

**SERIOUS BREACHES OF THE  
DUTY OF VIGILANCE LAW :  
THE CASE OF**

# **TOTAL IN UGANDA**

**JUNE 2019**



**Les Amis  
de la Terre  
France**





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I.

# INTRODUCTION



# 1. A NEW LEGAL FRAMEWORK: THE FRENCH CORPORATE DUTY OF VIGILANCE LAW

## a) An overview of the corporate duty of vigilance law

The French law on the duty of vigilance of parent and outsourcing companies was promulgated in March 2017.<sup>1</sup> The law, the result of many years of civil society campaigning and advocacy, is a first step in addressing the legal impunity of transnational corporations. The initial idea was promoted by NGOs and trade unions and endorsed by François Hollande during his 2012 presidential campaign. After the Rana Plaza disaster in Bangladesh, in April 2013, the urgency of the situation became apparent. It still took a legislative marathon<sup>2</sup> that lasted almost three and a half years to have the law eventually passed. In alliance with other NGOs and trade unions, Friends of the Earth France played a key role in this process, and Survie supported them all along the way.

Although the pressure of big business lobbying has resulted in a law that is, in some respects, a watered-down version of what was originally intended, it remains an international breakthrough. And it has quickly become a key benchmark. By tackling the "corporate veil", for the first time, those that are economically responsible for the actions of legally distinct entities can be prosecuted in France. Despite an obvious relationship of economic control, subsidiaries and subcontractors of transnational corporations still remain distinct legal persons (companies registered in various countries), which up until now, were not legally bound to parent or outsourcing companies. This meant

that the latter could not be held accountable for human rights or environmental violations caused by their operations, in France or abroad. The law fills this legal gap by imposing an obligation of vigilance on parent companies covering not only their own operations, but also those of the companies they control directly or indirectly<sup>3</sup> as well as those of subcontractors and suppliers with which they have an "established commercial relationship."

The law is wide in scope, seeking to prevent "serious violations of human rights and fundamental freedoms, health and safety of persons and the environment" in all sectors.

Companies covered by the law have three obligations: to establish, publish and effectively implement a "vigilance plan", which includes "measures of reasonable vigilance" to identify risks and prevent serious violations. Article 1 of the law, which modifies article L. 225-102-4 of the French Commercial Code, stipulates that vigilance plan must include:

"1° A mapping that identifies, analyses and ranks risks;

2° Procedures to regularly assess, in accordance with the risk mapping, the situation of subsidiaries, subcontractors or suppliers with whom the company maintains an established commercial relationship;

3° Appropriate actions to mitigate risks or prevent serious violations;

4° An alert mechanism that collects potential or actual risks, developed in working partnership with the trade union organisations representative of the company concerned;

5° A monitoring scheme to follow up on the measures implemented and assess their efficiency."

1 Law No. 2017-399 of 27 March 2017 on the corporate duty of vigilance for parent and instructing companies. See: <https://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000034290626&categorieLien=id>

2 See "Le parcours du combattant de la loi sur le devoir de vigilance des multinationals": <https://www.amisdelaterre.org/Le-parcours-du-combattant-de-la-loi-sur-le-devoir-de-vigilance-des.html>

3 As defined by article L. 233-16 II of the French Commercial Code: companies in which they, directly or indirectly, hold a majority of voting rights; appointing for a period of two consecutive financial years the majority of the members of the administration, management or supervisory bodies, or over which it exercises a dominant influence by virtue of a contract or statutory clauses.

## b) Total's vigilance plan and its normative standards

The registered company Total SA, the largest company in France, is well above the law's application thresholds,<sup>4</sup> and therefore subject to the new obligations required by the corporate duty of vigilance law.

Total published its first vigilance plan in its 2017 annual report. The plan, however, does not meet the law's requirements,<sup>5</sup> as has been the case with the majority of first vigilance plans published by corporations under the duty of vigilance law. In 2019, Total updated its vigilance plan in its 2018 annual report, alongside the report on the plan's effective implementation.<sup>6</sup> This new plan still falls short of what is required, as does its effective implementation, as illustrated by Total's operations in Uganda.

In its vigilance plan,<sup>7</sup> the company states that, "Total's Vigilance Plan is based primarily on the Group's Code of Conduct." Total undertakes, through its code of conduct<sup>8</sup> and its Human

Rights Briefing Paper,<sup>9</sup> also mentioned in the vigilance plan, to comply with a number of international legal standards:

- The principles of the Universal Declaration of Human Rights;
- The United Nations Guiding Principles on Business and Human Rights;
- The principles of the International Labour Organisation's fundamental Conventions;
- The principles of the United Nations Global Compact;
- The OECD Guidelines for Multinational Enterprises;
- The Voluntary Principles on Security and Human Rights.

Total also commits<sup>10</sup> to comply with the environmental and social sustainability performance standards of the International Financial Corporation,<sup>11</sup> part of the World Bank group (known as the "IFC Performance Standards").

In addition, the United Nations Guiding Principles on Business and Human Rights (**UNGPs**), which Total undertakes to adhere to, stipulate that: "An authoritative list of the core internationally recognized human rights is contained in the International Bill of Human Rights (consisting of the Universal Declaration of Human Rights and the main instruments through which it has been codified: the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights), coupled

4 The law applies to all companies registered in France: i) which have, at the end of two consecutive financial years, at least five thousand employees of their own and in their direct or indirect subsidiaries with a head office in France; or ii) at least ten thousand employees of their own and in their direct or indirect subsidiaries with a head office in France or abroad.

5 See our report "Law on duty of vigilance of parent and outsourcing companies - Year 1 : companies must do better", February 2019, published by ActionAid France-Peuples Solidaires, Friends of the Earth France, Amnesty International France, CCFD-Terre Solidaire, collectif Éthique sur l'étiquette and Sherpa. The report includes a section on the extractive sector, which examines the vigilance plans of three corporations, including Total. [https://www.amisdelaterre.org/IMG/pdf/2019\\_collective\\_report\\_-\\_duty\\_of\\_vigilance\\_year\\_1.pdf](https://www.amisdelaterre.org/IMG/pdf/2019_collective_report_-_duty_of_vigilance_year_1.pdf)

6 See: <https://www.sustainable-performance.total.com/en/reporting/vigilance-plan>

7 Vigilance plan published in Total's 2018 Registration Document, pages 93 to 110. Also available here: <https://www.sustainable-performance.total.com/fr/reporting/plan-de-vigilance>

8 Total's Code of conduct, updated December 2018, quoted page 95 of the vigilance plan: [https://www.total.com/sites/default/files/atoms/files/total\\_code\\_of\\_conduct\\_va\\_0.pdf](https://www.total.com/sites/default/files/atoms/files/total_code_of_conduct_va_0.pdf)

9 Human Rights Briefing Paper, April 2018 update, reference to page 98 of the vigilance plan: [https://www.sustainable-performance.total.com/sites/shared/sustainable/files/atoms/files/final\\_1438\\_total\\_fr\\_humanrights20188\\_planches\\_0.pdf](https://www.sustainable-performance.total.com/sites/shared/sustainable/files/atoms/files/final_1438_total_fr_humanrights20188_planches_0.pdf)

10 This commitment is mentioned in the Human Rights Briefing Paper (April 2018 update) page 27, as well as in the documents established for specific development projects such as the "Land and Acquisition Resettlement Framework" for projects in Uganda.

11 [https://www.ifc.org/wps/wcm/connect/24e6bfc3-5de3-444d-be9b-226188c95454/PS\\_English\\_2012\\_Full-Document.pdf?MOD=AJPERES&CVID=jkV-X6h](https://www.ifc.org/wps/wcm/connect/24e6bfc3-5de3-444d-be9b-226188c95454/PS_English_2012_Full-Document.pdf?MOD=AJPERES&CVID=jkV-X6h)

with the principles concerning fundamental rights in the eight ILO core conventions as set out in the Declaration on Fundamental Principles and Rights at Work.” It is further specified that: “Depending on circumstances, business enterprises may need to consider additional standards.” Similarly, the IFC Performance Standards also refer to various international conventions in the field of environmental law and labour rights.

Total is, therefore, bound by all these international legal standards.

Despite the commitments made by Total, investigations conducted by Friends of the Earth France and Survie, as well as information provided by numerous local partners, NGOs and institutions,<sup>12</sup> conclude that the Tilenga and EACOP projects entail serious violations and risks of violations of human rights and fundamental freedoms, health and safety of persons and of the environment.

## 2. TOTAL'S OPERATIONS IN UGANDA

Total is present in Uganda through its wholly owned subsidiary Total Exploration & Production Uganda B.V (hereinafter **Total Uganda**), developing an oil project called “Tilenga” on the shores of Lake Albert. Total owns 54.9% of the project and is its operator. Its partners are the Chinese oil company CNOOC, with a 33.33% stake and Britain-based Tullow Oil with a 11.77% share. The oil development is part of a larger project, which includes the construction of a giant oil pipeline (“East African Crude Oil Pipeline”, hereinafter **EACOP**, developed by Total

East Africa Midstream, another wholly owned subsidiary) through Uganda and Tanzania to transport the oil extracted by Lake Albert. According to a presentation by the consortium, the 1,445km-long pipeline will be “the longest electrically heated pipeline in the world”.<sup>13</sup>

The Tilenga project encompasses six oilfields. Total plans to drill more than 400 wells, mostly in the Murchison Falls protected natural area, in order to produce approximately 200,000 barrels a day. The project also includes related infrastructure such as an industrial zone with an oil processing plant (Central Processing Facility, hereinafter **CPF**), a pipeline network to connect the wells, CPF and Lake Albert, and a pipeline to transport the oil to a refinery in Kabaale, in the Hoima district, built by the Ugandan government. Tilenga and EACOP involve large-scale land acquisitions that require communities affected by expropriations to receive compensation. Consequently, Total's operations in Uganda involve risks of serious human rights and environmental violations, detailed in the present report.

In spite of these risks, Total's 2018 vigilance plan mentions no specific vigilance measures for the Tilenga and EACOP projects. The vigilance plan thus fails to comply with the duty of vigilance law, as it does not map risks. The plan is clearly inadequate, as potential risks caused by the group's operations are only described in a perfunctory manner. Only very general risks are mentioned, and the plan does not include a detailed report or rank risks based on the group's actual operations (e.g. by sector, by geographical area, by activity, by company/supplier/subcontractor, etc.).

12 See Uganda Consortium on Corporate Accountability (UCCA), “One rapid response visit to PAP in Buliisa”, March 2019, as well as: <https://www.rosalux.co.tz/2018/05/24/preying-on-the-albertine-a-spotlight-over-total-ep-operations-in-ugandas-oil-region/> and: <https://www.albertinewatchdog.org/2019/05/26/an-independent-investigation-reveals-french-oil-company-total-and-atacama-consulting-are-abusing-the-rights-of-the-community-in-ngwedu-buliisa-district/>

13 See the EACOP website: <https://eacop.com/about-us/overview/>

Only in Total's Human Rights Briefing Paper, referred to in the vigilance plan, is there any mention of the Tilenga and EACOP projects, and these are only glossed over twice.<sup>14</sup>

In spite of Total SA's commitment to adhere to a body of international standards, the company's vigilance plan is clearly inadequate, as the risks involved in its operations as well as those of its subsidiaries, subcontractors and suppliers, as defined by the duty of vigilance law, aren't identified or adequately identified, especially in regards to the Tilenga and EACOP projects.

Total's vigilance plan does not, in fact, comply with any of the provisions defined by law (cf. a) above) as regards the Tilenga and EACOP projects.

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<sup>14</sup> Pages 27 and 29 of Total's Human Rights Briefing Paper, April 2018 update, op. cit.



## **II.**

# **VIOLATIONS OF HUMAN RIGHTS, FUNDAMENTAL FREEDOMS AND THE HEALTH AND SAFETY OF PERSONS UNDER THE TILenga PROJECT**



Total Uganda has subcontracted a part of the land acquisition and resettlement programmes for those affected by the Tilenga project to a company called Atacama Consulting Ltd, in partnership with Synergie Global Consulting Limited and Nomad Consulting.

Despite Total Uganda's commitment to ensure these land acquisition and resettlement programmes comply with specific conditions, the majority of human rights violations have occurred under these programmes. The conditions are defined in a December 2016 document signed by the oil companies and the government of Uganda, the "Land Acquisition and Resettlement Framework" (hereinafter **LARF**).<sup>15</sup> This document is detailed in Total's Human Rights Briefing Paper, referred to in the vigilance plan:

"LARF proposes a voluntary and consistent approach that is compliant with Ugandan legislation, international standards and best practices to further safeguard against social risks, such as, but not limited to those associated with involuntary resettlement. The objective of LARF is to:

- Clearly and comprehensively define a framework of terminology, objectives, policies, principles and organizational arrangements that will govern resettlement activities related to the project;
- Assist with the application of, and compliance with national legal requirements and International Finance Corporation (IFC) standards; and
- Provide practical guidance to project personnel (including joint venture partners, contractors and consultants) in the planning and implementing of the overall project."

LARF establishes a procedure for resettling communities in accordance with the principles of the UNGPs and the IFC, and, which consequently,

<sup>15</sup> [https://pau.go.ug/site/assets/files/1116/larf\\_land\\_acquisition.pdf](https://pau.go.ug/site/assets/files/1116/larf_land_acquisition.pdf)

respects the rights of affected communities. The Tilenga project's environmental and social impact assessment (hereinafter **ESIA**)<sup>16</sup> published by Total and its partners also refers to the same standards for mitigating the impacts of land acquisition and involuntary resettlements.

However, evidence provided by local organisations and statements collected during our own investigations report serious breaches in the implementation of resettlement procedures, which violate the human rights of affected communities.

## 1. VIOLATIONS OF THE RIGHT TO DEVELOPMENT OF LOCAL COMMUNITIES IN THE DISPLACEMENT AND RESETTLEMENT OF AFFECTED POPULATIONS

In Article 1 of the United Nations Declaration on the Right to Development, this right is defined as "an inalienable human right by virtue of which every human person and all peoples are entitled to participate in, contribute to, and enjoy economic, social, cultural and political development, in which all human rights and fundamental freedoms can be fully realized."

Article 25 of Universal Declaration of Human Rights (hereinafter **UDHR**) on the "right to an adequate standard of living" specifically mentions the right to security in the event of unemployment. When people are displaced, their right to livelihood is threatened because they lose both their homes and their occupation – cattle breeding, fishing, hunting, trading or other similar income-earning activities.<sup>17</sup> Similarly, Article 11 of the International

<sup>16</sup> <https://www.nema.go.ug/media/esia-report-tilenga-project-available-public-review-and-comments>

<sup>17</sup> "Les déplacements causés par des projets de développement," Groupe International de Travail pour les Peuples Autochtones, p3 - <https://www.gitpa.org/Autochtone%20GITPA%20300/gitpa300-29DEPLACEMENTSTEXREFIDMC.pdf>

Covenant on Economic, Social and Cultural Rights (hereinafter **ICESCR**) recognises “the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions.”<sup>18</sup>

As mentioned above, both the UDHR and ICESCR are part of the body of international standards which Total has committed to adhering to, both directly in its vigilance plan and indirectly through its adherence to the UNGPs, referred to in the vigilance plan.

Under those standards, the right to development of communities affected by an industrial “development” project is violated if the realisation of the project results in a reduced standard of living, and therefore to their impoverishment.

In order to prevent the violation of this right, the IFC Performance Standard 5, “Land acquisition and involuntary resettlement” stipulates that land acquisitions and involuntary resettlements must aim “to improve, or restore, the livelihoods and standards of living of displaced persons.” Furthermore, according to Article 26 of the Constitution of Uganda, “the compulsory taking of possession or acquisition of property is made under a law which makes provision for— (i) prompt payment of fair and adequate compensation, prior to the taking of possession or acquisition of the property.”<sup>19</sup> The impoverishment of local

communities due to these land acquisitions would thus constitute a serious violation of their right to development and of their right to an adequate standard of living.

As mentioned previously, Total Uganda and its partners have produced two documents in order to identify the risks caused by their operations and establish mitigation mechanisms for potential violations: the ESIA and the LARF.

Both the LARF and the ESIA identifies risks of a reduced standard of living and impoverishment of local communities due to involuntary resettlement.

Indeed, Chapter 6.4 of the non-technical summary of the ESIA addresses the socio-economic impacts of the Tilenga project on local communities, and includes a table which summarises the numerous potential negative impacts of the Tilenga project. It specifically states that the physical and economic displacement of communities affected by the Tilenga project may have adverse effects on their standard of living.<sup>20</sup>

The ESIA also states that physical and economic displacements due to land acquisition must be carried out in accordance with the LARF and the various “Resettlement Action Plans” (hereinafter **RAP**), especially the IFC Performance Standard 5: “Land acquisition and involuntary resettlement”. To our knowledge, only “RAP No.1” has been published, despite the fact that land acquisition processes have been initiated for subsequent RAPs.

Paragraph 8.3 of the LARF includes a compensation procedure for land acquisition related to the Tilenga project, aiming to improve the standard of living of affected communities.

The aforementioned standards, however, have not been adequately implemented, and Ugandan partners have provided factual evidence which suggest that the compensation procedures for communities affected by the Resettlement

<sup>18</sup> <https://www.ohchr.org/EN/ProfessionalInterest/Pages/CESCR.aspx>

<sup>19</sup> Constitution of the Republic of Uganda, 1995. The full text of Article 26: “26. Protection from deprivation of property. (1) Every person has a right to own property either individually or in association with others. (2) No person shall be compulsorily deprived of property or any interest in or right over property of any description except where the following conditions are satisfied— (a) the taking of possession or acquisition is necessary for public use or in the interest of defence, public safety, public order, public morality or public health; and (b) **the compulsory taking of possession or acquisition of property is made under a law which makes provision for— (i) prompt payment of fair and adequate compensation, prior to the taking of possession or acquisition of the property;** and (ii) a right of access to a court of law by any person who has an interest or right over the property.” Available here: <https://www.wipo.int/edocs/lexdocs/laws/en/ug/ug023en.pdf>

<sup>20</sup> Non-technical Summary ESIA, p.84



Action Plan No.1 (hereinafter **RAP 1**) and land acquisition carried out by Total and its subcontractor Atacama Consulting did not seek to “improve, or restore, the livelihoods and standards of living of displaced persons.” These procedures violated the right to development and the right to an adequate standard of living of the communities affected by RAP 1, as they contributed to their impoverishment. Statements collected directly by Friends of the Earth France and Survie raise the same concerns.

Problems reported with regard to the compensation procedures concern: (a) failure to respect the right to choose the type of land compensation, (b) procedures for the compensation of homes, land and crops, and (c) fixed compensation rates for land and crops.

#### **a) Failure to respect the right to choose the type of land compensation (in kind/in cash)**

According to the LARF (p. 42) and the ESIA, and in accordance with international standards

that Total has undertaken to comply with, the communities affected by the Tilenga project are entitled to choose between a payment in kind (“land to land”) or a monetary compensation (“cash compensation”) for the acquisition of their land.

The IFC Performance Standard 5 (paragraph 21) states that corporations should prioritise compensation in kind over cash compensations in order to improve, or restore, the standard of living of affected communities.

Furthermore, paragraph 20 states, “If people living in the project area are required to move to another location, the client<sup>21</sup> will (i) offer displaced persons choices among feasible resettlement options, including adequate replacement housing or cash compensation where appropriate; and (ii) provide relocation assistance suited to the needs of each group of displaced persons. New resettlement sites built for displaced persons must offer improved

<sup>21</sup> In the IFC Performance Standards, the “client” is the company that develops a project.

living conditions. The displaced persons' preferences with respect to relocating in pre-existing communities and groups will be taken into consideration. Existing social and cultural institutions of the displaced persons and any host communities will be respected."

Uganda organisations, however, including the UCCA (Uganda Consortium on Corporate Accountability) coalition, report that Atacama Consulting has forced persons affected by the project to accept a cash compensation, even though the rate of 3.5 millions Uganda Shillings per acre did not enable them to purchase new land equivalent to that lost.

Project-affected people (hereinafter **PAPs**), however, told the staff of Atacama Consulting and the Chief Government Valuer (the Ugandan Government agent in charge of setting the compensation rate) that they would prefer compensation in kind to a cash compensation, as the compensation rate (3.5m Uganda Shillings per acre) seemed too low.

Giving communities little choice in regards to the type of compensation inevitably jeopardised the PAPs's ability to restore their livelihoods and their standard of living. The PAPs report that even when Total Uganda and Atacama Consulting did agree to provide compensation in kind, they deliberately chose land in areas that were not among the PAPs's stated choices. The PAPs argued that compensation in kind should involve acquiring land suitable for both grazing and for crops, but their requests were not taken into account. The PAPs also accuse Atacama Consulting of trying to separate families by offering plots of land too small to accommodate a clan or household.

Total Uganda and Atacama Consulting forced PAPs to choose land in only four villages, all of which are close to the upcoming industrial zone in Buliisa (CPF): Uduk II, Kisomere, Kirama and Kigwera.<sup>22</sup> Yet, the PAPs had clearly stated

that they wanted to move away from oil-related activities so as not to endure, once again, the adverse effects of this industry (dust, noise, smoke, the risk of further land acquisitions by oil project operators, etc.). The deal also required that the price of the new land be no more than 3.5m Uganda Shillings per acre. There is actually very little land for sale available at that price in the four villages, especially for families or clans that owned large plots of land. Although the PAPs raised this issue several times, it was not addressed by the project's developers. It was only in April 2019 that Total Uganda agreed (for the last 13 PAPs of RAP 1 who had not yet signed) to provide land in areas other than the four villages mentioned above.

In order to facilitate compensation in kind, the PAPs suggested to Atacama Consulting that community representatives be involved in selecting suitable land, and that they should be allowed to choose land themselves, rather than choices being forced upon them. Again, these suggestions were declined.

This goes against paragraph 10 of the IFC Performance Standard 5, which states: "The client will engage with Affected Communities, including host communities, through the process of stakeholder engagement described in Performance Standard 1. Decision-making processes related to resettlement and livelihood restoration should include options and alternatives, where applicable. Disclosure of relevant information and participation of Affected Communities and persons will continue during the planning, implementation, monitoring, and evaluation of compensation payments, livelihood restoration activities, and resettlement to achieve outcomes that are consistent with the objectives of this Performance Standard."

Finally, the manner in which Atacama Consulting has tried to intimidate PAPs into accepting cash compensation has proved highly detrimental. Most of the PAPs interviewed by UCCA have not acquired new land yet. Among the eight clans

22 As stated in RAP1, p138.

that were interviewed (representing more than 16 households and over 126 individuals), none had used the cash compensation to acquire new land. It was revealed that despite training in "financial literacy" provided in February 2018<sup>23</sup> by Total Uganda through its subcontractors Atacama Consulting and Masterlinks Group, the PAPs that received a cash compensation used the money to improve their lives in other ways, such as buying motorcycles, paying school fees for their children or buying clothes. This represents a serious issue as these PAPs no longer have the money to buy land. This issue should also have been anticipated, as the same trend was observed in expropriated communities affected by the Kabaale refinery project, in 2012.

Total (through its subsidiary and its subcontractor Atacama Consulting) has therefore failed to effectively respect the right of PAPs to choose the preferred type of land compensation. The ultimate outcome of this shortcoming is the fraction of PAPs that have opted for compensation in kind under RAP 1: only 3 of the 622 registered by 5 May 2019.<sup>24</sup> This not only violates the IFC Performance Standard 5, but also violates these communities' right to development, because the lack of choice forces them to receive compensation for their land at a rate far below its real value (see point 3 below). This has led to a reduced standard of living, which violates their right to livelihood.

## **b) Procedures for the compensation of homes, land and crops**

### *i. The compensation procedure for homes*

As with land, the homes of PAPs must be compensated for either in kind or in cash, but international standards prioritise compensation in kind.

<sup>23</sup> <https://ugtotal.com/home/media/list-news/project-updates-project-affected-affected-persons-receive-financial-literacy-training>

<sup>24</sup> See the 5th slide of the presentation of the 9th RPC meeting of RAP1, 14 May 2019.

Under RAP 1, however, Total decided that only people expropriated from their so-called "principal" residence may choose between compensation in kind (i.e., building a new house) and cash compensation.

Those expropriated from their so-called "secondary" residence are only entitled to cash compensation. Yet, as explained below, cash compensations do not allow affected people to maintain the same standard of living that they had before their displacement (see point c. below). These so-called "secondary" residences, however, are very important, even essential to PAPs. Without them, they would struggle to continue their farming activities. They are mostly residences located in close proximity to farmland, used during periods of intense labour. Farmland can be remote from the main home, and they don't have the financial resources to travel back and forth every week between the main home and agricultural sites. Therefore, by denying PAPs the option of a compensation in kind for secondary residences located close to farmland, Total makes it very difficult for them to find new houses close to their new land. This effectively means their livelihood is jeopardised, as it may be impossible for them to continue working on their new farmland.

Furthermore, RAP 1, coordinated by Atacama Consulting, involved serious inaccuracies in regards to people's principal and secondary homes. Homes in which people were living permanently were wrongly called "secondary homes."

The only definitions mentioned in RAP 1 are the following:

- "Principal home: "Dwelling used as primary residence; Owners who live in the affected house and structures" (p.115),
- Secondary home: "Dwellings used for secondary purposes (rental properties, free accommodation for relatives, etc.); Owner of residential structure".



Due to incorrectly defining principal homes as secondary homes in the assessment, only a small number of people affected by RAP 1 were effectively eligible to compensation in kind.

These inaccuracies have been inadvertently “approved” by the PAPs during Atacama Consulting’s assessment due to a poor understanding of the difference between “principal” and “secondary” homes. It appears, from several accounts, that Atacama Consulting explained that their homes were classified as “secondary” because they were “new.” Other PAPs report that Atacama Consulting declared they were “absent” from their homes, although they had stated that this was their principal home. Thus, as far as RAP 1 is concerned, only 30 PAPs are said to have signed a Memorandum of Understanding (MoU) that would entitle them to the construction of a new house,<sup>25</sup> despite the fact that residents and community leaders of Kasinyi village (affected by RAP 1) report that over a hundred families had a principal home in the CPF zone, and should therefore have been

eligible to such MoUs.

Thereby, the cash compensation offered for the Tilenga project is likely to contribute to reducing the standard of living of PAPs, since the compensation rate set by the assessment (as far as RAP 1 is concerned) seems lower than their true value (see point c. below), and does not enable them to access a standard of living that is at least equivalent to that previously enjoyed.

Lastly, information provided by Ugandan organisations suggests that some PAPs, who would have been eligible to compensation in kind, turned down this option, due to fears related to the way such compensations have been handled in the oil development zone in the past. The government of Uganda’s project to build an oil refinery in Kabaale (Hoima district) is a well-known example.<sup>26</sup>

<sup>26</sup> Total suggested in 2016 that it would acquire a 10% participation in this refinery, built by the Government of Uganda: <https://www.bloomberg.com/news/articles/2016-10-27/uganda-says-total-plans-to-take-stake-in-planned-oil-refinery>

<sup>25</sup> Ibid.

The 83 families (from the 13 affected villages) who opted for compensation in kind were put in an extremely detrimental situation.<sup>27</sup> Although they were expropriated from their land in 2012, only 46 families have been resettled, and only after five years, during which they suffered food shortages, lack of access to healthcare and schooling, and were unable to cultivate land. The 37 remaining families are still in this situation today.<sup>28</sup> A court case against the government of Uganda, initiated in 2014, is on-going.<sup>29</sup>

## *ii. Procedures used to calculate and assess crops*

Atacama Consulting also made an assessment of the agricultural crops of PAPs. This assessment involved calculating the number of crops (by unit or by surface area for each crop type) as well as noting the degree of maturity of each crop, which also impacted the level of compensation PAPs could claim.

Statements collected by our Ugandan partners as well as by Survie and Friends of the Earth France indicate that there were a significant number of errors in the assessment of crops by Atacama Consulting, which sometimes seemed deliberate. Numerous PAPs claim that large swaths of their cultivated land were not counted, and that when they informed the company's staff, Atacama Consulting threatened that it would be "that or nothing," or told them they could "go to the courts if they weren't happy with the assessment." Thus a

significant number of crops were not accounted for in the assessments. The same reports also suggest that Atacama Consulting's staff has often under-estimated the degree of maturity of cultivated crops, labelling crops that had been planted several months before, or that were already productive, "seedlings" or "just planted". This resulted in reduced cash compensation.

In addition, Atacama Consulting gave PAPs very little warning that their land and crops would be assessed, with the result that PAPs were often not present during the assessment of their cultivated land.

As the complaints mechanism is managed by Atacama Consulting itself, and therefore not independent, most PAPs were unable or unwilling to use it (see point 6 below).

## **c) Compensation rates for land and crops**

It seems that the compensation rates for land and crops have been under-estimated and do not reflect their true value. Information provided by our Ugandan partners, as well as that gathered by Friends of the Earth France and Survie, indicate that communities affected by RAP 1 are not satisfied with the compensation rates for their land and crops, and that their demands were not taken into account.

### *i. Compensation rate for land*

The LARF stipulates that a Ugandan Government agent, the "Chief Government Valuer" (hereinafter **CGV**),<sup>30</sup> sets the final price for the land, while "private operators" are tasked with conducting the assessments.

Accordingly, RAP 1 refers to an assessment report that should have been appended (Appendix 1), which we have been unable to access, and mentions in several places an "assessment team" yet fails to provide any

<sup>27</sup> Global Right Alert, "Acquisition of Land for the Oil Refinery: Tracking Progress in Resettling Project Affected Persons who opted for land for land Compensation", 2015: <https://globalrightsalert.org/publications/acquisition-land-oil-refinery-tracing-progress-resettling-projects-affected-persons-who>

<sup>28</sup> "Six years later, oil refinery affected people awaits for relocation", in Earthfinds, 17 mars 2017 <http://earthfinds.co.ug/index.php/oil-and-gas/item/845-six-years-later-oil-refinery-affected-people-awaits-for-relocation>

<sup>29</sup> Court case initiated by communities affected by the refinery and the organisation AFIEGO in March 2014. See: AFIEGO, "A Proceedings report of the refinery affected people's court case hearing April 2017", April 2017 - <https://www.afiego.org/download/a-proceedings-report-of-the-refinery-affected-peoples-court-case-hearing-april-2017/?wpdmdl=1039&refresh=5d09f4ad745df1560933549>

<sup>30</sup> LARF, p.64

information on the assessment team.

It appears, however, that the study was not conducted independently, and is therefore biased. A consultant hired by Total recommended the rate of 2.1m Ugandan Shillings (which was the initial compensation rate offered to PAPs as part of RAP 1) to the CGV, as the Ministry of Lands admits: "Mr Dennis Obbo, the Ministry of Lands spokesperson, said the chief government valuer approved Shs2.1m as compensation for each acre as recommended by private consultants that were contracted by Total E&P Uganda to value properties in the area."<sup>31</sup> The consultant's lack of independence creates an undeniable risk of bias in the assessment, and will only make the process of resettling the PAPs even more dysfunctional.

Both our investigations and that of our partners show that a majority of PAPs asked for a price of 21m Uganda Shillings, as was recalled in the various Dirco meetings<sup>32</sup> and Resettlement Planning Committee meetings (see point 6 below).

Furthermore, the price of 3.5m Uganda Shillings per acre that was eventually set by the project developers seems unbelievable when compared to the land lease contracts between Total and residents of the area (including in the villages of Kasenyi and surrounding villages). These contracts have yearly rents that usually range from 2.5m to more than 3m Ugandan Shillings per acre, as pointed out in August 2017 by the LC3<sup>33</sup> of Ngwedo sub-county,

Kaliisa G. S. Munange.<sup>34</sup> In other words, the price of leasing the land for one year is almost the same as the purchase price.

It also appears that the compensation rate under RAP 1 was set some time before the actual compensation process took place. Failing to take inflation into account means that, once again, PAPs lose out.

In addition to under-estimating the true value of the land, the time between the date when the compensation rate was set and the moment when affected communities actually received payment (for those who have received it) widens the gap between the true value of the land and the value set by the assessment team due to the significant inflation in the price of land (pushed up even further by the presence of the oil industry in these districts). The issue of inflating land values caused by the oil project was raised in the 5th Dirco meeting, on 27 August 2017, but elicited no specific response.<sup>35</sup>

## *ii. Compensation rate for crops*

According to RAP 1, the compensation rate for crops must be set in accordance with regulations set out in the Constitution of Uganda of 1995 and in the Land Act of 1998. Both texts specify that the rate must be that determined for the relevant district.<sup>36</sup>

RAP 1<sup>37</sup> also states that a team of "two assessment experts and two agronomists" conducted a market study, and that the CGV, in order to set the compensation rate for the district of Buliisa, took both this study and the "replacement cost" approach into account.

Again, the independent nature of the market

31 "Buliisa residents turn down 'meagre' government compensation", in Daily Monitor, 28 September 2017 <https://www.monitor.co.ug/News/National/Buliisa-residents-turn-down-meagre-government-compensation/688334-4114994-format-xhtml-4ksqp9/index.html>

32 A Dirco, for "District Resettlement Committee", was set up at district level. It comprises developers of the oil project (primarily Total and Atacama), various officials of the district (LC5 and LC3), as well as civil society representatives and PAPs.

33 Local Councils (LC) are the elected local administrations in the districts of Uganda. There are five levels in each district. The lowest (village level) is the LC1 (similar to the role of a mayor in France). The highest (entire district) is the LC5.

34 P14 of the minutes of the 5th Dirco meeting, 27th August 2017.

35 Question 8 in the report of the 5th Dirco meeting, 27th August 2017.

36 Paragraph 8.4.3.5 of RAP1.

37 RAP1, p126, para. 8.4.3.



study is questionable, since, as pointed out by the LC5 of Buliisa Agaba Simon Kinene, it was carried out by a consultant (whose exact identity remains unknown) employed by the oil companies.<sup>38</sup>

Our local partners have informed us that the communities affected by the project feel that the compensation rates for crops are, as they are for land, inadequate, particularly given prices on local markets, which assessments are supposed to be based on. It also appears that the price for certain crops, including those favoured among PAPs, was significantly reduced after the assessment (comparison of 2016-2017 rates before assessment with 2017-2018 rates, used as reference for the compensation). For instance, the compensation rate for young cassava, which during the year 2016/2017 was 3,000 Ugandan Shillings (Ush), was reduced the next year, with the introduction of three new categories: "seedlings" assessed at 120 Ush, "young non-productive" at 150 Ush, and

"young productive" at 950 Ush. In Hoima, the neighbouring district, no difference could be made between mature cassava and other types, all compensated at 5,000 Ush. To take a second example, the price for aloe vera, another popular crop in the district, fell from 8,000 to 1,100 Ush from one year to the next (mature plants). At the same time, the former "young plants" category, formerly assessed at 4,000 Ush, was replaced by three categories with much lower prices: 900 Ush for "young productive", 200 Ush for "young non-productive" and also 200 Ush for "seedlings".<sup>39</sup>

Some PAPs claim that Total has refused to compensate them for certain crops (for instance "bush" and "national trees", which have a variety of uses including medicinal) counted by Atacama Consulting's teams, and that are included in the list of official compensation rates of the Buliisa district. Uganda's other government programmes, especially those managed by the Uganda National Roads Authority (UNRA),

38 P.11 of the minutes of the second Dirco meeting on the implementation of RAP1, 27 June 2018.

39 See the 2016/2017 and 2017/2018 compensation rates for the Buliisa district, and 2017/2018 rates for the Hoima district.

compensate these crops when found on the land of PAPs who are to be expropriated.

Crops are essential to the livelihood of affected populations. Inadequate compensation thus causes them serious harm and is a violation of their right to an adequate standard of living.

In a country where communities already face insecurity, further impoverishment can have dire consequences, and will inevitably have adverse effects on other fundamental rights, such as the right to healthcare and the right to education (see point 4 below).

Accordingly, it would seem that Total Uganda and/or subcontractors with which the subsidiary of Total SA has established commercial relationships do not adequately implement actions designed to mitigate the risks created by the Tilenga project, impinging upon affected communities' right to development and the right to an adequate standard of living, both in terms of compensation procedures and of the actual rates.

## **2. VIOLATIONS OF THE RIGHT TO PROPERTY OF AFFECTED COMMUNITIES**

It appears that those affected by the project are not allowed to cultivate their land, as requested by Total Uganda and Atacama Consulting, despite the fact that they have not yet received compensation for the land. Such practices run counter to the principles that Total has pledged to adhere to (including UDHR and the IFC Performance Standard 5, both referred to in the vigilance plan) and with Article 26 of the Constitution of Uganda (see above), and constitutes therefore a violation of these persons' right to property. The Supreme Court of Uganda issued a reminder of this in its decision No. 2 of 2014: "Compensation is key and must be paid to persons with an interest in the land before the government takes possession, both physical and legal."

Article 17 of the Universal Declaration of Human Rights provides that "1. Everyone has the right to own property alone as well as in association with others. 2. No one shall be arbitrarily deprived of his property."

The IFC Performance Standard 5 on land acquisition and involuntary resettlement similarly states that: "The client will take possession of acquired land and related assets only after compensation has been made available and, where applicable, resettlement sites and moving allowances have been provided to the displaced persons in addition to compensation."

The actions of Total Uganda and Atacama Consulting do not comply with these standards.

Total Uganda and Atacama Consulting have held meetings to announce an eligibility "cut-off date", i.e., a final date after which no modification to the land, houses and crops of PAPs will be taken into account in the calculation of compensation. These meetings were held in May 2017 for RAP 1. The cut-off date for RAP 2 was set for 28 August 2018, for RAP 4 for 22 September 2018 (Buliisa district) and 9 November 2018 (Hoima district).<sup>40</sup> The cut-off date for RAP 3 and RAP 5 seems to have been 18 February 2019. On the cut-off date form, as on many billboards in the Buliisa district, it states that PAPs may continue using their land until the "implementation phase" of RAP 1, which Total cites as beginning in February 2018, nine months after the cut-off date. This provision runs counter to Ugandan law, which allows persons affected by expropriation to continue using their land until they have received compensation, as mentioned above.

Worse still, various studies and field investigations conducted by our partners and by Friends of the Earth France and Survie have found that all the PAPs of the RAPs have been

<sup>40</sup> According to the minutes of the 6th Dirco meeting, 21 November 2018.

forced to stop cultivating their land as of the cut-off date, with dire consequences for these individuals and their families (see point 4 below). In a 2019 article published in the *African Social Science Review*, academic researchers conveyed the situation in the village of Kasenyi (RAP 1):<sup>41</sup> "The people have been stopped from accessing the already enclosed land since May 2017, yet, they have not received their compensation by the time of writing this article.[...] From the above analysis, it can be said that Project Affected Persons (PAPs) did not only suffer from delayed and inadequate compensations, but they were also dispossessed of their land rights. They were restricted from accessing their land and they could not use it productively, neither were they compensated on time."

According to numerous accounts, Atacama Consulting explicitly told the PAPs that they had to stop using their land by the cut-off date. The fact, therefore, that many PAPs affected by the different RAPs stopped working on the land is not due to any misunderstanding on their part, but precisely because they followed the instructions of project developers, including Atacama staff which convened meetings to announce cut-off dates.

Some PAPs have stated that they attempted to work on the land after the cut-off date, well before they received any compensation, but that employees of Atacama Consulting and/or Total Uganda explicitly forbade them from doing so, threatening them with lawsuits and police arrest. This is blatant intimidation. The same PAPs report that they were overtly told that the land no longer belongs to them as the cut-off date had been officially announced, which is inconsistent with Ugandan law. Following these incidents, staff at Total Uganda demarcated the land in question, as a clear signal to PAPs that they should stay away.

The PAPs also report cases of intimidation by policemen stationed at the entrance of the CPF zone when residents attempted to access their land. When this "oil police" station was established in the spring of 2018, there was no Total facility that would require such a security post, and, over a year later, there still isn't. According to PAPs and local NGOs, its sole purpose is to intimidate them and prevent them from accessing their land.

Many PAPs also state that Atacama Consulting staff has forbidden them to repair their houses, even though they require constant maintenance due to the kind of materials used (including roofs made out of straw or grass). This quickly resulted in the collapse of roofs, which forced residents to leave their homes and the area.

### **3. VIOLATIONS OF THE RIGHT TO FOOD OF AFFECTED COMMUNITIES**

Due to the cut-off dates for the various RAPs of the Tilenga project, and due to the way in which these cut-off dates were implemented (see point 2 above), PAPs were deprived of their agricultural land, which is the main way in which they meet their own food needs as well as that of their family members.

This violates several standards which Total has committed to adhering to in its vigilance plan: the UNGPs, which themselves refer to the UDHR and the ICESCR, and the IFC Performance Standards.

Article 11 of the ICESCR states that, "The States Parties to the present Covenant, recognizing the fundamental right of everyone to be free from hunger, shall take, individually and through international co-operation, the measures, including specific programmes, which are needed".

Furthermore, as mentioned above, the IFC Performance Standard 5 aims "to improve, or restore, the livelihoods and standards of

41 Julius, Niringiyimana; William, Muhumuza; and Rutanga, Murindwa (2019) «Oil Politics and Land Tenure Changes in Uganda: Understanding the Curse of Dispossession in the Albertine Region», *African Social Science Review*: Vol. 10: No1, Article 7, pp.30- 31. Available here: <https://digitalscholarship.tsu.edu/assr/vol10/iss1/7>



living of displaced persons". More specifically, paragraph 9 of the standard provides that: "When displacement cannot be avoided, the client will offer displaced communities and persons compensation for loss of assets at full replacement cost and other assistance to help them improve or restore their standards of living or livelihoods, as provided in this Performance Standard."

The issue of food security is also identified in the LARF: "While livelihood restoration will aim to sustain and improve existing livelihood strategies, the primary focus during RAP implementation will be on ensuring continued food security."<sup>42</sup>

The vast majority of PAPs interviewed by Ugandan organisations, Friends of the Earth France and Survie report that their families have been affected by food shortages and starvation due to the loss of their farmland. The situation described by affected communities is a direct consequence of the Tilenga project.

The fact that Total Uganda, via the NGO Living Earth, has distributed food supplies for six months to the PAPs of RAP 1 only demonstrates that the corporation recognised that these communities have been deprived of their livelihood. However, these food distributions do not seem to address the violation of the right to food of PAPs.

This is because, firstly, the food distributions did not start before 17 November 2018 for RAP 1,<sup>43</sup> a full eighteen months after the PAPs impacted by RAP 1 were prevented from accessing their farmland. For the other RAPs, the cut-off dates were announced in 2018 or early in 2019, and the PAPs were notified that they could not use their land after these dates. Regular food distributions have still not begun for these PAPs, even though they need them to compensate for the loss of their livelihood.

Secondly, many PAPs are unhappy with the amount of food that has been distributed, which

42 LARF p.71.

43 According to the minutes of the 6th Dirco meeting, 21 November 2018.

they deem insufficient to satisfy the needs of large families (sometimes with more than ten members). The quantity of food distributed should be adapted to the situation of each PAP, particularly when there are large families involved.

Lastly, food distributions cannot be limited to six months. Many PAPs have told Total this. PAPs are faced with food shortages as soon as the cut-off date is announced, as they are no longer allowed to use their land. PAPs have no way of meeting their own needs until several months after they receive compensation, because of the time required for crops to grow. It takes eighteen months for Cassava, which is the Buliisa district's main crop and main staple, to reach maturity and be suitable for consumption.

#### **4. VIOLATIONS OF THE RIGHT TO EDUCATION AND OF THE RIGHT TO HEALTH OF AFFECTED COMMUNITIES**

Article 26 of the Universal Declaration of Human Rights states that: "Everyone has a right to education". Article 25 states that: "Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family."

Following the official announcement of the cut-off date, resulting in PAPs no longer being able to access their land, the PAPs of RAP 1 and their families report that they have suffered from widespread impoverishment. What remains of their meagre resources has had to be spent on food to provide for minimal subsistence. Several families have had to take their children out of school as they have been unable to afford school fees and other education-related expenses (transport, school materials, etc.). Other families have been forced to pull their children out of private schools and put them in public schools. The latter is significantly cheaper but has a far larger number of pupils per class, resulting in much higher exam failure rate.

As the PAPs of other Tilenga project RAPs were also prevented from accessing their land without prior compensation, it is highly likely that many families will find themselves facing the same violations of their right to education, which will affect many children in PAPs's families.

Furthermore, many PAPs interviewed by our Ugandan partners or during our field investigations have declared they could not afford healthcare costs when they or another family member fell ill. Several PAPs report that they were forced to go to hospital for treatment, or could no longer afford to buy medicines.

At least one family affected by RAP 1 has reported two illness-related deaths, with the family unable to afford medical expenses because of the Tilenga project.

Oil extraction projects carry inherent risks for the environment in general (air quality, climate, noise pollution, soil geology, flora and fauna, aquatic life, biodiversity, etc.). The Tilenga project is no exception. The pollution from these projects can also affect the rights of local communities, in particular, the right to health and their livelihood (access to freshwater, contamination of soils and water used for agriculture, respiratory diseases, etc.).

#### **5. RISK OF VIOLATIONS OF THE RIGHT TO LIFE AND SECURITY OF COMMUNITIES**

Article 3 of the UDHR provides that: "Everyone has the right to life, liberty and the security of person."

Article 6 of the International Covenant on Civil and Political Rights (hereinafter **ICCPR**) states that: "Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life."

Not only does Total as a group commit to respecting both standards in its vigilance plan, but its risk mapping also specifically mentions "the risk of disproportionate use of force,



when intervention by government security forces or private security companies might be necessary to protect the Group's staff and facilities." The report also mentions monitoring instruments, stating that, "Total also publishes a report<sup>44</sup> to assess the progress made in the implementation of the Voluntary Principles on Security and Human Rights."<sup>45</sup>

Total does not specifically mention Uganda in its risk mapping, despite the fact that the country has a high risk of violations of the security of people.

Although President Museveni, in power since 1986, claims to be at the helm of a democratic government, Amnesty International describes the situation otherwise in its 2017/2018 report on the country: "The rights to freedom of expression, association and assembly were restricted. Journalists and others who criticized the President or his family were arrested,

detained and harassed. There was a sharp rise in the number of women killed, some of whom were subjected to sexual violence. The government said it would investigate and prosecute those responsible. Draft constitutional amendments to the land laws gave the government authority to expropriate private land."<sup>46</sup>

The recent acts of violence of Ugandan police forces against inhabitants of the oil region demonstrate how dangerous the situation can be to civil populations. The eviction of Rwamutonga village (in the neighbouring district of Hoima), is a prime example, and has been often mentioned by the Tilenga project PAPs during interviews. The eviction was enforced with such violence that it attracted the attention of the Ugandan national media, and even featured in the evening news of France 2, the French public TV channel.<sup>47</sup> The violent eviction

44 [https://www.sustainable-performancetotal.com/sites/shared/sustainable/files/atoms/files/190201\\_-\\_vpshr\\_annual\\_report\\_2018.pdf](https://www.sustainable-performancetotal.com/sites/shared/sustainable/files/atoms/files/190201_-_vpshr_annual_report_2018.pdf)

45 <http://www.voluntaryprinciples.org>

46 <https://www.amnestyorg/en/countries/africa/uganda/report-uganda/>

47 France 2 evening news, 30 August 2018: [https://www.francetvinfo.fr/monde/afrique/ouganda-chasses-par-le-petrole\\_2918163.html](https://www.francetvinfo.fr/monde/afrique/ouganda-chasses-par-le-petrole_2918163.html)

was also described in *The Observer*. "Tibagwa, with the help of police, stormed Rwamutonga village and rained terror on the residents. Houses were torched, property destroyed and residents left homeless. [...] We were not even served with eviction notices, we didn't know that we were going to be evicted, and police just came with four trucks full of police officers. They started firing bullets in the air and tear gas. Police together with the deputy RDC<sup>48</sup> [Ambrose Mwesigye] burnt down houses, destroyed our property and even looted some."<sup>49</sup>

Given this situation, it would seem that Total, as a major investor and economic operator, should ensure that the Tilenga project does not entail risks of violations of the local populations' right to life and their security.

There is nothing, however, in Total's vigilance plan or in the project-related documents (LARF, RAP, ESIA) that mentions any measures taken by Total to ensure that the Tilenga project does not result in threats to affected communities by authorities or by subsidiaries and subcontractors of Total SA.

In its 2018 report on the implementation of the Voluntary Principles on Security and Human Rights, it is simply mentioned that: "At local level, government security forces (GSF) and private security companies (PSC) were trained, for example in Bolivia, Nigeria and Uganda."

The economic interests generated by the implementation of the Tilenga project can harm affected communities, especially those most vulnerable.

In Uganda, many PAPs have testified that staff members of Atacama Consulting, Total Uganda and the new "oil police" have frequently used intimidation tactics (see point 2 above). In

the report broadcast on French TV, a Total subcontractor is caught (by a hidden camera) saying: "We have several options: there are those who want to be resettled, we give them a house as compensation, and those who want money, we give them cash. If they refuse, there are several ways to make them understand. We don't force them, but we make sure they get the message..."<sup>50</sup>

We were also informed that at a public information meeting on the Tilenga project, a Minister threatened the communities with forced resettlements if they did not agree to sign the required documents. At another important public meeting in June 2018, the RDC apparently threatened PAPs.

Local organisations also report numerous restrictions on their activities. They have been prevented from holding public meetings in the Buliisa district, and it has become difficult to visit communities within the CPF zone.<sup>51</sup>

Communities subject to these intimidation tactics find themselves with no possible recourse, as Total's complaints mechanism is not independent, despite what is stipulated in the LARF.<sup>52</sup> Effectively, PAPs are supposed to ask Atacama Consulting for help; in other words, turn to the very company that is managing the land acquisition process and that is intimidating them.

Having Total and/or Atacama Consulting involved in the complaints procedure creates an obvious bias in the way claims are processed. Total is both "judge and jury", which runs counter to a fair justice system. Consequently, many PAPs that lodged a complaint have stated that they eventually accepted the solutions proposed by Atacama Consulting, because they had no hope that this biased mechanism would

48 RDC (Resident District Commissioner) named by the President of Uganda, who thus represents the government at district level.

49 "Police evicts 200 families in Hoima", *The Observer*, 29 August 2014. <https://observer.ug/news-headlines/33573-police-evicts-200-families-in-hoima>

50 France 2 evening news, 30 August 2018, opcit.

51 NTV report, 25 May 2018, "Buliisa residents reject land compensation rates", <https://www.youtube.com/watch?v=Vvqu8uOT7OI>

52 LARF, p.41.

lead anywhere. More serious still, PAPs claim they were pressured by Atacama Consulting to accept the proposed solutions.

Avocats sans Frontières (Lawyers Without Borders) has also criticised the complaints mechanism:<sup>53</sup> "The mechanism is only briefly summarized in Chapter 5 (p. 5.12) and Appendix G (p. 63). Appendix C of Appendix G only show a leaflet on the three various ways in which grievances can be processed. Most of them are managed directly by the company, without any information as to who (or which body) exactly deals with the grievance, and which safeguards are in place to ensure the impartiality of this mechanism, so that it meets the international standard of an effective remedy (cf. Third Pillar of the UN Guiding Principles on Business & Human Rights). This is all the more important as those implementing such a process are employees of the project proponents. Their relation with the companies must be clearly stated."

This is in contradiction with Total's obligation under the duty of vigilance law, to establish a secure and effective mechanism for whistleblowing and conveying grievances.

## **6. VIOLATION OF THE RIGHT TO PARTICIPATION OF AFFECTED COMMUNITIES**

The international standards which Total has committed to adhering to in its vigilance plan state that communities affected by economic projects must be able to participate in decisions related to the projects which impact them.

The general right to participation is defined by Article 25 of the ICCPR. More specifically, Article 7 of the 1991 International Labour Organisation Indigenous and Tribal Peoples Convention (ILO Convention No. 169) states that indigenous and tribal peoples "shall participate in

the formulation, implementation and evaluation of plans and programmes for national and regional development which may affect them directly". Article 16 states that involuntary resettlements "shall take place only with their free and informed consent."

The right to participation is also explicitly endorsed by the IFC Performance Standard 5, which Total refers to in its vigilance plan: "Community Engagement.<sup>10</sup> The client will engage with Affected Communities, including host communities, through the process of stakeholder engagement described in Performance Standard 1. Decision-making processes related to resettlement and livelihood restoration should include options and alternatives, where applicable. Disclosure of relevant information and participation of Affected Communities and persons will continue during the planning, implementation, monitoring, and evaluation of compensation payments, livelihood restoration activities, and resettlement to achieve outcomes that are consistent with the objectives of this Performance Standard. Additional provisions apply to consultations with Indigenous Peoples, in accordance with Performance Standard 7."

Finally, all the instruments developed by Total to identify and mitigate risks related to the Tilenga project, whether it be the ESIA (paragraph 5.2.4, "Disclosure and Consultation Methods"), the LARF (paragraph 9.4) or the RAPs (paragraph 7 of RAP 1) stress the crucial importance of involving affected communities to facilitate the execution of the Tilenga project. These instruments provide for very specific procedures that enable affected communities to be involved in decision-making processes and convey their grievances through a "grievance mechanism," so that problems may be addressed.

There are very specific standards for complaints mechanisms, which usually refer to the recommendations of the UNGPs.

Yet, Ugandan organisations have informed us

<sup>53</sup> Lawyers Without Borders, "Feedback on Tilenga ESIA", 31 October 2018.



that, in reality, the processes laid out by the previously mentioned instruments (both in regards to involving communities in decision-making and conveying grievances) have not been properly implemented. Legal action has been taken in regards to the consultation process for the ESIA of the Tilenga project, following a complaint lodged by two of these organisations against NEMA (the National Environmental Management Authority of Uganda) and PAU (Petroleum Authority of Uganda) in May 2019.<sup>54</sup> The organisations are requesting that the environmental impact study certificate granted by NEMA on 15 April 2019 be cancelled due to flaws in the process of public consultations held on 12 and 15 November 2018 in the Buliisa and Nwoya districts.<sup>55</sup> These

flaws include failure to communicate project-related documents (particularly RAPs) to the public before consultations, and the fact those attending the public consultations were not able to share their own analysis or criticism of the ESIA. Furthermore, according to the complaint lodged by the two organisations, the person designated to chair the public consultations was in a situation of conflict of interest. Lastly, the dates of the public consultations were only announced on October 30th, giving communities and NGOs only 11 and 14 days to prepare for them.

As regards the process of land acquisition and resettlement, PAPs do not seem to have been involved in the assessment process.

According to the LARF,<sup>56</sup> each area that is assigned a RAP is supposed to have a "Resettlement Planning Committee" (hereinafter **RPC**) to protect the interests of affected communities, represent them in discussions and keep them informed of the project's progress. It appears that the

54 <https://www.unoc.co.ug/news-nema-approves-es-ia-for-tilenga-project/>

55 See the press release, dated 20 May 2019, of AFIE-GO and GPFOG: "CSOs and youth file court case, request for quashing of Tilenga EIA certificate", as well as this article by the Daily Monitor: "Tilenga EIA certificate won't conserve the environment and protect livelihoods" - <https://www.monitor.co.ug/OpEd/Commentary/Tilenga-EIA-certificate-environment-protect-livelihoods/689364-5115232-70wrcj/>

56 LARF, p.73.

RPCs of RAPs 2, 3, 4 and 5 were only elected in June 2019, several months after the cut-off dates in the affected villages. Our organisations interviewed PAPs who report various problems with the elections, one issue being that Atacama Consulting prevented certain PAPs from coming forward as candidates for the RPCs of RAPs 2 to 5. According to these PAPs, the members of the RPC of RAP 1 (who may also be impacted by other RAPs) as well as several leaders and elected officials of the villages impacted by the RAPs were disregarded by Total's subcontractor. As regards RAP 1, a RPC was elected, but also much too late: in June 2017, three weeks after the cut-off date. Since then, meetings have not been held frequently enough to involve affected communities, who complain that their concerns and grievances are not being heard.

The ESIA states that: "Meeting minutes and attendance were taken at all meetings and a record of questions and comments was recorded and logged in a Project Issue and Response Register, which enabled stakeholder perceptions and concerns about the Project and the ESIA process to be fed back into the ESIA and Project design process." However, the communities and organisations interviewed all complain that their questions and criticisms

have not been taken into account, with the corporation always promising to provide responses at the next meeting, which it then fails to do.

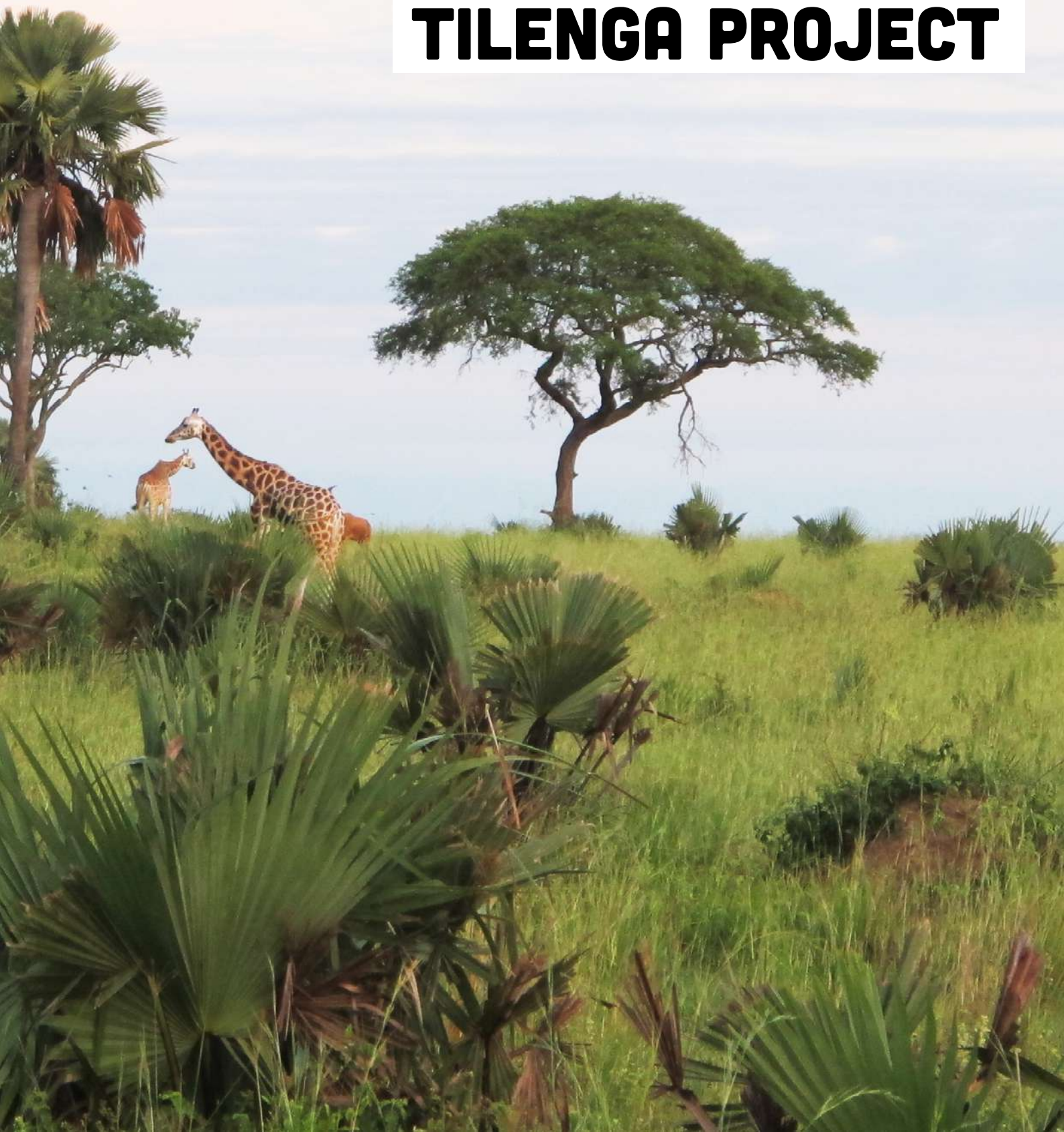
The following comment has been made by Lawyers Without Borders:<sup>57</sup> "There is no information to know whether engagement with project-affected communities both inside and outside the affected area was sufficiently representative of the entire community, especially at sub-county and village levels, and which exact measures were adopted to encourage their participation throughout the process."

Lawyers Without Borders also makes the following point in regards to discussions on land- and resettlement-related issues: "The number of responses to this issue highlights the Companies' commitment not to repeat past mistakes in terms of compensation. However, there is no mention of the commitment to respect the so-far constitutionally guaranteed right to fair compensation prior to the implementation of the expropriation order."



**III.**

**RISKS OF ENVIRONMENTAL  
VIOLATIONS UNDER THE  
TILENGA PROJECT**



Oil extraction projects carry inherent risks for the environment in general (air quality, climate, noise pollution, soil geology, flora and fauna, aquatic life, biodiversity, etc.). The Tilenga project is no exception. This pollution can also affect the rights of local communities, especially their right to health and their livelihood (access to freshwater, contamination of soils and water used for agriculture, respiratory diseases, etc.).

In its vigilance plan, Total again fails to mention the specific environmental risks of the Tilenga project. It only states, in Chapter 3.5.2.2. "Safety, Health, and Environment,"<sup>58</sup> that "Total has developed safety, health and environment risk assessment procedures and tools applicable to operate its Activities." It also highlights in paragraph 3.5.3. on "Action Principles"<sup>59</sup> that "the Group ensures that it complies with strict safety, security, health and environment standards in the performance of its Activities" and that "the Safety Health Environment Quality Charter<sup>60</sup> sets out the principles that apply to the conduct of its operations in all of the countries where it operates."

The Charter, which is very brief, only states in Principle 6 that: "Total implements, for all of its operations, appropriate management policies regarding safety, security, health, the environment, quality, societal commitment and a periodic risk assessment of relevant policies and measures. Any development of a project or launch of a product is undertaken upon full lifecycle risk assessment."

Therefore, as mentioned previously, Total's vigilance plan does not comply with the provisions of Article L.225-102-4 of the French Commercial Code, as it fails to mention the Tilenga project in its mapping of risks or include adequate actions for mitigating risks and preventing serious environmental violations in the execution of the project.

As was the case with the risk of human rights violations, it was our own investigations that enabled us to access the environmental and social impact assessment commissioned by Total Uganda and its partners in order to assess the environmental risks of the project.

The study was conducted in order to meet the requirements of Ugandan law and the recommendations of the IFC Performance Standard 1: the developers of the Tilenga project, including Total Uganda, commissioned the ESIA in order to identify negative (and positive) effects that the Tilenga project would have on the environment and develop measures to mitigate these negative effects.

Regarding the study conducted by the ESIA in order to map the environmental risks of the Tilenga project and develop measures to mitigate these risks, assessments made by various partners, as well as our own assessment and that of the Netherlands Commission for Environmental Assessment (hereinafter **NCEA**)<sup>61</sup> – directly commissioned by the National Environmental Management Authority of Uganda (hereinafter **NEMA**) to assess the ESIA – all conclude that the ESIA presents serious shortcomings in regards to identifying risks and, in particular, in regards to measures taken to mitigate risks.

Despite the short time frame (just two weeks) given to civil society organisations to comment on the ESIA, Ugandan organisations have published scathing reports – one by CSCO ("Civil Society Coalition on Oil and Gas")<sup>62</sup> and another by about fifteen civil society organisations<sup>63</sup> – which they shared with NEMA alongside the NCEA assessment mentioned above. In addition, the Netherlands section of the International Union for the Conservation of Nature (IUCN) also

58 Human Rights Briefing Paper, April 2018 update, p.94.

59 Human Rights Briefing Paper, April 2018 update, p.95.

60 [https://www.total.com/sites/default/files/atoms/files/charte-securite-environnement-qualite\\_vf.pdf](https://www.total.com/sites/default/files/atoms/files/charte-securite-environnement-qualite_vf.pdf)

61 [https://www.eia.nl/docs/os/i72/i7280/7280\\_ncea\\_review\\_esia\\_report\\_tilenga\\_project.pdf](https://www.eia.nl/docs/os/i72/i7280/7280_ncea_review_esia_report_tilenga_project.pdf)

62 [https://www.asf.be/wp-content/uploads/2018/12/201812\\_CSCO-ENRCommentsTilengaESIA.pdf](https://www.asf.be/wp-content/uploads/2018/12/201812_CSCO-ENRCommentsTilengaESIA.pdf)

63 "CSO Memorandum of proposals to the NEMA on the Tilenga Project ESIA," 9 November 2018.

published a document listing the main criticisms and recommendations in regards to the ESIA.<sup>64</sup>

These various documents highlight the serious shortcomings of the ESIA in terms of risk identification and, in particular, in terms of measures taken to mitigate environmental risks.

For the purpose of this report, we shall highlight the most serious shortcomings in regards to Total's obligations in the ESIA. Under Article L.225-102-4 of the French Commercial Code, Total SA must identify risks and prevent, through mitigation actions, serious environmental violations that may result from the operations of its subsidiary Total Uganda and its subcontractors.

Although civil society organisations had warned NEMA of the risks involved in approving an impact study with serious shortcomings, Total Uganda and Tullow Uganda were granted by NEMA, on 15 April 2019, a certificate of approval of their environmental impact assessment.<sup>65</sup> This was a critical step forward for the oil companies in the implementation of the Tilenga project before the final investment decision.

The certificate of approval is particularly worrying in that there is no longer any possibility that Total Uganda will improve its impact assessment in order to minimise the environmental risks of the Tilenga project. Bizarrely, upon granting the certificate, NEMA added a long list of conditions that Total Uganda had not yet fulfilled. Some of these conditions have extremely important implications in terms of environmental impact. Granting the certificate should therefore be conditional on meeting these conditions. One of the conditions, to give an example, is put in plain terms but points to extremely serious risks: "Ensure that no pollution of the Victoria Nile or surrounding environment (Ramsar Site) occurs as a result of the Horizontal

Directional Drilling (HDD) activities including frack-out."

Below are some of the most serious shortcomings of the ESIA, identified in the reports listed above.

## 1. AN OIL PROJECT IN A PROTECTED NATURAL AREA

Firstly, it should be highlighted that the majority of Tilenga project activities are located inside the Murchison Falls National Park. The Victoria Nile flows through the natural park, dividing the Tilenga project in two. An oil pipeline will have to run under the river. The Tilenga project also includes the RAMSAR-classified Murchison Falls-Delta Albert wetlands system, wetlands of international significance.

The Murchison Falls-Delta Albert wetlands system is a critical area for bird conservation, known to provide shelter to rare, vulnerable and threatened species. More specifically, according to the official website of the RAMSAR convention: "The convergence between Lake Albert and the delta forms a shallow area that is important for waterbirds, especially the Shoebill, Pelicans, Darters and various heron species. The delta is an important spawning and breeding ground for Lake Albert fisheries, containing indigenous fish species; the rest of the site is dominated by rolling savannahs and tall grass with increasingly thick bush, woodlands and forest patches in the higher and wetter areas to the south and east. It forms a feeding and watering refuge for wildlife in the National Park during dry seasons. Murchison Falls are one of the main tourist attractions and recreation areas in Uganda, and the site is of social and cultural importance to the people of the area: livestock grazing; fishing, with fish exported to DR Congo and also used to feed the refugees in camps in northern Uganda; illegal hunting for game, etc. Conflicts between fishermen and crocodiles are common. The site has been proposed for UNESCO World Heritage status."<sup>66</sup>

<sup>64</sup> "Environmental Impact - Tilenga Project," IUCN Netherlands.

<sup>65</sup> <https://www.unoc.co.ug/news-nema-approves-es-ia-for-tilenga-project/>

<sup>66</sup> <https://www.ramsar.org/fr/node/37586>



The company itself states in the ESIA that: "The Murchison Falls National Park (MFNP) is the largest and the second-most visited national park in Uganda and it is ecologically important for a number of globally and regionally threatened species."

## 2. LACK OF EFFECTIVE MITIGATION MEASURES AND RESIDUAL IMPACTS

The ESIA appears incomplete and sketchy in regards to risk mitigation measures. Indeed, some of the instruments necessary to implement said mitigation measures are not available.

The shortcomings mostly relate to indirect impacts, which are generally more serious than direct impacts, because they involve very large areas and are not within the project's direct control.<sup>67</sup> The above-mentioned reports concerning the ESIA all stress unanimously that it does not include any measure designed to mitigate indirect effects.

Section 14.7.9.3 of the ESIA, which deals with mitigating indirect impacts, refers to a number of documents which are key to mitigating risks, but which have not been published:

- The Environmental and Social Management Plan
- The Biodiversity Management Plan
- The Stakeholder Communication Plan
- The Road Safety and Transport Management Plan
- The Community Impact Management Strategy
- The Influx Management Strategy

The fact that the ESIA fails to include an "Environmental and Social Management Plan" (for both direct and indirect impacts) is particularly concerning, as this document represents the frame of reference for implementing mitigation measures.

Chapter 23 of the ESIA on the Environmental and Social Management Plan is effectively incomplete. It is a list of measures, most of which are still to be clearly defined, which provides no guarantee as to the reliability of the measures to be developed

<sup>67</sup> "Environmental Impact - Tilenga Project," IUCN.

or their feasibility in actually mitigating and preventing risks.

Following our investigations, it appears that the management plan has finally been published.<sup>68</sup> However, this document is not available on the investors' various websites, nor on that of NEMA. Again, this highlights that if Total SA complied with its obligations under the duty of vigilance law, by publishing risk mitigation measures, those affected by the project could have access to this information.

Regarding residual impacts, the reports mentioned above suggest they will be significant, but it is not clear whether they will be acceptable or will require specific mitigation measures.

Residual impacts can only be described once the mitigation measures have been identified and their effect on reducing impacts quantified. But the ESIA falls short on this point, too. It only states that further mitigation measures will be necessary, but there is no information as to how they will be implemented or whether they will be effective. The ESIA concludes, for example, in regards to selective non-catalytic reduction (SNCR) technology, that most impacts can be concretely brought back to "low to moderate" after mitigation measures, yet it fails to clearly illustrate how this will be achieved. Another impediment to addressing these risks relates to the fact that some decisions regarding the project design have not yet been made or are not clear, such as the design of drilling platforms and waste management (all of which can considerably alter impacts).

Therefore, in order to comply with its obligations, Total, or Total Uganda, should promptly communicate and publish all the above-mentioned documents, in particular the social and environmental management plan, all of which are indispensable to preventing serious environmental violations.

### 3. RISKS RELATED TO WATER EXTRACTION FROM LAKE ALBERT

The ESIA includes only imprecise data regarding the amount of water that will be extracted from Lake Albert, which makes it impossible to predict the impacts of water extraction.

Certain passages (ESIA volume 5, pages 22-6)<sup>69</sup> even suggest that the amount of water pumped from Lake Albert will be negligible and that the impacts will therefore be insignificant. But the figures published do not take into account the significant shrinking of Mount Rwenzori's glaciers, which replenish Lake Albert, and the reduced amount of water flowing into the Lake.

Water extraction can have serious consequences on biodiversity, particularly on Lake Albert's aquatic life. Pumping Lake Albert will also impact the fishing activities of local communities in the catchment area, who depend upon fishing for their livelihood.

The ESIA does not clearly consider the cumulated impacts on water levels and water quality. This shortcoming had already been pointed out in the Terms of Reference for the ESIA, but is also valid for the ESIA. What is the baseline and what will be the cumulative impacts of the various developments around the lake and in the project zone (agriculture, water for irrigation and domestic use, oil and gas, industry, evaporation, etc.), given the fragility of local streams and wetlands?

As regards groundwater, local information suggests that the area is already experiencing water stress. This means that using groundwater for human consumption should not be considered at regional level, but only at local level. In addition, it is unrealistic to consider the use of groundwater for the project without taking into account the interplay of several groundwater

68 <https://allafrica.com/stories/201904260081.html>

69 This information was reported to us by our partners, as volume 5 of the ESIA is not available on NEMA's website (<https://www.nema.go.ug/media/esia-report-tilenga-project-available-public-review-and-comments>)

extraction activities (ESIA report, Chapter 9 on Hydrogeology).

In the ESIA, a one-metre drop in groundwater levels is considered marginal. To what degree is it reliable to assume that oil drilling can withstand a one-metre drop? In any case, this assumption only relates to oil extraction and human consumption. We do not know exactly how this will affect wetlands, drinking spots of the local fauna or the level and flow of groundwater.

#### **4. FAUNA, FLORA AND BIODIVERSITY**

The Tilenga project will trigger an influx of people, which will inevitably have consequences on the fauna, flora and biodiversity. The whole strategy for managing the population influx presented in the ESIA does not seem convincing in regards to effects on the fauna, flora and aquatic biodiversity. It merely includes a list of questions that will be "considered", "where feasible." It is unacceptable that the ESIA fails to include any concrete measures to protect the wild fauna and flora as well as aquatic life against oil-related risks.

The ESIA admits that oil operations create multiple risks for the environment and the population (overfishing, poaching, poisoning of fauna and flora, etc.) but provides no concrete information on the laws and the implementation plans necessary to prevent, minimise and mitigate these risks. There is no reference to an "Integrated Management Plan", although required by the 2013 "Strategic Environmental Assessment."

What's more, Total Uganda and its partners undertake, in the ESIA, to conduct risk assessment studies before commencing drilling. This means that NEMA has issued the certificate without being fully aware of the risks of the Tilenga project, as the information from risk assessment studies was not included. Yet, under the terms of the 1998 Uganda regulation on environmental impact studies, NEMA must

base its decision not on promises but on the concrete information available in the ESIA.

Finally, the ESIA does not mention any provision of national legislations that will govern and ensure compliance with risk assessments, wetland management plans, Ramsar sites protection plans, forest corridor plans, enhanced protection of parks, among others.

#### **5. POLLUTION RISKS OF OVERFLOWING WELLS**

The ESIA does not anticipate any human presence around the wells that will be built. As a result, it is impossible to foresee how any potential leak will be handled.

NCEA observed on a visit to the site that the soil was permeable and that the equipment was already damaged. The main cause of concern is not so much oil leaks as water pollution due to wastewater from oil production.

Equipment damage so early in the project does not bode well for the future development of the Tilenga project.

#### **6. SEISMIC RISKS, WASTE MANAGEMENT AND SITE CLOSURE**

The ESIA does not address risks related to the closure of the site and the departure of investors from the area used for the Tilenga project, estimating it to be at least 25 years away. It is nevertheless critical to conduct a study on the closure of the site in order to anticipate the impacts that it will have in 25 years, a length of time which does not seem that far away given the human life-span.

NCEA also considers seismic risks and the effects of such an event. The issue is briefly mentioned on pages 20-23 (Chapter 20: "Unplanned events"). A natural earthquake is considered an unlikely event but one which would have significant impacts.



What will happen if underground oil pipelines collapse during an earthquake? What will be the consequences if these pipelines are located under the Nile? There is a real seismic risk in Uganda. This has been calculated as "moderate" for the oil area, which means that there is a 10% risk of an earthquake in the next fifty years. This may sound marginal but the Global Facility for Disaster Reduction and Recovery (GFDRR, managed by the World Bank) states that: "Based on this information, the impact of earthquake should be considered in all phases of the project, in particular during design and construction. Project planning decisions, project design, and construction methods should take into account the level of earthquake hazard."<sup>70</sup>

A scientific article in the *South African Journal of Geology* also concludes that: "The Albertine region of Uganda is characterized by high levels of seismic activity and by many active normal faults. [...] We conclude that in the Albertine region, the return period for an earthquake capable of causing damage to engineering structures is, on average, 30 years. It is thus recommended that

all important engineering structures in the region should be designed for earthquake resistance."<sup>71</sup> This study was entirely funded by Tullow Oil, partner in the Tilenga project, and should be referred to more explicitly in the ESIA.

NCEA recommends that the aforementioned issues be addressed in the emergency intervention plan, still to be developed.

The ESIA does not provide any clear answers to the issue of waste management (for instance from well logging, wastewater from wells, etc.).

## 7. CLIMATE IMPACTS

The risks related to greenhouse gas (GHG) emissions are only briefly mentioned by Total in the ESIA. It is surprising to learn that, for an oil project of such scope (around 200,000 oil barrels per day), "the impact significance of GHG emissions was judged to range between

70 See the Thinkhazard website run by GFDRR: <http://thinkhazard.org/en/report/253-uganda/EQ>

71 B. Bwambale, U. Bagampadde, A. Gidudu, "Seismic Hazard Analysis for the Albertine Region, Uganda - A Probabilistic Approach", *South African Journal of Geology*, December 2015.

Insignificant and Moderate Adverse."

The GHG assessment includes "account vehicle / machinery emissions, embodied carbon in construction materials, and the loss of carbon stock sources during site clearance activities, as well as GHG emissions during the operations of the Project".

Thus, it does not take into account the life-cycle GHG emissions of the oil that will be extracted in the Tilenga project, which are by far the most significant GHG emissions, particularly during transport and combustion.

The ESIA states that there won't be any routine gas flaring during normal operations, but does anticipate that flaring will occur in exceptional circumstances, for a maximum period of 48 hours. Yet, flaring – burning the natural gas that escapes from oil wells, which cannot be processed, sold or used for economic and technical reasons – has a very significant climate impact. In addition to the waste of energy and the GHG emissions it produces, gas flaring also has severe health impacts, as documented in Nigeria.<sup>72</sup> Ugandan civil society organisations are concerned about potential abuse of so-called "exceptional" flaring, as the specifics of these exceptions are not clearly defined.

Last but not least, the French government itself, directly referring to IPCC reports, has recognised under its so-called "Hulot" law, which bans new fossil fuel exploration projects, that "80% of known fossil fuel reserves must stay in

the ground in order to maintain the trajectory of global temperature increase within the objectives of the Paris Agreement."<sup>73</sup> Currently operating fossil fuel deposits are already so big that extracting all their reserves would take the world beyond a 2°C temperature increase.<sup>74</sup> Extracting oil and gas from new deposits, as proposed by the Tilenga project, contravenes the Paris agreement and its objectives.

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In view of these shortcomings, the ESIA is clearly lacking in terms of risk prevention, and does not provide any guarantee that these risks can be avoided. Given that the oil project is located in an outstanding, protected natural area, it seems obvious that it would be impossible to guarantee that no serious and potentially irreversible environmental damage occurs. This raises the question of whether the project should go ahead at all.

Some of the environmental risks of the Tilenga project may have been identified in the ESIA, but not in a way that meets requirements under the duty of vigilance law, which calls for risk mapping within the vigilance plan itself, not a list of a few risks lacking in context.

Similarly, the actions to mitigate risks and prevent serious environmental violations mentioned in the ESIA are largely inadequate, and are not formally included in Total's vigilance plan. This is a breach of Total's obligations under the duty of vigilance law.

72 See Ajugwo, Anslem O., «Negative Effects of Gas Flaring: The Nigerian Experience», *Journal of Environment Pollution and Human Health* 11 (2013): 6-8 - <http://pubs.sciepub.com/jephh/11/2/>

73 <http://www.assemblee-nationale.fr/15/pdf/projets/pl0155-ei.pdf>

74 See: "The Sky's Limit, Oil Change International", September 2016 - [http://priceofoil.org/content/uploads/2016/09/OCI\\_the\\_skys\\_limit\\_2016\\_FINAL\\_2.pdf](http://priceofoil.org/content/uploads/2016/09/OCI_the_skys_limit_2016_FINAL_2.pdf)



# **IV.**

## **RISKS OF VIOLATIONS OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS, OF HEALTH AND SAFETY OF PERSONS AND OF THE ENVIRONMENT UNDER THE EACOP PROJECT**



As with the Tilenga project, the EACOP project (described above in paragraph 1.2.) involves serious risks of human rights and environmental violations. The oil pipeline will be 1,145 km long, connecting the Kabaale refinery to the port of Tanga, in Tanzania. According to the Total-led consortium, the project represents an investment of \$3.5bn. The pipeline will run across 10 districts and 25 sub-counties in Uganda (296 km) and across 8 regions and 25 districts in Tanzania (1,147 km).<sup>75</sup> Given the scale of the project, it will impact many more people and a much larger geographical area than the Tilenga project. Tens of thousands of people could be affected.

Despite these serious risks, there is no mention of the EACOP project in the risk mapping section of Total SA's vigilance plan. Consequently, Total SA's vigilance plan does not include any appropriate measure to identify risks and prevent serious violations of human rights and fundamental freedoms, of health and safety of persons and of the environment which might result from the project. In its April 2018 update, Total's Human Rights Briefing Paper makes a brief reference to the EACOP project, but this does in no way meet the requirements of Article L.225-102-4 of the French Commercial Code.

Given the seriousness of the risks created by the project, Total SA must urgently adopt a vigilance plan that identifies these risks and prevents serious violations.

Risk mitigation measures have been developed through a number of instruments, but, as far as we know, these are not publicly available (other than the non-technical report of the ESIA mentioned below), and therefore do not allow affected persons and civil society organisations to convey comments and criticisms.

Before the ESIA was completed, NCEA published, in July 2017, a study on its terms of reference, at the request of NEMA.<sup>76</sup> In the study, NCEA informed

NEMA of the critical issues that the ESIA needed to address in order to effectively mitigate the negative effects of the project. It highlighted several types of impacts that required specific identification and explicit mitigation measures (disruptions and damage related to land use, access restrictions, management of expectations and anxiety, etc.).

The ESIA of the EACOP project was eventually published in January 2019. Yet it is still not available to the public. The sole risk mitigation instrument that is publicly accessible is the non-technical summary of the ESIA.<sup>77</sup> Surprisingly, this document is only 29 pages long, whereas the non-technical summary of the ESIA for the Tilenga project is 119 pages long. This very concise summary fails to provide any information on the actions undertaken by Total East Africa Midstream and its partners to identify risks and prevent serious violations in the execution of the EACOP project.

Studies conducted by NGOs such as WWF,<sup>78</sup> ActionAid and IPIS,<sup>79</sup> and BankTrack<sup>80</sup> all warn of the serious risks involved in the EACOP project. More recently, an open letter endorsed by thirty African and international civil society organisations was sent to banks involved in the EACOP project to warn them of its inherent risks in regards to both human rights and the environment. These risks are similar to those identified in the Tilenga project and concern several issues:

- **Threats to the right to property of local communities:** massive land acquisition and large-scale community resettlements to build the

<sup>77</sup> [https://mwe.go.ug/sites/default/files/library/EACOP\\_Ug\\_non\\_tech\\_summary\\_press.pdf](https://mwe.go.ug/sites/default/files/library/EACOP_Ug_non_tech_summary_press.pdf)

<sup>78</sup> WWF, Safeguarding people & nature in the East Africa crude oil pipeline project, 2017 [https://www.banktrack.org/download/safeguarding\\_people\\_nature\\_in\\_the\\_east\\_africa\\_crude\\_oil\\_pipeline\\_project/safeguarding\\_people\\_nature\\_in\\_the\\_east\\_africa\\_crude\\_oil\\_pipeline\\_project.pdf](https://www.banktrack.org/download/safeguarding_people_nature_in_the_east_africa_crude_oil_pipeline_project/safeguarding_people_nature_in_the_east_africa_crude_oil_pipeline_project.pdf)

<sup>79</sup> ActionAid and IPIS, Business, Human Rights, and Uganda's Oil Part I: Uganda's oil sector and potential threats to human rights, July 2013 - [https://www.banktrack.org/download/business\\_human\\_rights\\_and\\_uganda\\_s\\_oil/business\\_human\\_rights\\_and\\_ugandas\\_oilpdf](https://www.banktrack.org/download/business_human_rights_and_uganda_s_oil/business_human_rights_and_ugandas_oilpdf)

<sup>80</sup> [https://www.banktrack.org/project/east\\_african\\_crude\\_oil\\_pipeline](https://www.banktrack.org/project/east_african_crude_oil_pipeline)

<sup>75</sup> <http://eacop.com/publication/view/route-map/>

<sup>76</sup> [http://www.eia.nl/docs/os/i72/i7228/7228\\_final\\_review\\_scoping\\_report\\_and\\_tor\\_esia\\_for\\_eacop-uganda.pdf](http://www.eia.nl/docs/os/i72/i7228/7228_final_review_scoping_report_and_tor_esia_for_eacop-uganda.pdf)

pipeline and associated infrastructure, which will run across densely-populated areas in Uganda and Tanzania;

- **Threats to the right to livelihood of local communities:** threats to income derived from agriculture, cattle and fishing; threats to freshwater sources on which local communities depend, since the pipeline is to run across Lake Victoria and wetlands in Tanzania, which are a direct source of freshwater for more than 30 million people in the region;

- **Threats to tourism:** tourism is an important source of income for many in East Africa with outstanding natural areas such as the Murchison Falls National Park, the largest in Uganda where 40% of oil deposits of the Tilenga project are located, and the national parks of Tanzania, where 1,149 km of the pipeline will be built and operated. The risk of a pipeline oil leak, which would cause serious harm to the ecosystems of these protected areas and biodiversity habitats, is not only an extremely serious environmental threat, but also a socio-economic hazard. The benefits of the EACOP project in terms of employment (an estimated 5,000 jobs, of which only 300 will be permanent) pale in comparison to the potential job losses in the tourism sector and the social, environmental and socio-economic costs resulting from a disturbance to ecosystems.

- **Threats to the environment:** compared to the Tilenga project, the very scale of the EACOP project suggests environmental risks of an unprecedented nature. A preliminary analysis of the environmental and socioeconomic risks conducted by WWF<sup>81</sup> concludes that the impacts of the pipeline will be felt across all Eastern Africa. These areas include:

- 2,000 square kilometres of protected wildlife habitats, including the Biharamulo game reserve and the biodiversity hotspot of Wembere Steppe.

- Around 500 square kilometres of wildlife corridors critical to species such as Eastern chimpanzees and African elephants, which could be seriously degraded.

- Serious risks of freshwater pollution and degradation, as more than 400 km of oil pipeline will run across the Lake Victoria watershed.

- Two ecologically and biologically significant marine areas (EBSAs), Pemba-Shimoni-Kisite and Tanga Coelacanth, are at high risk because of the oil that will be transported through the port of Tanga. These EBSAs include several marine protected areas (MAPs) as well as mangrove forest reserves.

- The probability of a pipeline oil leak is high, given that about one third of it is located in the Lake Victoria basin, an active seismic area.

- The pipeline is also supposed to run in close proximity to or directly across a number of RAMSAR sites (as defined by the Ramsar convention for the protection of wetlands) such as the Mabamba Bay, the Lake Mburo-Nakivali system, the Lake Nabugabo system, the Nabajjuzi system, and the Sango Bay-Musambwa island.

- **Threats to the climate:** it is expected that the pipeline will transport 216,000 barrels of oil every day, resulting in GHG emissions of more than 33 million tons per annum, significantly more than the combined emissions of Uganda and Tanzania.<sup>82</sup>

Even if this project is not as far along as the Tilenga project, the process of land acquisition and community resettlement to allow for the construction of the pipeline began over a year ago in the Lwengo, Rakai, and Kyotera districts of Uganda. The hardships endured by PAPs because of this project are described in an article entitled "Uganda: Locals to be displaced by oil pipeline oppose land valuation process; includes Total's

81 [https://www.banktrack.org/download/safeguarding\\_people\\_nature\\_in\\_the\\_east\\_africa\\_crude\\_oil\\_pipeline\\_project/safeguarding\\_people\\_nature\\_in\\_the\\_east\\_africa\\_crude\\_oil\\_pipeline\\_project.pdf](https://www.banktrack.org/download/safeguarding_people_nature_in_the_east_africa_crude_oil_pipeline_project/safeguarding_people_nature_in_the_east_africa_crude_oil_pipeline_project.pdf)

82 [https://www.inclusivedevelopment.net/wp-content/uploads/2019/05/standard\\_bank\\_eacop.pdf](https://www.inclusivedevelopment.net/wp-content/uploads/2019/05/standard_bank_eacop.pdf)

comments" published in May 2019.<sup>83</sup>

Total is responsible for implementing this process. As with the Tilenga project, Total SA's subsidiary, Total East Africa Midstream, has subcontracted this task to another company, Newplan Ltd.

This company made an inventory and assessment of the land and assets of households to be expropriated. Yet, at least 150 households in the Lwengo district claim that Newplan Ltd has not complied with the international guidelines on managing such processes. One of the PAPs reports that they have been "hassled and forced to sign various forms without any clear explanation."

This article on the EACOP project describes the same issues that are mentioned in the RAP 1 of the Tilenga project. For instance, according to the president of the Kito parish, people affected by the process report that Newplan Ltd staff takes advantage of vulnerable persons (the illiterate and the elderly) to alter figures. He also claims that during certain meetings, those in charge of the assessment "cornered" the chairman of the local council (LC1) to get his signature and stamp on blank forms. In the same article George William Mutabaazi, president of the Lwengo district, claims that Newplan Ltd has not included and/or undervalued some of the PAPs's assets such as houses, mosques, and crops (particularly banana, coffee, corn and bean crops).

As in the case with the Tilenga project, the EACOP complaints mechanism<sup>84</sup> does not seem reliable, operational or independent. It appears that affected communities have been told that if they feel the project has resulted in an unfair situation, they should lodge a complaint with the Community Liaison Officer, or "CLO," or any staff

from EACOP. There does, however, seem to be a free hotline where complaints may be lodged, although the procedure is not guaranteed in any way (people in charge of receiving the complaint, independence of those processing complaints, whistle-blower protection, etc.).

Once again, Total SA has failed to meet its obligations under the duty of vigilance law. Indeed, as with the Tilenga project, the EACOP project is not even mentioned in the vigilance plan of Total SA, although the project, implemented by a wholly-owned subsidiary and subcontractor with an established commercial relationship (Newplan Ltd), entails serious risks for human rights and the environment.

Unlike the Tilenga project, apart from the very brief non-technical summary of the EACOP ESIA, there is no instrument accessible that could help identify risk mitigation measures (if identified in the vigilance plans).

It would seem, in any case, that although the EACOP project is only at a preliminary stage, the serious shortcomings of Total Uganda on the Tilenga project in regards to human rights are likely to be repeated by Total East Africa Midstream and its subcontractor. It is therefore of utmost urgency that Total SA complies with requirements under the duty of vigilance law.

<sup>83</sup> <https://www.business-humanrights.org/en/uganda-locals-to-be-displaced-by-oil-pipeline-oppose-land-valuation-process-includes-totals-comments>

<sup>84</sup> <http://eacop.com/our-communities/grievance-procedure/>



The federation of **Friends of the Earth France** is a non-profit environmental and human rights network, independent from any religious or political influence. Created in 1970, it helped build the French ecological movement and helped found the world's largest grassroots environmental network, Friends of the Earth International, uniting 75 national groups with over 2 millions members and supporters around the world.

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Created 35 years ago, the NGO « Survie » analyses the French African news and stands up against « Françafrique », the special name given to French imperialism in Africa, that the NGO has brought to light. It denounces all types of French neo-colonial interventionism in Africa, and works to change French politics in Africa and to bring together all citizens who want to inform themselves and to act concretely.

With about 1300 members and local groups in approximately 20 French cities, the NGO regularly publishes analysis in leaflets, books and in its newspaper "Billets d'Afrique", and in parallel realizes advocacy work and takes legal actions.

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