

Mandates of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Working Group on the issue of human rights and transnational corporations and other business enterprises; the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment; and the Special Rapporteur on the situation of human rights defenders

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Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; Working Group on the issue of human rights and transnational corporations and other business enterprises; Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment; and Special Rapporteur on the situation of human rights defenders, pursuant to Human Rights Council resolutions 34/18, 35/7, 37/8 and 34/5.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning various acts of harassment and intimidation against two Ugandan land rights defenders, Mr. Jelousy Mugisha and Mr. Fred Mwesigwa, in connection with the Total Tilenga oil project. Mr. Jelousy Mugisha is a pastor and a community leader in Buliisa in the Buliisa District of Uganda. Mr. Fred Mwesigwa is a farmer.

According to the information received:

On 23 October 2019, four Ugandan and two French environmental groups filed a legal notification under the 2017 France's Corporate Duty of Vigilance law against Total Oil, claiming that, in connection with the Tilenga oil project, Total had failed to address the human and environmental impact of its Ugandan operations in Tilenga as required by French law. The law requires large French companies (with over 5,000 employees in France or 10,000 worldwide, including in the company's subsidiaries) to establish, publish and implement a vigilance plan. This includes the obligation to take appropriate measures to identify and prevent risks of serious infringements to human rights or environmental damage, resulting directly and indirectly from a company's activities and those of its business relations. The law requires to publish the company's plan(s), and those of subsidiaries and suppliers. The law also provides for judicial mechanisms to enforce its provisions and for ensuring access to remedies for victims of abuses by corporations and their subsidiaries.

More specifically, the environmental groups that filed the lawsuit allege that Total has intimidated and failed to properly compensate over 5,000 local land-owners and has failed to develop adequate environmental safeguards to protect the

surrounding national park. The allegations include the potential displacement of tens of thousands of Ugandans and massive environmental ramifications, including a network of pipelines passing under the Nile River and the development of the longest heated electric pipeline in the world. The suit further alleges that Total's subsidiary, Total Uganda, and the subcontractor it hired, Atacama Consulting, forced farmers to sign compensation agreements under pressure or intimidation and deprived them of access to their land before compensation was received. In addition to the prior allegations, Total is also alleged to be working secretly with NEMA, the environmental regulator in Uganda, to get a certificate of approval for them to begin the Tilenga project without a mitigation plan, even though rights advocates had identified at least 32 risks related to the proposed oil activities.

The trial began on 12 December 2019 at the High Court in Nanterre, France. Mr. Mugisha and Mr. Mwesiga travelled to France as two representatives of Ugandan communities to testify during the Total Oil trial. They spoke about the impacts of the loss of their land and the harassment and intimidation they have endured allegedly as a result of Total's involvement in the region. Mr. Mwesiga has reportedly been harassed, intimidated, and arrested for his attempts to return to farm his land. The week before travelling to France, Mr. Mugisha was subjected to heavy intimidation that forced him to hide outside the Buliisa District.

Upon his return from France on 14 December 2019, Mr. Mugisha was detained by the authorities at the Kampala airport for nearly nine hours. Mr. Mugisha was reportedly interrogated about his participation in the Total Oil case.

The intimidation of Mr. Mugisha and Mr. Mwesigwa continued on their return to Buliisa district. On 23 and 24 December 2019, unknown men attempted to break into Mr. Mwesigwa's house, attempting to force through his metal doors and wooden structures. Further, according to the reports we received, some individuals have spread misinformation about Mr. Mugisha in the community, insinuating that Mr. Mugisha lied during the trial in France and that he was the one responsible for the fact that some inhabitants are still to receive compensation from the company, spreading general confusion and fear.

Concern is expressed at acts of intimidation against Mr. Mugisha and Mr. Mwesigwa, including the short detention of Mr. Mugisha in Kampala airport, which seem directly related to the exercise of their right to freedom of opinion and expression. Further, the alleged attacks on Mr. Mwesigwa's house on 23 and 24 December 2019 suggest a concerning pattern of retaliation for the exercise of his legitimate human rights. We are concerned that the harassment against them may stifle the freedom of opinion and expression of other Ugandan individuals impacted by the Total Uganda oil project.

In connection with the above alleged facts and concerns, please refer to the **Annex on Reference to international human rights law** attached to this letter which cites international human rights instruments and standards relevant to these allegations.

As it is our responsibility, under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention, we would be grateful for your observations on the following matters:

1. Please provide any additional information and/or comment(s) you may have on the above-mentioned allegations.
2. Please provide information about the factual and legal basis for the arrest and detention of Mr. Mugisha in Kampala airport on 14 December 2019, and explain how these actions are consistent with Uganda's obligations under international human rights law.
3. Please provide all known information about the harassment of Mr. Mwesigwa on 23 and 24 December 2019, specifically, any information on who the individuals that attempted to break into Mr. Mwesigwa's house were, their motives in doing so, and how your Excellency's Government is attempting to find these individuals and bring them to justice. If no investigations have been undertaken, or if they have been inconclusive, please explain why.
4. Please provide information on the measures taken by your Excellency's Government to ensure the security and physical integrity of Mr. Mugisha and Mr. Mwesigwa in light of the repeated and ongoing harassment they have endured.
5. Please indicate what measures have been taken to ensure that all Ugandan individuals impacted by the Total Uganda oil project are able to freely express their opinions concerning this matter in a safe and enabling environment without fear of threats or acts of intimidation and harassment of any sort.
6. Please indicate the steps that the Government has taken, or is considering to take, to ensure the implementation of the United Nations Guiding Principles on Human Rights, such as (i) setting out clearly the expectations that all businesses respect human rights throughout their operations, including human rights due diligence and (ii) taking appropriate steps to ensure the effectiveness of domestic judicial mechanisms with respect to business-related human rights abuses.

We would appreciate receiving a response within 60 days. Passed this delay, this communication and any response received from your Excellency's Government will be

made public via the communications reporting [website](#). They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

While awaiting a reply, we urge that all necessary interim measures be taken to halt the alleged violations and prevent their re-occurrence and in the event that the investigations support or suggest the allegations to be correct, to ensure the accountability of any person(s) responsible for the alleged violations.

Please be informed that a letter on the same subject was also sent to Total and to the Government of France.

Please accept, Excellency, the assurances of our highest consideration.

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

Annex

Reference to international human rights law

In connection with above alleged facts and concerns, we would like to remind your Excellency's Government of its international obligations under article 19 of the International Covenant on Civil and Political Rights (ICCPR), to which Uganda acceded on 21 June 1995, which provides that everyone shall have the freedom to seek, receive and impart information and ideas of all kinds through any media of his choice.

We also wish to remind your Excellency's Government that the right to liberty and security of persons is enshrined in article 9 of the ICCPR, and ensures the freedom from arbitrary arrest or detention. Arresting or detaining an individual as punishment for the legitimate exercise of the rights as guaranteed by the Covenant constitutes a violation of article 9 (CCPR/C/GC/35 para 17).

We also wish to remind your Excellency's Government of State obligations under the International Covenant on Economic, Social and Cultural Rights in the context of business activities, particularly the obligation to non-discrimination (ICESCR). In its General comment No. 24 (2017) on State obligations under the International Covenant on Economic, Social and Cultural Rights in the context of business activities, the Committee recognized that "among the groups that are often disproportionately affected by the adverse impact of business activities are peasants and other people working in rural areas" (ICESCR/GC/24/sec.3/A/ para 8). In this context, we would like to remind your Excellency's Government of the Guiding Principles on Business and Human Rights (A/HRC/17/31), which delineate that States' international human rights obligations require that they respect, protect and fulfil the human rights of individuals within their territory and/or jurisdiction, including the duty to protect against human rights abuses by third parties, including business enterprises.

We would also like to highlight that during the most recent Universal Periodic Review of Uganda, your Excellency's Government supported recommendations to ensure that its national laws remain in compliance with its international obligations to respect and protect the rights of all to exercise their freedom of expression and peaceful assembly (A/HRC/34/10, para. 115.19). Your Excellency's Government also supported the recommendation to ensure that civil and political rights, including the right to participate in political and public affairs, are enjoyed by all (A/HRC/34/10, para. 115.107).

Furthermore, we would like to recall articles 9 and 12 (2) of the UN Declaration on Human Rights Defenders, which provide that, for the purpose of promoting and protecting human rights and fundamental freedoms, everyone whose rights or freedoms are allegedly violated has the right, to complain to and have that complaint promptly reviewed in a public hearing before an independent, impartial and competent judicial authority established by law and to obtain from such an authority a decision, in accordance with law, providing redress where there has been a violation of that person's rights or freedoms;; and that the State shall take all necessary measures to ensure the protection of anyone facing violence, threats, discrimination, or any other arbitrary action

as a consequence of his or her legitimate exercise of the rights referred to in the Declaration.

We would also like to highlight the United Nations Guiding Principles on Business and Human Rights, which were unanimously endorsed by the Human Rights Council in resolution A/HRC/RES/17/31 in 2011. These Guiding Principles are grounded in recognition of:

- a) “States’ existing obligations to respect, protect and fulfil human rights and fundamental freedoms;
- b) “The role of business enterprises as specialized organs of society performing specialized functions, required to comply with all applicable laws and to respect human rights; and
- c) “The need for rights and obligations to be matched to appropriate and effective remedies when breached.”

It is a recognized principle that States must protect against human rights abuses by business enterprises within their territory. As part of their duty to protect against business-related human rights abuse, States are required to take appropriate steps to “prevent, investigate, punish and redress such abuse through effective policies, legislation, regulations and adjudication” (Guiding Principle 1). In addition, States should “enforce laws that are aimed at, or have the effect of, requiring business enterprises to respect human rights...” (Guiding Principle 3). The Guiding Principles also require States to ensure that victims have access to effective remedy in instances where adverse human rights impacts linked to business activities occur.

The Guiding Principles also clarify that business enterprises have an independent responsibility to respect human rights. However, States may be considered to have breached their international human rights law obligations where they fail to take appropriate steps to prevent, investigate and redress human rights violations committed by private actors.

The Guiding Principles also recognise the important and valuable role played by independent civil society organisations and human rights defenders. In particular, Principle 18 underlines the essential role of civil society and human rights defenders in helping to identify potential adverse business-related human rights impacts. The Commentary to Principle 26 underlines how States, in order to ensure access to remedy, should make sure that the legitimate activities of human rights defenders are not obstructed.