) United Nations Framework Convention on Climate Change;

(e) African Charter on Human and People's Rights; and

(f) African Convention on Conservation of Natural Resources.

**They called on court to declare that:**

(i) Signing of the HGA and IGA by Uganda and Tanzania violates national and international laws; and

(ii) Execution of the EACOP in legally protected areas contravenes the EAC Treaty.

**They also sought injunctions to:**

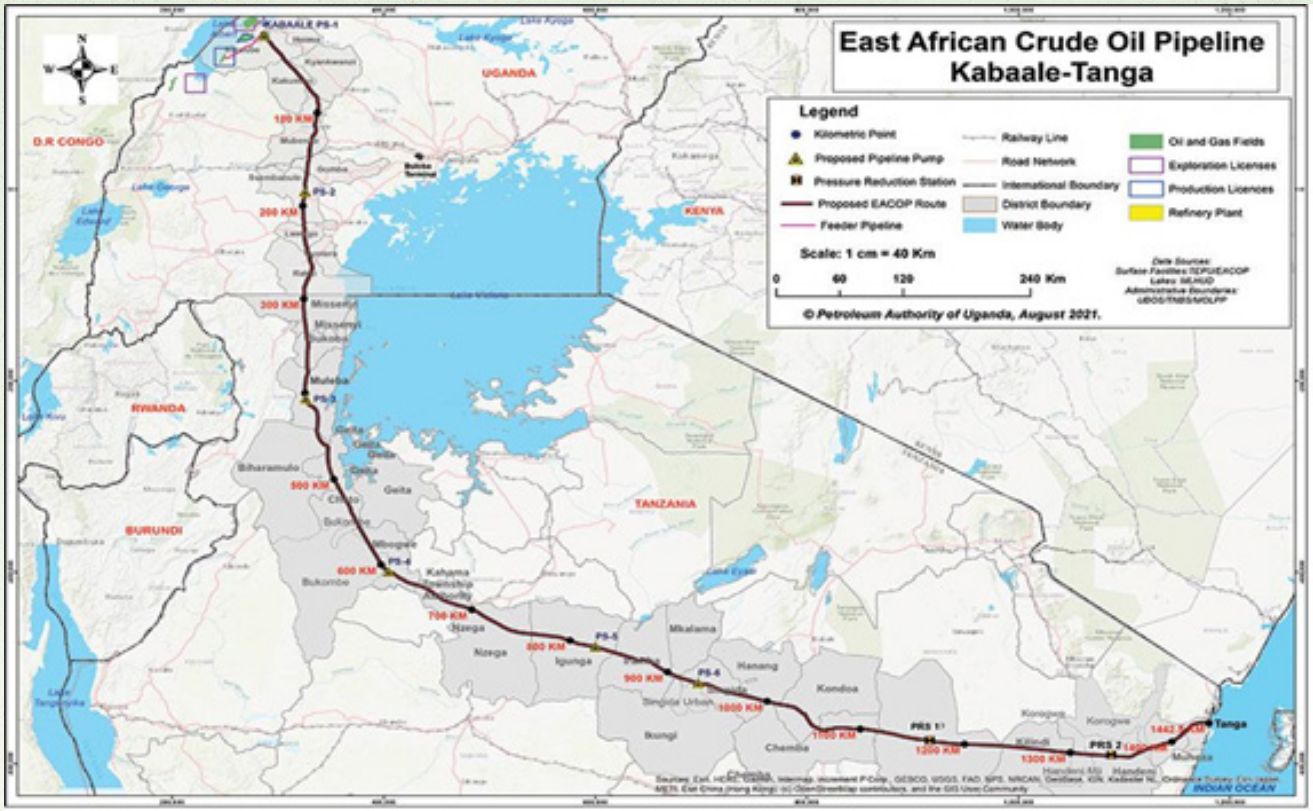
(i) Halt the construction of the EACOP in protected areas in Uganda and Tanzania.

(ii) Temporarily halt any developments under the EACOP project pending the hearing and disposal of the main case.

**Further, the CSOs sought the following orders:**

(i) Adequate compensation for all project-affected persons (PAPs) and for losses accrued by the PAPs due to property restrictions placed by the EACOP project developers on the affected people's property.

The restrictions, which included stopping the PAPs from setting up any new developments as well as growing perennial food and cash crops, were placed following setting of cut-off dates on the affected people's property in 2018 and 2019 in Uganda and Tanzania.



*Map of the EACOP showing the pipeline route*

### 3. Dismissal of court case

The case that the CSOs filed was dismissed by the First Instance Division of the EACJ on November 29, 2023. Among others, the court argued that the case was filed out of time. The CSOs were also ordered to pay for the costs of the suit.

The case was dismissed after the respondents in the case including the solicitor general of Tanzania raised preliminary objections challenging the jurisdiction of the EACJ's First Instance Division to hear the case due to time limitation among others. The respondents argued that the case was time barred, as it had been filed beyond the 60 days within which the case should have been filed.

### 4. Appealing case dismissal

Following dismissal of the case by the EACJ's First Instance Division, the four CSOs filed an appeal on December 13, 2023. The appeal was filed at the appellate division of the EACJ.

The CSOs made the following arguments:

- **Timeliness:** The court case was timely based on the fact that the applicants (CSOs) got knowledge of the signing of the IGA on October 26, 2020. The applicants' case was filed on November 6, 2020, ten days after gaining knowledge about the signing of the IGA.
- **Misinterpretation of the law:** The First Instance Division erred in interpreting the EAC Treaty's Article 30 and misapplied procedural law. Article 30 of the EAC Treaty sets the limitation period for filing cases at the EACJ to two months from the enactment, publication, directive, decision or action complained of, or in the absence thereof, of the day in which it came to the knowledge of the complainant, as the case may be.
- **Severability of grounds:** That court should have appreciated the fact that the appellants' statement of reference is premised on 12 grounds and only two grounds were challenged by the respondents.

Court should have preserved and heard the remaining 10 grounds if the preliminary objection on two grounds were upheld.

- **Evidence misinterpretation:** That the affidavits relied on in resolution of the preliminary objections constitute valid evidence which is a violation of the law on preliminary objections.

- **Costs in public interest litigation:** That imposing costs on public interest litigants is wrong.

**The CSOs want the following issues to be determined by the appellate court:**

- Whether the First Instance Division of the EACJ erred in law in finding that the governments of Tanzania and Uganda had raised a proper Preliminary Objection.

- Whether the First Instance Division of the EACJ erred in law in holding that the court case (Reference no. 39 of November 2020) was filed out of time and therefore the court had no jurisdiction to hear the case.

- Whether the parties (CSOs/ applicants) are entitled to remedies. **The CSOs are seeking the following remedies:**

- Setting aside of the ruling of the First Instance division that dismissed the CSOs' EACOP case;

- Deferral of the above case back to the First Instance Division for hearing on its merits;

- Alternatively, remittance of the case back to the First Instance Division for trial of the other aspects for which no preliminary objections were raised by the governments of Uganda and Tanzania; and

- Setting aside the decision of the First Instance division awarding costs to the governments of Uganda and Tanzania, as well as the Secretary General of the EAC.



*The CSOs and their lawyers during preparation of their written submissions in March 2024*



*East African citizens, especially women and elderly, are some of the most vulnerable to climate change. East African governments need to take climate action by desisting from developing the EACOP to protect citizens.*



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