



**TOTAL**  
COMMITTED TO BETTER ENERGY

**TOTAL E&P UGANDA**

General Manager

DG 2020/2-171

Att. David Kaye, Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Githu Muigai, Chair-Rapporteur of the Working Group on the issue of human rights and transnational corporations and other business enterprises, David R. Boyd, Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, Michel Forst, Special Rapporteur on the situation of human rights defenders

Cc. Beatriz Balbin, Chief

Special Procedures Branch  
Office of the United Nations High Commissioner for Human Rights (OHCHR) Palais Wilson 52 rue des Pâquis CH-1201 Geneva.

Kampala, May 18, 2020

Ref : AL OTH 18/2020

**Re: Joint communication from Special procedures**

I am referring to your letter dated April 20, 2020 in which you are seeking information on allegations made in relation to the Tilenga project and proceedings brought in France under the Law n°2017-399 of March 27, 2017 also known as the Duty of Vigilance Law (hereafter "Duty of Vigilance Law" or "the Law").

Total E&P Uganda is a company incorporated under the laws of The Netherlands. As such, Total E&P Uganda is not directly subjected to the Duty of Vigilance Law. However, as a subsidiary of Total S.A., Total E&P Uganda applies Total's Code of conduct as well as its internal regulations with respect to the protection of human rights and the environment.

The litigation in France under the Duty of Vigilance Law is not brought against Total E&P Uganda but against Total SA. Total E&P Uganda is therefore not in a position to comment these proceedings.

I am however able to provide background information on the Tilenga project. The allegations contained in your letter dated April 20, 2020 are unfounded and give an inaccurate account of the operations in Uganda.

Tilenga is a project run by Total E&P Uganda and its partners Tullow and CNOOC. The project consists in the development of the Tilenga oil field, for which only 0,1% of the surface areas of the Murchison Falls National Park will be affected by the operations. It is related to the EACOP pipeline project which is due to transport the oil from the field in Uganda to the port of Tanga in Tanzania. Both projects are expected to bring significant economic and social benefits to both countries.

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Total E&P Uganda B.V. Registered capital: €90,000

TOTAL Classification Restricted Distribution  
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In accordance with Total's Code of Conduct and internal regulations and standards, Total E&P Uganda has placed particular emphasis on environmental issues with a specific commitment to leaving the site in a better state than it was before the work started and to limiting residents' relocations as much as possible.

TOTAL E&P Uganda and its partners, acting on behalf of the Government of Uganda, acquired the land from the people affected by the projects through a process of acquisition and resettlement in accordance with the World Bank's IFC Performance Standard 5 on Land Acquisition and Involuntary Resettlement.

Practically speaking, the land acquisition and resettlement process was conducted by a local company called Atacama under the supervision of Total E&P Uganda and its partners. The process was conducted in accordance with the IFC's performance standards as well as Total's code of conduct.

The land acquisition agreements were signed by affected persons (PAPs<sup>1</sup>) in the presence of representatives of local community members in order to ensure their true consent. PAPs who objected to the valuation of the compensation were given the opportunity to lodge a grievance report as it will further be explained below. The audits conducted by independent experts did not reveal any violations of Total's Code of Conduct in the land acquisition and resettlement process.

As a result of the first phase of the resettlement process (referred to as "RAP 1"), which was completed in 2019, 613 PAPs<sup>2</sup> received appropriate compensation - established on the basis of professional valuations - for the acquired land as well as for the affected crops. To date, only the nine PAPs who refused the proposed valuation have not wanted to receive the money, which Total E&P Uganda has therefore paid into a dedicated account.

The compensation was determined through a consultative process with representatives of the affected people and the Ugandan government. The due diligence carried out by Total E&P Uganda and its local contractor ensured that the affected persons understood that the compensation scales were established by the Ugandan authorities and agreed to receive the compensation amounts calculated on those bases, except for the 9 persons mentioned above.

TOTAL E&P Uganda and its local partners made every effort to ensure that the affected persons received compensation as soon as possible. They were invited to leave the premises only after receiving the compensation and were encouraged to continue to cultivate their land throughout the process until it was received. TOTAL E&P Uganda and its local partners have also put in place measures to help the affected people during the transition between harvests.

With respect to the allegation of "secret" work or discussions between Total E&P Uganda and NEMA, we would like to express our surprise with this statement which is totally unsubstantiated and groundless. Accordingly, Total E&P Uganda strongly contest having or having had any form of "secret" discussions with NEMA. In this respect, Total E&P Uganda would like to stress that the approval of the Tilenga Environmental and Social Impact Assessment (ESIA) has been the conclusion of a long and iterative process framed by many documented meetings and exchanges between Total E&P Uganda and NEMA.

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<sup>1</sup> <http://documents.banquemondiale.org/curated/fr/492791468153884773/pdf/246740PUB0REPL020020Box12600PUBLIC0.pdf> : According to the Handbook for Preparing a Resettlement Action Plan established by the International Finance Corporation, a project-affected person (pap) characterizes a person who, as a result of the implementation of a project, loses the right to own, use, or otherwise benefit from a built structure, land (residential, agricultural, or pasture), annual or perennial crops and trees, or any other fixed or moveable asset, either in full or in part, permanently or temporarily.

<sup>2</sup> For the sake of clarity, a PAP is usually not an individual but rather a household comprising several individuals, so that the number of individuals that are impacted by the RAP process is higher than the number of PAPs.

This process of exchanges between an oil operator and the Ugandan environmental authority is in compliance with the laws and regulations set by the Government of Uganda and consistent with international practices for projects of this magnitude and sensitivity. Total E&P Uganda wishes to highlight that the ESIA process does not stop at the certificate issued by NEMA: it is a continuous process which requires at each stage of the development project to work on all the measures to avoid, measure, control and mitigate any impact of our project toward our surrounding environment, in full transparency with all stakeholders.

Concerning the allegations of intimidation and misinformation supposedly spread about Mr Mugisha and Mr Mwesiga, as soon as they were brought to Total E&P Uganda's attention, inquiries have been made and concluded that such a behavior - assuming the allegations were true – was not attributable to any of Total E&P Uganda and Atacama's employees. Total E&P Uganda also recalled, during meetings that took place with Ugandan authorities on December 19 and 20, 2019, and January 9, 2020, its commitment to ensuring that the Tilenga project be conducted in accordance with international human rights standards.

In this respect, Total E&P Uganda is highly concerned about the false accusations made against its Chief Community Liaison Officer (CLO) who was publicly named by the NGO Survie's December 26, 2019 press release. Not only do these ungrounded accusations pose serious threats to his physical integrity but they undermine and jeopardize the important role played by CLOs to ensure dialogue with local communities (as explained below).

Regarding your request for information on the "*specific measures taken to identify and prevent risks of negative impacts on human rights and the environment in Tilenga*" (question no. 2 of your letter), the measures taken by Total E&P Uganda in accordance with Total's internal compliance rules, IFC's Performance Standard 5 and the international practices in this field can be summarized as follows:

- Impact studies were conducted prior to and during the implementation of the project, including and not limited to the following: Social and Health Baseline Study, The Environmental and Social Impact Assessment (ESIA)<sup>3</sup>, Industrial Baseline Survey, Lake Albert Regional Social – Economic Baseline Assessment, Agricultural Value Chain Analysis in Buliisa, Market and Asset Valuation Assessment (MAVA), Resettlement Impact Scoping, Practical Guide to Resettlement Planning and Implementation.
- A Land Resettlement and Acquisition Framework (LARF) was entered into in November 2016 with the Ugandan government to ensure that when IFC's standards were more protective of rights than Ugandan law, IFC's standard would apply. The LARF is available online<sup>4</sup>. This in effect means that Tilenga project complies with higher standards than Ugandan law requirements. These standards include i) considering feasible alternative project designs to avoid and minimize physical and economic displacement while balancing environmental, social, and financial costs and benefits, paying particular attention to impacts on the poor and vulnerable, ii) when displacement cannot be avoided, providing displaced communities compensation including where appropriate land for land compensation iii) engagement with affected communities iv) grievance mechanism v) resettlement and livelihood restoration planning and implementation. These standards are implemented in Resettlement Actions Plans (RAP) which constitute the framework of the resettlement process conducted by Atacama. RAP 1 Report gives a detailed account of the measures taken to analyze the projects impact and minimize displacement and impact in livelihood during the implementation.
- The project is under continuous monitoring by way of regular reporting from Atacama as well as internal and external audits on ground operations in order to ensure compliance with the LARF, IFC's and international human rights standards.

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<sup>3</sup> <https://www.nema.go.ug/media/esia-report-tilenga-project-available-public-review-and-comments>

<sup>4</sup> <https://ug.total.com/social>

Total E&P Uganda's societal department is made of 22 people dedicated to the societal and environmental dimensions of the projects. In addition, 35 CLOs employed by both Total E&P Uganda and its subcontractor are entirely devoted to maintaining relations with local communities.

On the *"steps taken to engage in dialogue with affected communities about their views and grievances, and the outcomes of such engagement, prior to the commencement of the project"* (question no. 3 of your letter), dialogue with affected stakeholders including affected communities started in 2015 as part of the ESIA mentioned above. In 2015, over 900 stakeholders participated in consultations at district, sub county and community levels. Comments were logged in a register for feedback in the project design process. Concerns regarding employment were addressed with a ballot system to select unskilled workers, and educational programmes were set up. Between November and December 2016, 51 focus group discussions were held throughout villages for the ESIA. In January 2018, the preliminary findings of the ESIA were presented during village meetings with affected communities who given the opportunity to provide comments. In total, 10,000 people were consulted to produce the ESIA. Before its approval, the Ugandan National Environment Management Authority conducted public hearings on the ESIA in November 2018.

Continuous dialogue with stakeholders is enshrined in the LARF which sets out key principles for consultations of affected communities. During RAP 1, the team developed a Stakeholder Engagement Plan (SEP) specific to the resettlement process aiming at ensuring that stakeholders were consulted and informed of the resettlement developments in a separate process than the one set up for the ESIA. As part of the Stakeholders Engagement Plan, consultation of affected communities took place by way of village meetings, focus group discussions, posters in public places, information leaflets, Q&A sheets and surveys. Targeted efforts were made for vulnerable groups, and feedback is recorded to be integrated in the project's implementation. A detailed account of the stakeholders' engagement actions can be found in RAP 1 Report available on Total E&P Uganda website.

In relation to the *"processes in place to remedy adverse human rights and environmental impacts or your activities, including by providing access to effective operational-level grievance mechanism, in line with the UN Guiding Principles on Business and Human Rights"* (question no. 4 of your letter), Total E&P Uganda and the Uganda government committed in the LARF to offer compensation for loss of assets at full replacement cost and other assistance to help affected person improve or restore their standards of living or livelihoods. A resettlement plan and a livelihood restoration program has been into place offering *inter alia* training courses to affected communities. The measures during the first phase of the resettlement plan were accounted for in the RAP 1 Report which was submitted to the Ugandan government for approval and published on Total E&P Uganda's website<sup>5</sup>.

A concerns and grievance mechanism was set out in line with the LARF's requirements, IFC's and UNGPs standards. The concerns and grievance mechanism was communicated to all stakeholders at the early stage of the resettlement process. Concerns and grievances can be filed by numerous avenues including email, toll free number, postal address, suggestion boxes available in villages, submission during resettlement committees' meetings, grievance form with CLO. All concerns and grievances are logged in a database.

The resolution of a grievance is a 4 steps process. At all times, grievance received is acknowledged and registered within 24 hours. A response is given when available to close the grievance at the first level. When the resolution proposed to the complainant is not accepted at the first level, it is escalated to levels 2, 3 and 4. The resolution process involves third parties such as members of the Resettlement Planning Committee (RPC) and District Resettlement Committee (DIRCO). If no solution is found through dialogue, the grievance may be brought before Uganda courts.

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<sup>5</sup> <https://ug.total.com/tilenga-project-rap-1-report>

In order to improve the effectiveness of the grievance mechanism, Total E&P Uganda has also set up a monthly societal reporting system in its entities, in addition with key performance indicators (KPIs) to monitor the implementation and management of these mechanisms. On the basis of the reporting document, it appears that:

- Within the framework of the first resettlement action plan (RAP1, TILenga project), Total E&P Uganda collected 170 complaints between January 15, 2018 and February 28, 2019. 98% of these complaints were fully processed within an average period of 19.6 days.
- 87% of the complaints transmitted through the grievance mechanism under RAP1 were resolved at either level 1 or level 2.
- The grievance mechanisms did not receive any complaints about pressure on a PAP to accept compensation. The majority of complaints relates to challenges to compensation rates and asset valuation of PAPs.
- In December 2019, only one complaint on the qualification of residences under RAP1 forwarded by the Chairman of the Resettlement Planning Committee (RPC) was not resolved and transferred to a compulsory land acquisition case.

I hope this answers your questions and I remain at your disposal to answer any additional question you may have.

Please accept the assurances of my highest consideration.

Yours Faithfully,



Pierre JESSUA  
**General Manager**