



General Counsel

**Office of the United Nations High
Commissioner for Human Rights (OHCHR)**

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Switzerland**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

Paris, May 18, 2020

Ref: AL OTH 18/2020

Re: Joint Communication from special procedures

I am writing with reference to your communication dated April 20, 2020 in which you have requested clarifications on a matter brought to your attention referring to legal proceedings before French Courts under Law n°2017-399 of March 27, 2017 also known as the Duty of Vigilance Law (hereafter "Duty of Vigilance Law" or "the Law") in relation to the Tilenga project in Uganda.

I am also aware that you have sent a similar request for information to our affiliate, Total E&P Uganda. Given that Total E&P Uganda has also sent you a reply and in order to avoid any redundancy in the information being provided to you, please note that the developments contained in this letter should be read in conjunction with those contained in Total E&P Uganda's letter in order to get a comprehensive view of the Total's group commitment to upholding human rights in relation to the projects in Uganda. For ease of reference, a copy of Total E&P Uganda's letter to you is attached herewith.

In order to provide an overview of the steps taken so that Tilenga and EACOP projects in Uganda and in Tanzania are conducted while upholding the environment and human rights, I attach some information documents that are also publicly available on our website¹.

By way of background, I would like to stress that Total's commitment to respecting human rights and the environment is longstanding and predates the Duty of Vigilance Law as a key part of a responsible business conduct.

¹ <https://ug.total.com/news/tilenga-and-eacop-discussion-and-dialogue-central-our-activities>

In 2002, Total adhered to the UN Global Compact and in 2012, it became an official member of the Voluntary Principles on Security and Human Rights Initiative, which promotes guiding principles for companies on providing operational security while respecting human rights. As from 2011, we committed to the UN Guiding Principles on Business and Human Rights (UNGPs), which since their unanimous adoption by the UN General Assembly have become the international reference for respect of human rights. In 2014, Total became a member of Shift's Business Learning Program, which assists companies to develop internal capacity to ensure the respect of human rights in accordance with the UNGPs. From 2011, we started to issue our first human rights guide, targeted for internal use, made publicly available², regularly updated since, to present Total's human rights approach and policy, with the support of stakeholders.

In implementing the UNGPs, Total aims at having a transparent reporting on human rights matters. In this vein, Total was the first oil and gas company to publish, in July 2016, an information document on human rights in accordance with the UNGP Reporting Framework of 2015, which provides guidance for companies to report on human rights issues. We have since then been issuing regular updates³.

Total is also a member of the multi stakeholders "Extractive Industries Transparency Initiative" (EITI), aiming to promote the transparent and responsible management of natural resources; it adheres to other international reporting standards, such as those of the Global Reporting Initiative (GRI) and of the International Petroleum Industry Environmental Conservation Association (IPIECA). Total is among the companies assessed each year by the Corporate Human Rights Benchmark (CHRB) since it was launched in 2017 and ranked among the best within the world extractive companies⁴. In relation to environment, Total has voluntarily been responding to the CDP's (Carbon Disclosure Project) annual survey on climate change since 2003 and took part in the Oil & Gas Preparer Forum set up by the Task Force on Climate-related Financial Disclosures (TCFD) of the G20, which resulted in the publication of best practices on the disclosure of climate-related information by oil and gas companies in July 2018.

We are confident that the commitments made by Total to respect human rights and the environment at the UN Forum on Business and Human Rights have been directly implemented at all level of the group's operations including in the Tilenga project.

As far as the allegations outlined in your letter are concerned, they warrant the following observations.

1. Background on the legal proceedings under the Duty of Vigilance Law

On October 29, 2019, legal proceedings were brought against Total SA by six NGOs under the French law n°2017-399 of March 27, 2017 also known as the Duty of Vigilance Law. The Law requires large French companies to establish and effectively implement an internal vigilance plan (hereafter "Vigilance Plan") with reasonable measures to identify and prevent risks that can have serious impacts on human rights and the environment resulting from its activities, those of the companies it controls, and those of subcontractors and suppliers with whom it has an established business relationship. The Vigilance Plan and a report of its implementation must be included in companies' annual management report.

The Law allows persons affected by a company's alleged failure to implement a Vigilance Plan to send a formal notice to comply with the Law. Within 3 months of this formal notice, they may make applications before a judge who has the power to issue an order to comply with the Law (Article L.225-102-4 of the French Code of Commerce). This order can be sought by way of an application for interim measures, if the legal requirements are fulfilled. The Law also provides that persons whose interest have been affected may bring

² https://www.sustainable-performance.total.com/sites/g/files/wompnd1016/f/atoms/files/human_rights_internal_guide_va.pdf

³ https://www.sustainable-performance.total.com/sites/g/files/wompnd1016/f/atoms/files/total_human_rights_briefing_paper_update_published_april_2018.pdf

⁴ <https://www.corporatebenchmark.org/sites/default/files/2019-11/CHRB2019KeyFindingsReport.pdf>

a lawsuit based on regular civil liability should the failure to comply with the Law cause them damages (Article L. 225-102-5 of the French Code of Commerce).

In the instant case, on June 23, 2019, six NGOs sent two formal notices which Total responded to on September 24, 2019. The six NGOs then filed, on October 29, 2019, two applications for interim measures under Article L.226-102-4 of the Code of Commerce. The underlying contention of the applications for interim measures is two-fold : i) it is argued that Total's Vigilance Plan fails to comply with the Law insofar the Plan's risk mapping and account of preventive measures published in the 2018 Total's management report fail to specifically mention the Tilenga and EACOP (East African Crude Oil Pipeline) projects, ii) it is alleged that the Tilenga project resulted in human rights violations and that such failings would constitute evidence that Total's Vigilance Plan is not effectively implemented. The NGOs have therefore requested that i) Total amends its Vigilance Plan ii) Total orders Total E&P Uganda to effectively implement the principles laid out in the "Land Resettlement and Acquisition Framework" concluded with the Ugandan government.

Following the hearing that took place on December 12, 2019, the Nanterre first instance tribunal declined jurisdiction in favour of the commercial tribunal of Nanterre. The NGOs have appealed this decision. The appeal is currently pending.

Total categorically objects to any breach of the Duty of Vigilance Law as it will be explained further below. Total also submits to the Special Rapporteurs that an independent court has been officially seized of the alleged breaches in accordance with French laws. The procedure is currently pending. Total therefore respectfully submits that the following short-form information is further developed and explained in legal briefs exchanged in an adversarial judicial process with the NGOs.

Though it is Total's position not to comment the merits of the proceedings to avoid any appearance of interference, the following answers can be provided.

2. Background on the Tilenga project in Uganda

In your letter, it is said that the NGOs that have filed the applications for interim relief 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".

These allegations are baseless and unfounded.

The Tilenga project which forms the basis of the proceedings brought against Total before French Courts under the Duty of Vigilance Law is a project run by Total E&P Uganda and its partners Tullow⁵ and CNOOC. The project consists in the development of the Tilenga oil field. This project is also linked to the EACOP pipeline project which is due to transport the oil from the field to the port of Tanga in Tanzania. Both projects are expected to bring significant economic and social benefits to both countries.

In accordance with Total's Vigilance Plan and internal rules and guidelines, Total E&P Uganda has placed particular emphasis on people and environmental issues with a specific commitment to limiting residents' relocations as much as possible and leaving the site in a better state than it was before the work stated and to limiting residents' relocations.

As our affiliate will explain in more details in its reply, we flatly deny that any form of "secret" discussions has taken place between Total E&P Uganda and NEMA. Such a bold allegation is not only unfounded but also at odds with the actual nature of the engagement with – among others - environmental regulators in relation to the oil and gas projects.

⁵ Total and Tullow have recently announced a transaction whereby Total will take over the entire participating interest of Tullow in the Tilenga project, subject to regulatory and other customary approvals.

3. The allegations made by Mr Mugisha and Mr Mwesiga

The allegations mentioned in your letter state that two Ugandan community members, Mr Mugisha and Mr Mwesiga testified during a trial on 12 December 2019.

This account of the December 12, 2019 hearing is inaccurate and the OHCHR must have been ill-informed. No trial took place on that date. The December 12, 2019's hearing primarily focused on procedural issues namely jurisdiction and whether the legal requirements for ordering interim measures were fulfilled. Mr Mugisha and Mr Mwesiga – though present during the hearing - did not testify and were not heard by the Court, as under French law witnesses are usually not heard during an interim measure hearing.

Your letter further picks up allegations of intimidation and the spreading of false rumors against Mr Mugisha and Mr Mwesiga surrounding the December 12, 2019's hearing.

As Total was made aware of these allegations through NGOs' public communication in late December 2019, Total E&P Uganda made the enquiries into these allegations that concluded that such a conduct – assuming the allegations are true – was not attributable to any of Total E&P Uganda and Atacama's employees. Total E&P Uganda used the opportunity to recall 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 would like to draw the Special Rapporteurs' attention to the fact that false accusations have been made against Total E&P Uganda's 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 and uphold the UNGP. Total is extremely concerned by such an accusation laid out publicly by an NGO against a named TEPU's employee, all the more when such employee is a CLO who is meant to engage with local communities.

In addition to the explanations provided above, you will find hereafter specific answers to the requests you have made:

a. Information about specific measures taken to ensure Total Uganda had identified and prevented risks of negative impacts on human rights and the environment in Tilenga

In accordance with the Duty of Vigilance Law and its public commitment expressed before the United Nations Forum on Business and Human Rights, Total has established a comprehensive corpus of internal rules and guidelines aiming at ensuring all group's employees and subsidiaries respect human rights and the environment in the context of a project such as Tilenga. These rules enshrined in the Vigilance Plan, Total's Code of Conduct and specific internal regulations are built around three pillars: i) compliance with international human rights standards ; ii) dialogue with stakeholders and iii) limitation of negative consequences on local communities or, where appropriate, control and remedy them.

Total is committing significant resources to ensuring that all projects run by the company and its subsidiary and sub-contractors abide by these principles. At the headquarter level, the Ethics Committee is entrusted with the task of ensuring compliance with the Code of Conduct. The Ethics Committee directly reports to Total's Chairman and CEO. In addition, there is a dedicated division called "Engagement with Civil Society" composed of a dedicated "Human Rights" department with 3 employees and a "social accountability and prospective" department, in particular in charge of relations with NGOs, with five employees. There is also a Human Rights Steering Committee that coordinates internal and external actions carried out by the Group's various branches and entities in relation to respect of Human rights, with representatives of these branches and key support entities (such as Human Resources, Security, Health Safety & Environment (HSE), Legal, Ethics, ...). This Committee has been existing since 2010 (previously called the "Human Rights Coordination Committee").

The Human Rights Department and the Ethics Committee are supported by a network of "ethics officers" responsible for promoting the values of the Code of Conduct among employees in subsidiaries and for ensuring the proper implementation of the Group's commitments locally.

There is also a dedicated societal team at Headquarters within the Health, Safety and Environment (HSE) Department comprising 14 experts who define internal rules, tools and methods to ensure consistency and professionalism among operational staff and to evaluate performance.

In addition, Total has elaborated a comprehensive training and capacity building program for employees and suppliers on human rights and environmental issues. Oversight of Total's Code of Conduct's compliance is conducted by way of regular internal and external audits.

Following the two formal notices sent by the six NGOs in June 2019 referring to allegations of human rights violations in the Tilenga project, Total has conducted internal verifications in order to obtain detailed information and explanations on the project and has instructed additional external audits to be conducted. These inquiries have led Total to conclude that the operations in the Tilenga project were compliant with international human rights standards, IFC Performance Standard 5 on Land Acquisition and Involuntary Resettlement and Total's Code of Conduct.

- b. Information on steps taken by your company to ensure Total Uganda had engaged in dialogue with affected communities about their views and grievances, and the outcomes of such engagement before the commencement of the project.*

Dialogue with stakeholders is one of the principles laid out in Total's Code of Conduct which applies to Total E&P Uganda's operations. To ensure that all affiliates engage in dialogue with affected communities, Total has set up training and capacity building programs. Total also supports local dialogue through societal directives, in-house guides and stakeholder management tools used to gather inputs from local communities. For example, the "Stakeholder Relationship Management tool" (SRM+) was developed to apply to all business segments of the company and to enable business units to identify and map their main stakeholders, schedule meetings and better understand their concerns. Subsidiaries are expected to appoint Community Liaison Officers (CLOs), as was effectively done by Total E&P Uganda. Compliance with these rules forms part of Total's continuous oversight over its subsidiaries, subcontractors and suppliers conducted by way of regular internal and external audits as mentioned above.

- c. Information about the processes in place to provide access to effective operational-level grievance mechanisms for individuals and communities affected by activities of your company's business partners, in line with the UN Guiding Principles on Business and Human Rights.*

In accordance with the UNGPs, Total has established grievance mechanisms both at the group level and operational level.

At the group level, employees and stakeholders can bring any matter to the Ethics Committee's attention. The Ethics Committee's email address (ethics@total.com) is publicly available on Total's website. In 2019, the Ethics Committee received 190 grievances related to the Code of Conduct. 50% of these grievances concerned human resources issues and a third of these grievances led to corrective measures including, when appropriate, disciplinary sanctions.

Total's subsidiaries are also required to establish a specific grievance mechanism when persons could be affected by a project. Such a grievance mechanism was established by Total E&P Uganda in accordance with IFC's Performance Standard 5 and UNGPs. Total has recently implemented a new tool to collect statistics on grievances lodged at the operational level in order to analyse their frequency, patterns, and causes.

I hope that the above explanations will put any concern that you may have had to rest, and remain at your disposal should you need any additional clarifications,

Yours truly

Aurélien Hamelle

