

Due diligence Plan of TOTAL ENERGIES GROUP : a first and disappointing Court decision

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Total/Eacop trial: the first court ruling on duty of care gives birth to a mouse

On Tuesday, February 28, the judge of the Paris Court of Justice dismissed the six NGOs that were suing TotalEnergies over its duty of due diligence for its Eacop/Tilenga oil mega-project in Uganda and Tanzania. This is the first time a court decision has been handed down on the basis of this groundbreaking law, which came into force in France in 2017. In addition to a procedural issue and the jurisdiction of the "juge des référés" over this case, the ruling goes on at length about the difficulties of enforcing this law.



The Eacop/Tilenga project calls for the construction of the world's largest heated pipeline of almost 1,500 kilometers, the drilling of 400 wells, a third of them in Murchison Falls National Park, and an estimated carbon footprint of 33 Mt CO₂ per year.

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It was a long-awaited decision. The “juge des référés” of the Paris Court of Justice has finally dismissed the six associations, including Les Amis de la Terre, Survie and the Cred association, which were suing TotalEnergies under the French "duty of vigilance" law for its Eacop/Tilenga oil mega-project in Uganda and Tanzania. This is the first court ruling on this law, which came into force in France in 2017 in a completely unprecedented way. It requires the largest companies to publish due diligence plans to prevent the risks of human rights and

environmental abuses across their entire value chain. The judge ruled that the complaint was inadmissible for several reasons.

Firstly, with regard to procedure, the Paris judicial court ruled that the associations' claims and grievances at the December hearing were "substantially different" from those they had accused TotalEnergies of in their 2019 formal notice, the starting point of the case. The NGOs dispute this. "With more than 200 supporting evidentiary documents, the documents in the file are numerous and proportionate to the issues at stake, and meet the need for updates linked to the length of the proceedings, considerably lengthened by the procedural battle initiated by Total in 2019", they react in a press release.

"Monumental goals"

Next, on the powers of the judge in matters of duty of care, the decision stipulates "that the grievances and breaches alleged against TotalEnergies with regard to its duty of care, in the present case, must be the subject of an in-depth examination of the elements of the case exceeding the powers of the judge "des référés" (...) it being observed that no unlawfulness, as it stands, is characterized with the obviousness required to seize this judge or in a manifest manner".

Finally, the decision goes on to discuss at length the difficulty of enforcing the "duty of care" law. The judge explains that "this legislation assigns monumental goals for the protection of human rights and the environment to certain categories of company, specifying at the very least the means that must be implemented to achieve them". He added that "the law does not directly refer to any guiding principle or other pre-established international standard, nor does it include any nomenclature or classification of the duties of care incumbent on companies".

"Missed opportunity for French justice".

Contacted by Novethic, TotalEnergies said it had "taken note of today's decision by the Paris Court of First Instance, which recalls in particular that TotalEnergies formally drew up a due diligence plan containing the 5 items required by the due diligence law, in sufficient detail to avoid being regarded as summary". "However, this decision does not vindicate Total either, since the court did not rule on the heart of the matter", say the extremely disappointed NGOs. They reserve the right to decide on the next steps, "in consultation with the affected communities".

Once again, this is a missed opportunity for French justice," comments Juliette Renaud, campaigner for the Regulation of Multinationals at Friends of the Earth. It is essential that this summary proceedings procedure, which allows faster judgments, can be effective in achieving the central objective of this law: to prevent human rights violations and environmental damage before they occur".

For AFIEGO, one of the Ugandan NGOs suing TotalEnergies, director Dickens Kamugisha points to "enormous disappointment". "Human rights violations and environmental damage continue and are getting worse. We will remain more than ever mobilized in and out of court to stop them and hold Total accountable for the consequences of its activities," he warned.