

Mandates of the Special Rapporteur on the situation of human rights defenders; 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 promotion and protection of the right to freedom of opinion and expression

REFERENCE:
AL OTH 204/2021

6 July 2021

Dear Mr. Jessua,

We have the honour to address you in our capacities as Special Rapporteur on the situation of human rights defenders; 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 promotion and protection of the right to freedom of opinion and expression, pursuant to Human Rights Council resolutions 43/16, 46/7 and 43/4.

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 the attention of your company, information we have received concerning the alleged arbitrary arrest and detention of environmental rights defender Maxwell Atuhura, and journalist Federica Marsi in Buliisa, in the Albertine region of Uganda in connection with the Total Tilenga oil project.

Mr. **Maxwell Atuhura** is an environmental rights defender and is the Field Officer in Buliisa for the Africa Institute for Energy Governance (AFIEGO), working to support members of the community who have been affected by the Tilenga oil pipeline project.

In October 2019, AFIEGO and five other environmental organizations took legal action against Total in France under the 2017 Corporate Duty of Vigilance Law, claiming that the company had failed to fulfill its obligations to address the impact of the Tilenga oil project for the affected community and the environment. The organizations also allege that Total has both intimidated and failed to compensate over 5,000 local land-owners, and neglected to develop sufficient environmental safeguards to protect the surrounding national park. The claim also includes allegations about the potential displacement of thousands of people in the area and the immense environmental ramifications from the construction of a network of pipelines passing under the Nile River and the development of the longest heated electric pipeline in the world, the East Africa Crude Oil Export Pipeline (EACOP). The case alleges that the company's subsidiary, Total Uganda, and one of its subcontractors coerced land-owners into signing compensation agreements, and denied them access to their lands prior to providing the compensation.

Ms. **Federica Marsi** is an Italian national and freelance journalist whose reporting has focused on social and environmental issues.

The harassment and intimidation of human rights defenders in relation to their involvement in advocacy against the human and environmental impact of the Tilenga oil project in the Albertine Graben and the legal case against the company, was the subject of a previous communication by a number of Special Procedures mandate holders to your company on 20 April 2020 (OTH 18/2020). We thank you for your response, dated 18 May 2020, and the information provided regarding Total Uganda's remediation process, the consultations prior to the commencement of the project and the concern and grievance mechanism in place.

According to the information received:

On 24 May 2021, Mr. Atuhura filed a complaint at the Buliisa police station following break-ins at both his home in the oil region, and his family home in Kampala on 10 May 2021. In the weeks prior to the break-ins, Mr. Atuhura had also reportedly received a number of anonymous phone calls, threatening him.

On 25 May 2021 at approximately 3 p.m., Mr. Atuhura and Ms. Marsi were arrested by the Resident District Commissioner of Buliisa and the District Police Commissioner (DPC) at the Adonia Hotel in Buliisa, where they were staying. The officers reportedly did not present a warrant for their arrest, or a reason for their arrest. Mr. Atuhura and Ms. Marsi were taken to Buliisa Central Police Station (CPS), where they were interrogated and reportedly threatened by the police officers questioning them. Prior to their arrest, Mr. Atuhura and Ms. Marsi had been conducting interviews with individuals from the area whose land has been acquired or is due to be acquired as part of the oil project in Buliisa.

Later that day, Ms. Marsi was released from the police station, reportedly on condition that she leave Tilenga and travel back to Kampala, allegedly due to issues with her visa. She was reportedly arrested again later that day by two plainclothes officers in the town of Biso in Buliisa whilst attempting to leave the area in a taxi, and brought in front of the Biso police station, before she

was eventually allowed to leave. Ms. Marsi arrived to Kampala late that evening.

On 26 May 2021, Mr. Atuhura was transferred to Hoima CPS, allegedly for further questioning. During the questioning, police officers reportedly asked Mr. Atuhura about his work, his connection to the lawsuit against Total, AFIEGO's relationship with other international organisations, why he was "working with foreigners" and claimed he was not "speaking the truth". Whilst detained, Mr. Atuhura was not brought before a judge, but was allowed access to his lawyers and his AFIEGO colleagues.

On the evening of 27 May 2021, Mr. Atuhura was released on bond. The police bond for his release reportedly states that Mr. Atuhura is being charged with "unlawful assembly", and was required to appear before the regional Criminal Investigations Department (CID) officer for the Albertine region in Hoima on 2 June 2021.

On 2 June 2021, Mr. Atuhura appeared before the CID officer in Hoima, and the bond was extended until 18 June 2021, when he is due to report to the police headquarters in Buliisa. Mr. Atuhura's mobile phone and camera, confiscated during his arrest, are yet to be returned to him.

On 18 June 2021, Mr. Atuhura notified the police station in Hoima that he would be unable to report to the station, due to the ban on inter-district travel as part of COVID-19 restrictions.

Whilst we do not wish to prejudge the accuracy of these allegations, we express serious concern in response to the alleged arbitrary arrest and detention of Mr. Atuhura and Ms. Marsi, seemingly in connection with their work in the context of the Tilenga oil project in Buliisa and conducting interviews with individuals from the affected community. We are further concerned that these apparent attempts to intimidate

Mr. Atuhura and deter him from advocating against the impacts of the Tilenga oil project, are not isolated, as environmental rights defenders working in defence of the rights of the communities impacted by the project, have previously been subjected to harassment in retaliation for this work, as communicated to your company by the Special Procedures mandate holders. We fear the chilling affect this may have on all those seeking to uphold and defend human rights in Uganda, particularly those defending the rights of individuals whose livelihoods have been detrimentally impacted as a result of the actions of Total Oil in the Albertine Graben.

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 any comment you may have on the above-mentioned allegations.

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.
3. Please provide information as to ways in which Total Uganda is exercising 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 the rights of human rights defenders engaged in advocacy against the project, are protected.
4. Please provide information as to whether Total Uganda is engaged in consultations with civil society organisations, human rights defenders and or independent experts in relation to the Tilenga oil project and its human rights due diligence.
5. Please provide information as Total Uganda's existing policies to fulfill its obligations to respect and protect human rights defenders.

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.

While awaiting a reply, we urge that all necessary interim measures be taken to halt the alleged violations and prevent their re-occurrence.

Please be informed that a similar letter on the same subject has also been sent to the Governments of Uganda and France, and Total's headquarters in France.

Please accept, Mr. Jessua, the assurances of our highest consideration.

Mary Lawlor
Special Rapporteur on the situation of human rights defenders

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

Irene Khan
Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression

Annex

Reference to international human rights law

In connection with above alleged facts and concerns, we would like to draw your attention to the United Nations Guiding Principles on Business and Human Rights (A/HRC/17/31), which were unanimously endorsed by the Human Rights Council in June 2011, and which are relevant to the impact of business activities on human rights. 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 or society performing specialized functions, required to comply with all applicable laws and to respect human rights;
- c. The need for rights and obligations to be matched to appropriate and effective remedies when breached.”

According to the Guiding Principles, all business enterprises have a responsibility to respect human rights, which requires them to avoid infringing on the human rights of others to address adverse human rights impacts with which they are involved. The responsibility to respect human rights is a global standard of expected conduct for all business enterprises wherever they operate. It exists independently of States’ abilities and/or willingness to fulfil their own human rights obligations, and does not diminish those obligations. Furthermore, it exists over and above compliance with national laws and regulations protecting human rights.

Principle 13 has identified two main components to the business responsibility to respect human rights, which require that “business enterprises: (a) Avoid causing or contributing to adverse human rights impacts through their own activities, and address such impacts when they occur; [and] (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”.

Principles 17-21 lays down the four-step human rights due diligence process that all business enterprises should take to identify, prevent, mitigate and account for how they address their adverse human rights impacts. Principle 22 further provides that when “business enterprises identify that they have caused or contributed to adverse impacts, they should provide for or cooperate in their remediation through legitimate processes”.

In this connection, we also wish to highlight the Report of the Working Group on the issue of human rights and transnational corporations and other business enterprises to the 47th Human Rights Council on guidance on ensuring respect for human rights defenders, pursuant to the Guiding Principles ([A/HRC/47/39/Add.2](#)). In its guidance to business enterprises, the Working Group emphasizes the need to treat human rights defenders as “valued partners” and “critical friends” in all levels of its operations and its conduct, and to development and implement human rights policies with specific focus on risks faced by human rights defenders, pursuant to Guiding

Principle 15.¹ Such policies should include commitments of zero-tolerance for attacks on human rights defenders, which may occur in connection with a business enterprise's operations, or their business relationships, assurances to publicly condemn attacks against human rights defenders, as well as commitments to support independent fact-finding missions to assess the situation of human rights and human rights defenders where they are operating.² Regarding the exercise of leverage pursuant to guiding Principle 19, the Working Group also recommends illustrative actions that business enterprises should take when human rights defenders are at risk and there is a link to the enterprise's own activities, including but not limited to:

- “stand up against abusive government actions, restrictions and regulations, making reference to the Guiding Principles e.g. where human rights defenders are targets of judicial or legislative processes
- write or sign open letters to States where human rights defenders are being attacked, or put on trial for their legitimate human rights work as this can be an effective way for a concerned business to respond to issues occurring within its own sector and make its voice heard while setting standards for its peers
- include in such letters that human rights defenders are protected under the United Nations Declaration on Human Rights Defenders, and that business enterprises rely on human rights defenders to be able to speak freely, and without fear of reprisal, in order to learn about challenges in supply chains, encourage due diligence and provide remedy when harm occurs
- intervene when threats are made against human rights defenders, even before legal processes are launched against human rights defenders, in order to prevent them from escalating, and in order to set out the situations that a business enterprise finds unacceptable.”³

In its Guidance, the Working Group emphasises the responsibility of business enterprises to exercise their leverage to convey an expectation that risks to human rights defenders, will be prevented and addressed through human rights due diligence wherever relevant across business relationships, stating that such enterprises and their subsidiaries should “use their position to safeguard, and mitigate negative serious outcomes for human rights defenders by speaking out to raise awareness about cases, for example concerning those that are relevant to their industry, or the States in which they operate/have relationships with”.⁴

We also wish to refer to the report by the Special Rapporteur on the situation of human rights defenders to the 46th session of the Human Rights Council, on death threats against and killings of human rights defenders. The Special Rapporteur highlights the responsibilities of business to protect human rights defenders, and notes that many are killed after protesting negative human rights impacts of business ventures, noting that “in too many cases, businesses are also shirking their responsibilities to prevent attacks on defenders or are even perpetrators of such

¹ [A/HRC/47/39/Add.2](#), paragraphs 58-61

² Ibid, paragraph 59

³ [A/HRC/47/39/Add.2](#), paragraph 69

⁴ Ibid, paragraph 67

attacks.”⁵ Regarding the development, implementation and periodic review of human rights policies, the Special Rapporteur acknowledges that whilst some companies are engaging in good practices in relation to such policies, they are “the exception rather than the general rule” and that “few have public policies specifically addressing the protection of human rights defenders.”⁶

We recall that the Human Rights Council resolution 31/32 in paragraph 2 called upon all States to take all measures necessary to ensure the rights and safety of human rights defenders, including those working towards realization of economic, social and cultural rights and who, in so doing, exercise other human rights, such as the rights to freedom of opinion, expression, peaceful assembly and association, to participate in public affairs, and to seek an effective remedy.

Finally, the Framework Principles on Human Rights and the Environment, presented to the Human Rights Council in March 2018 (A/HRC/37/59) set out basic obligations of States under human rights law as they relate to the enjoyment of a safe, clean, healthy and sustainable environment. The commentary of Principle 12 provides that “In accordance with the Guiding Principles on Business and Human Rights, the responsibility of business enterprises to respect human rights includes the responsibility to avoid causing or contributing to adverse human rights impacts through environmental harm, to address such impacts when they occur and to seek to prevent or mitigate adverse human rights impacts that are directly linked to their operations, products or services by their business relationships. Businesses should comply with all applicable environmental laws, issue clear policy commitments to meet their responsibility to respect human rights through environmental protection, implement human rights due diligence processes (including human rights impact assessments) to identify, prevent, mitigate and account for how they address their environmental impacts on human rights, and enable the remediation of any adverse environmental human rights impacts they cause or to which they contribute.”

⁵ A/HRC/46/35, paragraph 10

⁶ Ibid, paragraph 91