



## Analysis of the answers provided by Total SA and Total E&P Uganda to the UN Special Rapporteurs June 2020

See our [press release on this matter](#).

On May 18, 2020, [Total SA](#) and [Total E&P Uganda](#) each sent a letter in response to the [joint communication from the United Nations Special Rapporteurs](#).

We believe that these responses, which have just been made public, are insufficient or even erroneous. We therefore considered it useful to present the following comments.

### **Regarding the alleged respect by the Total Group of human rights and the law on the duty of vigilance**

In its response, the Total Group presents a list of voluntary norms and standards that it has committed to respecting. However, the main problem with these standards is precisely their voluntary nature, and the lack of a mechanism to sanction companies that do not respect their commitments. In our [investigative report published in 2019](#), we analyse how the Tilenga and EACOP projects conducted by Total are already undermining or carry risks of serious violations of a number of human rights as well as serious risks for the environment and the climate, contravening these voluntary commitments, including the United Nations Guidelines on Business and Human Rights (UNGPs). This is not an isolated case, as shown by [the new investigation](#) carried out by Friends of the Earth France, Friends of the Earth Mozambique and Friends of the Earth International about the gas mega-project led by Total in Mozambique.

More specifically, Total's compliance with the law on the duty of vigilance, both in terms of the contents and regarding the effective implementation of its vigilance plan, is the subject of the [ongoing legal proceedings](#). Our main charges are detailed in the above-mentioned investigation report, and in addition, we have recently prepared a [summary analysis of Total's new vigilance plan](#), published in 2020. This analysis shows that Total SA still fails to comply with the law on the duty of vigilance.

According to our analysis, on the one hand, the contents of the plan by Total still does not comply with the requirements of the law. Indeed, while Total mentions an update of its risk mapping in 2019, as well as the existence of other specific mappings (human rights, suppliers), it still does not publish this risk-mapping in its vigilance plan, despite this being required by the law. Total's vigilance plan could be that of any oil company since it only mentions generic risks, without ever concretely linking them to Total's actual activities. The plan therefore fails to provide any information on the countries or projects where these risks exist or are occurring. Furthermore, the plan lacks references to any actions to mitigate or prevent these risks, once again breaching the law on the duty of vigilance.

On the other hand, we also consider that the effective implementation of Total's vigilance measures remains as deficient as ever, as shown by the actions carried out by Total in the context of the Tilenga and EACOP projects.

## **Regarding the violations of human rights and the environment (or risks thereof) in the context of the Tilenga and EACOP projects.**

In its response to the United Nations Special Rapporteurs, the Total Group stated that it had "*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*".

It is quite surprising for the transnational company to claim its will to limit the displacement of populations when we know that the Tilenga and EACOP projects involve the "resettlement" of nearly 90,000 people in Uganda alone (we do not know the exact number of people affected by the EACOP project in Tanzania, but it is estimated to be several tens of thousands of people).

Total E&P Uganda states in its response that it "*made every effort to ensure that the affected persons received compensation as soon as possible. They were invited to leave the premises only after receiving the compensation and were encouraged to continue to cultivate their land throughout the process until it was received. Total E&P Uganda and its local partners have also put in place measures to help the affected people during the transition between harvests*".

However, our investigation and [testimonies](#) show the opposite. Indeed, many families report that they felt forced to accept the compensation offered by Total, despite the fact that they considered it insufficient. Even more serious, in the first resettlement plan, many people report having been deprived of access to their land even before receiving compensation, and testify that they have lived through situations of famine. According to testimonies, it was only after a year and a half that Total set up food deliveries, and those affected said these food parcels were insufficient to feed their entire family.

This situation is currently being replicated or is highly likely to be replicated for the tens of thousands of people affected by Tilenga's and [EACOP](#) other resettlement plans. According to very recent testimonies, affected people continue to complain that they are still unable to farm their land, some of them having been prevented from doing so since the end of 2018. In another district, people testify having only been able to grow seasonal crops since January 2019, when annual crops such as tobacco or cassava were their main source of food and income.

These people find themselves in great difficulty without knowing how much longer this situation will continue and without receiving the necessary assistance to compensate for this considerable loss of livelihood. In practice, we therefore consider that Total does not comply with [Performance Standard #5](#) on Land Acquisition and Involuntary Resettlement as defined by the International Finance Corporation (IFC, part of the World Bank Group), despite Total claiming to be in compliance with the said standard.

Moreover, there are doubts about Total's compliance with environmental standards when it is known that oil projects systematically negatively impact the quality of water, air and soil, and cause significant greenhouse gas emissions, fueling climate change. In the current case, Total's oil drilling project is located in the heart of the Murchison Falls National Protected Area. In our investigation report, we analyze at length the risks of serious environmental damages caused by the Tilenga and EACOP projects. The environmental and social impact assessment carried out by Total clearly appears to be flawed, as analysed in numerous reports, including the most recent one [published by the consulting group E-Tech](#), specialised in the environmental impacts of extractive industries:

*" It is my professional opinion that TEP Uganda has chosen a least-cost, high impact development model for the Tilenga Project in the face of the profitability risks associated with the venture."*

*"In the case of the Tilenga Project, the core area of the potential UNESCO Biosphere Reserve – Murchison Falls NP – would be irreversibly compromised by the development of a major oil field in the heart of the park".*

In its response to the rapporteurs, Total E&P Uganda lists a number of management plans and studies, most of which are also listed in its environmental and social impact assessment. However, they have not been made public despite repeated requests from Ugandan civil society. It is therefore impossible to judge the quality of the measures elaborated by Total to prevent and mitigate environmental risks.

Just as in its vigilance plan, Total points out, in its response to the UN rapporteurs, that it has carried out verifications and due diligence external audits on its activities in Uganda. However, in the absence of these audits being publicly available, it is impossible to assess their thoroughness and to comment on their conclusions.

The company also lists the staff dedicated internally to HSE (Health, Safety and Environment) and human rights issues, and the training activities of their employees and subcontractors on these issues. However, as in its vigilance plan, the Total Group does not assess the effectiveness of this internal organisation and of these actions in terms of preventing the risk of human rights and environmental violations, despite the fact that this is required by the duty of vigilance law. There is also no mention of the effective implementation of their Code of Conduct by their subsidiaries and subcontractors; here too, Total mentions the existence of internal and external audits, but without publishing them or even summarising their conclusions.

### **Regarding the harassment and intimidation of representatives of affected communities**

The UN Special Rapporteurs are particularly concerned about the harassment and intimidation of two representatives of affected communities who traveled to France to attend a hearing at the Tribunal de Grande Instance de Nanterre (civil court, now called "tribunal judiciaire") in December 2019.

They reported concrete and established facts, namely the arrest of one of the representatives at Kampala airport on December 14, 2019, on his return from Paris, and attacks carried out against the home of the second representative, on the nights of December 23 and 24.

The rapporteurs expressed their alarm as follows:

*"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."*

To this, the Total Group responds that they did carry out an internal investigation, which concluded that these facts could be attributed to any of its direct employees or those of its subcontractor, Atacama. Total also contests the qualification of the two community representatives as "witnesses".

It is true that the two Ugandan representatives were not able to speak at the court hearing itself. However, both of their testimonies were used as pieces of evidence in the court proceedings. In addition, during their short stay in France, they spoke extensively about the impacts on their communities as a result of the Total oil project, whether to representatives of the Ministry of Foreign Affairs, Members of Parliament or the media. Finally, according to their statements, it was clearly their presence at the court hearing that was the source of the harassment and intimidation they faced, just before they traveled to France and [upon their return to Uganda](#). During his arrest at the airport, which lasted 9 hours, one of the two representatives was reportedly questioned on this very issue.

Apart from the fact that Total had allegedly "*made the enquiries into these allegations*", the transnational company has not provided any evidence that would clear Total and Atacama employees: no details are given on the results of these inquiries, and the results have not been made public, their conclusions being therefore unverifiable.

In any case, regardless of the identity of those responsible, it seems once again undeniable that these acts of intimidation are linked to the public criticism of the human impacts of this mega oil-project expressed by these two representatives of the affected communities.

Moreover, according to several witnesses, the employee from Total who attended the hearing in Nanterre allegedly told lies upon his return to Uganda: he claimed that one of the witnesses had been arrested at the Kampala airport because he allegedly had lied at the hearing in Nanterre – despite the fact that the witnesses have been unable to speak at this hearing. This behavior is in total contradiction with the role that these community liaison officers are supposed to play in ensuring dialogue and a climate of trust with the communities.

Finally, in early 2020, according to several testimonies, members of Total's staff in Uganda allegedly told the communities that the payment of compensations was delayed because of the lawsuit in France and therefore tried to shift the blame towards the two witnesses. This created a strong feeling of animosity towards them, to the point that stones were thrown at them. They had to [flee their homes several times](#) and benefited from a protection program of the European Union.

### **Regarding the dialogue with local communities and the complaint mechanisms**

The Total Group concludes its letter by answering the rapporteurs' questions about their actions to ensure dialogue with the affected communities and the management of their complaints. This is an issue that we also analysed in our 2019 investigation report. At that time, we explained:

- That the international standards that Total has committed to comply with in its vigilance plan require that communities affected by economic projects must be able to participate in decision-making on projects that impact them.
- In fact, the Total Group does not comply with these standards, and the consultation process for the environmental and social impact assessment of the Tilenga project is even the subject of [legal action filed by several Ugandan associations](#).
- Meetings are indeed organised on a regular basis but do not fulfill their consultation objective: the communities and civil society organisations that we questioned all complain that the majority of their questions and criticisms are not taken into account, with the company promising each time to provide answers at the next meeting, without this ever happening. In addition, they report that the minutes of these meetings do not reflect the full range of what was said.
- The issue is not whether a complaint mechanism exists, but its accessibility, independence and effectiveness. In the present case, the intimidated populations find themselves without access to a remedy because the complaint mechanism set up by Total is, according to our analysis, not independent, and therefore does not comply with IFC Performance Standard 5 and the UNGPs that Total SA refers to in its letter: in fact, the affected people who have complaints are supposed to turn to Atacama, i.e., the same entity responsible for the land acquisition process, and the one who is carrying out the intimidations.

It emerges from this detailed analysis that, despite the voluntary commitments and internal procedures emphasised by Total, a number of shortcomings are identified in its conduct in the context of the Tilenga and EACOP projects. We hope that the United Nations Special Rapporteurs will be able to continue their work, including by visiting Uganda and Tanzania to meet directly with affected people and civil society organisations.