

# ENVIRONMENTAL COURT CASES ACROSS THE WORLD

## Climate Change

### FRIENDS OF THE EARTH ET AL. V. TOTAL

Nanterre High Court, Court of Cassation (France); Filed in 2019, Interim Procedural Decision: December 15, 2021 (final outcome pending)

#### TOTAL'S DUTY OF VIGILANCE VIOLATION TO BE HEARD BY CIVIL COURT INSTEAD OF COURT OF CORPORATE PEERS IN COMMERCIAL COURT

#### Parties

**Applicants:** Six nongovernmental organisations (Friends of the Earth France, Survie, AFIEGO, CRED, NAPE/Friends of the Earth Uganda, and NAVODA)

**Defendant:** TotalEnergies

#### Key Facts

France's 2017 Duty of Vigilance Law requires companies to prepare a due diligence plan in which they identify, and provide measures to prevent, human rights violations and environmental harm that may result from their operations. Businesses must include their foreign subsidiaries and subcontractors in preparing this due diligence plan.

The plaintiffs allege that Total failed to adequately assess the human rights and environmental impacts of its Tilenga oil project in Uganda and Tanzania. The project is located on the shores of Lake Albert in western Uganda, and the associated pipeline will transport oil from Uganda to the port of Tanga in Tanzania. The project is expected to displace around 100,000 people and involve the drilling of 400 boreholes, around a third of which are set to be drilled in Uganda's Murchinson Falls National Park, which is home to numerous endangered species. In 2019, the NGOs sent Total a report describing the inadequacies of its vigilance plan for the Tilenga Project and demanded Total to revise the vigilance plan. The vigilance plan failed to take into account the massive human rights and environmental impact of this project, in violation of France's Duty of Vigilance law, so the plaintiffs sought a court order demanding urgent action to require the company to comply with its due diligence obligations. In the alternative, plaintiffs asked the court to require Total to establish, publish, and implement a set of measures in its due diligence plan to prevent serious violations of human rights and serious environmental damage. In January 2020, the Nanterre Judicial Court ruled that it was not competent to hear the case and that the case should be brought before the Nanterre Commercial Court—a decision that the Court of Appeal of Versailles affirmed in December 2020. Applicants appealed to the Court of Cassation—France's highest court.

#### The Court's Decision

The Court of Cassation overturned the Versailles Court of Appeal's judgment, recognizing the competence of the judicial court to exercise jurisdiction over the case. The Court ruled that, as non-commercial claimants, applicant NGOs had a right to choose ("droit d'option") whether to bring their case before a commercial court or a civil court (judicial court).



## The Court's Reasoning

The Court rooted its decision in two key findings:

- 1) Companies' duty of vigilance does not constitute a commercial act, and therefore is not within the purview of the Commercial Court, and
- 2) A natural person plaintiff can bring a claim against a legal entity (here, a corporation) before either the judicial court or the commercial court.

## What now?

This decision is favourable for the applicant NGOs, as the Judicial Court is traditionally understood as being less sympathetic to corporate interests than the Commercial Court (in which the judges are elected by their corporate peers). The ruling also constitutes important recognition that the duty of vigilance is not merely a commercial dispute, but rather a key protection for human and environmental rights. This aligns with a new procedural law to accompany the Duty of Vigilance Law, which gives the Paris Civil Court jurisdiction over all cases arising from the Duty of Vigilance Law.

Unfortunately, while this procedural victory is important to the ultimate success of the case, more than 100,000 people are still being displaced and deprived of their livelihoods in Uganda and Tanzania as court proceedings move forward.

## International Impact

The French Duty of Vigilance law is seen as a groundbreaking law among human rights advocates globally, as it opens the door to more effective accountability for French companies, and crucially their subsidiaries and contractors. However, because the law has not been "tested" extensively in French courts, the international community is watching these early interpretations of the law—including procedural decisions like this one—in order to better understand how the law can be effectively leveraged to demand human rights protection and climate/environmental justice in the countries in which French companies operate.

## Key Issues

Corporate accountability, transitional litigation, duty of vigilance, oil, extractive industries, pipeline

## Laws Cited

### Domestic Laws Implicated:

French Commercial Code (Article L. 225-102-4.-I)  
Duty of Vigilance Law

## References & Further Reading

### Judgment:

The judgment is available in French here: [Judgment](#)

### Further Reading:

[Friends of the Earth France - Victory! Total Uganda case: the French Supreme Court recognizes the jurisdiction of the civil court](#)

[Energy Voice - As EACOP FID looms, French court knocks TotalEnergies back](#)

[Friends of the Earth France and Survie - A Nightmare Named Total: An Alarming Rise in Human Rights Violations in Uganda and Tanzania](#)

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