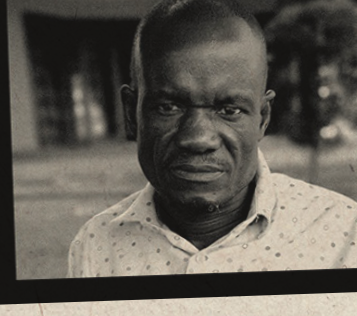
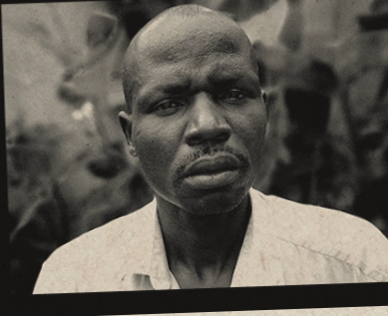


TOTAL IN COURT

ACT 2

**Ugandan Communities
Sue The French Oil Giant In France**





INTRODUCTION

The Tilenga and EACOP projects, developed by Total in Uganda and Tanzania, have become, in the words of the multinational's CEO, *"the symbol of the anti-oil fight"*. If these projects have sadly become emblematic, it is because of the scale of the human rights violations they are already causing, as well as the risks of irreversible damage to the environment and climate. These projects are also known to have been the subject of the very first lawsuit based on the French "duty of vigilance" law¹, brought by Friends of the Earth France, Survie and four Ugandan civil society organizations (CSOs) - Africa Institute for Energy Governance (AFIEGO), Civic Response on Environment and Development (CRED), National Association of Professional Environmentalists (NAPE/Friends of the Earth Uganda), and Navigators of Development Association (NAVODA).

After more than three years of procedural motions in the first summary proceedings², the legal battle against Total in France is back on: 26 members of communities affected by the Tilenga and East African Crude Oil Pipeline (EACOP) projects in Uganda, human rights defender Maxwell Atuhura and five French and Ugandan CSOs – AFIEGO, Friends of the Earth France, NAPE/Friends of the Earth Uganda, Survie and TASHA Research Institute – have just taken TotalEnergies back to court on the basis of the duty of vigilance law. This time it is an action for damages, aiming at incurring Total's civil liability and seeking compensation for the human rights violations that have been caused since 2017.

¹ Law no. 2017-399 of March 27, 2017 on the duty of vigilance of parent and outsourcing companies. More information in Friends of the Earth France's report *End of the road for transnational corporations ?* (2017).

² In October 2019, Friends of the Earth France, Survie, AFIEGO, CRED, NAPE/Friends of the Earth Uganda and NAVODA took Total to court using the summary proceedings procedure, which should normally enable a faster legal process in view of the urgency of one situation in particular. After an initial two-year procedural battle over the competent court, won by the civil society organizations, the Paris civil court declared the claim inadmissible in February 2023 on controversial procedural grounds. As a result, no ruling has been pronounced on the heart of the matter, i.e. whether or not Total is complying with its duty of vigilance obligations.

The plaintiffs, represented by the attorney Elise Le Gall, are accusing Total of failing to comply with its duty of vigilance obligations and of causing them serious damage:

- The people affected by the Tilenga and EACOP projects have been **deprived of the free use of their land** for more than three or four years, before even receiving compensation, thus **violating their property rights**;
- This has deprived them of their livelihoods, producing **serious food shortages**, even famine in some families, thus **violating their right to adequate food** (the rare food distributions have proved insufficient in both quality and quantity);
- Since May 2022, farmland in some villages has been affected by **repeated flooding caused by the construction of Tilenga's Central Processing Facility (CPF)**;
- **Only a minority of people were able to receive compensation in kind³**, and for the others the financial compensation was largely insufficient;

- The land acquisition by Total was in many cases the result of pressure and intimidation, so the **consent of those affected was vitiated⁴**;
- Several claimants have been **threatened, harassed and arrested** simply for daring to criticize oil projects in Uganda and Tanzania and defend the rights of affected communities.

In the writ of summons, the plaintiffs set out to demonstrate that TotalEnergies SE:

- Did not identify the risks relating to these serious abuses in its vigilance plan,
- failed to act even though it was in a position to identify these risks before they occurred and had been alerted to their existence, and
- failed to take corrective measures once the violations had occurred, even though it had been alerted to their existence.

This case will be heard by the Paris civil court ("*Tribunal judiciaire de Paris*"), which has jurisdiction over all cases based on the French law on duty of vigilance. ■

The Tilenga and EACOP projects involve massive land grabbing: over 118,000 people are having some or all of their land expropriated.

These projects also present risks of irreversible damage to the environment and climate. The Tilenga project plans to drill over 400 oil wells, a third of them in the Murchison Falls National Park on the shores of Lake Albert in Uganda. While the start of drilling is imminent, initial work in the protected natural area and for the construction of the Central Processing Facility is already causing damage.

If completed, the 1445 km-long EACOP pipeline will be the longest heated oil pipeline in the world, going from Hoima in Uganda to Tanga in Tanzania. It will cross regions rich in biodiversity, passing through several protected areas and wildlife corridors, threatening Ramsar wetlands. An oil port is to be built in Tanga, Tanzania, close to marine protected areas, and in an area at risk from tsunamis and cyclones.

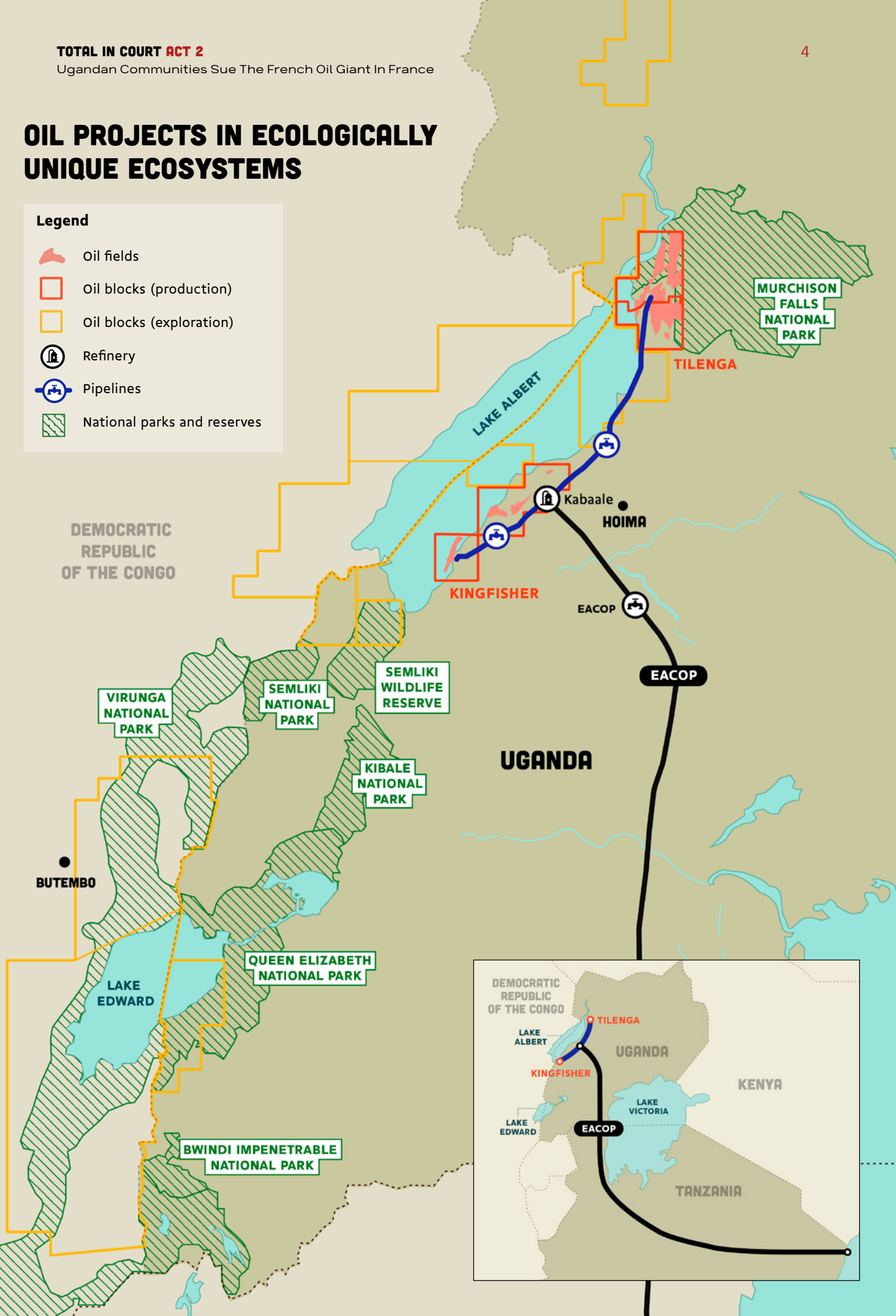
³ Those receiving compensation in kind, also known as "land for land", will receive new land and a new house built by Total, while those receiving financial compensation must themselves buy new land and rebuild a house.

⁴ Vitiating consent is a person's acceptance of something based on misrepresentation, undue influence, duress or mistake by the other party. Affected people's consent has been greatly marred by intimidation but also non-disclosure of key information where illiterate landowners are made to sign documents they do not understand.

OIL PROJECTS IN ECOLOGICALLY UNIQUE ECOSYSTEMS

Legend

-  Oil fields
-  Oil blocks (production)
-  Oil blocks (exploration)
-  Refinery
-  Pipelines
-  National parks and reserves



TILENGA AND EACOP : THE LEGAL BATTLE AGAINST TOTAL RESUMES IN FRANCE

THE DUTY OF VIGILANCE LAW

The French law on the duty of vigilance of parent and outsourcing companies, enacted in 2017, represents an unprecedented first step in the fight against corporate impunity. Although weakened by powerful business lobbying, this legislation is undeniably a world-first, and has rapidly set the standard in the field.

This law resolves a major legal stumbling block, by imposing a duty of care on the parent company, applying not only to its own activities, but also those of companies it directly or indirectly controls, and those of subcontractors and suppliers with whom it has an "*established business relationship*".

In the present case, Total is implementing the Tilenga and EACOP projects mainly through two subsidiaries, TotalEnergies E&P Uganda and TotalEnergies EACOP Holding, and various subcontractors, notably Atacama and Newplan for the process of "*land acquisition and resettlement*" of affected people.

The duty of vigilance law provides for two judicial mechanisms:

The first is an **injunction claim**, which allows the case to be brought before the French courts even before human rights violations have occurred. It aims to get the court to order the company to bring its vigilance plan in compliance with the law,

and to take concrete measures to prevent violations from occurring. **This mechanism was used in the first legal action brought against Total** as well as in the vast majority of other actions based on this new law.

The second judicial mechanism is a **claim for compensation (action for damages)**, which allows to incur a company's civil liability, and order the company to pay compensation to those affected by its activities, or those of its subsidiaries or subcontractors. It is **this second mechanism that is being used in this new lawsuit**, because unfortunately, the human rights violations that the first action was designed to prevent, mainly due to the eviction of Ugandan and Tanzanian communities without fair and prior compensation, have now become reality.

TOTAL'S BREACHES OF ITS DUTY OF VIGILANCE

Under the duty of vigilance law, French transnational corporations are required to **draw up and publish a "vigilance plan"** detailing the human rights and environmental risks identified in their operations worldwide, as well as the concrete measures taken to prevent serious human rights violations and mitigate these risks. Above all, they must ensure that these measures are **effectively deployed and implemented** in all their activities, including those carried out by their subsidiaries, subcontractors and suppliers worldwide.

The duty of vigilance obligation exists **independently of the publication of the plan**. In other words, merely publishing a vigilance plan does not mean that the company has complied with its obligation.

Despite the fact that Total states that it operates in *"more than 130 countries in varied, complex economic and socio-cultural settings"* and in several different business sectors, **all the vigilance plans published by the company since 2018 present only a very brief list of risks** to human rights and the environment, set out in general terms, without making it possible to understand their severity, frequency, and probability of occurrence.



DIFFICULT ACCESS TO JUSTICE

Bringing an action for damages can be an uphill battle. In fact, the burden of proof rests with the plaintiffs, who must demonstrate to the judge that violations have occurred and that these violations and subsequent damage are the result of a failure to comply with its vigilance obligations, i.e. a failure to draw up and/or effectively implement a vigilance plan.

However, it is very difficult for those affected and for civil society organizations to gather the necessary evidence, as much of the key information is held by the company itself. Added to this are the dangers and difficulties of collecting evidence and testimony on the ground in authoritarian countries such as Uganda, with members of communities and CSOs suffering threats and harassment.

Reversing the burden of proof would have placed the onus on companies to demonstrate that they are not responsible for the acts of which they are accused, thus re-establishing a form of procedural equality between those affected and the corporations.





© Lambert Coleman / Hans Lucas

Since the risks are not precisely identified and concretely linked to major projects such as Tilenga and EACOP, it is impossible to implement effective vigilance measures. Thus, **Total's vigilance plans contain no specific measures to prevent or mitigate risks**, even though they are supposed to address the mapped risks point-by-point. For example, Total's vigilance plans do not include any measures to prevent the displacement of populations, the restriction of access to their livelihoods, or threats to human rights defenders.

However, the plaintiffs have demonstrated that even before Total launched its oil projects in Uganda and Tanzania, **the oil major was in a position to identify Tilenga and EACOP as entailing major risks of human rights violations and environmental damage**. These projects involve massive evictions, and the company has chosen to set up operations in two authoritarian countries.

Subsequently, **Total was repeatedly alerted** to these risks and their occurrence, not only by the affected people themselves, but also by civil society field investigation, press articles and even by United Nations Special Rapporteurs and a European Parliament resolution. According to the plaintiffs, the company has once again failed in its duty of vigilance, since it **did not act on these warnings when it should have taken corrective measures** to mitigate the risks and put an end to the human rights violations.

DAMAGES FOR WHICH COMPENSATION IS SOUGHT

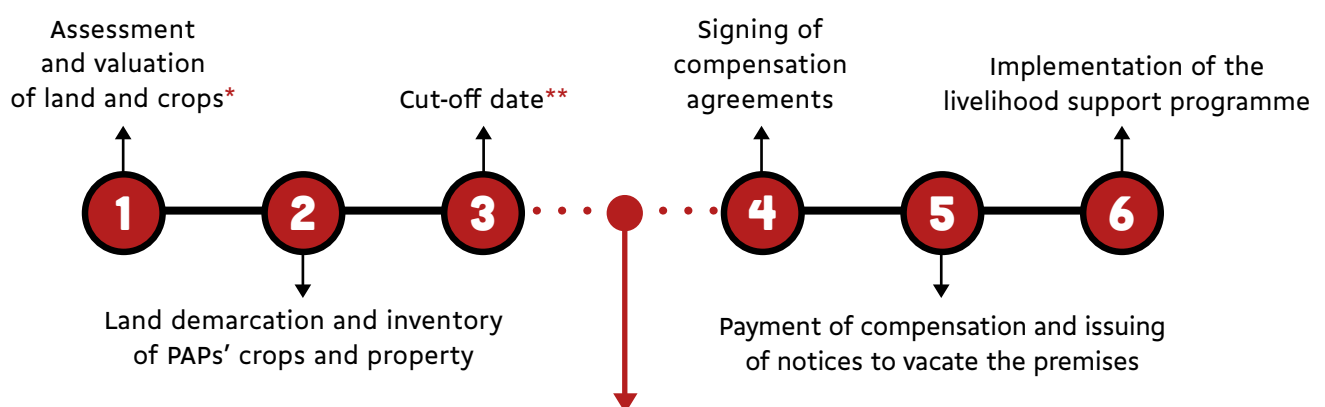
VIOLATIONS OF LAND RIGHTS

The first and foremost social impact of this mega-oil project is a massive land grab in Uganda and Tanzania: the Tilenga project involves the total or partial eviction of nearly 32,000 people, while the EACOP project affects the land of over 86,000 people.

The process and conditions of “*land acquisition and resettlement*” are detailed for each project in different “*Resettlement Action Plans*” (“RAPs”) for each item of infrastructure and project zone.

In fact, the land was acquired without the free consent of the families, and Total and its subcontractors imposed severe restrictions on the people affected by these two projects, starting from a “cut-off date” set by the company. This cut-off date was simply intended to mark a point when the goods and crops were to be valued for the purposes of calculating compensation. And yet, from that date onwards, affected people were deprived of the free use of their land, on which they depend for survival, for more than three or even four years before receiving compensation.

THE LAND ACQUISITION PROCESS



PAPs await compensation for one to more than four years, during which time they cannot freely use their land

*The land compensation rates are based on a study carried out by the company. The valuation of PAPs' land, crops and assets, also carried out by the company, is then approved by the Ugandan and Tanzanian administrations.

** Compensation is supposed to be paid shortly after this date.

"Just after the cut-off date, they told us to stop using the land. They told us "don't even go there". It was RAP team Total & Atacama who said that. They told us that anyone we find [on these lands] will be taken to court. Everyone stopped using the land because we were afraid. (...) I tried to use my land in October 2018 because the situation was very difficult for me and my family, and I received a lot of threats."

Fred Mwesigwa



From a total ban to "tolerance" for seasonal crops

Questioned about the halt of land cultivation, Total stated in 2019 that it was a simple communication problem. However, the same phenomenon was repeated in the other Tilenga RAPs and in the EACOP project, both in Uganda and Tanzania.

Later and in certain regions, Total changed its tune, claiming that it was possible to cultivate the land after all, but only for seasonal crops that grow in less than three months.

However, this is still a violation of property rights and does not solve the problem: first because these seasonal crops only grow in certain regions, and more importantly, they are totally insufficient to enable the families to feed themselves and meet their other needs, such as paying school fees or health care expenses.

"I was told (...) "you are not allowed to further use your land to grow perennial crops, but rather you can grow such which don't last beyond two months". My life is difficult now because it is this land that they stopped me from using, and that I used to get food and feed my family of 12 members."

Ismail Bwowe

Unfair and long-delayed compensation

According to the Ugandan constitution and the international standards that Total claims to respect, the compensation paid must be fair and given prior to the loss of the land. In addition, the company should give preference to compensation in kind rather than financial compensation.

In fact, only 3-5% of those affected have been able to receive a new home built on land purchased by Total. Indeed, many families were not eligible for

compensation in kind, because their homes had been classified as secondary houses by Total, even though they had lived there for many years.

In addition, those affected have complained of poor valuations of their land and crops: the amount offered for the land is below market prices, and there are numerous "errors" concerning the quantity or maturity of crops. Compensation is therefore insufficient to buy back equivalent land and crops.

These irregularities were even revealed by a former employee of a Total subcontractor: *"I worked for Atacama during survey and assessment of crops and land. Some of the figures for PAPs [project-affected persons] that I had counted during the survey did not match with assessment figures, i.e. what was counted during the assessment was not the same as [what was reported] on the evaluation form."*

Finally, delays in compensation continued to grow, reaching more than three or even four years, during which time those affected were deprived of their livelihoods.

"I wanted to plant more jackfruit trees on my land, but they stopped us from planting long lasting crops on that land, yet it is the source of income for my family. It's now four years down the road, but I still haven't received yet any money."

A plaintiff who wishes to remain anonymous

Vitiated content

Many of those affected claim to have had to sign forms under pressure, without fully understanding what was written in them, sometimes even without knowing the exact size of the land to be taken or the amount of compensation to be received. The threat of legal expropriation was also repeatedly used by the company.

"I have not freely signed the agreement, except [it is only because of] the delays, now we were stricken by poverty, which forced me to consent."

Magrate Nyakato

"The pressure was really high: they came to our house several times – Atacama, petroleum authority and Total – to intimidate us and force us to sign."

Kisembo Rugadya



VIOLATION OF THE RIGHT TO FOOD

Agricultural land is the main source of food and income for the affected communities. The restrictions imposed by Total even before compensation was paid had a dramatic impact on the families, who attest to having suffered greatly from food shortages and even starvation.

"When they announced the cut off dates, they stopped me from using my land. I suffered because I didn't have what to eat and feed my family, because I had no source of income"

James Kasegu

As part of each RAP, the company has set up food distribution programs, but these only start once the compensation has been paid, and often with further delays. Nearly 15,000 households (around 95,000 people) were still waiting for this food support in December 2022, even though they had not been able to use their land for more than three or even four years.

What's more, these programs have proven to be flawed. In meetings and through petitions, those affected alerted Total to the fact that food support rations were incomplete, did not offer satisfactory nutrition, and were not distributed in sufficient quantities, particularly for large families.

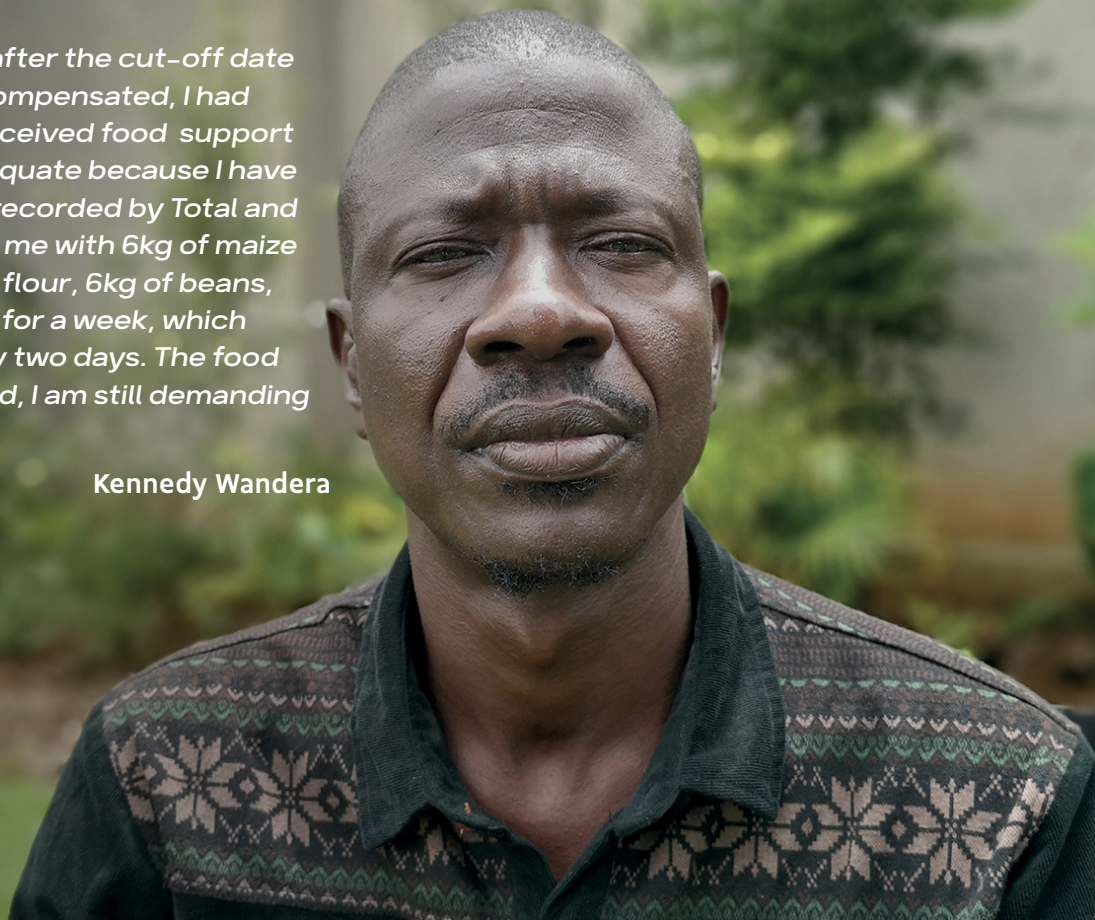
Lastly, these food distributions are allocated for too short a period, leaving no time for those affected to grow new crops to feed themselves. In fact, two evaluation reports commissioned by Total on RAP 1 pointed this out, without the company following their recommendation to extend the duration of the program.

"I got food but it was not enough, it was for a period of six months yet our cassava takes one year to mature."

Korokoni Byetiima

"I spent three years after the cut-off date before I have been compensated, I had no food to eat (...) I received food support however it was inadequate because I have 12 people who were recorded by Total and they used to provide me with 6kg of maize flour, 6kg of cassava flour, 6kg of beans, 2 liters of cooking oil for a week, which we use to eat for only two days. The food was not fully provided, I am still demanding [for it] even now."

Kennedy Wandera



FLOODED LAND FOLLOWING INITIAL WORK

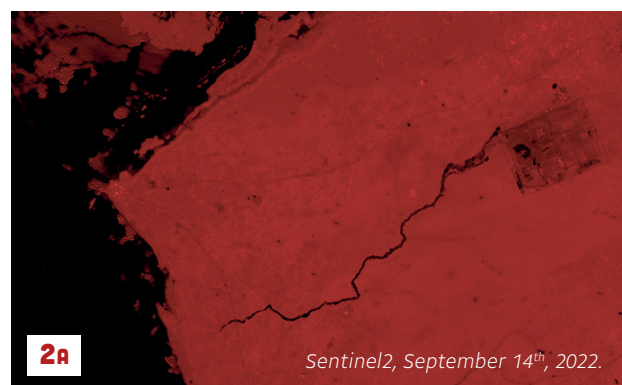
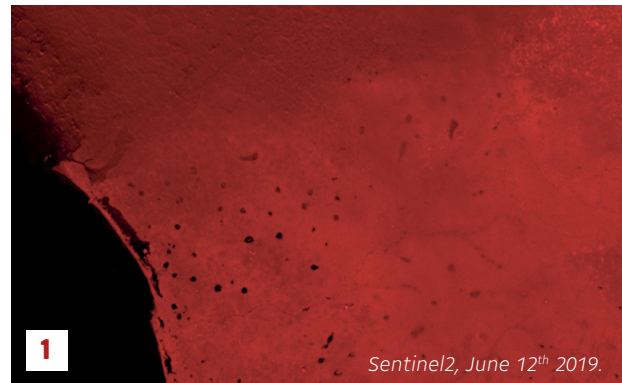
As part of the Tilenga project, Total began work in 2021 on the construction of the so-called "CPF" plant, which aims to enable the processing of around 190,000 barrels of oil per day, by separating the oil, water and gas coming from the drilling platforms.

However, Total failed to take into account the risk of flooding in this area, even though it was identifiable and the company had been alerted to the issue by local residents. The impact assessment commissioned in 2019 stated: *"It is possible that this work phase will have an impact on the risk of flooding due to changes on the ground surface. (...) This could lead to the creation of new surface water flow paths, soil erosion and increased flood risk downstream"*. However, in a perfectly surprising and contradictory fashion, flood risks were classified as *"insignificant"* or *"low"*.

It has to be said that the risks have materialized, as several major floods occurred in 2022 and 2023, inundating the surrounding farmland with water from the construction site, which is therefore considered polluted.

Based on satellite images, the plaintiffs have demonstrated that these floods were indeed caused by the CPF construction work. The starting point of the flooding is easily identified at the north-western end of the industrial area. In addition, it can be seen that after an initial flood around May 2022, a spill trail formed, creating new runoff and joining pre-existing tributaries further downstream (see satellite images 2). This caused several floods and spills into Lake Albert, more than 8km west of the CPF. This phenomenon had never occurred before the start of the work, even after major floods, for which only a few occasional areas of dampness were observed (see satellite image 1).


The plaintiff Magrate Nyakato testified in the press *"that she had never seen such destructive and terrifying floods in her life"*.



The satellite images above highlight very wet areas in black.

1. Before the CPF construction work:
image taken in 2019, after a major flood.

2a and 2b. Post-construction:
images taken following flooding caused by the CPF in September 2022. In the image 2a, the rectangle at top right is the area of construction of the CPF.



"Water specifically comes from the CPF area and it goes to our gardens. The water is too much! It has destroyed crops belonging to several families, including mine . (...) My watermelon, grafted orange and jackfruit trees were destroyed by the water from the CPF"

Jelousy Mugisha

THREATS, HARASSMENT AND ARRESTS

Faced with the multiple human rights violations caused by the Tilenga and EACOP projects, as well as the risks of irreversible damage to the environment and climate, members of the affected communities and civil society organizations have increasingly mobilized in recent years.

This has been met with an increase in threats, intimidation and arrests targeting anyone daring to criticize the oil projects. This worrying situation has been the subject of four communications from UN Special Rapporteurs in less than two years, two of which were addressed to Total CEO Patrick Pouyanné.

Here again, the risk was completely foreseeable by the company, as Tanzania and Uganda are among the worst countries in the world in terms of freedom of expression and demonstration.

Several claimants have been subjected to repeated harassment. This is particularly true of Jelousy Mugisha and Fred Mwesigwa, who came to France in December 2019 for the very first court hearing. Upon their return to Uganda, one was arrested at the airport and the other was attacked in his home ten days later. The threats against them continue to this day.

"This happened to me when I returned from France, where I testified; I was also told that if we won the case in France, they would kill me."

Fred Mwesigwa

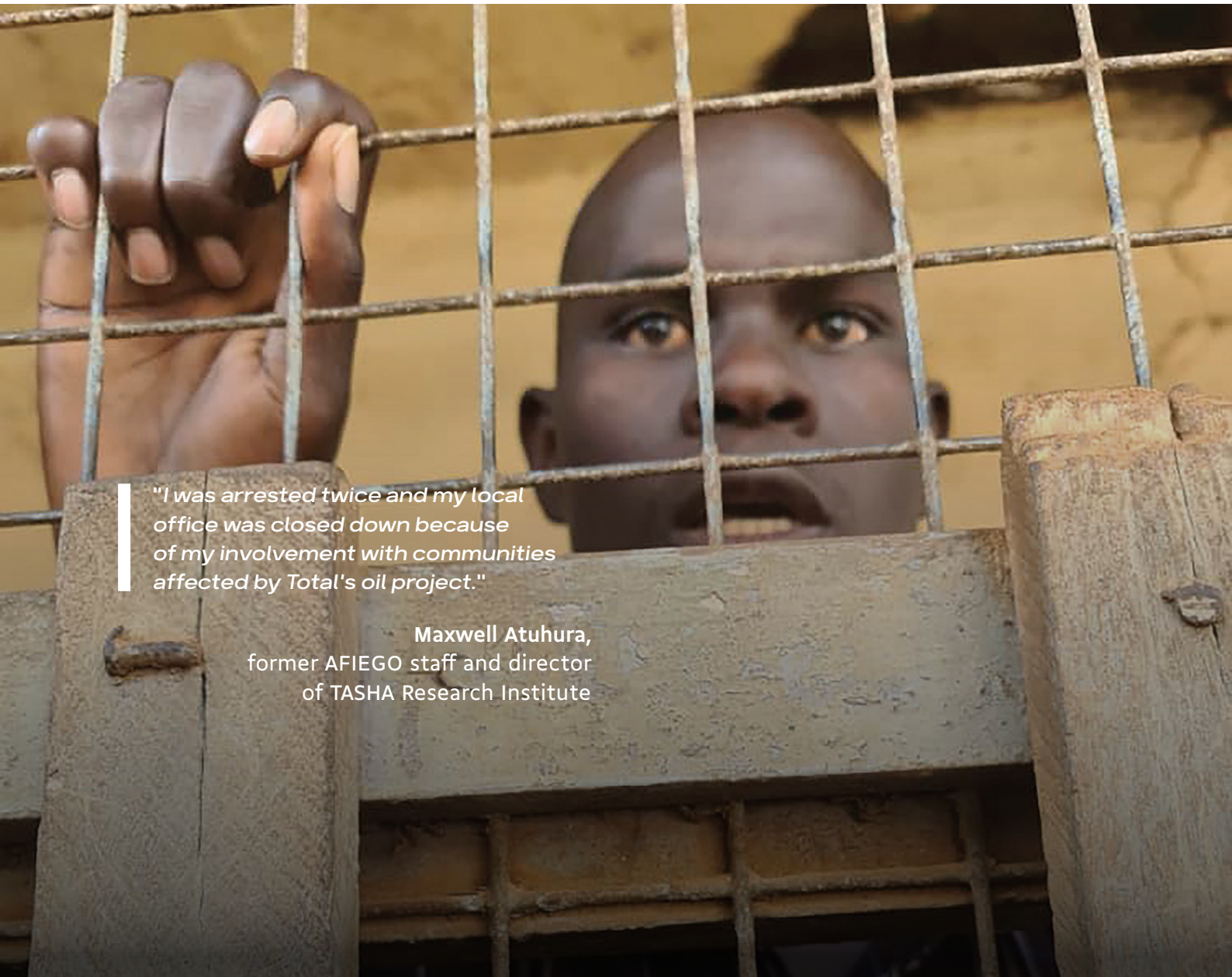
"I've struggled a lot when writing some petitions, but in my struggle, I've faced the problem of being arrested. I remember that I was taken into a cell at police station. (...) And after that I was charged with inciting violence, sabotaging government programs, (...) and finally, conducting unlawfull assemblies."

A plaintiff who wishes to remain anonymous

"When I was arrested, I was scared, because since I was born, I had never been to jail."

Jelousy Mugisha

Some members of plaintiff civil society organizations have also been targeted: several AFIEGO staff have been arbitrarily arrested on multiple occasions. This is also the case for Maxwell Atuhura, who has been the victim of numerous threats and break-ins at his home, and who was also arbitrarily arrested twice in 2022. He is also an individual plaintiff in this new lawsuit, seeking compensation for the violations he suffered as a human rights defender. ■



"I was arrested twice and my local office was closed down because of my involvement with communities affected by Total's oil project."

Maxwell Atuhura,
former AFIEGO staff and director
of TASHA Research Institute

TOTAL IN COURT

ACT 2

Ugandan Communities Sue The French Oil Giant in France

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FOR FURTHER DETAILS, READ OUR LAST INVESTIGATION REPORTS:

EACOP, a disaster in the making - Research into Total's mega pipeline project in Tanzania (2022) ;

A nightmare named Total - An Alarming Rise in Human Rights Violations in Uganda and Tanzania (2020).

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