

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

REFERENCE:
AL OTH 18/2020

20 April 2020

Dear Mr. Pierre Jessua,

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.

We are independent human rights experts appointed and mandated by the United Nations Human Rights Council to report and advise on human rights issues from a thematic or country-specific perspective. We are part of the special procedures system of the United Nations, which has 56 thematic and country mandates on a broad range of human rights issues. We are sending this letter under the communications procedure of the Special Procedures of the United Nations Human Rights Council to seek clarification on information we have received. Special Procedures mechanisms can intervene directly with Governments and other stakeholders (including companies) on allegations of abuses of human rights that come within their mandates by means of letters, which include urgent appeals, allegation letters, and other communications. The intervention may relate to a human rights violation that has already occurred, is ongoing, or which has a high risk of occurring. The process involves sending a letter to the concerned actors identifying the facts of the allegation, applicable international human rights norms and standards, the concerns and questions of the mandate-holder(s), and a request for follow-up action. Communications may deal with individual cases, general patterns and trends of human rights violations, cases affecting a particular group or community, or the content of draft or existing legislation, policy or practice considered not to be fully compatible with international human rights standards.

In this connection, we would like to bring to your attention 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.

Mr. Pierre JESSUA
Country chairman
Total E&P Uganda

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.

We wish to express our concern at the acts of intimidation against Mr. Mugisha and Mr. Mwesigwa 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 December 2019 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 specific measures taken by the company to identify and prevent risks of negative impacts on human rights and the environment in Tilenga, in compliance with the 2017 France's Corporate Duty of Vigilance law.
3. Please provide information on steps taken by your company 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.
4. Please provide information about the processes in place to remedy adverse human rights and environmental impacts of your activities, including by providing access to effective operational-level grievance mechanisms, in line with the UN Guiding Principles on Business and Human Rights.

We would appreciate receiving a response within 60 days. Passed this delay, this communication and any response received from your company 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.

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

Please accept, Mr. Pierre Jessua, 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 company of its responsibilities under the Guiding Principles on Business and Human Rights (A/HRC/17/31). The Guiding Principles have established themselves as the authoritative global standard for business to prevent and address negative business-related impacts on human rights. The responsibility to respect human rights is a global standard of conduct applicable to all businesses, wherever they operate. It exists independently of the ability and/or willingness of States to meet their own human rights obligations and does not diminish those obligations. It is an additional responsibility to that of complying with national laws and regulations protecting human rights.

“The responsibility to respect human rights requires that business enterprises: (a) Avoid causing or contributing to adverse human rights impacts through their own activities, and address such impacts when they occur; (b) Seek to prevent or mitigate adverse human rights impacts that are directly linked to their operations, products or services by their business relationships, even if they have not contributed to those impacts”. (Guiding Principle 13).

In order to meet their responsibility to respect human rights, business enterprises should have in place policies and processes appropriate to their size and circumstances, including:

- (a) A policy commitment to meet their responsibility to respect human rights;
- (b) A human rights due diligence process to identify, prevent, mitigate and account for how they address their impacts on human rights;
- (c) Processes to enable the remediation of any adverse human rights impacts they cause or to which they contribute. (Guiding Principle 15)

In order to gauge human rights risks, business enterprises should identify and assess any actual or potential adverse human rights impacts with which they may be involved either through their own activities or as a result of their business relationships [...] meaningful consultation with potentially affected groups and other relevant stakeholders (Guiding Principle 18).

Also, Principle 22 provides that "Where business enterprises identify that they have caused or contributed to adverse impacts, they should provide for or cooperate in their remediation through legitimate processes". "Establishing grievance mechanisms at the operational level for those potentially affected by business activities can be an effective means of redress provided they meet certain requirements listed in Principle 31 (Commentary on Guiding Principle 22).

We would like to recall the thematic report of the Working Group on the issue of human rights and transnational corporations and other business enterprises (ref. A/HRC/32/45) which discusses the obligation of States to protect individuals against human rights abuses by companies that they own or control. In particular, we would like

to highlight the following conclusions and recommendations: “All businesses, whether public or wholly private, have a responsibility to respect human rights. This responsibility is distinct from, but complementary to, the State's duty to protect against human rights abuses by business enterprises.”

In this context, we would like to highlight that international human rights law protects individuals' right to freedom of opinion and expression, under article 19 of the International Covenant on Civil and Political Rights (ICCPR), to which Uganda acceded on 21 June 1995.

Furthermore, we would like to recall articles 5 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.