



O/Ref : DG 2021/2 - 553

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

Palais Wilson 52 rue des Pâquis
CH-1201 Geneva
Switzerland.

Att. Mary Lawlor, Special Rapporteur on the situation of human rights defenders.

Att. David R.Boyd, Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment.

Att. Irene Khan, Special Rapporteur on the promotion and protection on the right to freedom of opinion and expression
Att. Beatriz Balbin, Chief, Special Procedures Branch.

Paris, August 23rd , 2021

Ref: AL OTH 204/2021

Re: Joint Communication from special procedures

Dear Madams, Dear Sirs,

We refer to your letter of 6 July 2021 seeking clarification on certain information you have received concerning the alleged arbitrary arrest and detention of environmental rights defender Maxwell Atuhura and journalist Federica Marsi in Buliisa, Uganda.

We share your deep concern on the importance of freedom of expression and the essential role that Human Rights Defenders play in upholding rights and ensuring constructive dialogue and an open civil space.

You have invited us to respond to certain questions.

1 Please provide any additional information and any comment you may have on the above-mentioned allegations

We understand that the allegations you have received pertain to the Ugandan police and authorities, and that neither TotalEnergies SE ("TotalEnergies") nor its subsidiary TotalEnergies EP Uganda ("TEPU") (operator of the Tilenga project) are directly the object of such allegations.

TEPU is well aware and accepts its responsibility to seek to influence government and the authorities in the field of Human Rights and is committed to doing so notably in application of the UN Guiding Principles on Human Rights. Under Ugandan law, as elsewhere in the world, petroleum is a sovereign resource which is the property of the Republic of Uganda. The decision to exploit such resource is taken by the Government on behalf of its people. In this context, TEPU is acting as operator under petroleum licences granted by the Government of the Republic of

Uganda to conduct petroleum activities on behalf of the Republic. The Ugandan State is responsible for national policy, legal requirements and the actions of public authorities. In relation to the police, TEPU has no oversight nor supervisory role or sanction powers including in relation to the section of local police known as the "Oil & Gas Police". We can only influence, building trust with the authorities, as it is our experience that without trust leverage is impossible.

2 Please provide information as to whether Total Uganda was informed of the arrest of Mr Maxwell Atuhura, and any actions it took in response

In relation to the detention of Mr. Atuhura and Mrs Marsi on 25 May 2021 at around 5pm, TotalEnergies SE was informed by an NGO that a representative of AFIEGO and a foreign journalist who were apparently carrying out investigations on the Tilenga project had been detained by police close to the town of Buliisa. We were informed that the journalist was released the same day. As soon as it received this alert communicated through TotalEnergies SE, TEPU's team intervened to establish a dialogue with the Ugandan authorities including the Oil and Gas police in Buliisa and Kampala, to express concern and to request explanations. TEPU also immediately took the initiative of informing the representative of the OHCHR in Uganda of the detentions.

Calls were also made to the Petroleum Authority of Uganda (PAU) on 25 May and again on 26 May, to convey the same concerns and to propose that the authority exercise its influence to secure the release of Maxwell Atuhura.

Over the following days TEPU monitored the situation closely. Dialogue was maintained with the Buliisa and Hoima police.

On 27 May, concerned to hear that Mr Atuhura was still in detention, TEPU took the initiative of writing a letter to the Minister of Internal Affairs which stated that TEPU was not aware of any charges brought against Mr Atuhura nor any potential laws violated. TEPU stated that it had been informed that Mr Atuhura did not have access to the information necessary to prepare his defense and insisted that such access should be provided and, unless a charge brought in strict accordance with the law, that Mr Atuhura should be released.

On 28 May 2021, the Chairman and CEO of TotalEnergies SE addressed a letter to the President of Uganda sharing his concern. As is explained in TotalEnergies SE's own reply to your letter, the President of the Republic of Uganda has replied to the letter of TotalEnergies' Chairman and CEO by giving instructions to the Ugandan police and local authorities to systematically liaise with TEP Uganda when it comes to activities of NGOs' representatives and journalists in the project areas. As such, if they so deem appropriate, any human rights defenders who wish to visit our projects' area in Uganda will be in a position to refer to our local affiliate so as to facilitate their request and its processing, without of course any interference in their activities.

TEPU is currently taking follow up measures including additional meetings with the highest level of police, in order to insist that NGOs and journalists be allowed to carry out their work without interference, giving due respect to Ugandan law. Reinforcement of our capacity building on the Voluntary Principles of Security and Human Rights (VPSHR) and on matters related to freedom of expression is also being prepared.

3 Please provide Information as to way in which Total Uganda exercises its leverage with the Government of Uganda and other relevant stakeholders, to ensure human rights due diligence in relation to The Tilenga oil project, and more specifically to ensure that the rights of Human right Defenders engaged in advocacy against the project are protected

TEPU regularly takes opportunities to discuss and promote Human Rights issues during its dialogue with Government, petroleum authorities police and army.

Where TEPU is alerted of allegations that a Human Rights Defender carrying out work in relation to petroleum activities has been subject to threats or Human Rights breaches, TEPU contacts the authorities in order to insist that the rights of such defenders are protected.

Moreover, proactive steps are taken in relation to Government Security Forces. Indeed whilst no agreement related to security has yet been signed with authorities, in accordance with TotalEnergies' commitment on VPSHR, a framework has been discussed and defined and will be implemented during the construction phase of the project. This framework describes the relations between TEPU and the Ugandan authorities and notably the principles of coordination, the requirements to respect Human Rights, and give appropriate training to personnel.

Prior to the validation of this framework agreement, TEPU's security teams are already assisting the police and army by giving trainings related to the VPSHR (Voluntary Principles on Security and Human Rights) to all security

forces present in the project area. In all contacts with these armed forces, TEPU consistently insists on the importance of respecting the rights of citizens.

In Q2 2021, a new NGO and Human Rights Coordination team was created within TEPU to assist with developing closer relationships and dialogue with NGOs and particularly those involved in Human Rights defense and advocacy. This new team is comprised of a Ugandan national who has extensive experience with the Coalition of Civil Society Organizations (CSCO) and an expatriate with international experience in Human Rights and environmental matters. This team is also charged with developing dedicated policies, charters, and statements on Human Rights matters, including on human rights defenders, and will play an important role in delivering trainings on Human Rights both within the Tilenga Joint Venture and to external parties.

4. Please provide information as to whether Total Uganda is engaged in consultations with civil society organizations, Human Rights Defenders and or independent experts in relation to the Tilenga oil project and its Human Rights due diligence.

TEPU has extensive stakeholder engagement plans in place and carries out regular engagement of Civil Society Organisations (CSO). Notably, on a quarterly basis, stakeholder engagement meetings are held both in Kampala and in Buliisa in order to give an opportunity for CSOs to be updated on the project and to provide their comments. In an effort towards continuous improvement we have recently begun to change the format of these meetings to ensure a meaningful dialogue for all parties, by ensuring that the agenda of the meeting is established along with civil society and that there is sufficient time for exchange and engagement rather than formal presentations. In addition, CSOs are regularly consulted on key project documents such as Environmental and Social Management Plans, Biodiversity engagements, Resettlement Planning, Human Rights Impact Assessment with a view to capitalizing on their vast experience to the benefit of the project and society.

In relation specifically to Human Rights Defenders, engagement to date has been less formal. As set out above TEPU intervenes whenever concerns in relation to Human Rights Defenders are brought to its attention. On the 14th of July we have started a first engagement with a local NGO, called Defend Defenders to identify together how we will dialogue and work together.

5. Please provide information on Total Uganda's existing policies to fulfil its obligations to respect and protect Human Rights Defenders

TEPU does not currently have a written policy specifically related to Human Rights Defenders. However, on numerous occasions it has expressed its position in the following terms, or similar:

“TEPU is strongly committed to the defense of Human Rights in its activities all over the world. In particular TEPU recognizes the importance of protecting Human Rights Defenders and does not tolerate any attack or threats against those who peacefully promote Human Rights in relations to its activities. Further, TEPU seeks to promote dialogue and exchanges with Human Rights Defenders in the framework of its activities. Where appropriate as recommended by the UN Guiding Principles on Business and Human Rights, TEPU seeks to exert its leverage to influence others to respect these principles.

TEPU maintains an on-going and active dialogue with Human Rights organizations. In addition, Total maintains a dialogue with the representation of the UN High-Commissioner in Uganda TEPU is strongly committed to the defense of Human Rights in its activities all over the world. In particular TEPU recognizes the importance of protecting Human Rights Defenders and does not tolerate any attack or threats against those who peacefully promote Human Rights in relations to its activities. Further, TEPU seeks to promote dialogue and exchanges with Human Rights Defenders in the framework of its activities. Where appropriate as recommended by the UN Guiding Principles on Business and Human Rights, TEPU seeks to exert its leverage to influence others to respect these principles.”

TEPU has extra-judicial grievance procedures in place and encourages anyone to raise complaints and concerns. In addition, and even when grievances have not been made formally, TEPU investigates any allegation of threats brought to its attention. However, one ongoing concern is that often such allegations are insufficiently precise in terms of dates, times, and details, and therefore difficult to verify. TEPU therefore strongly encourages complainants to provide sufficient detail in order to allow for thorough investigation and is open to direct dialogue whenever possible.

In addition, it is worth noting that a Human Rights Impact Assessment (HRIA) is currently being prepared in order to reinforce the Human Rights aspects of the Tilenga Environmental and Social Impact Assessment and related

management plans. This HRIA is conducted by LKL Consulting in conjunction with local experts "Eco Consulting" and follows methodology based on the Danish Institute for Human Rights' recommendations for HRIA. The HRIA has included extensive stakeholder engagement and will contain a section on human rights defenders. Such report will be published when finalized along with an associated action plan.

We hope that the above adequately responds to your inquiry and reassures you of the very high importance that TEPU places on these matters.

In relation to the communications procedure of the Special Procedures of the United Nations Human Rights Council, we of course understand that it is absolutely necessary to protect the authors and affected parties on the ground, but we also urge you to consider that TEP Uganda will not be able to conduct meaningful enquiries in relation to any allegations if no details can be provided to us. In this respect, we would like to reiterate that TEPU has not received any grievance under its grievance mechanism, nor informal complaint in relation to the facts set out in your letter. We would also like to emphasize our commitment to investigate thoroughly all grievances brought to us.

Finally, owing to the public nature of this process and particularly the fact that the letter of 6 July 2021 will be published on your website, we would also respectfully request that the OHCHR consider publishing a statement in relation to this case. Without such a statement, there could remain doubts as to the position of the OHCHR and this could be extremely harmful to all parties concerned as it leaves them with no real opportunity to close the case out. This is all the more important in light of the way in which the letter sent by the Special Rapporteurs to TEP Uganda on 20 April 2020 (Ref AL OTH 18/2020) was treated in some media, where the allegations relayed by the Special Rapporteurs was sometimes -wrongly - taken as reflecting the view by the Special Rapporteurs themselves that such allegations were founded as against TEP Uganda and TotalEnergies more broadly.

We remain at your disposal to respond to any further questions you may have.

Yours faithfully,

Pierre Jessua
General Manager