



**fidh**



# New Oil, Same Business?

## At a Crossroads to Avert Catastrophe in Uganda

Community-Based Human Rights Impact Assessment of the Lake Albert Oil Extraction Project and Related Developments in the Albertine Graben, Uganda



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# ACRONYMS

<b>AAAS</b>	American Association for the Advancement of Science
<b>CESCR</b>	Committee on Economic, Social and Cultural Rights
<b>CPF</b>	Central Processing Facility
<b>CSOs</b>	Civil Society Organizations
<b>DNMC</b>	District Non-Governmental Monitoring Committee
<b>EACOP</b>	East African Crude Oil Pipeline
<b>ESIA</b>	Environmental and Social Impact Assessment
<b>FEED</b>	Front-End Engineering Design
<b>FHRI</b>	Foundation for Human Rights Initiative
<b>FIDH</b>	International Federation for Human Rights
<b>HRDs</b>	Human Rights Defenders
<b>IFC</b>	International Finance Corporation
<b>KFDA</b>	The Kingfisher Development Area
<b>LA</b>	License Areas
<b>LARF</b>	Land Acquisition and Resettlement Framework
<b>MoU</b>	Memorandum of Understanding
<b>NPV</b>	Net Present Value
<b>PAP</b>	Project Affected Persons
<b>PAU</b>	Petroleum Authority of Uganda
<b>RAP</b>	Resettlement Action Plans
<b>UNOC</b>	Uganda National Oil Company Limited
<b>UNRA</b>	Uganda National Roads Authority
<b>UPDF</b>	Uganda People's Defence Force

# I. INTRODUCTION

In 2014, Sub-Saharan Africa held only a tenth of the world's crude oil reserves, but since 2009, the region has been one of the fastest-growing oil regions in the world.<sup>1</sup> Since 2006, a series of oil discoveries under and around Lake Albert in the West of Uganda have led to investment by a consortium of multinational companies, in particular Total Group ("Total"), China National Offshore Oil Corporation ("CNOOC"), and Tullow Oil plc ("Tullow"), as well as by the Ugandan Government.<sup>2</sup> According to Uganda's second National Development Plan (2015/16 - 2019/20), extractive industries represent one of the Government's priority areas of development.<sup>3</sup> The Government is hopeful that the oil industry will have a significant positive impact on Government revenue, on parts of the Ugandan economy, and on Uganda's geopolitical standing. The Lake Albert oil extraction and development project entails concessions for exploration and extraction to the Joint Venture Partners,<sup>4</sup> – with Total operating the oil fields in the northern part of the lake, the Tilenga area, while CNOOC operates those in the southern part, the Kingfisher area – and for a consortium<sup>5</sup> to build a refinery in the Hoima district, where some of the oil will be refined for national and regional markets, and from which a pipeline of 1445 km, passing mostly through Tanzanian territory, will take the oil for export to the Indian Ocean port of Tanga on the Tanzanian coast.

The negative impacts that the activities of extractive industries can have on human rights and the environment have been documented worldwide.<sup>6</sup> These negative impacts are all the more likely to occur when investments are made in countries whose governments do not comply with their duty to respect, protect, and fulfill human rights, or when operators are under pressure to cut costs. These two concerns are both present in Uganda, where the relevant companies are on the verge of a Final Investment Decision on whether to start oil extraction, in a context of economic crisis in the oil sector and narrowing civic space in the country.<sup>7</sup> In such a complex context, efforts of the Ugandan government to reinforce its institutional and legal framework to regulate oil exploration and extraction activities have not been sufficient to prevent human rights impacts. Since the initial discoveries, and during the subsequent exploration for oil in the late 2000s, human rights organizations have already reported multiple negative impacts on the environment and the human rights of the populations residing in the areas affected by the oil project, and which they attribute to a diverse range of actors.<sup>8</sup>

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1. International Energy Agency, *Africa Energy Outlook. A focus on Energy Prospects in Sub-Saharan Africa*, World Energy Outlook Special Report, 2014, p. 48, <https://www.icafrica.org/fileadmin/documents/Knowledge/Energy/AfricaEnergyOutlook-IEA.pdf>.

2. Luke Patey, *Oil in Uganda: Hard bargaining and complex politics in East Africa*. Oxford Institute for Energy Studies, October 2015, <https://www.oxfordenergy.org/wpcms/wp-content/uploads/2015/10/WPM-601.pdf>.

3. The Republic of Uganda, *Second National Development plan NDPII* (Uganda Vision 2040, June 2015), <http://npa.go.ug/wp-content/uploads/NDPII-Final.pdf>.

4. The Joint Venture refers to the plans for exploration and production in the Tilenga and Kingfisher areas. As detailed below in section II.2, of the three initial partners in the Joint Venture, only Total and CNOOC now remain, Tullow having sold its shares to Total in 2020.

5. For a detailed description of the constitution of the Consortium, see section II.2.6 below.

6. e.g., FIDH, *The Human Cost of Oil*, July 2016, <https://www.fidh.org/en/region/americas/colombia/oil-extraction-in-colombia-report-reveals-the-human-and-environmental>.

7. Adam Morton, "From Covid-19 to climate: what's next after the global oil and gas industry crash?", *The Guardian* (July 11, 2020), <https://www.theguardian.com/environment/2020/jul/12/from-covid-19-to-climate-whats-next-after-the-global-oil-and-gas-industry-crash>.

8. Bassam Fattouh for Oxford Institute for Energy Studies, *Oil in Uganda: Hard bargaining and complex politics in East Africa* (October 2015), <https://www.oxfordenergy.org/wpcms/wp-content/uploads/2015/10/WPM-601.pdf>.

FIDH and FHRI undertook this Community-based human rights impact assessment<sup>9</sup> (“Assessment” or “Report”) of the Lake Albert project to address these issues. The Report, which is the result of a long process and implements a community-based Human Rights Impact Assessment methodology, documents a number of human rights violations and abuses resulting from the activities of the State of Uganda and the companies developing the oil projects in the Tilenga and Kingfisher areas. In particular, the Report focuses on the right to land, housing, and an adequate standard of living, the right to health and clean water, and the right to a healthy environment. The violations of these rights are inextricably related to violations of the right to information, the right to participation, and the right of access to justice. The Report also emphasizes the great risks of further harm to human and environmental rights in decades to come if Total, CNOOC, and the Ugandan Government fail to enact a series of preventive and remedial measures, as well as larger policy changes, before moving on with the project.

## 1. The Local and National Context of this Human Rights Impact Assessment of the Lake Albert Oil Extraction Project

In order to understand the past, present, and potential future negative impacts of this project, it is important to describe the local context of the project, as well as to highlight the broader complexities related to the overall human rights context in Uganda, along with the additional challenges that extractive industries may bring to this context.

### 1.1. Local context in the Albertine Region

Most of the newly-found energy reserves in Uganda are around Lake Albert, in Western Uganda. Lake Albert is Africa’s seventh largest lake; it is 160 km long and 32 km wide and comprises part of the border between Uganda and the Democratic Republic of Congo (DRC).

The land surrounding Lake Albert is extremely rich in biodiversity, and on the Ugandan side is partly designated as a protected area.

Much of the land is used for agriculture (i.e. crops and livestock) and human settlement, while the lake itself provides fish for the surrounding communities and beyond.



Map of Uganda. Source: United States Central Intelligence Agency, World Factbook – Africa: Uganda, <https://www.cia.gov/library/publications/the-world-factbook/geos/ug.html>

9. FIDH, *Community-based Human Rights Impact Assessments* (July 2011), <https://www.fidh.org/en/issues/globalisation-human-rights/business-and-human-rights/community-based-human-rights-impact-assessments>.



Uganda's history has been marked by several periods of war and political violence. The most significant internal conflict ended in 1986. Subsequently, Uganda was plagued by decades of civil war between Government forces and the Lord's Resistance Army rebels. Moreover, the Ugandan Government was involved in several conflicts that have roiled the Great Lakes region since the 1990s. While most of these conflicts are now over or in abeyance, they have affected the country as a whole. The people of northern Uganda, victims of the war waged between the Lord Resistance's Army (LRA) and the Uganda People's Defence Forces (UPDF), suffered killings, torture, forced displacement, among other crimes which remain largely unpunished.<sup>10</sup>

Although the regions neighbouring the Uganda-DRC border are prone to such tensions and conflicts, the Albertine region, where the oil project is being developed, has not been directly affected. The region is mainly rural, with most agricultural production based on crops and cattle, and contains small growing urban centres such as Hoima. The region has two rainy seasons, but has suffered from a period of drought over the last 10 years, which has exacerbated the plight of the population and tensions around land and natural resource use.<sup>11</sup> Most of the roads are unpaved, and water is often obtained from streams, boreholes, or from the lake, with little access available to electricity or proper water treatment facilities.

North of Lake Albert is located the Murchison Falls National Park, the largest national park in the country, which provides a source of income derived mainly from foreign tourism. The development of the oil project in the area has been called into question by several analysts, who deem that tourism could be a greater source of foreign exchange than oil, while the oil project would in fact hamper the development of tourism, in addition to threatening the National Park's environment.<sup>12</sup>

## 1.2. A complex political and economic situation in Uganda

Since it became an independent State after the end of British colonial rule in 1962, Uganda has experienced several political regimes, but none of them have fully adhered to democracy, the rule of law, or respect for fundamental human rights.<sup>13</sup> The current president, Yoweri Museveni, has been in power since 1986. Although multi-party elections have been allowed since 2005, the ruling party has retained power without interruption. In 2017, in a tense parliamentary vote, the constitution was amended to remove age limitations on the presidency, legally allowing Yoweri Museveni to be a candidate for re-election indefinitely.<sup>14</sup>

Many local and national human rights organizations are active in the country, as are an independent press and political opposition parties. But their activities meet with constant Government harassment and restrictions, along with the threat of various forms of repression.<sup>15</sup> Police raids and administrative

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10. Human Rights Watch, *Uprooted and Forgotten: Impunity and Human Rights Abuses in Northern Uganda* (2005), <https://www.hrw.org/report/2005/09/20/uprooted-and-forgotten/impunity-and-human-rights-abuses-northern-uganda>.

11. Paddy Ssentongo et al., "Changes in Ugandan Climate Rainfall at the Village and Forest Level," *Scientific Reports* (February 23, 2018), <https://www.nature.com/articles/s41598-018-21427-5>.

12. e.g. Netherlands Commission for Environmental Assessment, *Review of the Environmental and Social Impact Assessment (ESIA) Report for the Tilenga Project* (2018).

13. See FHRI, *Human Rights and Elections in Uganda 2016: A call for Action*, <http://www.fhri.or.ug/index.php/2015-07-22-14-08-32/thematic-reports/69-human-rights-and-elections-in-uganda-2016-a-call-for-action>; Uganda's ranking under the Freedom in the World Report, published by Freedom House since 1972, <https://freedomhouse.org/country/uganda/freedom-world/2020>; or Amnesty International, *Uganda 2019 State Report*, <https://www.amnesty.org/en/countries/africa/uganda/report-uganda>.

14. "Uganda enacts law ending presidential age limits," *Al Jazeera* (January 2, 2018), <https://www.aljazeera.com/news/2018/01/uganda-enacts-law-presidential-age-limits-180102182656189.html>.

15. FHRI, *Human Rights and Elections in Uganda 2016: A call for Action*, <http://www.fhri.or.ug/index.php/2015-07-22-14-08-32/thematic-reports/69-human-rights-and-elections-in-uganda-2016-a-call-for-action>.



and judicial harassment are used as deterrents against the work of human rights defenders.<sup>16</sup> Unlawful or arbitrary killings; forced disappearances; torture; arbitrary detention; imprisonment on political grounds; violence and intimidation against journalists, censorship, the criminalization of libel, and restricted access to the internet; substantial interference with the rights of peaceful assembly and freedom of association; restrictions on political participation; corruption; criminalization of consensual same-sex sexual conduct; and security force harassment and detention of lesbian, gay, bisexual, transgender, and intersex (LGBTI) persons have also been documented in Uganda.<sup>17</sup>

The systematic violations of civil and political rights are accompanied by violations of economic, social, and cultural rights, against which victims have no adequate means of resistance.<sup>18</sup> This is exacerbated by high levels of poverty and a lack of access to basic resources such as clean water, proper housing, education, and health services for important parts of the population, in particular in rural areas.

This worrying context for human rights sets a negative precedent that may aggravate the impacts of the activities of the oil industry. The issue has been acknowledged by a series of business organizations,<sup>19</sup> and the European Commission addressed it explicitly in its report on the application of the UN Guiding Principles to the oil and gas sector.<sup>20</sup>

The oil and gas industries are capital-intensive but generate relatively few jobs in the places where they operate. Thus, the considerable financial investment and revenue that they generate can have an important impact on the host government's finances, without necessarily resulting in a redistribution of wealth to the areas from which the resources are extracted. The OECD has identified a dependence on oil and the volatility of oil prices as among the drivers of the resource curse phenomenon – “the negative impact of resource abundance on long-term economic growth,”<sup>21</sup> social development, and governance of a country.<sup>22</sup>

*There is now robust evidence that one type of mineral wealth, petroleum, has at least three harmful effects: It tends to make authoritarian regimes more durable, to increase certain types of corruption, and to help trigger violent conflict in low- and middle-income countries, particularly when it is located in the territory of marginalized ethnic groups. The effects on authoritarianism and conflict appear to be recent phenomena, emerging after the 1970s.*<sup>23</sup>

16. “Uganda: Administrative Harassment Faced by Several NGOs” FIDH (October 20, 2017), <https://www.fidh.org/en/issues/human-rights-defenders/uganda-administrative-harassment-faced-by-several-ngos>; “Uganda: Shooting of Mr. James Rukanpana and judicial harassment of Messrs. Suleiman Trader, Jackson Magezi, Fred Kyaligonza and Prosper Businge”, FIDH (September 21, 2017), <https://www.fidh.org/en/issues/human-rights-defenders/uganda-shooting-of-mr-james-rukanpana-and-judicial-harassment-of>; “Uganda: Police raids Uganda Pride event, arrests several human rights defenders and assaults participants”, FIDH (August 9, 2016), <https://www.fidh.org/en/issues/human-rights-defenders/uganda-police-raids-uganda-pride-event-arrests-several-human-rights>.

17. Amnesty International, *Uganda 2019 State Report*, <https://www.amnesty.org/en/countries/africa/uganda/report-uganda>.

18. Uganda Coalition on Economic, Social and Cultural Rights, *The State of Economic, Social and Cultural Rights in Uganda and Emerging Issues*, Joint Submission to the United Nations Universal Periodic Review (UPR) of Uganda (2016), [https://www.iser-uganda.org/images/downloads/ESCR\\_JOINT\\_SUBMISSION\\_UPR\\_Uganda.pdf](https://www.iser-uganda.org/images/downloads/ESCR_JOINT_SUBMISSION_UPR_Uganda.pdf).

19. e.g. Principles For Responsible Investment, *Digging Deeper: Human Rights and the Extractives Sector* (2018), <https://www.unpri.org/download?ac=5081>; BSR, *10 Human Rights Priorities for the Extractives Sector*, [https://www.bsr.org/reports/BSR\\_Primer\\_Human\\_Rights\\_Extractives.pdf](https://www.bsr.org/reports/BSR_Primer_Human_Rights_Extractives.pdf).

20. European Commission, *Oil and Gas Sector Guide on Implementing the UN Guiding Principles on Business and Human Rights*, [https://www.ihrb.org/pdf/eu-sector-guidance/EC-Guides/O&G/EC-Guide\\_O&G.pdf](https://www.ihrb.org/pdf/eu-sector-guidance/EC-Guides/O&G/EC-Guide_O&G.pdf).

21. OECD, *Resource curse in oil exporting countries*, Economics (Department Working paper No. 1511; October 22, 2018), [http://www.oecd.org/officialdocuments/publicdisplaydocumentpdf/?cote=ECO/WKP\(2018\)59&docLanguage=En](http://www.oecd.org/officialdocuments/publicdisplaydocumentpdf/?cote=ECO/WKP(2018)59&docLanguage=En).

22. Michael L. Ross, “What have we Learnt About the Resource Curse?” (2015) *Annu. Rev. Polit. Sci.* 18:239–59, <https://www.annualreviews.org/doi/pdf/10.1146/annurev-polisci-052213-040359>.

23. *Ibid.*

Human rights violations resulting from the activities of the oil and gas industries are often veiled or even justified by host governments in the name of an economic development that would benefit the country as a whole. This argument is unacceptable, however, as human rights cannot be opposed to economic development, but rather must be the foundation of any development project.<sup>24</sup>

It is in this context that human rights organizations and the independent press have been documenting the violations and abuses of human rights related to the oil project in the Albertine region.

## 2. Methodology

### 2.1. Brief presentation of the methodology: its reach and its limits

To conduct this community-based human rights impact assessment, the authors used the *Getting it Right Tool*,<sup>25</sup> a step-by-step methodology designed by Rights & Democracy that gives ownership to affected communities to assess and document the potential human rights impacts that investment projects may generate. Such assessments help to voice the concerns of affected individuals and local communities, putting them on a more equal footing with the public and private actors involved. This tool guides communities and NGOs in measuring the actual or potential human rights impact of an investment project, and enables the drafting of a final report and recommendations which can serve as a basis for engagement with public and private actors involved in the investment project.

The research team, composed of representatives of FIDH, FHRI, and the community, held meetings with communities and local and national authorities in Uganda, as well as with corporate actors.

The research team developed long-term engagement with many stakeholders. Seven focus group discussions and 44 interviews were held with members of affected communities in the Albertine Graben, members of national and international civil society, and journalists, among other players. Seven communities in Kikuube and Buliisa, located in proximity to oil fields and other oil-related investment projects such as roads and the central processing facility, participated in this assessment.<sup>26</sup> In addition, the research team carried out consultations with other civil society groups working within the Albertine region and on the oil extractive industry. All interviews were conducted face to face, and mostly in private. For the safety of the respondents, their identities have been withheld.

Twelve meetings with local authorities and five meetings with national authorities were held as part of the research. In these meetings, initial findings were shared and responses from authorities were compiled. Similarly, exchanges were held with the four main corporate actors. Two of these exchanges included conversations with local representatives and with others from the companies' headquarters. However, only one exchange, with Total, has led to a sustained dialogue regarding the issues raised.<sup>27</sup>

Furthermore, thorough desk research was conducted. This included a review of the relevant national, regional, and international legal frameworks; documents in possession of local and national authorities,

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24. Statement on Commemoration for International Day for Human Rights (2017) by Mr. Liu Zhenmin.

25. FIDH, *Community-based Human Rights Impact Assessments*, July 14, 2011, <https://www.fidh.org/en/issues/globalisation-human-rights/business-and-human-rights/community-based-human-rights-impact-assessments>.

26. The villages were chosen at random, and their exact location has been withheld for the security of the residents.

27. Tullow provided written responses to the Report after a virtual engagement wherein questions regarding the human rights impacts of their involvement were raised. However the contradictory information provided, orally and in writing, as well as the lack of access to key documents to verify the information provided, limited the research team's capacity to integrate it into the findings of the report.



A community member speaks to the research team. © Martin Dudek

as well the oil companies; reports of civil society groups; and online publications, newspaper articles, journals, and academic literature. Uganda has a comprehensive legal framework that regulates access to information in the hands of public bodies.

A team of expert scientists and engineers also participated in establishing the findings and analysing the data.

Given the extensive territory covered by the project, this study is not exhaustive. Through the analysis of representative examples, documented through on-site research, this Report catalogues past, present, and potential violations of fundamental human rights, affecting people and communities well beyond the particular sites observed. Obstacles in accessing information both at the governmental and corporate level were numerous, further limiting the reach of the present study. As a result, this Report does not reflect the full extent of the project's human rights impacts. When information was accessible, in particular through the establishment of dialogue with corporate actors, an effort has been made to present the views of all relevant actors. In these cases, a robust exchange of information represents a positive development, and may anticipate steps towards greater transparency in relation to the Lake Albert project overall.

Furthermore, while the report tries to identify the specific governmental and corporate actors having caused or contributed to the impacts documented, it is important to bear in mind that as key economic and operational players in the project, Joint Venture Partners jointly bear the responsibility to address the actual and potential abuses caused by or linked to the oil extraction project and its directly associated elements, proportional to their participation and level of influence and control over the elements of the overall development.

In light of the close business, economic, and operational connections between the oil extraction project and the associated developments (including but not limited to the refinery and the road construction networks), the research team has assessed the link between these to be direct, in the meaning used by the United Nations Guiding Principles on Business and Human Rights.

## 2.2. A rights-based approach

This impact assessment was conducted in the reference framework of international human rights and environmental legal instruments. As such it allocates the responsibility of State and economic actors in accordance with obligations derived from national law, and from regional and international instruments. Regarding the responsibility of economic actors, the UN Guiding Principles on Business and Human Rights (UNGPs) is the main reference framework for defining the extent of business responsibilities.

Following Principle 13 of the UNGPs, a business enterprise's responsibility to respect human rights entails two factors:

- (a) the first requires the business to “avoid causing or contributing to adverse human rights impacts through its own activities and address such impacts when they occur”;
- (b) the second requires businesses to “seek to prevent and mitigate adverse human rights impacts that are directly linked to their operations, products or services by their business relationships.”<sup>28</sup>

To meet these requirements, the Guidelines require business enterprises to put in place a human rights due diligence process “assessing actual and potential human rights impacts, integrating and acting upon the findings, tracking responses, and communicating how impacts are addressed.”<sup>29</sup> In addition, when business enterprises identify instances in which they have caused or contributed to adverse impacts, they should provide for or cooperate in their remediation.

This set of principles is also complemented by other commitments and adherences of companies to international instruments and standards, as well as by relevant legal provisions in their home countries. In that regard it is important to point out that in France, the Duty of Vigilance law governing parent and instructing companies, enacted on March 27, 2017, requires companies of a certain size to identify and prevent risks of violations of human rights and fundamental freedoms and of damage to health, safety, and the environment stemming from their operations and those of their subsidiaries and/or business partners (sub-contractors and suppliers) by drawing up, publishing, and effectively

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28. Office of the United Nations High Commissioner for Human Rights, *Guiding Principles on Business and Human Rights: Implementing the United Nations Protect, Respect, Remedy Framework* (2011), Fundamental principle 13.

29. Office of the United Nations High Commissioner for Human Rights, *Guiding Principles on Business and Human Rights: Implementing the United Nations Protect, Respect, Remedy Framework* (2011), Fundamental principle 17.

implementing a vigilance plan containing adequate preventive, mitigating, and remedial measures to address those risks and impacts. Thus a more stringent level of vigilance is required from French parent companies when operating abroad, relative to those of most other nations.



## II. THE LAKE ALBERT OIL EXTRACTION PROJECT AND RELATED DEVELOPMENTS

This section presents the current state of the project and the main companies involved in it. The extraction project started in the late 1990s. It has involved a large number of private companies and public agencies over a relatively long period of time and across a vast geographical area. The current section seeks to highlight the most important features of the extraction project in relation to the overall aims of this report, as well as to present a brief profile of the main corporate actors involved, including their commitments with regards to human rights and the protection of the environment.

### 1. Overview of the extraction project

In 2014, the Ugandan Government estimated that there are 6.5 billion barrels of oil in and around Lake Albert. The amount of recoverable oil in the area is estimated to be between 1.8 and 2.2 billion barrels. Oil production is expected to reach heights of between 200,000 and 250,000 barrels per day. This would place Uganda in the position to be a mid-level African producer, comparable with present-day levels in Equatorial Guinea and Gabon.<sup>30</sup>

The Lake Albert project under scrutiny in this report is the first and most advanced oil extraction project in the region. The companies involved expect to extract a total of 1 billion barrels of oil during the production phase.<sup>31</sup>

There is a history of delays in the implementation of the Lake Albert project, due to complicated relationships between the companies and the Government, extensive negotiations, and tax disputes.<sup>32</sup> Since 2009, the date when extraction was expected to commence has been moved several times.<sup>33</sup> The purchase of Tullow's assets by Total in 2020 added to these delays. However, companies are already onsite and have been engaged in oil exploration and preparation for the construction and extraction to begin, which includes the displacement of households living on the land that will be used for oil production. It is now expected that oil production will start three years after the Final Investment Decision, which is expected to be taken in 2021.<sup>34</sup>

The geographical repartition of the oil blocs comprising the Lake Albert project is as follows: CNOOC (through its subsidiary CNOOC Uganda Ltd) will operate the Kingfisher project on the shores of Lake Albert, while Total (through its subsidiary Total E&P Uganda) will operate the Tilenga project further north in the Buliisa and Nwoya districts.<sup>35</sup>

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30. Luke Patey, *Oil in Uganda: Hard bargaining and complex politics in East Africa*, Oxford Institute for Energy Studies, October 2015, <https://www.oxfordenergy.org/wpcms/wp-content/uploads/2015/10/WPM-601.pdf>.

31. CNOOC, Total, Tullow, "Environment and Social Impact Assessment: non-technical summary" (Tilenga Project, February 2019), [https://ug.total.com/sites/g/files/wompnd1236/f/atoms/files/esia\\_nts\\_tilenga\\_esia\\_28-02-19\\_reduced\\_size.pdf](https://ug.total.com/sites/g/files/wompnd1236/f/atoms/files/esia_nts_tilenga_esia_28-02-19_reduced_size.pdf).

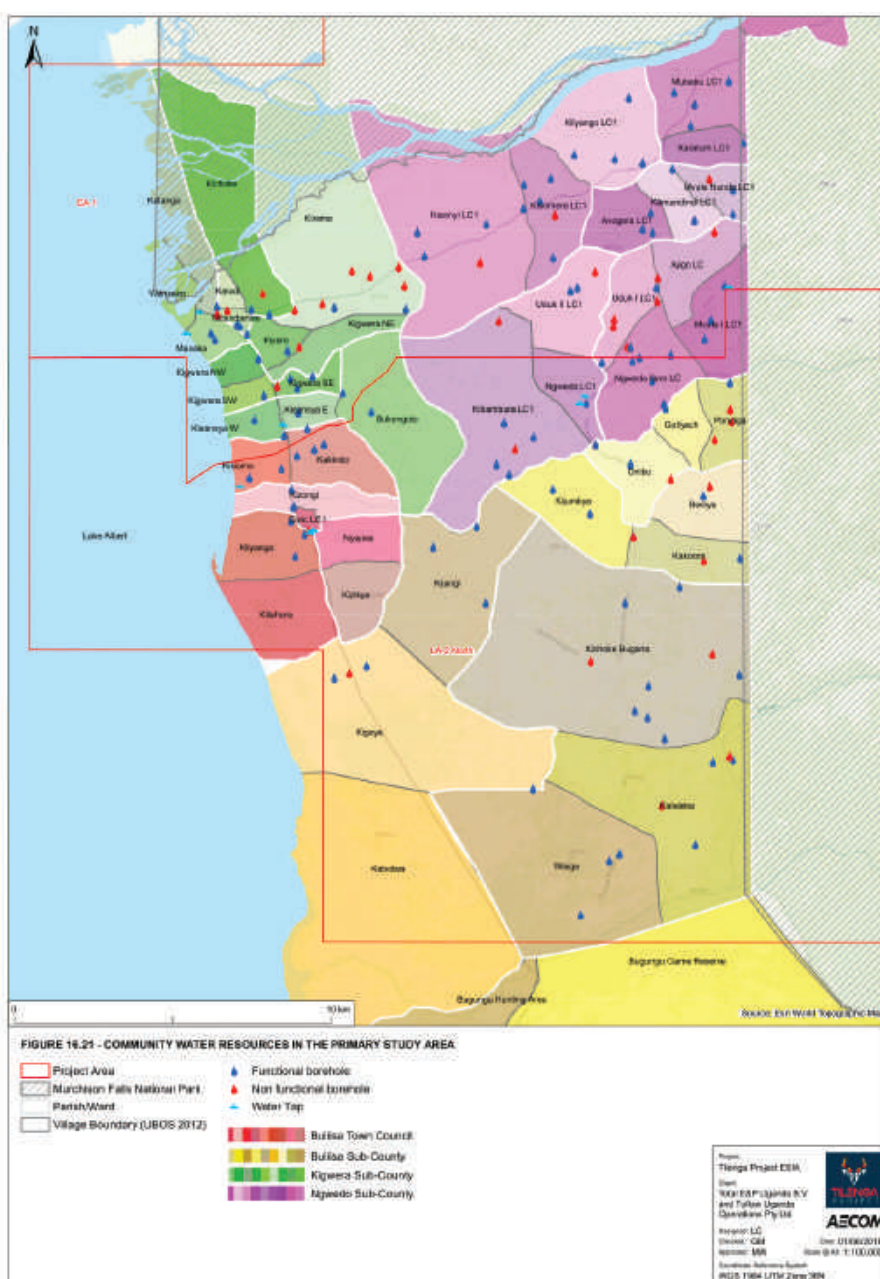
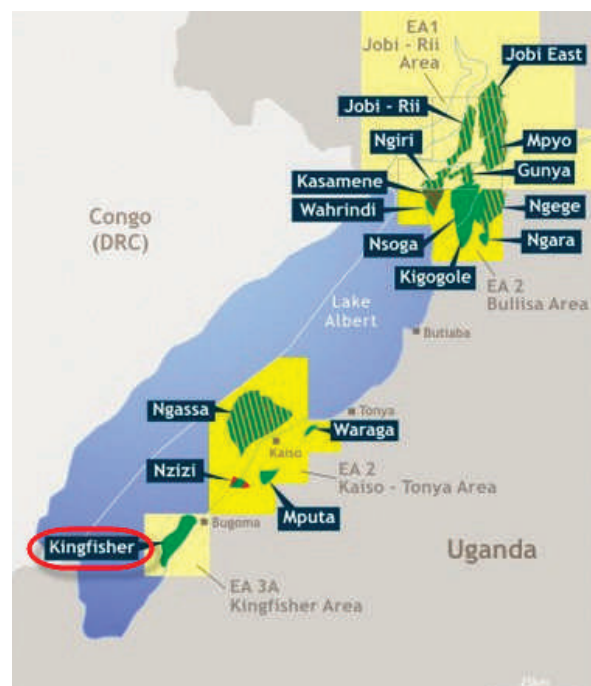
32. *Daily Monitor*, Oil Firm Hints at Progress in Talks to Resolve Tax Dispute (March 10, 2020), <https://iclg.com/alb/10067-tullow-ends-ugandan-oil-deal-over-tax-dispute>

33. "Post-coronavirus: more sorrow for Africa's new oil and gas producers", *The Africa Report* (May 27, 2020), <https://www.theafricareport.com/28902/post-coronavirus-more-sorrow-for-africas-new-oil-and-gas-producers>.

34. Frederic Musisi, "Total-Tullow oil sales deal awaits cabinet approval", *Daily Monitor* (May 18, 2020), <https://www.theafricareport.com/28902/post-coronavirus-more-sorrow-for-africas-new-oil-and-gas-producers>.

35. Billy Rwothengeyo, "Tullow oil clarifies on Uganda investment", *New Vision* (January 12, 2018), <https://www.newvision.co.ug/news/1468913/tullow-oil-clarifies-uganda-investment>.

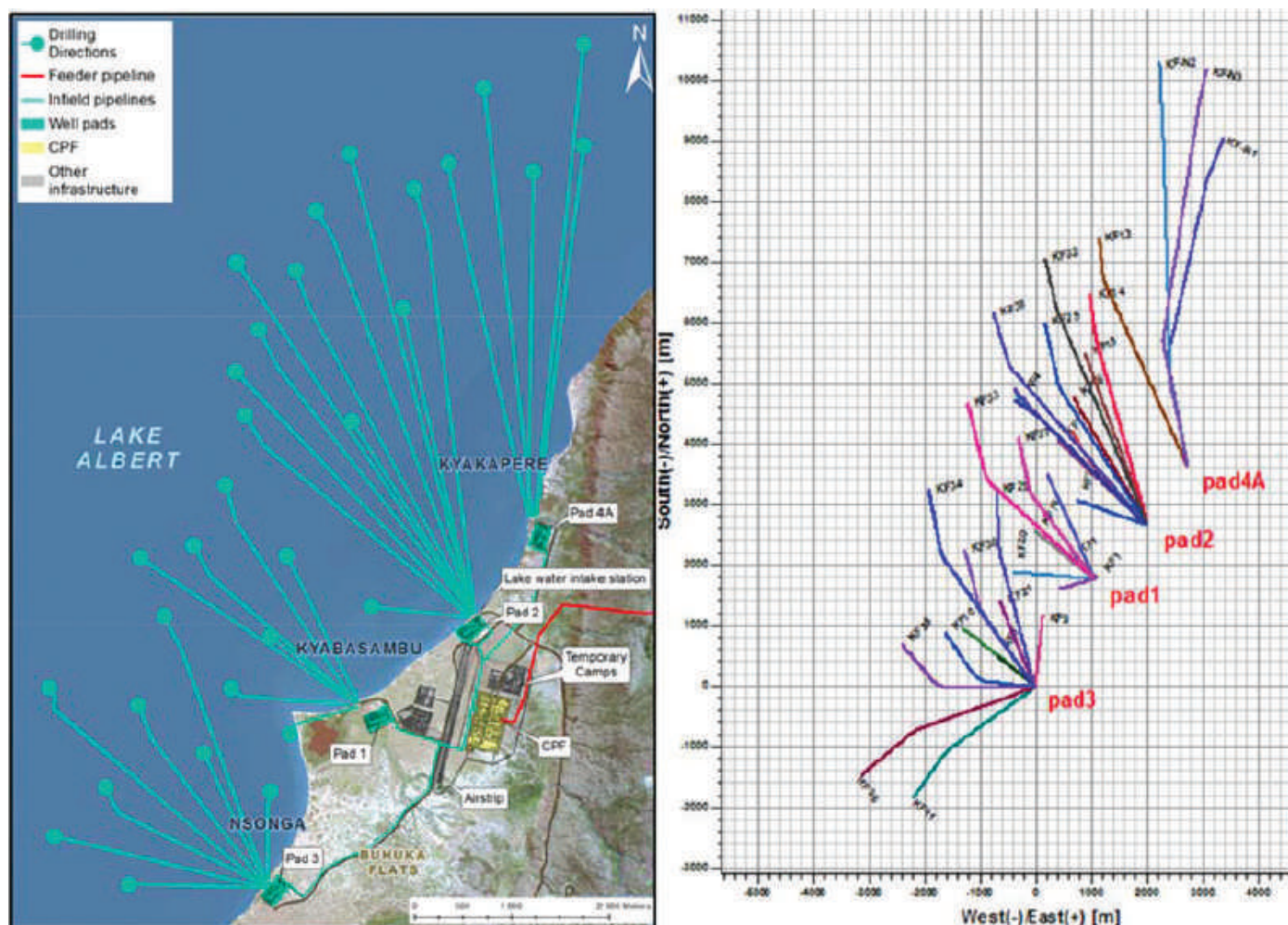
Map of the oil findings to be exploited by Total and CNOOC in the Albertine Graben. In blue are the names of the different oil fields that constitute the Lake Albert project. At the north EA-1 corresponds to "Tilenga" operated by Total, EA-2 Buliisa Area at the north and EA-2 Kaiso-Tonya area, operated currently by Tullow and Kingfisher Area, operated by CNOOC.



Developments and Project Area, including the natural protected zones. The Murchison Falls National Park is represented with green hatchings. Source: CNOOC, Total, Tullow, "Environment and Social Impact Assessment" (Tilenga Project, February 2019), Volume VI-a, pp. 67.



A total of about 400 wells will be drilled from over 30 well pads in Tilenga, while 20 production wells and 11 water injection wells will be drilled under the lake from four well pads in Kingfisher.<sup>36</sup>



Map of oil wells, Kingfisher area. Source: Kingfisher ESIA, *Non-technical summary*.

Kingfisher and Tilenga will both host the construction of Central Processing Facilities (CPF), through which crude oil will transit. The first, in Kingfisher, will be built in Buhuka in Hoima district; the second, in Tilenga, in Kasenyi, Buliisa district.<sup>37</sup>

A network of inter-field pipelines will collect the oil production from each well pad and transport it to the CPF. The Tilenga CPF will also be connected to a water abstraction plant on the shores of Lake Albert.<sup>38</sup>

Most of the oil extracted is expected to be sold internationally. Oil will flow from Uganda to international markets by means of a regional pipeline, still to be constructed, called the East African Crude

36. CNOOC Uganda Limited, "Environmental and social impact assessment for the CNOOC Uganda Ltd Kingfisher oil development, Uganda: Non-technical summary" (September 2018); CNOOC, Total, Tullow "Environment and Social Impact Assessment: Non-technical summary" (Tilenga Project, February 2019), [https://ug.total.com/sites/g/files/wompond1236/f/atoms/files/esia\\_nts\\_tilenga\\_esia\\_28-02-19\\_reduced\\_size.pdf](https://ug.total.com/sites/g/files/wompond1236/f/atoms/files/esia_nts_tilenga_esia_28-02-19_reduced_size.pdf).

37. [https://en.wikipedia.org/wiki/Kasenyei,\\_Buliisa](https://en.wikipedia.org/wiki/Kasenyei,_Buliisa).

38. Total et al. "Resettlement Action Plan RAP 1 for the proposed Industrial Area and N1 Access Road" (Tilenga Project, January 2018).



Oil Pipeline (EACOP).<sup>39</sup> The pipeline will be 1,450 km long, only slightly shorter than the massive Dakota and Keystone XL pipelines in the United States. About 21% of the pipeline will be located in Uganda, with the rest in Tanzania. It will be the longest heated pipeline in the world, and will be buried underground. Uganda and Tanzania plan to share the cost of construction, in partnership with Total and CNOOC. The construction of the pipeline is scheduled to start in March 2021 and to be finished in just 36 months.<sup>40</sup> Although the pipeline's trajectory was designed to avoid the most populated areas, it will go through villages, as well as natural reserves, parks and rivers. The pipeline's website offers a detailed map of its route.<sup>41</sup>



Map of EACOP.

Source: East African Crude oil Pipeline "Route Description and Map."  
<http://eacop.com/the-route/route-description-map>.

39. Luke Patey, *Oil in Uganda: Hard bargaining and complex politics in East Africa*, Oxford Institute for Energy Studies, October 2015, <https://www.oxfordenergy.org/wpcms/wp-content/uploads/2015/10/WPM-601.pdf>.

40. Louis Kolumbia, "Uganda, Tanzania crude oil pipeline project on track", *The Citizen* (June 7, 2020), <https://www.thecitizen.co.tz/news/-Uganda--Tanzania-crude-oil-pipeline-project-on-track/1840340-5572598-7dapri/index.html>.

41. For a very detailed map, cf. <http://eacop.com/the-route/route-description-map>.

Finally, the oil development encompasses the construction of a crude oil refinery, whose output is expected to meet the petroleum product needs of Uganda and its regional neighbours.

The refinery is a “project of national importance” led by the State-owned Uganda National Oil Company (UNOC), with the support of the Ugandan authorities.<sup>42</sup> In April 2018, Uganda entered into a Project Framework Agreement (PFA) with the Albertine Graben Refinery Consortium (AGRC), the lead investor in the project.<sup>43</sup> Total has indicated that it would be prepared to take a 10% share in the refinery in the future, as have certain East African Governments.<sup>44</sup>

In addition to the Tilenga and Kingfisher extraction projects, other drilling projects and plans for further exploration have been developed in the Albertine region.

One of these planned collaborations follows the signature of a new memorandum of understanding, signed in Beijing on September 5, 2018 in the presence of Ugandan President Yoweri Museveni, between UNOC and CNOOC, which is already in charge of the Kingfisher project, over jointly exploring for oil in Uganda. The agreement indicates that the two entities “will work together to develop a block<sup>45</sup> in the Albertine Graben” starting “as soon as possible,” and that the operation will serve to strengthen “[UNOC’s] exploration capabilities and begin its journey towards a fully-fledged oil company able to perform operatorship roles.”<sup>46</sup>

In another, Oranto Petroleum Ltd., a Nigerian company, and Armour Energy, an Australian company, have contracted a license with the Ugandan Government to exploit, respectively, the Ngassa area and the Kanywataba block. These licenses were initially granted in 2017, and renewed in 2019 for two more years.<sup>47</sup> The Ngassa oil well is located under Lake Albert and immediately north of Kingfisher.<sup>48</sup> Oranto Petroleum has allegedly already completed its ESIA study, seismic acquisition, and a “Lake drilling solution study.”<sup>49</sup>

## 2. The main companies involved

After passing the commercial threshold of oil discoveries in 2006, the industry shifted from small-sized exploration companies and oil independents to include large-sized oil majors with significant development and production capacity.

The main companies acting in the Albertine Graben are currently the French oil major Total, via its Ugandan subsidiary, Total E&P Uganda, and the Chinese oil major China National Offshore Oil Corporation (CNOOC), via its Ugandan subsidiary CNOOC Uganda Ltd. A Joint Venture was initially established between Total, CNOOC, and the small British oil company Tullow, which had led explorations since 2004. Under this agreement, the three companies had equal shares in the Joint

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42. Minutes of FIDH & FHRI meeting with Total, February 2020.

43. Martin Kitubi “Oil, Gas Sector Gets Refined”, *New Vision* (January 22, 2020), <https://www.newvision.co.ug/news/1513830/oil-gas-sector-refined>.

44. Minutes of FIDH & FHRI meeting with Total, February 2020.

45. Blocks are large areas of land, typically granted in 1000s of square kilometres, which are awarded to large oil companies by a country’s government specifically for oil exploration purposes.

46. Jeff Mbangwa, “CNOOC, UNOC oil exploration deal faces Opposition”, *The Observer* (October 2018), <https://observer.ug/businessnews/58943-cnooc-unoc-oil-exploration-deal-faces-opposition>.

47. Halima Abdallah, “Uganda: Oranto and Armour get licenses back in Uganda”, *The East African* (December 28, 2019), <https://allafrica.com/stories/201912280082.html>.

48. “Oranto Petroleum starts oil work in Uganda’s Ngassa Area”, EABW News (September 25, 2019), <https://www.busiweek.com/oranto-petroleum-starts-oil-work-in-ugandas-ngassa-area>.

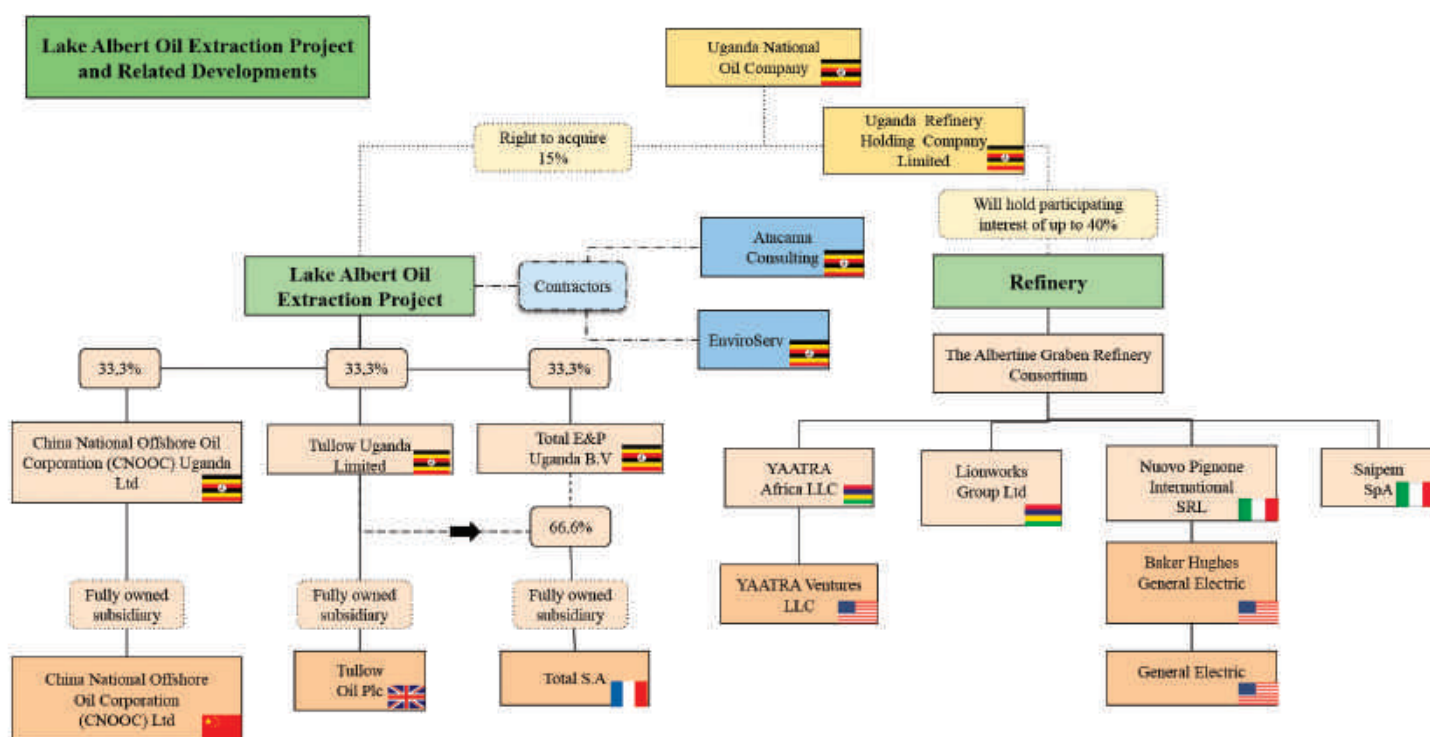
49. *Ibid*.



Venture comprising three extraction areas, EA1, EA2, and EA3 (see first map p. 15), and the EACOP. Total is to be the sole operator of EA1 in the Tilenga area, where most of the reserves are located, while CNOOC is the sole operator of the Kingfisher area, in EA3A.<sup>50</sup>

In April 2020, Total announced the purchase from Tullow of all its shares in the Joint Venture.<sup>51</sup> Following the decision by CNOOC not to exercise its pre-emptive rights to acquire part of the shares sold, Total will own 66.6% of shares in the Joint Venture,<sup>52</sup> and CNOOC 33.3%. Total and CNOOC would both recover the operatorship of parts of EA2, which until closing of the acquisition agreement remains in Tullow's hands, while the future distribution of operatorship is, according to Total, still to be agreed upon.<sup>53</sup> Under its agreement with the State of Uganda, the State-owned Uganda National Oil Company (UNOC) retains the right to acquire 15% of the Joint Venture.

Besides Total, CNOOC, Tullow, and UNOC, three other companies play a central role in the oil development. The Ugandan company Atacama Consulting is in charge of carrying out several activities for Total, in particular those linked to the relocation of displaced populations. EnviroServ, a South African company, is in charge of waste management for the project, primarily via the Nyamasoga Waste Treatment and Disposal Facility in the Hoima District. Finally, the Albertine Graben Refinery Consortium (AGRC) is the lead investor in the refinery.



50. Total, *Universal Registration Document 2019 including the Annual Financial Report* (2019), [https://www.total.com/sites/g/files/nytnzq111/files/atoms/files/2019\\_total\\_universal\\_registration\\_document.pdf](https://www.total.com/sites/g/files/nytnzq111/files/atoms/files/2019_total_universal_registration_document.pdf); CNOOC Limited, *2019 Annual Report* (2019), <https://www.cnooltd.com/attach/0/f6a7aa6b93294582889a1b0aec07c8f1.pdf>.

51. Zeynep Beya Karabay, "Total raises share in Uganda Lake Albert Oil project", AA Energy (January 10, 2017), <https://www.aa.com.tr/en/energy/finance/total-raises-share-in-uganda-lake-albert-oil-project/4138>; "Total Acquires Tullow Entire Interests in the Uganda Lake Albert Project", Total (April 23, 2020), <https://www.total.com/media/news/actualites/total-acquires-tullow-entire-interests-uganda-lake-albert-project>.

52. Although the acquisition of Tullow's shares has been announced and partially executed, Total's legal interest remains 33.3%, and its acquisition of the supplementary 33.3% is still subject to the execution of the agreement conditions.

53. Frederic Musisi, in "Cnooc declines to buy Tullow's assets", *Daily Monitor* (May 29, 2020), <https://www.monitor.co.ug/News/National/Cnooc-Tullows-assets-Total-EP-Kaiso-Tonya/688334-5567160-bd50hrz/index.html>, reported that Total E&P and CNOOC would both recover operatorship of parts of EA2: CNOOC in the southern part – Kaiso-Tonya fields – adjacent to EA-3I (Kingfisher), and Total E&P in Buliisa, near its Nwoya (Tilenga) operations.

## 2.1. Total

### *Company overview*

Founded in 1924, Total S.A. is an oil and gas company, incorporated in France and active in more than 130 countries.<sup>54</sup> Over the years, the company has expanded internationally and diversified from mere exploration and production to gas, refining, petrochemicals, and petroleum product marketing, as well as some renewable energy activities.<sup>55</sup>

For the year 2019, it reported a consolidated revenue of 200.3 billion USD, net income of 12.1 billion USD, 107,776 employees, and a market capitalization of 128 billion euros.<sup>56</sup> With a production of 1.4 million barrels of oil per day, it stands among the smallest of the 20 biggest oil companies in the world.

### *Activities in Uganda*

Total has been present in Uganda since 1955 in downstream<sup>57</sup> marketing and services with today over 150 service stations across the country and an overall market share of 24%. In the Albertine Graben, Total operates through its wholly-owned subsidiary, Total E&P Uganda. Accordingly, all references to “Total” or to “Total E&P Uganda,” in the context of its Ugandan operations, should be understood to refer to the same entity, as the France-based corporation is entirely responsible for the activities of its subsidiary. Total has been present in upstream oil exploration in Uganda since 2011, after acquiring an initial 33.33% interest from Tullow. It obtained approval to operate oil exploration and production activities in the Tilenga area in August 2016. Tullow announced the sale of its last shares to Total in April 2020, and CNOOC declined to exercise its right to acquire 50% of them. Currently, Total owns 33.33% of the shares, but will become the majority owner with 66.66% of the shares once the conditions of the purchase agreement are fulfilled.

### *Ownership and control*

Total S.A. is listed on the Euronext stock exchange. Currently, Mr. Patrick Pouyanné is the Chairman and Chief Executive Officer of Total S.A. As of December 31, 2019, Total’s shares were held as follows: group employees hold 5.3%, individual shareholders hold 7.8%, and institutional shareholders hold 86.9%. Geographically, 56.2% of shareholders are located in the European Union, and 34.9% in North America. The most important single shareholder is the American financial giant BlackRock, with a capital share of 6.3%, and 5.4% voting rights.

### *Total and Human Rights*

Over the past decades, Total has been repeatedly criticized and sued in various jurisdictions for violations of human or environmental rights.<sup>58</sup> In 1996, FIDH reported on grave violations of human rights linked to the company’s operations in Myanmar.<sup>59</sup> Total has been denounced for abuses caused

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54. <https://www.reuters.com/finance/stocks/company-profile/TOTF.PA>.

55. “Our Identity”, Total, <https://www.total.com/en/group/identity>; “Our Identity, history”, Total, <https://www.total.com/en/group/identity/history>.

56. “Total SA”, Reuters, [https://www.total.com/sites/g/files/nytnzq111/files/atoms/files/total\\_document\\_enregistrement\\_universel\\_2019.pdf](https://www.total.com/sites/g/files/nytnzq111/files/atoms/files/total_document_enregistrement_universel_2019.pdf).

57. In the petroleum industry, downstream refers primarily to the refinement, processing, marketing, and distribution of oil and gas products. Meanwhile, upstream refers primarily to exploration and extraction, while midstream refers to transportation and storage. See, e.g., <https://www.investopedia.com/ask/answers/060215/what-difference-between-upstream-and-downstream-oil-and-gas-operations.asp>.

58. “Total”, Business and Human Rights Research Center, <https://www.business-humanrights.org/en/total>.

59. The collective “Total pollue la démocratie – stoppons le TOTALitarisme en Birmanie”, “Total Pollue la Démocratie, Stoppons

by or linked to its operations in the Lake Albert oil project (see annex) and has been the object of ongoing lawsuits in Uganda and France (see section II.4 below).

Total officially adheres to several human rights instruments, including the Universal Declaration of Human Rights, the United Nations Global Compact, the core Conventions of the International Labour Organisation, the OECD Guidelines for Multinational Enterprises, the Voluntary Principles on Security and Human Rights, the Extractive Industries Transparency Initiative, and the UNGPs.<sup>60</sup> The norms and principles contained in these instruments are integrated into Total's Human Rights Guide. In 2016, Total published an [initial Human Rights Briefing Paper](#), in line with the UN Guiding Principles Reporting Framework, and updated [this document in 2018](#).<sup>61</sup>

Furthermore, Total has adopted a Human Rights Guide for M&A Legal Experts, which provides tools for lawyers to integrate human rights consideration into mergers and acquisitions procedures. This guide was written in collaboration with Shift Project.

## 2.2. China National Offshore Oil Corporation (CNOOC)

### *Company overview*

The China National Offshore Oil Corporation was incorporated on January 30, 1982, as part of China's State Council's implementation of the Regulation of the People's Petroleum Resources in Cooperation with Foreign Enterprises. Since then, by State regulation, it has exclusive rights within the People's Republic of China to explore and develop offshore oil and natural gas, with the right to do so in cooperation with foreign partners through production sharing contracts.

The company CNOOC Ltd., a subsidiary of CNOOC, was incorporated in Hong Kong on August 20, 1999. The company was listed on the New York Stock Exchange on February 27, 2001, and on the Hong Kong Stock Exchange on February 28, 2001. The company was included in the Hang Seng Index of the Hong Kong Stock Exchange in July 2001. The company's American Depositary Receipts (ADRs) were listed on the Toronto Stock Exchange on September 18, 2013.

CNOOC is one of the three major Chinese State-owned oil and gas companies, along with SINOPEC and CNPC. It is thus a centrally strategic company in the development of oil and gas exploration for the People's Republic of China. The company plays a central part in the provisioning of oil for consumption within China, but it also sells oil to other actors.

In its annual report for 2019, the company declared a consolidated revenue of 233.2 billion RMB (33.32 billion USD), and net profits of 61 billion RMB (8.72 billion USD).<sup>62</sup> It has 18,703 employees<sup>63</sup> and a market capitalization of 54.5 billion USD.<sup>64</sup>

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le TOTALitarisme en Birmanie" (July 2005), <https://www.fidh.org/IMG/pdf/mm04062005fr.pdf>; Ludovic Hennebel, Cellule de Recherche Interdisciplinaire en Droits de l'Homme, "L'affaire Total-Unocal en Birmanie jugée en Europe et aux États-Unis", <https://sites.uclouvain.be/cridho/documents/Working.Papers/CRIDHO.WP2006.09.pdf>; "La Birmanie, Total et les droits de l'homme dissection d'un chantier" FIDH (September 30, 1996), <https://www.fidh.org/fr/regions/asie/birmanie/Total-en-Birmanie/La-Birmanie-TOTAL-et-les-droits-de->

60. Total, "Code of Conduct: Our values in practice", [https://www.total.com/sites/g/files/nytnzq111/files/atoms/files/total\\_code\\_of\\_conduct\\_va\\_0.pdf](https://www.total.com/sites/g/files/nytnzq111/files/atoms/files/total_code_of_conduct_va_0.pdf).

61. "Human Rights", Total, <https://www.sustainable-performance.total.com/en/our-challenges/human-rights>.

62. CNOOC Limited, "2019 Annual Report" (2019), <https://www.cnooc ltd.com/attach/0/f6a7aa6b93294582889a1b0aec07c8f1.pdf>.

63. "About Us: Company Profile", CNOOC Limited, <https://www.cnooc ltd.com/col/col7261/index.html>.

64. "CNOOC Limited", Bloomberg, <https://www.bloomberg.com/quote/CEO:US>, retrieved June 10, 2020.

The number of Chinese companies investing in Uganda started to increase only after the official launch by Beijing of the policy known as “going out,” which includes incentives and licenses for State-owned and non-State-owned Chinese companies to invest outside of China. This followed several decades during which Chinese investment overseas was extremely limited, and tightly controlled by the central authorities.<sup>65</sup> Chinese expansion abroad is connected to its rapid economic growth and to its avid search both for commodities for domestic use, and for markets for its products. But this expansion does not follow a simple linear pattern: although it is in part oriented towards an increase in geopolitical influence, Chinese companies, including those owned by the State, also expand simply to increase their profits.<sup>66</sup>

### **Activities in Uganda**

CNOOC operates in Uganda through its wholly owned subsidiary CNOOC Uganda Ltd. CNOOC first entered the Albertine Graben project with the signature of a Memorandum of Understanding with Tullow, Total, and the Government of Uganda in 2011. CNOOC declined to use its right of first refusal by purchasing a portion of the shares that Tullow sold to Total, which has left CNOOC with its original 33.33% of the shares. The company is the sole operator of the Kingfisher area, which may produce around 40,000 barrels of oil per day (BOPD) at its production peak.

### **Ownership and control**

CNOOC Ltd. is controlled by CNOOC, a Chinese State-owned company that is subject to the control of the highest political authority of the People’s Republic of China, the State Council.<sup>67</sup> The company belongs to the Chinese State as one of the assets under the management of the State Assets Supervision and Administration Commission (SASAC). The State fully owns CNOOC, which in turn owns 64.44% of the shares of the CNOOC Ltd., via its fully owned subsidiaries CNOOC (BVI) and Overseas Oil & Gas Corporation. CNOOC Ltd. wholly owns CNOOC Uganda Ltd.

As a listed company, CNOOC Ltd. publishes an Annual Report, an Annual Environmental, Social and Governance Report, and an annual Sustainability report.<sup>68</sup>

### **CNOOC and Human Rights**

In line with repeated declarations of the central Government, including by Chinese President Xi Jinping, CNOOC asserts in its annual report that its activities overseas are premised on the absolute respect for local laws and the aim of a “win-win” relationship with local governments and other actors.

Before 2011, the company was accused of human rights violations in its operations in Myanmar, in particular violations of workers’ rights and displacement of local populations.<sup>69</sup> The company was also accused of participation in the persecution of members of the Falun Gong.<sup>70</sup>

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65. Warmerdam, W. & van Dijk, M. P., “China-Uganda and the question of mutual benefits”, *South African Journal of International Affairs*, 2013, Vol. 20, no. 2, pp. 271-295.

66. Arjan De Haan and Ward Warmerdam, “Chapter 22. China’s foreign aid: towards a new normal?”, *Research Handbook of Economic Diplomacy* (June 29, 2018).

67. CNOOC Limited, “2018 Annual Report” (2018), p. 115, <https://www.cnooc ltd.com/attach/0/91ce9f2285834a7fa5d7e070a01640ec.pdf>.

68. CNOOC Limited, “homepage”: Available in English and Chinese on the company’s website, [www.cnooc ltd.com](http://www.cnooc ltd.com).

69. <https://www.oilwatch.org/2008/11/15/blocking-freedom/>.

70. “Nexen takeover: Net Benefit to Canada, what benefit to human rights?”, Amnesty International (December 7, 2012), <https://www.amnesty.ca/news/public-statements/nexen-takeover-%E2%80%98net-benefit%E2%80%99-to-canada-what-benefit-to-human-rights>.





A road to Lake Albert shores, where the Kingfisher oil wells are based. © Martin Dudek

Without mentioning these events, in the last few years CNOOC has developed an explicit narrative concerning its respect for human rights,<sup>71</sup> invoking both the laws of the People's Republic of China and its membership in the UN Global Compact, which it joined in 2008, since which time it has published an annual sustainability report.

In its Environmental, Social and Governance annual report for the year 2018, and its Sustainability annual report for the year 2017, the company declares its adherence to the Universal Declaration of Human Rights and its commitment to the UN framework for human rights. These commitments are echoed in a document establishing human right standards for the company that is available on its website.<sup>72</sup>

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71. See for instance, "CNOOC (China National Offshore Oil Corporation)", Business and Human Rights Resource Center, <https://www.business-humanrights.org/en/cnooc-china-national-offshore-oil-corporation-0>.

72. CNOOC "Standard for Human Rights" GBL-STD-0082, <https://intl.cnooc.com/-/media/cnooc-images-and-files/suppliers/policies/gblstd0082--human-rights-standard-a105--jan72019.ashx?la=en&hash=9A4E98A852662E0E66D418D23B490B4D>.

## 2.3. Tullow Oil

### *Company overview*

Headquartered in London, England, Tullow Oil plc is an independent oil and gas exploration and production company. It was founded in Tullow, Ireland, in 1985 by Aidan Heavy. Tullow's primary activities consist of production of oil and gas in Africa and South America. According to its 2019 annual report, the company has 74 licenses in 14 countries and produced 86,800 BOPD that year. In 2019 it had 989 employees, its consolidated revenue was 1.7 billion USD, and it ended the year with net losses of 1.7 million USD. Its market capitalization is 430 million USD.<sup>73</sup>

### *Activities in Uganda*

Tullow Oil plc is the parent company of Tullow Uganda Operations Pty Limited. Tullow Uganda Operations Pty Limited acquired licenses for the exploration of the Albertine Graben with the acquisition of Energy Africa in 2004 and of Hardman Resources in 2011. Tullow conducted exploration activities in the area and eventually signed a Memorandum of Understanding with Total, CNOOC, and the Government of Uganda in 2011. In 2017, Tullow signed an agreement to sell its shares to its partners in the Joint Venture, Total and CNOOC. After disputes with the Government of Uganda concerning tax payments, the sale transaction was announced in April 2020, though its closing remains subject to a number of conditions, and is expected to be finalised in the second half of 2020.<sup>74</sup> Total paid Tullow 500 million USD, with a further 75 million to be paid once the Final Investment Decision is realized, and with contingent bonuses to be paid at the production stage if the average annual price of a barrel of oil is then above 62 USD.<sup>75</sup> As of April 2020, the company has no more shares in the Joint Venture, including the production sites and the EACOP.

### *Ownership and control*

Tullow Oil plc is the parent company of almost 70 subsidiaries which Tullow Uganda Limited operates in Uganda. Tullow Oil is listed in the London, Euronext Dublin, and Ghanaian Stock Exchanges. According to its 2019 Annual Report, its single biggest shareholder is the oil entrepreneur Samuel Dossou Aworet, who owns 12% of the shares. The rest of its ownership is relatively diluted, and the major remaining shareholders are financial companies that hold 5% or less each: M&G plc., RWC Asset Management LLP, Summerhill Trust Company (Isle of Man) Limited, and Azvalor Asset Management S.G.I.I.C, S.A.<sup>76</sup>

### *Tullow and Human Rights*

Tullow publishes a Sustainability Report, which includes its policies concerning human rights and social and environmental concerns.<sup>77</sup> In 2017, it also published a one-page official statement about its commitment to respect human rights.<sup>78</sup>

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73. "Tullow," Bloomberg, <https://www.bloomberg.com/quote/TLW:LN>, retrieved on June 11, 2020.

74. *African Law & Business*, Tullow ends Ugandan Oil Deal Over Tax Dispute, <https://www.monitor.co.ug/News/National/Oil-firm-progress-tax-dispute-China-Kikuube-Hoima/688334-5486054-tj721lz/index.html>

75. [https://www.tullowoil.com/application/files/8415/8772/2763/Sales\\_of\\_Uganda\\_interest\\_FINAL.PDF](https://www.tullowoil.com/application/files/8415/8772/2763/Sales_of_Uganda_interest_FINAL.PDF).

76. Tullow, "2019 Annual Reports and Accounts", [https://www.tullowoil.com/application/files/6515/8636/0100/2019\\_Annual\\_Report\\_and\\_Accounts.pdf](https://www.tullowoil.com/application/files/6515/8636/0100/2019_Annual_Report_and_Accounts.pdf).

77. Tullow, "Focus on sustainability: Sustainability Report 2019", [https://www.tullowoil.com/application/files/9215/8694/9510/Tullow\\_Oil\\_plc\\_Sustainability\\_Report\\_2019.pdf](https://www.tullowoil.com/application/files/9215/8694/9510/Tullow_Oil_plc_Sustainability_Report_2019.pdf).

78. Tullow Oil PIC, "Human Rights Policy statement" (2017), [https://www.tullowoil.com/application/files/7315/8489/5559/tullow-oil\\_human-rights-policy-2017.pdf](https://www.tullowoil.com/application/files/7315/8489/5559/tullow-oil_human-rights-policy-2017.pdf).

In May 2011, Tullow became a corporate supporter of the Extractive Industries Transparency Initiative (EITI), a coalition of companies, governments, and civil society organisations, which aims to improve transparency and governance in the extractive value chain. In its 2019 Sustainability Report, Tullow claims to support the adoption of the EITI by the Government of Uganda.

Due to EU and US legislation, Total, CNOOC, and Tullow are required to publish the payments they make to the Government of Uganda.<sup>79</sup> ActionAid reported that Tullow was already doing so in 2014.<sup>80</sup>

In 2011 and 2012, NomoGaia conducted a preliminary human rights risk analysis of the Tullow petroleum operations in the Albertine Graben of western Uganda, and concluded that the most significant human rights risks of the project stem from land management and resettlement, corruption, increasing militarization of the zone, and discrimination against Bunyoro, Alur, and Congolese people, and particularly women.<sup>81</sup>

## **2.4. Atacama**

### ***Company overview***

Founded in 2009, Atacama Consulting is a consultancy firm headquartered in Uganda.<sup>82</sup>

Atacama works and has worked for Total, Tullow, and CNOOC. It has played a role in the production of ESIA's, environmental monitoring and audits, studies of waste management and the resettlement of displaced populations. It is the lead contractor for the land acquisition and relocation process in the Tilenga project operated by Total.

### ***Ownership and control***

The company has two partners, Edgar Mugisha and Juliana Keirungi, as well as an advisory board composed of the chairman, Alfred Agaba, and of Stella Katumba and Reint Bakema. According to their biographies on the company's site and their LinkedIn pages, many of these individuals have worked for Governmental agencies in Uganda.

### ***Atacama and human rights***

As the main contractor of Total, Atacama has been mentioned in multiple reports denouncing its role in the violation of human rights in the Albertine Graben.<sup>83</sup>

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79. Directive 2014/95/EU of the European Parliament and the Council, 2014; Dodd-Frank Wall Street Reform and Consumer Protection Act, Section 1504.

80. Oil In Uganda, "Oil and Agriculture" (April 2015) Issue 10, [https://uganda.actionaid.org/sites/uganda/files/oil\\_and\\_agriculture.pdf](https://uganda.actionaid.org/sites/uganda/files/oil_and_agriculture.pdf).

81. Nomo Gaia, *Human Rights Risk Assessment, Lake Albert Exploration Project in Hoima and Buliisa Districts, Bunyoro Uganda* (March 2012), <http://nomogaia.org/wp-content/uploads/2014/12/Tullow-Uganda-HRRA-Drafted-2012-Published-2014.pdf>.

82. Atacama home page: <https://www.atacama.co.ug/>.

83. For a recent overview, see France of the Earth France, "Serious Breaches of the Duty of Vigilance: the case of Total in Uganda" (June 2019), <https://www.amisdelaterre.org/wp-content/uploads/2020/03/report-totaluganda-foefrance-survie-2019-compressed.pdf>. See also: Cyril Belaud, "Delays and shattered hopes: Uganda still waiting for oil riches" (March 27, 2020), <https://news.yahoo.com/delays-shattered-hopes-uganda-still-waiting-oil-riches-023103811.html>.





EnviroServ waste disposal site in Niamasoga. © Martin Dudek

## 2.5. EnviroServ Uganda

### *Company overview*

Founded in 1979, EnviroServ is headquartered in Gauteng, South Africa. It is a major waste management company in South Africa, and has branches in Mozambique and Uganda.<sup>84</sup>

### *Activities in Uganda*

EnviroServ Uganda Limited owns and operates the Nyamasoga Waste Treatment and Disposal Facility in the Hoima district, commissioned in 2015. The facility treats several kinds of waste. It manages the waste generated by the extractive companies in the Albertine Graben. The waste is treated and disposed of in a landfill cell. The design life of the facility is based on 100 acres, and approved for use for 20 years, with a 30-year post closure monitoring period.

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84. EnviroServ, <https://www.enviroserv.co.za/>.

## ***EnviroServ and human rights***

To date and to our knowledge, no human rights concerns have been brought against EnviroServ in Uganda. In South Africa, the South African Human Rights Commission found the company was violating people's right to a clean environment in one of its facilities in 2015.<sup>85</sup> The company is also embroiled in an ongoing conflict in the Upper Highway region of Durban, in KwaZulu-Natal, but has so far been cleared by South African authorities.<sup>86</sup>

### **2.6. Albertine Graben Refinery Consortium**

In April 2018, Uganda entered into a Project Framework Agreement (PFA) with the Albertine Graben Refinery Consortium (AGRC), the lead investor in the construction of a new refinery that will transform part of the extracted oil.<sup>87</sup> The consortium is comprised of YAATRA Africa LLC, Mauritius; Lionworks Group Ltd., Mauritius; Baker Hughes General Electric's (BHGE) Italian subsidiary Nuovo Pignone International SRL; and Saipem SPA, an Italian company which will be in charge of engineering, procurement, and construction of the site.<sup>88</sup> Total has indicated that it would be prepared to take a share of 10% in the future, as have certain East African Governments.<sup>89</sup>

This refinery, located on 29 km<sup>2</sup> of land in the Kabaale Industrial Park, in the Kabaale parish of Hoima district, will receive crude oil from the Kingfisher and Tilenga extraction sites. Two separate feeder pipelines, stemming from Tilenga and Kingfisher's CPFs, will meet at the delivery point in Kabaale Industrial Park, from where part of the oil will flow to the refinery and part of it will be directed to the EACOP pipeline for export. An extensive industrial park is planned, comprising an international airport, mixed, polymer, and fertilizer industry facilities, warehouses, and "[c]ommon facilities and services including worker housing, expatriate camps, schools, recreation areas, medical facilities, among others." Roads have already been built to access it.<sup>90</sup>

In 2019, initial funding was granted by the Africa Finance Corporation to start construction, with an estimated overall cost of 4.27 billion USD for the whole project.<sup>91</sup>

### **2.7. Uganda National Oil Company**

Uganda National Oil Company Limited (UNOC) is a limited liability company fully owned by the Government of Uganda. It is established under Section 42 of the Petroleum (Exploration, Development and Production) Act and Section 7 of the Petroleum (Refining, Conversion, Transmission and Midstream Storage) Act, both of 2013.<sup>92</sup>

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85. SAHRC, "SAHRC finds against EnviroServ (Pty) Ltd" (June 2, 2015), <https://www.sahrc.org.za/index.php/sahrc-media/news-2/item/322>.

86. Upper Highway Air, "It all still stinks" (May 10, 2020), <http://www.upperhighwayair.co.za/2020/05/10/it-all-still-stinks>.

87. Martin Kitubi, "Oil, Gas Sector Gets Refined", *New Vision* (January 22, 2020), <https://www.newvision.co.ug/news/1513830/oil-gas-sector-refined>.

88. "Uganda approves FEED, EPC contractor for proposed refinery", *Oil & Gas Journal* (March 13, 2019), <https://www.ogj.com/refining-processing/article/17278792/uganda-approves-feed-epc-contractor-for-proposed-refinery>.

89. Minutes of FIDH & FHRI meeting with Total, February 2020 Kampala.

90. UNOC, "Kabaale Industrial Park", <https://www.unoc.co.ug/kabaale-industrial-park-kip/>. See also the well-documented Wikipedia page of the refinery: [https://en.wikipedia.org/wiki/Uganda\\_Oil\\_Refinery#cite\\_note-16](https://en.wikipedia.org/wiki/Uganda_Oil_Refinery#cite_note-16).

91. Fidelis John, "Uganda's oil refinery project receives US \$20m from AFC", *Construction Review Online* (November 28, 2019), <https://constructionreviewonline.com/2019/11/ugandas-oil-refinery-project-receives-us-20m-from-afc>.

92. Ugandan National Oil Company, <https://www.unoc.co.ug/>.

Its mandate is to handle the Government of Uganda's commercial interests in the petroleum sector and to investigate and propose new upstream, midstream and downstream ventures at the domestic level, and eventually the international level.

As the nominee of the Government of Uganda, or on behalf of the State, UNOC is mandated to hold a 15% participating interest in the licenses in the Tilenga and Kingfisher projects.

Through two wholly-owned subsidiaries, Uganda Refinery Holding Company Limited (URHC) and National Pipeline Company Limited (NPC), UNOC will hold a participating interest of up to 40% in the refinery and a participating interest of up to 15% in the East African Crude Oil Pipeline (EACOP). NPC will also develop, manage and operate downstream storage terminals.

### 3. Timeline of Oil Development in the Lake Albert Region

- 1997 The Ugandan Government reaches an agreement to carry out explorations with two companies: Hardman Resources, based in Australia, and Heritage Oil, owned by a British citizen connected to mercenary groups.<sup>93</sup>
- 2004 Heritage Oil and Energy Africa win new exploration licenses.
- 2004 Tullow purchases Energy Africa for 500 million USD and continues oil exploration in Uganda.
- 2006 Tullow makes the first oil findings considered commercially relevant.
- 2007 Tullow purchases Hardman Resources for 1.1 billion USD.
- 2010 Tullow announces its intention to sell its concessions to Total and CNOOC, an operation immediately followed by tax disputes. The total investment in the Albertine Graben is estimated to be around 10 billion USD.
- 2011 Tullow, CNOOC, and Total sign a Memorandum of Understanding with the Government of Uganda.
- 2012 Discovery of oil in Kenya.
- 2012 The division of 33.33% for each company is established between Tullow, Total, and CNOOC, who enter into a joint venture.
- 2013 The Government commissions Taylor Dejongh to search for an investor for the refinery, estimated to cost 1.6 billion USD.<sup>94</sup>
- 2014 The Lake Albert Graben is estimated to contain between 1.8 and 2.2 billion barrels of recoverable oil, out of a total quantity in place estimated at 6.5 billion barrels.
- 2016 It is decided that the pipeline will not go through Kenya, but through Tanzania.
- 2017 Renegotiations of the Joint Venture share allocation start.
- 2017 The State grants Oranto Petroleum Ltd., a Nigerian company, and Armour Energy, an Australian company, licenses to exploit respectively the Ngassa area and the Kanywataba block. These licenses expired in 2019 and were renewed for two years.
- 2018 An MoU is signed between UNOC and CNOOC to jointly explore oil in Uganda beyond Kingfisher.
- 2019 Oranto, a Nigerian company, begins exploration of the Ngassa oil well.
- 2019 Initial funding to build the refinery is granted by the African Finance Corporation, for a project now estimated to cost 4.27 billion USD.
- 2020 The acquisition of Tullow's interest in the project by Total is announced. The sales agreement is expected to be finalized during the second half of 2020.

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93. Simon Goodley, "Profile: Tony Buckingham, chief executive of heritage oil", *The Guardian* (November 13, 2011), <https://www.theguardian.com/business/2011/nov/13/heritage-oil-chief-tony-buckingham>.

94. Edward Sseskika, "Government hires transaction advisor for oil refinery", *The Observer* (March 1, 2013), <https://www.observer.ug/business/79-businesstopstories/23963-govt-hires-transaction-advisor-for-oil-refinery>.

## 4. Legal actions initiated against the project

### *Legal action against Tilenga's ESIA in Uganda*

In May 2019 a legal action was filed by the Ugandan NGO AFIEGO against the National Environment Management Authority of Uganda (NEMA) and the Petroleum Authority of Uganda (PAU) regarding the process by which Tilenga's Environmental and Social Impact Assessment (ESIA) was approved.<sup>95</sup> The plaintiffs seek the cancelation of the ESIA certificate for the Tilenga project on the basis of alleged irregularities validation process.

A hearing was set for June 11, 2020. In this hearing the plaintiffs were to cross-examine the officials from NEMA, and correspondingly the defendants would have the opportunity to cross-examine the plaintiffs. The hearing is still pending, however, partly due to delays caused by the transfer of the case to different judges, as well as to directives issued by the judiciary due to the Covid-19 pandemic, and according to which only urgent proceedings could be heard by the courts.

### *The duty of Vigilance action in France*

In June 2019, six French and Ugandan NGOs – Friends of the Earth France, Survie, AFIEGO, CRED, NAPE/Amis de la Terre Ouganda, and NAVODA – presented Total with a formal request to revise its vigilance plan and to implement that plan in its oil project in Uganda. After an unsatisfactory response to the formal request by Total, legal action was launched on October 23, 2019. The complainants argued that the company had failed to comply with its obligations under the [French duty of vigilance law](#). The summary hearing which took place on December 12, 2019 before the High Court (Tribunal de Grande Instance) of Nanterre lasted more than 2.5 hours. After an initial judgement, which found that the High Court was not competent to hear the case, and that the Commercial Court (Tribunal de Commerce) had jurisdiction, the plaintiffs filed an appeal which will be heard by the court on October 29, 2020. Several Ugandan human rights defenders who had come to France to testify in the case were victims of threats, intimidations, and attacks both before and after the December 12th hearing (see section III.1, below).

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95. High Court of Uganda, AFIEGO v NEMA & PAU, Miscellaneous Cause No. 140 of 2019.



# III. ASSESSING RESPECT FOR HUMAN AND ENVIRONMENTAL RIGHTS: FINDINGS AND ATTRIBUTION OF RESPONSIBILITY

In this chapter, we present a brief but detailed assessment of the reality experienced by the communities in Buliisa and Kikuube, from a rights-based perspective. Starting with a presentation of the relevant legal framework, the situations we document are analysed to highlight the human rights violations we identify, and to allocate responsibility to the appropriate parties.

This section is divided into four subsections which deal with the actual and potential impacts documented, within five key areas of human rights. First, the limitations on the **ability of human rights defenders to work**, including through violence, harassment, and impunity for perpetrators. Second, the question of the **right to land**, adopting a perspective that goes beyond the mere notion of property by embracing the social and cultural dimensions of the use of land. Third, the impacts on the **right to an adequate standard of living**. Fourth, a specific assessment of impacts on the **right to water and health**, and the **right to a healthy environment**.

## 1. Human Rights Defenders: Violence, Harassment, and Impunity in the Albertine Region

At the international level, the UN Declaration on Human Rights Defenders,<sup>96</sup> adopted by the UN General Assembly in 1998, protects the right of individuals to raise concerns over conduct of the State and other entities which may be harmful to fundamental rights.<sup>97</sup> The Declaration further calls for the protection of these individuals and holds the State responsible for “taking all necessary measures to ensure the protection” of human rights defenders who face “violence, threats, retaliation, (...) as a consequence” of their work.<sup>98</sup> In fact, individuals should “be protected effectively under national law in reacting against or opposing (...) activities and acts, (...) attributable to States that result in violations of human rights.”

According to the Declaration, States further have a responsibility to ensure that their employees, including law enforcement officers, are properly trained to respect human rights within their public functions.<sup>99</sup>

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96. In full, UN Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms 1998.

97. UN Declaration on Human Rights Defenders 1998, Article 9.1. Furthermore, Article 8.2 stipulates that “This includes (...) the right to submit to governmental bodies and (...) organizations concerned with public affairs criticism and (...) to draw attention to any aspect of their work that may hinder or impede the promotion, protection and realization of human rights and fundamental freedoms.”

98. UN Declaration on Human Rights Defenders 1998, Article 12.

99. UN Declaration on Human Rights Defenders 1998, Article 15.

At the regional level, several resolutions of the African Commission on Human and Peoples' Rights (the African Commission) recognize the importance of the work of human rights defenders ("HRDs") and the dangers they face as a result:

- Resolution 69 adopted in 2004 notes "with deep concern that impunity for threats, attacks and acts of intimidation against human rights defenders persists and that this impacts negatively on the work and safety of human rights defenders." It "reiterates its support for the work carried out by human rights defenders in Africa" and calls on States "to take all necessary measures to ensure their protection."<sup>100</sup>
- Resolution 119 adopted in 2007 recognizes the violations suffered by HRDs "such as arbitrary arrests, illegal detentions, acts of torture etc." and "urges States Parties to take all the necessary measures to ensure to all human rights defenders an environment conducive to carrying out their activities without fear of any acts of violence, threats, reprisals, discrimination, pressure and any arbitrary acts by State or non-State actors as a result of their human rights activities." It also "[r]ecommends that States take specific measures to ensure the physical and moral integrity of their peoples, especially those of human rights defenders."<sup>101</sup>
- Resolution 376 adopted in 2017 specifically addresses the risks faced by HRDs working on extractive industries and calls on States to take the necessary measures to ensure defenders can work without fear of "violence, threat, intimidation, reprisal, discrimination, oppression and harassment from State and non-State actors," and to recognize their particular status.<sup>102</sup>

The Guidelines on Freedom of Association and Assembly<sup>103</sup> of the African Commission derive from Article 10 of the African Charter on Human and Peoples' Rights (the African Charter or ACHPR), which bestows the right of freedom of association.<sup>104</sup> In these Guidelines, the African Commission expresses its concern with the "practice in some states of hampering the participation of civil society in the work of regional and international bodies and by the 'chilling effect' of reprisals," and recalls the obligation of States "to provide full protection to those who seek to participate in the work of international bodies." The Guidelines further remind States of their responsibility to ensure that associations carry out their activities without any fear of violence (Guideline 29<sup>105</sup>) and to protect them notably from non-state actors (Guideline 30<sup>106</sup>). The right to engage in "public affairs" at the "international level" is specifically recalled in Guideline 25.<sup>107</sup>

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100. ACHPR/Res.69(XXXV)04 (2004), "Resolution on the Protection of Human Rights Defenders in Africa."

101. ACHPR/Res.119(XXXII)07 (2007), "Resolution on the Situation of Human Rights Defenders in Africa."

102. ACHPR/Res.376(LX) (2017), "Resolution on the Situation of Human Rights Defenders in Africa", <https://www.achpr.org/sessions/resolutions?id=419>.

103. ACHPR Guidelines on Freedom of Association and Assembly adopted at the Commission's 60th Ordinary Session held in Niamey, Niger, from 8 to 22 May 2017.

104. African Charter on Human and Peoples Rights 1981, Article 10, states that "every individual shall have the right to free association provided that he abides by the law."

105. ACHPR Guideline 29 on Freedom of Association and Assembly: "States shall respect, in law and practice, the right of associations to carry out their activities, including those denoted above, without threats, harassment, interference, intimidation or reprisals of any kind." [https://www.ishr.ch/sites/default/files/documents/guidelines\\_on\\_foaa-english.pdf](https://www.ishr.ch/sites/default/files/documents/guidelines_on_foaa-english.pdf).

106. ACHPR Guideline 30 on Freedom of Association and Assembly: "States shall protect associations, including their principal and most visible members, from threats, harassment, interference, intimidation or reprisals by third parties and non-State actors." <https://www.achpr.org/presspublic/publication?id=22>.

107. ACHPR Guideline 25 on Freedom of Association and Assembly: "Associations shall be able to engage in the political, social and cultural life of their societies, and to be involved in all matters pertaining to public policy and public affairs, including, inter alia, human rights, democratic governance, and economic affairs, at the national, regional and international levels." <https://www.achpr.org/presspublic/publication?id=22>.

The Cotonou Declaration on strengthening and expanding the protection of all HRDs in Africa<sup>108</sup> also addresses the challenges faced by HRDs who work specifically on land rights issues.

Despite this framework of international and regional obligations that bind the State of Uganda as a member of the United Nations, the country currently has no specific law protecting and recognising the work and role of HRDs. However, The Human Rights Defenders Protection Bill has been proposed to Parliament, and would, if passed into law, provide for the protection and promotion of human rights defenders and establish a human rights defenders protection council.

Moreover, several laws impliedly provide for the protection of HRDs. The 1995 Constitution of Uganda (hereinafter “the Constitution”) recognises that human rights are inherent and not granted by the State, which is only mandated to guarantee them (Article 20 (1)). The Constitution also proceeds to reinforce the framework of protection, which includes the rights to: non-discrimination (Article 21); life (Article 22); liberty (Article 23); freedom from torture or other cruel, inhuman and degrading treatment or punishment (Article 24); freedom from slavery or servitude (Article 25); the right to property (Article 26); privacy (Article 27); a fair trial (Article 28); freedom of speech, expression, association, and assembly (Article 29); and the right to education (Article 30). The Constitution of Uganda goes yet further, in Article 38, to protect and encourage the use of civic space.

However, other laws are restrictive and muzzle the work of HRDs in Uganda. For example, the Public Order Management Act of 2013 is strongly protested by civil society organizations (CSOs) because it limits freedom of opinion, expression, and assembly, and does not conform to international human rights standards. Section 8 of the Public Order Management Act, which deals with the powers of police officers to stop or prevent a public meeting, and has been used to limit freedom of expression and peaceful assembly and to justify police brutality, was declared unconstitutional and illegal.<sup>109</sup> Furthermore, despite the adoption of the Access to Information Act in 2005, enacted with the purpose to ease access to information, in practice Government institutions have made it difficult for CSOs to gain access to specific information, particularly regarding issues considered highly sensitive, such as oil and gas projects.<sup>110</sup>

The NGO Act of 2016, which came into force in March 2016, places several obligations on NGOs working in Uganda. The Act curtails NGOs’ capacity to operate, by imposing on them a series of conditions and procedures. For example, Section 44 prohibits NGOs from carrying out activities in any part of the country unless they have approval from both the District Non-Governmental Monitoring Committee (DNMC) and the local government, and unless they have signed a memorandum of understanding (MoU) to that effect. NGOs may not extend their operations to new areas unless they have received a recommendation from the National Bureau for NGOs, through the DNMC of that area. Furthermore, the Act requires an NGO to have MoUs with all its donors, sponsors, affiliates, and foreign partners, and the MoUs must specify the terms and conditions of ownership, employment, resources mobilized for the NGO, and any other relevant matter. Also, Section 5 establishes a National Bureau for NGOs that is granted broad powers, which under Section 7 include the power to revoke an NGO’s permit. Although overall, the legal framework for civil society in Uganda is generally supportive of NGOs, this support is conditioned on the social and political acceptability of their activities to the Government.

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108. Cotonou Declaration, adopted at the 2nd International Symposium on Human Rights Defenders in Africa Johannesburg +18 (March 27 – April 1, 2017).

109. Constitutional Court of Uganda ruling delivered on March 26, 2020, on the Constitutional Petition No. 56 of 2013 filed by a group of human rights groups including Human Rights Network Uganda, Development Network of Indigenous Voluntary Associations, Uganda Association of Women Lawyers, and Chapter Four.

110. NGO Registration (Amendment) Act 2006, Section 2.

Similarly, the Anti-Money Laundering Act of 2013 has been used to obstruct the work of HRDs. Originally adopted to combat money laundering activities on all fronts through the Financial Intelligence Authority and Board, it imposes certain duties on institutions and other persons, businesses, and professions which might be used for money laundering. This has given the State powers to impose bureaucratic conditions on NGOs especially, and even to threaten criminal charges against NGOs that do not fulfil the required conditions.<sup>111</sup> Likewise, although the Computer Misuse Act of 2011 is supposed to provide for the safety and security of electronic transactions and information systems, and to prevent unlawful access to, and the abuse or misuse of information systems, including computers, it has also been used to limit HRDs' freedom of expression online.

Making HRDs jump through bureaucratic hoops or hindering access to their funds may be a very effective way to slow or even block them from carrying out their work, but it is expressly prohibited by international law. Article 6 of the Declaration on Human Rights Defenders states that "[e]veryone has the right (...) to know, seek, obtain, receive and hold information about (...) how (...) human rights and freedoms are given effect in domestic legislative, judicial or administrative systems," while Article 13 protects the right to "utilize resources for the express purpose of promoting and protecting human rights."

Restricting NGOs' access to funding is a tactic traditionally used by repressive governments against civil society and in particular against human rights NGOs. A 2013 Annual Report by The Observatory for the Protection of Human Rights Defenders (FIDH-OMCT) shows in detail the ways in which this tactic constitutes a clear violation of numerous international and regional legal texts,<sup>112</sup> including first and foremost the UN Declaration on Human Rights Defenders, Article 13.<sup>113</sup> Their report also reveals that the Committee on Economic, Social and Cultural Rights (CESCR) has denounced the incompatibility between fulfilling the obligation to respect the freedom of association and imposing restrictions on NGO financing, concluding that legislation that "gives the Government control over the right of NGOs to manage their activities, including seeking external funding" does not "conform" to Article 8 [on freedom of association] of the International Covenant on Economic, Social and Cultural Rights (ICESCR).<sup>114</sup>

The wide extent of this phenomenon led the United Nations Special Rapporteur on the situation of HRDs to stress that "in order for human rights organizations to be able to carry out their activities, it is indispensable that they are able to discharge their functions without any impediments."<sup>115</sup>

At the regional level, the African Commission Guidelines on Freedom of Association and Assembly<sup>116</sup> recognize the difficulties that civil society may face and express concern in their preamble about the "excessive restrictions" imposed on African organisations. Excessive restrictions may take the form of "freezing" organisations' assets. This is why the Guidelines specifically state that associations should be able to use their funds freely (Guideline 3<sup>117</sup>).

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111. To illustrate the misuse of these acts, FIDH, Uganda: Administrative harassment faced by several NGOs, (October 20, 2017) <https://www.fidh.org/en/issues/human-rights-defenders/uganda-administrative-harassment-faced-by-several-ngos>, see also Defenders Protection Initiative, Security and Freedom of Association in Uganda and Nigeria, (August 8, 2019), <https://defendersprotection.org/security-and-freedom-of-association-in-uganda-and-nigeria/>.

112. Observatory for the Protection of Human Rights Defenders, "Violations of the Right of NGOs to Funding: from harassment to criminalisation" (Annual Report 2013), [https://www.fidh.org/IMG/pdf/obs\\_2013\\_human\\_rights\\_defenders\\_english.pdf](https://www.fidh.org/IMG/pdf/obs_2013_human_rights_defenders_english.pdf).

113. UN Declaration on Human Rights Defenders 1998, Article 13: "Everyone has the right, individually and in association with others, to solicit, receive and utilize resources for the express purpose of promoting and protecting human rights and fundamental freedoms through peaceful means [...]."

114. See UN Committee on Economic, Social and Cultural Rights, "Concluding observations of the Committee on Economic, Social and Cultural Rights – Egypt" (May 23, 2000), UN Document E/C.12/1/Add.44, paragraph 19.

115. See UN General Assembly, 'Report of the Special Rapporteur on the situation of human rights defenders' (August 4, 2009), UN Document A/64/226, paragraph 91.

116. ACHPR Guidelines on Freedom of Association and Assembly adopted in May 2017 at the Commission's 60th Ordinary Session, [https://www.ishr.ch/sites/default/files/documents/guidelines\\_on\\_foaa-english.pdf](https://www.ishr.ch/sites/default/files/documents/guidelines_on_foaa-english.pdf).

117. ACHPR Guideline 37 on Freedom of Association and Assembly: "The law shall clearly state that associations have the right to seek, receive and use funds freely in compliance with not-for-profit aims." <https://www.ishr.ch/sites/default/files/>

Such restrictions may also include bureaucratic obstacles that members of civil society face when attempting to obtain answers or to learn the details of alleged violations, notably from Government institutions. This is also in violation of Article 9<sup>118</sup> of the African Charter on Human and Peoples' Rights, which confers the right to access information.

The Guidelines insist that the aim of States should be to enable and promote organisations "to pursue their objectives," "including [through] dialogue (...) with civil society" (Guideline 7<sup>119</sup>). According to these Guidelines, organizations should not be hindered in seeking to discuss matters with authorities or from requesting authorizations to access documents.

The importance of human rights defenders in the context of business-related impacts on human rights is recognized by the [UN Guiding Principles on Business and Human Rights](#). They highlight the key role that HRDs can play in human rights due diligence and in enabling companies to understand the concerns of affected stakeholders. In particular, the Guiding Principles urge businesses to consult HRDs as an important expert resource as part of their human rights due diligence, as defenders have a key role as watchdogs, as advocates, and as a voice for affected stakeholders, and urge States to ensure that the legitimate activities of HRDs are not obstructed.

In light of this legal framework, the research team documented violations and abuses impacting the security, integrity, and ability to work of human rights defenders. These abuses include violence and harassment, in a shrinking space fraught with bureaucratic obstacles and a generalized environment of impunity.

## 1.1. Violence and harassment against human rights defenders

The context in which this Report was produced has been characterised by a level of tension and violence high enough to limit the capacity of action of human rights defenders, as well as to limit FIDH and FHRI's capacity to document violations and to mobilize communities around human rights issues. This tension has engendered a fear to speak up about the impacts that are being felt by communities on the ground, a fear that has been proved justifiable by the concrete threats, violence, and harassment against defenders who dare to exercise their freedom of expression.

The presence of armed forces and private security companies in the area – powerful and numerous economic actors with economic and political interests in the project that often conflict with those of the local populations – has nurtured the high level of fear within affected communities, who generally remain silent or very cautious when speaking about the violence and harassment they may have experienced and the impacts they have suffered from the project. Total E&P Uganda acknowledges that building trust between the local population and corporate representatives is a critical issue for the company. Total and Tullow Oil have chosen to hire unarmed security guards and to commit to the Voluntary Principles on Security and Human Rights,<sup>120</sup> in contrast to other companies involved

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[documents/guidelines\\_on\\_foaa-english.pdf](#).

118. African Charter on Human and Peoples' Rights, Article 9: "Every individual shall have the right to receive information."

119. ACHPR Guideline 7 on Freedom of Association and Assembly: "National legislation on freedom of association, where necessary, shall be drafted with the aim of facilitating and encouraging the establishment of associations and promoting their ability to pursue their objectives. Such legislation shall be drafted and amended on the basis of broad and inclusive processes including dialogue and meaningful consultation with civil society." [https://www.ishr.ch/sites/default/files/documents/guidelines\\_on\\_foaa-english.pdf](https://www.ishr.ch/sites/default/files/documents/guidelines_on_foaa-english.pdf).

120. The Voluntary Principles on Security and Human Rights (VPs) are a set of non-binding principles created to assist extractive companies to balance security concerns with human rights. They were launched in 2000 and are a tripartite multi-stakeholder initiative.





A focus group discussion held with villagers. © Martin Dudek

in the project.<sup>121</sup> However, Total informed the research team that given the strategic value and the location of the project, an MoU would be concluded with Ugandan authorities for the deployment of a specialized oil and gas police force. The risks of human rights abuses linked to these agreements were highlighted during the exchanges – and illustrated by previous cases of abuse by Ugandan police forces – and are identified by Total S.A.’s Vigilance Plan, published in March 2020, as one of the risks associated with its operations in general. But the company was unable or unwilling to share information about any measures it plans to undertake to prevent or mitigate similar abuses in the future, besides a commitment to a “legal and security screening” of the contract. The terms of the MoU, moreover, will remain confidential.

#### The [African] Commission calls upon States Parties to:

2. *Take the necessary measures to provide human rights defenders with a conducive environment to be able to carry out their activities **without fear of acts of violence, threat, intimidation, reprisal, discrimination, oppression and harassment from State and non-State actors;***
3. *Adopt specific legislative measures to recognise the status of human rights defenders, and protect their rights and the rights of their colleagues and family members, including women human rights*

121. See Voluntary Principles on Security and Human Rights, “Our members”, <https://www.voluntaryprinciples.org/the-initiative>, last accessed April 30, 2020.

*defenders and those working on issues such as extractive industries, health and HIV/AIDS, reproductive health, sexual orientation and gender identity, promotion of peace and democracy, fight against terrorism, and respect for human rights.*<sup>122</sup>

Local HRDs, individuals and organisations, including some who participated in FIDH and FHRI's research team, were directly and individually targeted with abusive behaviours by Government and business actors, which seemed to be aimed at punishing them for their legitimate human rights activities.

Several HRDs in the region have reported arbitrary detentions, torture, confiscation of property, as well as limitations on their ability to circulate in the territory and hold meetings.

### **UN Declaration on Human Rights Defenders - Article 9.1-2:**

*In the exercise of human rights and fundamental freedoms, (...) everyone whose rights or freedoms are allegedly violated has the right, either in person or through legally authorized representation, to complain to and have that complaint promptly reviewed in a public hearing before an independent, impartial and competent judicial or other authority established by law and to obtain from such an authority a decision (...)*

Members of the **Ngetha Media Association for Peace**, a local organisation working to promote and protect human rights in the region and fighting for environmental justice in favour of marginalised communities, have been also victims of arbitrary detentions, violence, torture, and surveillance since 2017.

During the past year, they have been victims of at least three arbitrary detentions of several members of the organisation. The year before, in July 2018, the Oil and Gas Protection Unit of the police, along with the Marine Division of the Panyimur Police, arrested and detained for six hours a member of the organization on allegations that he was monitoring the activities of companies and of these police forces. He was seriously beaten and tortured before being released without charges. He was relocated to Kampala to receive adequate medical attention for the resulting injuries. The torture case was brought to court. Information about these detentions and an ongoing criminal investigation against them for publishing articles that exposed the human rights impacts of the oil development – in particular those linked to Atacama's and Total's activities in the region – has been circulating, along with death threats against the members of the organisation and their families.

Additionally, in January 2019 the phone of one of the organization's members was hacked and all its contents deleted.

Total contests these allegations, and any link between these allegations and their activities in the region. Nonetheless, to the knowledge of the authors, no specific in-depth inquiry was launched by the company into the situation of these human rights defenders.

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122. 376 Resolution on the Situation of Human Rights Defenders in Africa – ACHPR/Res.376(LX)2017.



Beyond these forms of repression by public officials, HRDs have also faced further intimidation and threats to their physical safety and personal integrity through individual and direct attacks, threatening messages, and the spreading of false information to discredit their work.

In Kitegwa, Hoima, members of the Oil Refinery Residents Association were beaten in June 2013 by security agencies composed of the Uganda Police Force, Internal Security Organisation, Uganda People's Defense Force (UPDF), and the Oil and Gas Protection Unit, when details of the relocation of residents in the area of the refinery were being released. The Association was trying to provide information to community members about their rights with regard to compensation, including by translating for community members the documents that Government officials had brought.

At least one of them was arrested and threatened at gunpoint by a person identified by them as a member of the Internal Security Organisation.

### **UN Declaration on Human Rights Defenders - Article 12:**

- 2. The State shall take all necessary measures to ensure the protection by the competent authorities of everyone, individually and in association with others, against any violence, threats, retaliation, de facto or de jure adverse discrimination, pressure or any other arbitrary action as a consequence of his or her legitimate exercise of the rights referred to in the present Declaration.*
- 3. In this connection, everyone is entitled, individually and in association with others, to be protected effectively under national law in reacting against or opposing, through peaceful means, activities and acts, including those by omission, attributable to States that result in violations of human rights and fundamental freedoms, as well as acts of violence perpetrated by groups or individuals that affect the enjoyment of human rights and fundamental freedoms.*

### **Witnesses at Risk**

The Observatory for the Protection of Human Rights Defenders<sup>123</sup> has received and verified several reports concerning worrying abuses suffered by human rights defenders involved as witnesses in the legal action brought against Total in France by Friends of the Earth and Survie. Those abuses range from arbitrary detention and interrogation by Ugandan immigration officials based on their involvement in the legal case to direct attacks on their houses at night by unidentified people, following episodes where individuals allegedly linked to the company spread false information in their community, claiming that the witnesses lied during their court appearances in France.<sup>124</sup> The misinformation campaign to discredit the work of these defenders, which has allegedly continued, has generated tensions and turned communities against them, putting their security at risk. It has resulted in the ostracism of the human rights

123. Observatory for the Protection of Human Rights Defenders, "Uganda: Arbitrary Detention and Release of Mr. Jealousy Mugisha following his Testimony in France in a Case against Total", (December 17, 2019), <https://www.fidh.org/en/issues/human-rights-defenders/uganda-arbitrary-detention-and-release-of-mr-jealousy-mugisha>.

124. Observatory for the Protection of Human Rights Defenders, "Two Defenders who Testified in the Trial Against Total are at Risk in Uganda" (December 26, 2019), <https://www.fidh.org/en/issues/human-rights-defenders/two-defenders-who-testified-in-the-trial-against-total-are-at-risk-in-uganda>.

defenders by some community members (including by throwing stones at them). As underlined elsewhere, dividing communities is one of the strategies frequently used by corporations to avoid accountability for human rights abuses.<sup>125</sup>

According to the information received, despite the efforts of Total to raise these concerns about the fate of HRDs with the Government, some of those defenders have also been subject to an exit ban, and their photos were circulated among high-level authorities, including in the Oil and Gas Protection Unit of the police.

The harassment and violence endured by the Ugandan land rights defenders in the context of the Tilenga project has also been denounced by the Office of the United Nations High Commissioner of Human Rights. In fact, the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, the Working Group on the issues of Human Rights and transnational corporations, the Special Rapporteur on the issues of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, and the Special Rapporteur on the situation of human rights defenders addressed a joint letter to Patrick Pouyanné, Total's CEO, pursuant to the Human Rights Council Resolutions 34/18, 37/8, and 34/5. The letter denounces the harassment and intimidation endured by the Ugandan human rights defenders before and after their participation in the case against Total S.A. before French jurisdiction.

Total S.A. and Total E&P Uganda both responded to the UN Special Rapporteur's letter on May, 18, 2020. In their response, Total S.A. claimed not to be in a position to "comment on the merits to avoid any appearance of interference,"<sup>126</sup> as the procedures are still ongoing. However, regarding the allegations of harassment and intimidation, Total affirms that "Total E&P Uganda made the enquiries into these allegations [which] concluded that such a conduct – assuming the allegations are true – was not attributable to any of Total E&P Uganda and Atacama's employees."<sup>127</sup> Yet no details regarding the scope or methodology of those inquiries have yet been released. Total S.A. and Total E&P Uganda did, however, respond to the inquiries made by the Special Rapporteurs. They provided accounts of the measures put in place to prevent negative human rights and environmental impacts, the measures taken by Total E&P Uganda to engage in dialogue, as well as the process in place to improve access to legal remedies.

It is clear that the spread of misinformation to the local communities creates a deleterious climate of confusion and fear, and that it is a tool being used by multiple actors operating on the ground. Combined with the use of force through arbitrary detention and violence, the local environment plainly lacks sufficient guarantees for the defence of human rights.

When asked about these worrying trends, stakeholders in Kampala offer mixed responses. The European Union Delegation to Uganda alleges that they are concerned about the treatment of human rights defenders in the country, notably those working on oil and gas projects or on the right to land. The EU has established itself as a focal point for Ugandan HRDs, and its representatives examine cases of individuals in need of protection every month.

Total's Chairman reports that intimidation or attacks against defenders are "against the company's principles and values," and that it has informed the Government that it does not approve of the

125. <https://www.somo.nl/five-strategies-corporations-use-to-avoid-responsibility-for-human-rights-abuses/>.

126. Letter from Aurelien Hamelle, Total General Council (Letter to office of the United Nations High Commissioner for Human Rights, May 18, 2020), <https://spcommreports.ohchr.org/TMResultsBase/DownloadFile?gld=35313>.

127. *Ibid.*

treatment of the defenders described above. Yet Total also asserts that these allegations are baseless and false. The company further claims that “the recurrent spread of false information concerning the employees of Total Group and alleged and undemonstrated wrongdoings is a particularly serious concern.”<sup>128</sup> Yet to date Total has released no information regarding any in-depth inquiry they have conducted into these allegations. Acknowledging that the grievance mechanisms in place have not necessarily been adequate to address claims made by or about HRDs, Total has offered to work on establishing alert mechanisms for the protection of local HRDs.

But responses by on-the-ground company liaisons and authorities tend to reveal a misunderstanding of the issues at stake. Worse, according to the information received it seems that such interlocutors are prone to making antagonistic remarks about members of communities who attempt to defend their rights, whom they often describe as liars or “speculators” seeking financial gain through compensation mechanisms. CNOOC, for its part, indicates “to-date, there is no grievance that has been registered with CNOOC Uganda Limited regarding human rights abuses from security forces.”<sup>129</sup>

CNOOC, when questioned, made only general reference to its compliance with relevant laws and regulations in Uganda, as well as to its corporate standards, including International Finance Corporation (IFC) performance standards, and to its human rights policy. However, no reference was made to any specific mechanism to ensure the protection of HRDs, beyond a policy of open dialogue with stakeholders, and social management plans.<sup>130</sup>

The specific cases of abuse of force and power by the authorities to intimidate HRDs reinforce an environment of fear that fuels conflict among community members, constituting a clear violation of the State’s duty to take the necessary measures to provide HRDs with a conducive environment in which to carry out their activities without fear of acts of violence, threat, intimidation, reprisal, discrimination, oppression, or harassment from State and non-State actors. Through reprisals, authorities create a “chilling effect” that discourages HRDs from speaking up in national and international fora. In the region, this effect generates fear and, in many cases, anger from community members against HRDs, especially when it is coupled with misinformation campaigns by non-State actors. By taking no action or insufficient action to prevent these strategies from being used against HRDs, the Joint Venture Partners also fail in their responsibility to respect human rights.

Human rights defenders have the right to be protected by authorities and by the law, but in this context, the State of Uganda has failed in its corresponding obligations. HRDs who have been victims of violence and harassment have been unable effectively to denounce those actions as a result of the shrinking space for civil society, and of widespread impunity.

## **1.2. Shrinking space and increased bureaucracy**

These above-mentioned cases in the Albertine region have occurred in a broader national context of shrinking space for civil society. In October 2017, FIDH denounced the administrative harassment faced by several NGOs that had challenged a constitutional amendment allowing the President of Uganda to run for another term in 2021. The organisations faced searches and the sealing-off of their premises, the freezing of their accounts, requests for specific financial information, and threats of closure of their offices, all aimed at discouraging their work. Journalists also face limitations on their ability to access information and conduct on-site research, including through restricted access to the

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128. Total’s response to FIDH draft report received on July 22, 2020.

129. CNOOC written response of July 23, 2020.

130. CNOOC written response of July 23, 2020.

Murchison Falls National Park. Similar obstacles have been faced by our research team, revealing, on top of a shrinking space resulting from violence and harassment, increased bureaucratic obstacles that prevent human rights organisations from carrying out their legitimate activities without hindrance.

*The Police Force continues to interpret the requirement for notification as a request for permission to assemble, thus unfairly restricting HRD assemblies and community barazas in the Albertine Region. There must be a commitment from the Police Force to stop mis-application of the sections of POMA.*

HRD operating in the Albertine Region.<sup>131</sup>

Special obligations, such as requiring organizations to have a Memorandum of Understandings (MoU) with districts, are already creating negative effects, despite the fact that requiring MoUs imposes an impermissible burden on NGOs.<sup>132</sup> For example, several organizations are reporting difficulties operating in Buliisa district. Ngetha Media Association for Peace, for example, has reported<sup>133</sup> challenges in conducting public human rights education in the district because of intimidation by district authorities.

*In the Albertine Region where the oil and extractives sector is taking shape, HRDs in those communities are equally facing challenges restricting their freedoms to assemble, associate, and express themselves. As HRD organisations move to sensitize people on land compensation, state agents continue to be inquisitive on who is building capacity of the locals. AFIEGO has been singled out by government and district officials for allegedly inciting the project affected persons. There has been intimidation and threats of closure of AFIEGO. Individual HRDs in the region continue to cite harassment, intimidation and arbitrary arrests.<sup>134</sup>*

### **UN Declaration on Human Rights Defenders - Article 13:**

*Everyone has the right, individually and in association with others, to solicit, receive and utilize resources for the express purpose of promoting and protecting human rights and fundamental freedoms through peaceful means, in accordance with article 3 of the present Declaration.*

More specifically, in the data-collection process for this community-based human rights impact assessment, FIDH and FHRI's research team faced a significant number of obstacles that illustrate the shrinking space for NGOs working on human rights in the oil and gas industry in Uganda.

After addressing written meeting requests to the companies, with no result, on January 21, 2019 the research team visited Total's head office in Kampala to seek an appointment to present and discuss the methodology and objectives of the human rights impact assessment. The team was informed by the receptionist that Total does not engage with any person, authority, or organization on matters of oil in the Albertine Graben unless that party has obtained prior formal permission from

131. National Coalition of Human Rights Defenders Uganda NCHRD-U (2016), Democracy on Trial, <https://hrdcoalition.ug/wp-content/uploads/2020/07/Democracy-on-Trial-Report.pdf>.

132. *Ibid.*

133. NCHRD-U interview with staff of the organization, Pakwach, July 2019.

134. NCHRD-U (2019), *Uganda: A clarion call to ensure the protection of Human Rights Defenders*, <https://www.albertinewatchdog.org/2020/01/24/environmental-human-rights-defenders-in-the-albertine-region-under-attack-the-tilenga-oil-development-project-raise-these-threats/>.



the Ministry of Energy and Mineral Development to conduct a study in the Albertine Graben. The research team was advised to write to the Permanent Secretary at the Ministry of Energy and Mineral Development for such authorization.<sup>135</sup> A similar reply was given by CNOOC, who refused to engage with our organisations without prior governmental clearance.

In a letter dated March 26, 2019, FHRI wrote to Mr. Robert Kasande, the Permanent Secretary at the Ministry of Energy and Mineral Development, requesting permission to conduct a “Human Rights Impact Assessment of the Effect of the Extractive Industry on the Local Communities in the Albertine Graben.” The letter was forwarded to the Petroleum Authority of Uganda (PAU). Officials at PAU stated that they had not received the letter from the Ministry and advised FHRI to write to the Executive Director of PAU to seek permission to carry out the study. After following elaborate procedures in three separate governmental institutions, sending several letters, submitting a detailed research proposal, and waiting more than four months, FHRI was then still required to obtain further permission from the President’s office.<sup>136</sup>

### **UN Declaration on Human Rights Defenders - Article 6:**

*Everyone has the right, individually and in association with others:*

*(a) To know, seek, obtain, receive and hold information about all human rights and fundamental freedoms, including having access to information as to how those rights and freedoms are given effect in domestic legislative, judicial or administrative systems.*

FIDH then decided to reach out to Total S.A. at its headquarters in Paris to raise its concerns about the difficulties of engaging with its Ugandan subsidiary as well as about the critical situation of human rights defenders. Total S.A. agreed to meet with FIDH and invited the Country Chair for Uganda to join. The exchanges at the headquarters level opened the doors at the local level, allowing for an in-depth exchange between the company, community representatives, FIDH, and FHRI. Exchanges have persisted throughout the process and facilitated the implementation of the methodology in the present report.

Nonetheless, this level of dialogue was not possible with CNOOC, who repeatedly refused to meet with FIDH and FHRI, despite the general authorization of PAU to conduct the specified research. CNOOC insisted that a specific clearance by PAU for the specific meeting was required for CNOOC to meet any person conducting this type of research. After such authorization was obtained, CNOOC only agreed to reply to the research team’s questions in writing, and provided only brief and partial responses. Thus, no constructive dialogue has as yet been established.

The process for securing meetings with the key stakeholders involved FIDH and FHRI sending letters requesting a meeting. Despite the cooperation of a number of key stakeholders, including Total, PAU, NEMA, the office of the Chief Government Valuer, and various district officials, other actors remained reluctant to meet with the research team. When asked if a standard procedure existed outlining the rules of engagement for CSOs, the regulating authorities were unable to respond.

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135. A year later, after the team secured authorizations by governmental authorities and opened a dialogue with Total’s headquarters in France, Total’s chairman affirmed that Total’s doors were “always open” to civil society, and that the company had a “duty to have a better mapping” of such administrative burdens imposed on CSOs.

136. See statement by FHRI addressed to Total (Letter correspondence, September 10, 2019): “Obstacles Faced by the Foundation for Human Rights Initiative (FHRI) in Efforts to Engage with Total E&P Uganda.”

At the local governmental level a similar labyrinth of bureaucratic requirements delayed the research. Local authorities in all districts require the signature of an MoU to authorize the research team to conduct activities. Information channels are often informal and depend on the will of individual authorities to share specific data. Documents are rarely available in electronic format, and in many cases it is difficult or impossible to photocopy the tomes of studies containing relevant information. During interviews with authorities, it appeared that they had limited access to information as well, and in many cases no capacity to influence decision-making, especially with regards to issues key to the project that are decided at the central level.

During exchanges with civil society organisations, the term “shrinking space” was received with scepticism. Human rights defenders question whether there is indeed any space left to denounce violations, particularly when those violations are related to the oil and gas industry. The facts described reveal that there is not only a failure by the State in its obligation to protect, but an active will to hinder the freedom of human rights organisations by imposing unreasonable administrative procedures to authorize their operations, intrusive mechanisms that closely monitor their receipt and use of funds, and censorship of their diffusion of information. Locally, corporate actors submit silently to these orders, even when clear norms have not been established through a legal framework, thus failing in their duty to respect human rights and to conform to their own commitments to respect international norms. In all contexts, business enterprises bear a responsibility to comply with all applicable laws and to respect internationally recognized human rights, wherever they operate. Thus companies have failed to comply with their obligations in the Lake Albert region, and cannot shield themselves on the basis of the limitations imposed by the Government on civil society’s capacity to act, particularly in light of the important leverage these companies can exercise over authorities as a result of the economic weight and strategic value of their investments in the country.

Reaching out at the international level was necessary to open spaces for dialogue. Unfortunately, local NGOs and community members cannot generally access such international audiences, and thus face insurmountable obstacles to their work.

### **1.3. A generalized environment of impunity**

Access to justice is an essential component of the protection and promotion of all human rights. At the international level, the UN Declaration on Human Rights Defenders,<sup>137</sup> Article 9, paragraph 2, protects the right of individuals whose rights or freedoms have been violated to access “independent, impartial and competent” justice, and to obtain redress.

Regionally, this right is also protected under Article 7 of the African Charter. It is also emphasized by the African Commission in Resolution 196,<sup>138</sup> which “[e]ncourages (...) States to take all necessary measures to initiate independent investigations on cases of violations of the rights of human rights defenders so as to prosecute and judge the perpetrators.”

In terms of business-related human rights abuses and the recourse to domestic judicial mechanisms, the Guiding Principles on Business and Human Rights call on States and companies to reduce relevant “barriers that could lead to a denial of access to remedy.”<sup>139</sup> The commentary explains that “[m]any of these barriers are the result of, or compounded by, the frequent imbalances between the parties to

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137. UN Declaration on Human Rights Defenders 1998, Article 9.2.

138. ACHPR/Res.196(L)2011, “Resolution on Human Rights Defenders in Africa.”

139. *United Nations Guiding Principles on Business and Human Rights*, Principle 26, [https://www.ohchr.org/documents/publications/guidingprinciplesbusinessshr\\_en.pdf](https://www.ohchr.org/documents/publications/guidingprinciplesbusinessshr_en.pdf).

business-related human rights claims, such as in their financial resources, access to information and expertise.”<sup>140</sup>

Nationally, the Constitution of Uganda, in Article 28, calls for the right to a fair hearing, and in the event that this right is violated or threatened, one can seek redress from a competent court of law under Article 50. Recourse can also be sought from the Uganda Human Rights Commission (UHRC) under Article 53(2) of the Constitution, which provides that UHRC has powers to give orders for redress and remedies where proof exists that human rights and freedoms have been infringed upon. Access to justice was further strengthened through the enactment of the Human Rights Enforcements Act of 2019, which provides for a mechanism for enforcing human rights through Chapter Four of the Constitution, and other related documents.

The United Nations Institute of Peace defines access to justice to mean more than simply improving an individual's access to courts or guaranteeing legal representation. Access to justice is defined as the ability of people to seek and obtain a remedy through formal or informal institutions of justice for grievances, in compliance with human rights standards.<sup>141</sup> There is no access to justice where citizens (especially marginalized groups) fear the system, see it as alien, and do not access it; where the justice system is financially inaccessible; where individuals have no lawyers; where they do not have information about or knowledge of their rights; or where there is a weak justice system. Access to justice involves normative legal protection, legal awareness, legal aid and counsel, adjudication, enforcement, and civil society oversight.

A number of people affected negatively by the oil development project find it difficult to access justice whether in formal or informal justice institutions. When litigants opt to use the courts, they cannot easily access them due to the distance and expense involved in filing and defending a suit. National authorities themselves acknowledged that, save for a handful of individuals who had the time and money to go to court, district tribunals had not been effective in dispute resolution. As we will describe below, in the instances where legal actions were identified, irregularities in the procedures as well as circumstances affecting the independence of judicial authorities often appear. This explains why the companies chose to develop alternative non-judicial bodies such as company grievance mechanisms. Many complaints have been lodged through these bodies, usually concerning compensation of lands, crops, or houses. But grievance mechanisms fall short of guaranteeing effective remedies for human rights defenders who have been intimidated or attacked.

Against this backdrop, judicial remedies appear more as a threat than as a tool for communities to defend their rights. Residents across a swath of villages narrated situations in which legal actions were used to coerce them into signing compensation agreements. While Total refers to judicial procedures as a component of due process, in practice, communities reacted with fear to the threat of a lengthy and expensive legal action against State authorities.

Furthermore, the heavy case backlog in the courts has materially affected access to justice for many litigants. Most cases spend between five and seven years in court before they are disposed of. An interview with the Resident Judge at Masindi High Court<sup>142</sup> alluded to the fact that currently Masindi High Court has a backlog of 2,000 cases, with limited judicial personnel to handle them. He mentioned that there are very few lawyers or litigants with knowledge of the laws governing the oil sector, which

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140. *United Nations Guiding Principles on Business and Human Rights*, Principle 26 commentary, [https://www.ohchr.org/documents/publications/guidingprinciplesbusinesshr\\_en.pdf](https://www.ohchr.org/documents/publications/guidingprinciplesbusinesshr_en.pdf).

141. United States Institute of Peace, “Necessary Condition: Access to Justice”, <https://www.usip.org/guiding-principles-stabilization-and-reconstruction-the-web-version/rule-law/access-justice>.

142. Interview with Justice Paul Gadenya Wolimbwa, March 24, 2020.



A village in Kasemene. © Martin Dudek

further cripples access to justice. He also noted that the devolution of Tullow's assets in the project poses a great risk, as there are a number of cases pending against it that have not been resolved. This will be a problem when cases are later concluded and compensation is to be provided to the complainants, who could be deprived of redress. Furthermore, dispute resolution through informal systems like Alternative Dispute Resolution (ADR) is rarely used, as these systems are not always robust enough to entertain oil-related disputes.

The environment of impunity negatively impacts the capacity of human rights defenders to work, and aggravates their vulnerability. Delays, high costs, and long distances are in most cases insurmountable obstacles that hinder the rights of defenders to access effective remedies. The State of Uganda is thereby failing in its obligation to secure access to justice and to fair and impartial proceedings. The important economic power of the Joint Venture Partners in a remote region, where institutions are weak and lack resources, contributes to aggravating this environment of impunity. Although the companies have put in place alternative grievance mechanisms, these mechanisms, contrary to the requirements of the LARF and IFC Performance Standards, remain company-led and lack independence, and are thus unable to address a number of critical issues, in particularly those linked to the security of HRDs. Furthermore, these mechanisms do not replace or obviate the State's obligation to guarantee impartial tribunals, regardless of the use and success of company grievance mechanisms.



## 2. The Right to Land

In light of the international, regional, and national legal framework of the right to land, which provides for its comprehensive definition and protection as a right which is not related only to property but also to private and family life, culture, and livelihood, this section underlines the findings regarding negative impacts on the right to land on affected communities, including as a result of limited access to information, land-grabbing, inadequate redress, a weak approach to gender, and situations of constraint and duress.

### 2.1. Land: A collective right beyond property

At the international level, the human rights system has not yet explicitly codified a human right to land. However, an ever-increasing body of soft law instruments and recommendations or observations by UN human rights treaty bodies recognise the right to land as “an essential element for the realization of many human rights.”<sup>143</sup> Several human rights instruments codified in major human rights treaties contain provisions regarding land and natural resources as part of their normative content, including the International Convention on the Elimination of all Forms of Racial Discrimination (ICERD) (1965), the International Covenant on Economic, Social and Cultural Rights (ICESCR) (1966), the International Covenant on Civil and Political Rights (ICCPR) (1966), the Convention to Eliminate All Forms of Discrimination against Women (CEDAW) (1979), the Convention on the Rights of the Child (CRC) (1989), and the rights enshrined in some of the fundamental International Labour Organisation (ILO) Conventions.<sup>144</sup> From these instruments and the observations and reports of UN special procedures derive a “right of every human being to effectively access, use and control – individually or in community – land and related natural resources in order to feed and house themselves, and to live and develop their cultures,”<sup>145</sup> achieving thereby an adequate standard of living, health, and cultural life. As such this right must be free from interferences such as evictions or pollution. From this perspective it is clear that the right to land is not limited to the right to private property. On the contrary, it must protect the variety of forms in which individuals and communities access, use, and control land. It does include an economic dimension, but rather than being strictly linked to the market value of land and profit, it underlines the role of land as a source of livelihood. As such, the right to land must be understood from an individual and collective perspective: it thus recognises and protects the different ways in which communities organise and relate to the natural resources that surround them. Cultural values, conceptions, and practices are thus an intrinsic element for understanding the relationship between human groups and natural resources from a holistic perspective.

Every individual is entitled to tenure use and management of land and natural resources, and to restitution and return when he or she has been forcibly evicted. Consequently, States have the obligation to protect people’s access, control, and use of land, including from interference from third parties such as corporations, by adequate legislation and enforcement.

Evictions are possible only under specific circumstances and insofar as they are:

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143. United Nations Human Rights Office of the High Commissioner, “Land and Human Rights”, <https://www.ohchr.org/EN/Issues/LandAndHR/Pages/LandandHumanRightsIndex.aspx>.

144. See for example: Report of the Special Rapporteur on the realisation of economic, social and cultural rights, Danilo Türk (1990) UN Document E/CN.4/Sub.2/1990/19, paragraph 121; Report of the Special Rapporteur on the right to adequate housing, Miloon Kothari (2005) UN Document E/CN.4/2005/48, paragraphs 25-31; Report of the Special Rapporteur on the right to adequate food, Jean Ziegler (2002) UN Document A/57/356; Report of the Special Rapporteur on the right to adequate food, Olivier de Schutter, UN Document A/65/281.

145. FIAN, “The Human Right To Land: Position Paper” (November 2017), [https://www.fian.org/fileadmin/media/publications\\_2017/Reports\\_and\\_Guidelines/FIAN\\_Position\\_paper\\_on\\_the\\_Human\\_Right\\_to\\_Land\\_en\\_061117web.pdf](https://www.fian.org/fileadmin/media/publications_2017/Reports_and_Guidelines/FIAN_Position_paper_on_the_Human_Right_to_Land_en_061117web.pdf), accessed April 24, 2020.

- (a) authorized by law;
- (b) carried out in accordance with international human rights law;
- (c) undertaken solely for the purpose of promoting the general welfare;
- (d) reasonable and proportional;
- (e) regulated so as to ensure full and fair compensation and rehabilitation; and
- (f) carried out in accordance with the [UN Basic Principles and Guidelines on Development-Based Evictions and Displacement].<sup>146</sup>

Furthermore, States have the obligation to provide equal protection from evictions and to guarantee secure tenure. In case of eviction, evictees have a right to resettlement before evictions are carried out, “which includes the right to alternative land of better or equal quality and housing that must satisfy the following criteria for adequacy: accessibility, affordability, habitability, security of tenure, cultural adequacy, suitability of location, and access to essential services such as health and education.”<sup>147</sup> Thus, this right is distinct and not limited to the right to compensation in the case that human rights violations occur prior, during, or as a result of an eviction. Furthermore, consultation with and the participation of affected people and communities; adequate notification; access to an effective administrative and legal recourse; and the prohibition of actions resulting in homelessness or the deterioration of housing and living conditions, are some of the key principles set out by international human rights bodies.

At the regional level, Article 14 of the African Charter on Human and Peoples’ Rights guarantees the right to property, which may only be “encroached upon in the interest of public need or in the general interest of the community and in accordance with the provisions of appropriate laws.”<sup>148</sup> Such a right is complemented by the rights to self-determination and to autonomous cultural, economic, and social development.<sup>149</sup> These same rights are protected by the International Covenants on Civil and Political Rights and on Economic Social and Cultural Rights, which specify that no people should be deprived of their means of subsistence.<sup>150</sup> Although the African Charter does not recognise the right to land as an autonomous right, it has been derived in three different ways: from the right to property (Article 14), the right to practice religion (Article 8), and the right to culture (Article 17). The African Commission considers that the right to property also includes “rights guaranteed by traditional custom and law to access to, and use of, land and other natural resources held under communal ownership.”<sup>151</sup>

In the *Ogiek vs. Kenya* case, the African Court on Human and Peoples’ Rights deemed the eviction of the Ogiek people without consultation to be a violation of the right to non-discrimination, culture and religion, property, natural resources, and development. Regarding the right to practice religion freely, including the right to worship and to engage in rituals and ceremonies, the Court found that the religious practices of the Ogiek people were inextricably linked with the land and the environment, thus concluding that an interference with their connection to the land placed severe constraints on their ability to practice religious rituals.<sup>152</sup>

146. *UN Basic Principles and Guidelines on Development Based Evictions and Displacement*, UN Doc A/HRC/4/18m, [https://www.ohchr.org/Documents/Issues/Housing/Guidelines\\_en.pdf](https://www.ohchr.org/Documents/Issues/Housing/Guidelines_en.pdf); see also OHCHR, “Forced evictions”, <https://www.ohchr.org/EN/Issues/Housing/Pages/ForcedEvictions.aspx>; OHCHR, “Forced evictions assessment questionnaire” (December 2016), p. 2, <https://www.ohchr.org/Documents/Issues/ForcedEvictions/ForcedEvictionsAssessmentQuestionnaire.pdf>.

147. *UN Basic Principles and Guidelines on Development Based evictions and Displacement*, UN Doc A/HRC/4/18m, [https://www.ohchr.org/Documents/Issues/Housing/Guidelines\\_en.pdf](https://www.ohchr.org/Documents/Issues/Housing/Guidelines_en.pdf); OHCHR, “Forced evictions”, <https://www.ohchr.org/EN/Issues/Housing/Pages/ForcedEvictions.aspx>.

148. African Charter on Human and People’s Rights (1981), Article 14.

149. African Charter on Human and People’s Rights (1981), Articles 20 and 22.

150. International Covenant on Civil and Political Rights (1966), International Covenant on Economics, Social and Cultural Rights (1966).

151. *Principles and Guidelines on the Implementation of Economic, Social and Cultural Rights in the African Charter on Human and Peoples’ Rights*, para 54.

152. *Ogiek vs. Kenya*, African Court on Human and People’s Rights, App. no. 006/2012, Judgement of May 26, 2017, paras. 162-169.

The Maputo Protocol<sup>153</sup> further develops the inter-linkage between cultural and land rights, but from a gender-sensitive perspective. Article 19, for example, provides that as part of the right to sustainable development, States have the obligation to take all measures to promote women's access to land and control over productive resources such as land, and to guarantee their right to property.

At the national level, the Constitution of Uganda protects the individual and collective right to property of all its citizens.<sup>154</sup> It allows for compulsory deprivation of property when the acquisition is necessary for public use, and when the compulsory taking of possession or acquisition of property is made in accordance with law, and further requires prompt payment of a fair and adequate compensation prior to the taking of possession or acquisition of property.<sup>155</sup> Moreover, the person or persons concerned by the acquisition are guaranteed access to a court of law.<sup>156</sup>

The Land Acquisition Act regulates the process by which land may be acquired to execute public works. According to this Act, an authorised contractor may enter into a mutual agreement with the occupier of the land. Where no agreement is reached, the land can be acquired compulsorily in accordance with Section 42 of the Act.<sup>157</sup>

Compulsory land acquisition can be defined as a process by which a Government body acquires land for the benefit of the public.<sup>158</sup> In the case of Uganda, compulsory acquisition of land means the intervention of the local or central Government to acquire land in the national interest, such as public use, interest of defence, public safety, public order, public morality, and public health. Acquisition of land in the name of public interest is a process that can only be done by the Government.<sup>159</sup> Moreover, landowners affected by compulsory acquisition must be adequately compensated for their land, developments on the land, and the loss of livelihood, prior to any resettlement or relocation.<sup>160</sup>

In 2013 the Uganda Land Policy defined these provisions to automatically grant restitution to the original owners when the public interest or purpose justifying the compulsory acquisition of their land is nullified or expires. As a result the Land Policy reinforces the uniform applicability of the right to prompt, adequate, and fair compensation irrespective of tenure category, whenever the power of compulsory acquisition is exercised.<sup>161</sup>

In the districts affected by the Tilenga and Kingfisher projects, land is predominantly held under unregistered customary tenure, according to the practices of different ethnic groups. Under customary tenure, land is held either individually or collectively – in the latter cases, by a family, clan, or community. There is an informal recognition of access to land, which is predominantly governed by the relevant norms and customs applicable to each area. Under this customary tenure, land is owned in perpetuity.<sup>162</sup> (For a more detailed description of the land tenure system in Uganda, see Annex 2.)

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153. "Uganda becomes the 28th State Party to the Maputo Protocol" (FIDH, July 23, 2010), <https://www.fidh.org/en/region/Africa/uganda/Uganda-becomes-the-28th-State#:~:text=The%20Coalition%20of%20the%20Campaign,%2C%20on%20July%2022%2C%202010>, accessed September 19, 2019).

154. The Constitution of Uganda 1995, Article 26, states that "everyone has a right to own property individually or in association with others," and that "no one shall be compulsorily deprived of property" or any interest in or right over property of any type.

155. The Constitution of Uganda 1995, Article 26.

156. The Constitution of Uganda 1995, Article 26.

157. The Constitution of Uganda 1995, Article 73.

158. "Compulsory Land Acquisition" (Craddock Murray, Compulsory Land Acquisition, 2010), <http://www.craddock.com.au/Document/Compulsory+Land+Acquisition.aspx> (accessed August 30, 2019).

159. Land Acquisition Act 1965, Section 3 and Land Act 1998, Chap 222, Section 43.

160. Sheema Cooperative Ranching Society & 31 Ors v Attorney General [2013] High Court Of Uganda, Civil suit: No. 103 of 2010.

161. The Uganda National Land Policy 2013.

162. Resettlement Advisory Committee, *Land Acquisition and Resettlement Framework: Petroleum Development and Production in the Albertine Graben* (Resettlement Advisory Committee, 2017), p. 21.



Houses in Ngwedo Subcounty. © Martin Dudek

The acquisition of land for the construction and operations of the oil project must take place through a process in which the Joint Venture Partners (Total, Tullow, and CNOOC) conduct negotiations with landowners, in respect of customary law and tenure rights, to then facilitate the transfer of property to the Government.<sup>163</sup> (See Annex 2 for a detailed description of the compensation process.) For the purpose of implementing the relevant laws in the framework of the Lake Albert oil project, the Joint Venture Partners proposed and elaborated<sup>164</sup> a set of specific norms, compiled under the Land Acquisition and Resettlement Framework (LARF), and implemented through subsequent Resettlement Action Plans (RAP). Government bodies and companies insist that the LARF incorporates best practices through the inclusion of International Finance Corporation's Standards, especially Performance Standard 5 on Land Acquisition and Involuntary Resettlement, which is deemed more favourable to rights-holders than national law.

163. Resettlement Advisory Committee, *Land Acquisition and Resettlement Framework: Petroleum Development and Production in the Albertine Graben* (2017), point 8.3.1.

164. In collaboration with representatives from Ministry of Energy and Mineral Development (MEMD), Ministry of Land Housing and Urban Development (MLHUD), Ministry of Local Government (MLOG) and the National Environment Management Authority (NEMA). See, CNOOC, Total, Tullow "Environment and Social Impact Assessment" (Tilenga Project, February 2019), Volume I, point 4.7, [https://ug.total.com/sites/g/files/wompnd1236/f/atoms/files/tilenga\\_esia\\_volume\\_i\\_28-02-19\\_reduced\\_size.pdf](https://ug.total.com/sites/g/files/wompnd1236/f/atoms/files/tilenga_esia_volume_i_28-02-19_reduced_size.pdf).



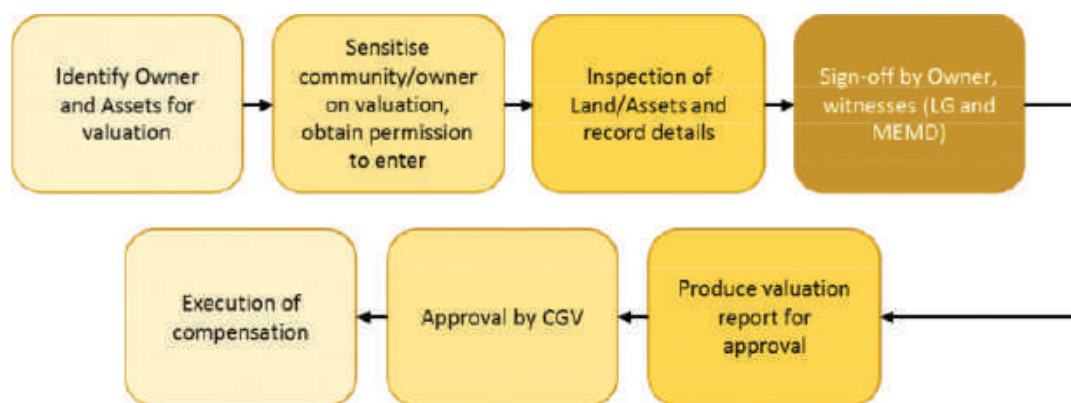


Diagram illustrating the main stages of the valuation and compensation process.<sup>165</sup>

In accordance with the provisions of the LARF, resettlement and compensation must be governed by the principle of equivalence.<sup>166</sup>

The LARF interprets the principle of equivalence strictly, insisting that it should be analysed exclusively from a financial point of view. Accordingly, the owners “should not be worse off or better off in financial terms from their status prior to acquisition.”<sup>167</sup> For resettlement, this means that all types of land tenure should be restored by the resettlement (including customary rights, as well as tenancy rights established through occupancy for bona fide tenants), and where the rights were not registered, owners should be assisted in the process of formalizing land tenure. For compensation, “the asset is valued on the basis of market value without any increase or decrease attributed to the reasons that led to the acquisition.”<sup>168</sup> Considering that land transactions in the project area are largely informal and unregistered, and that perceptions about land have been heavily impacted by the development of the oil project, the LARF presumes that the comparative method will be predominantly used. In applying this valuation method, “any special value to the owner which is not reflected in market value is excluded.”<sup>169</sup> From this perspective, no consideration of the socio-cultural dimensions related to land will be taken into account.

However, Ugandan case law has acknowledged that the determination of market value, on the basis of which the compensation shall be assessed, is the price which “a willing vendor might be expected to obtain from a willing purchaser. A willing purchaser is one who although he may be a speculator is not a wild or unreasonable speculator.”<sup>170</sup> Moreover, the timing of the assessment is one of the elements taken into account to determine the fairness and adequacy of the compensation. Indeed, the High Court has stated that a “valuation [...] made in 2005 did not reflect the market value of 2010 [and concluded] that the compensation award offered [...] was outdated and insufficient and inadequate.”<sup>171</sup>

165. Resettlement Advisory Committee, *Land Acquisition and Resettlement Framework: Petroleum Development and Production in the Albertine Graben* (2017), point 8.3.2.

166. Resettlement Advisory Committee, *Land Acquisition and Resettlement Framework: Petroleum Development and Production in the Albertine Graben* (2017), point 8.3.1.

167. Resettlement Advisory Committee, *Land Acquisition and Resettlement Framework: Petroleum Development and Production in the Albertine Graben* (2017), point 8.3.1. Interestingly, and contrary to claims made by the companies and regulating bodies, providing that owners must “not be better off” than their previous status contradicts IFC Standard 5, according to which “[f]or persons whose livelihoods are land-based, replacement land that has a combination of productive potential, locational advantages, and other factors at least equivalent to that being lost should be offered as a matter of priority.”

168. Resettlement Advisory Committee, *Land Acquisition and Resettlement Framework: Petroleum Development and Production in the Albertine Graben* (2017), point 8.3.1.

169. *Ibid.*

170. High Court of Uganda, *Sheema Cooperative Ranching Society & 31 Ors v Attorney General* (Civil Suit No.103 OF 2010) [2013], citing *Buran Chandmary vs The Collector under the Indian Land Acquisition Act (1894)* 1957 EACA 125.

171. High Court of Uganda, *Sheema Cooperative Ranching Society & 31 Ors v Attorney General* (Civil Suit No. 103 OF 2010) [2013].



The principle of equivalence, as understood through this restrictive interpretation, can be considered to contradict the principle of prompt, adequate, and fair compensation, the latter being broader and requiring a qualitative assessment, while the former seems to have been interpreted from a purely economic standpoint. In fact, international human rights bodies have recognized that persons evicted from their homes or lands shall “be given the opportunity to assess and document non-monetary losses to be compensated.”<sup>172</sup> Government or private actors responsible for providing just compensation must not only ensure that it corresponds to the value of the expropriated land, but must also:

*ensure that evicted persons or groups, especially those who are unable to provide for themselves, have safe and secure access to: (a) essential food, potable water and sanitation; (b) basic shelter and housing; (c) appropriate clothing; (d) essential medical services; (e) livelihood sources; (f) fodder for livestock and access to common property resources previously depended upon; and (g) education for children and childcare facilities. States should also ensure that members of the same extended family or community are not separated as a result of evictions.*<sup>173</sup>

In the *Endorois case*, the African Commission held that compensation should be full, prompt, fair, and just. The key criterion for assessing the fairness of compensation was the free acceptance by the victims. The Commission emphasised that, “unless otherwise freely agreed upon by the peoples concerned, compensation shall take the form of lands, territories and resources equal in quality, size and legal status.”<sup>174</sup>

The elements to be taken into account in the assessment process include, beyond the property and improvements,<sup>175</sup> crops (type and growth stage), fruit and economically-productive trees,<sup>176</sup> buildings (size, materials), and, where relevant, the features and characteristics of the land. The definition of fair and adequate compensation must not only take cognisance of the value of the asset that is lost, but also the disruption that resettlement is likely to cause, including the “loss of future opportunities to earn income and of standards of living, and the interruption of the progressive improvement over time of living conditions.”<sup>177</sup>

## The valuation of land, crops, and other affected rights

The land and other assets are valued using a market value approach. For the first Resettlement Action Plan (RAP 1), in order to establish the replacement cost “the valuation team carried out market research for land, structures, crops and trees in Buliisa district in May and June 2017”<sup>178</sup> through interviews and questionnaires, and by gathering evidence of transactions in the area.

172. *UN Basic Principles and Guidelines on Development-Based Evictions and Displacement*, UN Doc A/HRC/4/18m, [https://www.ohchr.org/Documents/Issues/Housing/Guidelines\\_en.pdf](https://www.ohchr.org/Documents/Issues/Housing/Guidelines_en.pdf).

173. *UN Basic Principles and Guidelines on Development-Based Evictions and Displacement*, UN Doc A/HRC/4/18m, [https://www.ohchr.org/Documents/Issues/Housing/Guidelines\\_en.pdf](https://www.ohchr.org/Documents/Issues/Housing/Guidelines_en.pdf).

174. Centre for Minority Rights Development (Kenya) and Minority Rights Group (on behalf of Endorois Welfare Council) v. Kenya [25 November 2009], Communication 276/03, para. 112, pp. 231-232.

175. Although the LARF does not provide a specific definition, some examples are elements of a house that are improved relative to usual houses, e.g. a corrugated iron roof, a concrete floor, or a ventilated pit latrine.

176. The term fruit and economic trees is used but not defined by the LARF. During the research it appeared that the common understanding of this term is fruit trees are those who bare fruits while economic trees are those whose materials (i.e. wood) are sold for construction.

177. Resettlement Advisory Committee, *Land Acquisition and Resettlement Framework: Petroleum Development and Production in the Albertine Graben* (2017), point 8.3.3.

178. Total et al., “Resettlement Action Plan RAP 1 for the proposed Industrial Area and N1 Access Road” (Tilenga Project, January 2018), Point 8.4, p. 121.

After these valuations, the following steps were taken to identify the assets to be compensated, and to evaluate the compensation rate.

For land, the results of the market value research for RAP 1 led to the conclusion that the rate applicable for land in the industrial area and on access road N1 would be set at 3,500,000 UGX per acre. This rate was set, according to RAP 1, after approval by the Chief Government Valuer. "On Saturday 6th of January 2018 at Kasenyi village, Buliisa district, the Government of Uganda team led by the Minister of Land and Minister of Energy"<sup>179</sup> communicated the said rate to the Project Affected Persons (PAPs).<sup>180</sup>

The structures "have been valued based on the 'reproduction cost' i.e. the cost of reconstructing an identical structure by using the same materials and design at the time of appraisal without depreciation,"<sup>181</sup> and according to their level of completion at the date of the valuation.

For crops, a distinction is made between annual and perennial crops. Annual crops are not compensated if sufficient notice is given to allow for harvest.<sup>182</sup> In case they cannot be harvested or incidental damage is caused, an assessment can take place and compensation be granted. The value of perennial crops must include the net present value (NPV) of forgone income for the duration of the period of re-establishment of the crop to the maturity stage at the time of displacement. In other words, the value of the work and time invested in the crop, taking into account the current state of maturity. This last element is crucial for the qualitative appreciation of compensation, and should allow the consideration of changing climate conditions that may affect the time for the crop to reach the same stage of maturity. Unfortunately, as we will see in the findings, the NPV has not been properly implemented in practice. Under the Tilenga RAP 1, for instance, lost crops were simply compensated using the statutorily-approved "District Compensation Rates" (DCR), with apparently no verification of compliance with the above-mentioned conditions. Although PAU claims the state/state/level of maturity of crops is taken into account, communities argued this were not properly taken into consideration.

The key elements in the calculation of the value of a specific property are the Cadastral and Asset surveys conducted to identify the rights and property of a specific affected person or family. (For a detailed description of the survey content and process, see Annex 2.)

Section 139 (2) and (3) of the Petroleum (Exploration, Development and Production) Act of 2013, provides that where the licensee fails to pay compensation or the land owner is dissatisfied with the compensation offered for disturbance or damage to his property or land, the dispute shall be brought to the Chief Government Valuer within a period of four years from the date when the claim accrued. This provision has been contested, however, by civil society members who claim it is inconsistent with the right to property under Article 26 (1) and (2)(b) of the Constitution of Uganda. It is, furthermore, a contravention of the right to a fair hearing under Article 28 (1), and a contravention of the right to freedom from discrimination under Article 21.

179. Total et al. "Resettlement Action Plan RAP 1 for the proposed Industrial Area and N1 Access Road" (Tilenga Project, January 2018), Point 8.4.1.6, p. 123.

180. Total noted that the initial rate provided by the market research was UGX 2,100,000 per acre. This amount was objected to by the PAPs, and the Government of Uganda (Minister of Land) stepped in and increased the rate to UGX 3,500,000 per acre plus 30% disturbance allowances to be paid in addition (see Total response of July 22). Nonetheless the rate proposed is still considered inadequate (see section III.2.2 below).

181. Total et al., "Resettlement Action Plan RAP 1 for the proposed Industrial Area and N1 Access Road" (Tilenga Project, January 2018), Point 8.4.2.6, p. 124.

182. Resettlement Advisory Committee, *Land Acquisition and Resettlement Framework: Petroleum Development and Production in the Albertine Graben* (2017), Point 8.3.3.f.

Finally, it is important to recall that the right to prior access to information, consultation, and notice must be respected at all the stages of the resettlement and compensation process.<sup>183</sup> In fact, Section 135 (1)(b) of the Petroleum (Exploration, Development and Production) Act states that a licensee shall not exercise any of the rights under a licence without the written consent of the owner. When an eviction is deemed necessary, those affected should be afforded procedural guarantees, including an opportunity for consultation; adequate notice; all available information on the eviction; the presence of government officials; proper identification of those carrying out the eviction; a prohibition on evictions in bad weather or at night-time; the availability of legal remedies; and the availability of legal aid to seek judicial redress.<sup>184</sup>

## **2.2. Impacts on the right to land: Flawed processes and inadequate redress**

The Assessment revealed that the oil project has had a series of negative impacts on the rights to land and to adequate standards of living, confirming that violations previously documented by civil society reports have not ended. Companies estimate that “approximately 1,576 hectares of land will be acquired for the Project.”<sup>185</sup> These impacts are not limited to the flaws in the compensation process, which has been at the centre of attention since the implementation of the Resettlement Action Plans started. They derive from a combination of a limited understanding of the use and value of land from a community-based perspective, including its cultural and social dimensions; lack of access to information; gaps and weaknesses in the legal framework; and conflicting interests over land, which have sparked conflict and violence.

### **2.2.1. Lack of access to information**

The starting point of any initiative to ensure respect for human rights is to provide access to information to affected communities, in order to explain the likely consequences and to obtain their free, prior, and informed consent. Yet communities claim that they were generally not consulted before actions affecting them were taken, and that the meetings held either with authorities or company representatives were rather to present specific issues than to consult them on the basis of clear, comprehensible, and complete information about the impacts of the project.

Key information regarding the compensation of affected individuals was found to have been provided orally. Copies of relevant documents, such as land asset surveys were not initially provided to the residents, preventing them from reviewing their content and assessing their accuracy. For instance, residents from RAPs 2, 3, and 4 informed local NGOs that Total and Atacama’s representatives distributed copies of the assessments conducted in February 2019 only on the week of March 23, 2020, over a year after they were conducted, due to successive suspensions of activities.<sup>186</sup>

Residents also complain about misinformation during compensation processes, where individual and bilateral exchanges with families were privileged over community meetings, allowing corporate actors to use threats of legal cases and/or the alleged consent of other community members to put

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183. In May 2012, the African Commission on Human and Peoples’ Rights (ACHPR) at its 51st Ordinary Session adopted ACHPR/Res.224 (LI) 2012 on a Human Rights-Based Approach to Natural Resources Governance, calling on State Parties to “confirm that all necessary measures must be taken by the State to ensure participation, including the free, prior and informed consent of communities, in decision making related to natural resources governance.”

184. *Muhindo James & Others vs Attorney General* Miscellaneous Cause No. 127 of 2016.

185. CNOOC, Total, Tullow “Environment and Social Impact Assessment” (Tilenga Project, February 2019), Volume IV, pp. 16-215.

186. According to Total this delay does not reflect the usual practice, but is the result of the project suspension: while the distribution of forms relating to RAP 2 and 4 started, according to them, from the second quarter of 2019, this process was delayed by the project suspension in September 2019 until March 2020, when the Covid-19 crisis led to a new suspension of activities (which was still ongoing when the present Report was going to press).

pressure on families to accept the compensation offered. Some residents in Buliisa felt “betrayed by their own Chairperson” whom they elected as representative to put forward their concerns and defend their interests, but was perceived to have sided with the companies to the detriment of the people. They claimed that some Chairpersons collected the copies of the assessment destined for affected households and returned them to the company. During the assessment and compensation procedures, company liaison officers (CLOs), who are selected from among community members but whose mission is to represent the company, work hand in hand with the local Chairpersons. Specifically, people affected by the Central Processing Facilities (CPF) complained about the lack of access to RAP 1 and recall having to file a petition to the Ministry of Energy and Mineral Development to gain access to the full RAP for community members.

Conversely, Total claims it has conducted 4,000 meetings, reaching about 10,000 people, regarding the Tilenga project, through 35 liaison officers and other staff in field offices, of whom 15-17 were directly employed by Total and the rest contracted through Atacama. Liaison officers are, according to the company, in charge of circulating information to, listening to, and gathering complaints from individuals and local government representatives.<sup>187</sup> The company also emphasizes that it disseminates information through writings in several languages (on flyers, notice boards, etc.), radio announcements, and participation in talk shows, as well as through a toll-free phone line.<sup>188</sup> Similarly, CNOOC assert that they have ensured the participation of stakeholders through a robust engagement process, by means of which communities participated in the planning and implementation of the land acquisition process.<sup>189</sup> Government authorities also report having conducted multiple public hearings during the validation and dissemination phase of the different Environmental and Social Impact Assessment (ESIA) processes. PAU sustains the government of Uganda undertook at least 1000 stakeholder engagements and disseminated information orally and in written.

Yet despite having participated in meetings and exchanges, many community members lack information and fail to understand their rights, the procedures in place, and the impacts of the project. This demonstrates that in practice, companies and governmental agencies have not guaranteed effective access to information allowing meaningful community participation, and that the means used to disseminate information have not been effective. Community members described the difficulties they encountered in engaging in a two-way dialogue during consultations. They expressed that little time was left for questions and that the answers provided were rarely satisfying, and that local staff on the ground often either lacked the knowledge to respond to inquiries, or disregarded concerns voiced by community members.

Furthermore, companies failed to address misunderstandings that appeared to derive from cultural perceptions. By way of example, in establishing the primary or secondary nature of homes in PAPs’ land, certain community members insisted on the secondary character of their homes, and as a result were not offered the possibility to opt for replacement, and in some cases did not receive any compensation. Buliisa authorities felt that Total and Atacama fulfilled their due diligence obligations when assessing the primary or secondary nature of homes, and rather blamed landowners for being dishonest and claiming undue compensation. However, a close analysis of the issue showed that communities understood secondary homes to refer to a more elaborate category – by analogy to the school system, where secondary is a higher level of education than primary – while Total considered them simply to be houses that were not the main place of residence.<sup>190</sup> As a result, compensation

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187. Meeting of FIDH representatives with Total, November 20, 2019.

188. Meeting of FIDH and FHRI with Total E&P Uganda, February 24, 2020.

189. CNOOC written response of July 23, 2020.

190. This confusion was allegedly reinforced by the confusing explanations provided by Atacama’s assessors, who, according to NGOs, even explained to the PAPs that secondary houses were more elaborate than primary houses.

was refused when it should have been granted.<sup>191</sup> When this question was raised in presence of Total E&P Uganda's leadership and several community liaisons, none reported having heard of such misperceptions.<sup>192</sup>

Moreover, tensions and misunderstandings were reinforced in the later stages of the project by the long stalling of resettlement operations due to lengthy negotiations regarding Tullow's sale of its assets, and those between companies and the Government regarding taxes and other government revenue. Since these negotiations postponed the Final Investment Decision, Total chose to halt the implementation of RAP 2 to 5, to cut its number of staff on the ground, and to suspend Atacama's operations, thereby reducing communities' access to information. The company's country chairman recognized the difficulties and uncertainty this created for affected people, and apologized for "not giving all the resources that the project deserve[d]."<sup>193</sup>

Local authorities do not seem to be any better informed than communities about company plans. Our research team observed contradictions in their discourse. Regarding the drafting and approval of ESIA's, local officials claim that plans were made without providing them with sufficient information. Buliisa authorities complain about how little they were involved in the calculation of compensation rates, and blame the national Government for providing low amounts of compensation. They affirm that there has been minimal participation from the local government in the compensation process, and consider that Joint Venture Partners shared minimal information and lacked a community-based approach when establishing compensation rates.<sup>194</sup> Finally, regarding access to benefits and distribution of royalties to communities, Buliisa authorities stated that there is no current framework for how the royalties are going to be distributed.

This lack of access to complete and clear information prior to the implementation of the project in its different phases, indicates that conflict may be emerging around certain subjects and in particular around land use. Specifically, it appears that access to privileged information has been used by powerful actors to harm communities, particularly through land-grabbing.

## 2.2.2. Land-grabbing

The development of the oil project in the Albertine Region has brought a multiplicity of actors and competing interests into the region, sparking conflicts over land ownership and use. A report published by UHRC in 2013 concluded that "the discovery of oil in 2006 is the main driver of land-grabbing in the region."<sup>195</sup> The UHRC confirmed these trends in a subsequent 2014 report.<sup>196</sup> The complex regime of land tenure in Uganda, and the near absence of the State in the region, which explains why many people lack official title to their land, have opened the door for the fraudulent sale and acquisition of land. For instance, a report elaborated by Global Rights Alert denounced the illegal eviction of 201 families from their land in Rwamutonga Village, Bugambe sub-county, Hoima district, by a businessman with the help of the Uganda Police Force. "People were tear-gassed and shot at and children disappeared during the eviction. Houses were broken down and burnt to ashes, clothes

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191. As explained by a resident during a focus group in Buliisa. Their identity has been withheld for security reasons.

192. Meeting of FIDH and FHRI with Total E&P Uganda, February 24, 2020.

193. Meeting of FIDH and FHRI with Total E&P Uganda, February 24, 2020.

194. The lack of consultation was underlined by local authorities despite the fact that under section 29(1)(e) the District Land Board is in charge of compiling and maintaining the list of rates of compensation.

195. Uganda Human Rights Commission, *Emerging Human Rights Issues. Special Focus on Selected Districts in the Albertine Region* (2013), <https://www.uhrc.ug/download/uhrc-oil-report-2014/?wpdmdl=488&refresh=5f3662c6b576a1597399750>.

196. Uganda Human Rights Commission, *Emerging Human Rights Issues. Special Focus on Selected Districts in the Albertine Region* (2013), <https://www.uhrc.ug/download/uhrc-oil-report-2014/?wpdmdl=488&refresh=5f3662c6b576a1597399750>.



set on fire and property destroyed. Gardens were slashed to the ground while food and animals were looted and whatever was left was set on fire.”<sup>197</sup>

These allegations were corroborated by the research team. Residents of Buliisa claimed that wealthy families came as land speculators and registered themselves as owners of the lands in order to obtain reparations. These land-grabbers, they explain, have come in different waves. First, between 2004 and 2009 they used armed harassment to create fear and to evict people from their lands. Then, after communities in the area were already living in fear, actors who are allegedly close to the military in Kampala started registering lands in the area under their own names.<sup>198</sup>

During a meeting with the Chief Government Valuer, authorities confirmed the allegations and explained that they have occurred in both the Tilenga and Kingfisher project areas. In Kingfisher, they explained, local authorities were found to have illegally appropriated land in the area with the aim of receiving compensation. National authorities were forced to rescind all transactions conducted by the Buliisa district land board between 2010 and 2017, and return the land to its original owners.<sup>199</sup> The land-grabbers in some cases contested these moves by filing cases in local tribunals against the original land owners or users. Some of these cases are still pending.

A resident of Kasenye described one of the emblematic cases in the region. “Mr Kaahwa Francis is a well-known man in the area for having registered under his name the land of at least four families in the area,” he related. When residents tried to contest the rights he was claiming over their lands, Mr Francis brought a case before the court on criminal and civil grounds for illegal trespassing.<sup>200</sup>

In July 2013, the plaintiff, Kaahwa Francis, sued Balyesima Biddo, claiming that he was the lawful owner of 472 acres of land situated at Bikongoro Village, Kisansya Parish, Kigwera subcounty, in Buliisa district, located in the area where the oil refinery will be constructed, and denouncing a trespass by Mr Biddo. The plaintiff claimed to have acquired the land from 12 families, including the defendant’s, through a “compensation agreement” whereby the families would have agreed to “give” the plaintiff the land in exchange for UGX 94,200,000.

The 12 families, customary owners of land but with no registered title, were too poor to acquire title in order to be acknowledged as owners and compensated for their relocation. They were advised by the Local Council-1 Chairperson to invite in an investor who would be given the authority to acquire title to and develop the land. It is claimed that the “compensation” was a buy-in by the plaintiff to be included as a 13th family, but that there was no intention for him to become the sole owner of the entire property.

In 2018, judgement was pronounced in favour of the plaintiff, who was found to be one of the lawful owners of the contested land. The defendant was declared to be a trespasser, and further ordered to pay damages and the costs of the suit. The case took five years to be judged in the first instance, in part due to the complexity stemming from the fact that it involved both communally-owned land and a contract.<sup>201</sup>

197. “201 families evicted to pave way for oil waste treatment plant in Hoima District” (Global Rights Alert, August 27, 2014), <https://globalrightsalert.org/news-and-views/201-families-evicted-pave-way-oil-waste-treatment-plant-hoima-district>.

198. Interview with a former member of parliament from the region who claims to have been silenced during his political campaigns when he addressed the issue of the oil project.

199. Meeting among the research team and representatives of the CGV, February 26, 2020.

200. Kaahwa Francis v Balyesima Biddo Civil Suit [2013] NO.018.

201. Interview with a lawyer who represented the defendants, April 6, 2020.

The residents claim that the process before the judge was neither fair nor transparent. The judgement was delayed and the final decision, despite the seven witnesses brought on behalf of the defendant, held that the residents did not prove the demarcation of their land. The residents appealed the decision of the court, but to date the appeal has not been decided.

According to residents, Kaahwa Francis would connive with one family member and buy land where several families were residing, without their consent, in strategic places where oil wells were going to be constructed. His actions led to a series of cases being filed in Masindi High Court by and/or against him. A lawyer representing the residents claimed that he currently has 12 cases pending before the Masindi High Court<sup>202</sup> against Kaahwa Francis.

Another case in point is one titled *Mugisha Jealousy & 4ors vs. Kaahwa Francis*,<sup>203</sup> and which concerns land-grabbing through the use of privileged information. The plaintiffs allege that the defendant manipulated the land administrative system to obtain title and purchase agreements over the lands of the plaintiffs, where he knew the oil wells were to be constructed, and later entered into agreements with the companies for compensation. After failing in the first instance, the case was appealed and is now awaiting a date for a hearing. According to interviewees, a representative of Total E&P Uganda visited some of the residents and told them Mr Kaahwa Francis was much more powerful than them, thereby contributing to the fear of communities in the area.

According to the information gathered, Kaahwa Francis has also filed a number of cases against Total seeking the recovery of land earlier acquired by the company, but over which he claimed ownership.<sup>204</sup> Most of these cases have been consolidated into one case to aid speedy justice; hearing of the cases is ongoing.

Land-grabbing is aggravated by the lack of a complete and adequate land registry. Despite the recognition of multiple forms of land tenure, customary land, which is the most common form of land tenure in the Albertine region, is less protected unless it has been registered and a title has been acquired. Furthermore, there are many cases of absentee landowners, whose land is occupied by settlers or communities, and is sometimes used to build towns, schools, and hospitals.

When presented with concerns regarding the above-mentioned cases and the increasing risks of land-grabbing, Buliisa authorities declared that they are aware that the lack of proper registration of land ownership allows for land-grabbing and creates conflicts. Nonetheless, they claim to lack the means to change the situation, and during interviews presented no solution or safeguards to prevent conflicts over land. On the other hand, Total is aware that land-grabbing by rich land merchants is one of the worries of communities in the area, and has worked with the Ministry of Lands to rescind all transactions that the District Land Board conducted between December 2010 and February 2017 and revert the land to the original owners. However, the context of pressure from opposing interests and of mistrust of the company by communities has prevented other measures, such as free legal services (allegedly offered by the company) to help defend themselves from land-grabbers, from being implemented. No in-depth analysis on the adequacy and effectiveness of the measures has been done by the company.

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202. Interview on March 14, 2020 with Counsel Simon Kasangaki at his chambers in Masindi Township.

203. Civil Suit 24/2016.

204. Kahwa Frances vs. Total Uganda Ltd about Gunya 2/E oil site, Civil Suit 6/2014; Kahwa Frances vs. Total Uganda Ltd concerning the Mabayo M/6 oil pad, Civil Suit 59/2016 and Kahwa Frances vs. Total Uganda Ltd concerning the Mgile 1 oil site, Civil Suit 61/2016.

### 2.2.3. Inadequate redress and its impacts on an adequate standard of living

Coupled with the issue of land-grabbing, a lack of adequate redress is one of the main complaints of members of communities across districts in the Lake Albert region. The Petroleum Authority of Uganda (PAU) estimated that 80% of the 289 hectares required for the Kingfisher project, and 90% of the 313 hectares for the Tilenga RAP 1, had been acquired as of February.<sup>205</sup> Yet the adequacy of these acquisition processes were contested by affected communities, who considered there to be a lack of adequate redress due to the absence of free consent as a result of duress or constraint, low compensation rates, and the absence of a gender-sensitive approach.<sup>206</sup> Many local and international organizations have denounced various injustices related to compensation.<sup>207</sup> The present section further documents such trends and provides an analysis based on a holistic understanding of the notion of redress, that goes beyond the issue of mere compensation.

Despite the above-mentioned legal provisions, and particularly the requirement to provide fair, adequate, and prompt compensation prior to land acquisition, as well as tenure restoration, some residents claim that they have not been restored to the same type of tenure they used to have. These issues particularly affect the residents who opted for land-for-land compensation, but also those who received cash and have been unable to acquire equivalent pieces of land elsewhere.

#### The case of the Kabaale Industrial Park relocation

The first relocation and compensation process, and the only to date to have been “fully” implemented in the area, is in Hoima and concerns the area that will be used for the establishment of the Kabaale Industrial Park, an element of the project currently led by the government of Uganda. The process of relocation was long and difficult for the 73 families who chose land-for-land compensation and who faced infringements on their rights to education, property, land, cultural development, and an adequate standard of living.



Local official presents a blueprint of resettlement homes.  
© Martin Dudek

205. PAU talking points for a meeting with FHRI and FIDH, February 25, 2020.

206. e.g. Avocats Sans Frontières, *Digging for Power Women empowerment and justice amidst extractive industry developments in the Albertine and Karamoja, Uganda* (2019) <https://www.asf.be/fr/blog/publications/digging-for-power-women-empowerment-and-justice-amidst-extractive-industry-developments-in-the-albertine-and-karamoja-uganda/>.

207. Global Rights Alert Acquisition of Land for the Oil Refinery: Tracking Progress in Resettling Project Affected Persons Who Opted for Land Compensation (2015), <https://www.business-humanrights.org/sites/default/files/documents/Uganda%20Global%20Rights%20Alert%20Resettlement%20Report.pdf>, for more details see Annex 1.

After most of the community members had received cash compensation and left the area, they had to wait for a year and a half before effectively being able to move to and settle in their new homes. Due to the reduced number of children who remained in the area, the local school closed, depriving them of their right to education. They could only resume their studies two years later, still under precarious conditions, as the school in Kyakaboga, where they were resettled, was not fully furnished, and had no teachers.

When finally resettled, families moved to the Kyakaboga resettlement camp, where they took possession of the houses built by authorities. However, they received no title to their new land. Consequently, since 2017 these families have lived in fear that their land could be taken back by the Government. Furthermore, seven of the relocated families now find themselves affected once again by the project, this time because their new homes will be crossed by a feeder pipeline comprised in RAP 4 of the Tilenga project. When notice of RAP 4 was released and their lands were surveyed, these families realized that they had been identified only as land users rather than landowners. Although PAU sustains they were registered as landowners and government is processing the land titles, residents now fear that they will not be adequately compensated for the loss of their land as property, as a result of the Government's violation of the laws on tenure restoration.

Moreover, while companies and governments emphasize that new homes are more modern and robust than former villages, the design of the resettlement camps reveal multiple flaws, and notably threaten the communities' traditional ways of life, due to the increased population density. Homes in Kyakaboga are amassed in one compound, in close proximity to each other. This creates problems of hygiene and sanitation because open-pit latrines are very close to kitchens and to other neighbours' toilets. When their current latrines are full there will not be enough space to dig a new pit. Trash now has to be disposed of in the bushes, as no provision for trash disposal was made in the resettlement.

Furthermore, cultural practices were not adequately taken into consideration when choosing the land, building the houses, and allocating parcels, impacting as a result the residents' family and communal way of life. While one clan used to own land collectively, and build houses to ensure proximity of family members and to sustain livelihoods and cultural practices, homes in the resettlement camps are randomly allocated. Besides, the land allocated does not correspond to the size of their initial property, leaving them with no space for additional construction, in particular to allow boys over 10 and girls over 12 years of age to leave their parents' homes while remaining close to the family. A single house may end up, as a result, with over 20 occupants.

Furthermore, the land allocated for farming, as well as areas for collecting wood and water, are farther away, thus modifying family dynamics. This burden is usually borne by women who are in charge of farming, fetching water, and collecting food. As distances become longer, they have to spend more time travelling from their homes to their farms and wells. Moreover, they claim that the quality of land is not equivalent to that of their former property, making it more difficult for them to sustain their families and preserve their agricultural practices and their relationship to natural resources. The construction of the houses clearly disregarded the comments of communities during consultation meetings, thus failing to fulfill the expectations of people who opted for land-for-land compensation.

There is a considerable risk that the problems that arose in the relocation of the former residents of the Kabaale Industrial Park by the refinery consortium will arise again in other areas, due to an inadequate assessment of cultural practices.





Woman fetching water in Kyenjojo. © Martin Dudek

Proper redress for such forced evictions cannot be assessed merely through an individualist or economic lens, and cultural impacts must be thoroughly taken into account. Communities in the areas affected by the Tilenga and Kingfisher projects rely on a customary, communal use of land to sustain their livelihoods. While families own their houses, they usually benefit in addition from extensive pieces of land where animals graze. These lands being communal, they frequently fall off the radar of the compensation mechanisms described above, thereby critically affecting local communities' livelihoods. The focus on individual compensation and/or relocation has separated family and community members from each other and reduced available lands, negatively impacting their right to an adequate standard of living. As has been identified by Total in its ESIA, "land acquisition will reduce the overall availability of land for cultivation and grazing (though the proportion of land taken in relation to the total land available in the district is relatively small), which may push crop farming and pastoralist activities closer together (i.e. cultivators encroaching on grazing land and vice versa), exacerbating conflict between farmers and herders."<sup>208</sup> While Total has claimed to keep relocated families and individuals within the same district as a measure to mitigate the tearing of the social fabric, they are restricting relocations to the areas in the immediate proximity of the project, where land will increasingly become scarce, and the need to restore communal lands for grazing has

208. CNOOC, Total, Tullow "Environment and Social Impact Assessment" (Tilenga Project, February 2019), Volume IV, February 2019, pp. 16-226.



therefore rarely been taken into consideration.<sup>209</sup> In a meeting with the research team, representatives of the Chief Government Valuer confirmed the profound modifications of inhabitants' environment following resettlement, and the frequent failure to restore central cultural elements of communities (e.g. schools and churches).

### ***Inadequate compensation rates***

In order to ensure a harmonised and coordinated land acquisition process, Government and Joint Venture Partners work closely in undertaking Resettlement Action Plans (RAPs) studies to acquire land for the required facilities. According to PAU, "the process is aimed at determining the affected persons and properties, and managing the loss of socio-economic activities and livelihoods as a result of displacement of Project Affected Persons (PAPs)." As such, RAPs determine the rates and process for compensation in a specific project area.

In cases of cash compensation, companies conducted market value assessments. For RAP 1, the value estimated was 3,500,000 UGX per acre, plus 30% disturbance allowance, for a total of 4,550,000 UGX per acre of land.<sup>210</sup> This valuation has been repeatedly deemed insufficient by affected persons, who claim that this amount is barely enough to buy equivalent land in the areas around the project, and clearly insufficient to allow them to move further away with their families to an area where they will not be directly impacted by the project and its future operations. A more detailed analysis of the practical consequences of the low levels of compensation can be found in section 3, below, on the adequate standard of living.

Representatives of the Chief Government Valuer emphasize that the establishment of compensation rates follows a robust standardized process, using market studies conducted by the companies, analysis and harmonization of rates at the governmental level, and adjustments for inflation and delays. While the District Land Board is responsible for consulting all relevant stakeholders prior to fixing the rates, authorities in Buliisa complain that compensation rates have been fixed without consulting them, and are being imposed from Kampala on the basis of market studies that are not up-to-date and far removed from the reality of families, who, not being used to handling such sums, mismanage it, and are unable to use it for its intended purpose.

Total had identified the risk of mismanagement of funds and admitted that "provision of cash as a mitigation for economic and physical displacement also assumes affected communities are committed (and have the capacity) to use the compensation for the intended purpose (i.e. replacement of housing or restoration of livelihood)," but assessed that these communities did not have the knowledge or means to do so.<sup>211</sup> Although Total considered this impact to be moderate, predicting that only a limited number of families would opt for cash compensation, while more would opt for land-for-land compensation, in practice, due to delays and issues regarding land compensation, as well as misinformation to residents regarding the available options for financial or land-for-land compensation, most residents in the area opted for cash compensation, increasing the gravity and likelihood that all the above-mentioned risks would materialize. Yet the RAP provided only limited mitigation measures, including financial literacy training, which have not proved adequate to tackle the problem. Moreover, many families who have been financially compensated in exchange for their land have found great difficulty in buying equivalent parcels of land on which to resettle. Total's

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209. For more on the impacts on the individual approach and the compensation of communal use of land, see section III.3 on the adequate standard of living.

210. See the RAP 1 updated valuation report of January 2018.

211. CNOOC, Total, Tullow "Environment and Social Impact Assessment" (Tilenga Project, February 2019), Volume IV, February 2019, pp. 16-218.

representatives in Uganda refuted this allegation, and cited a 2018 study according to which “over 50% of PAPs” had bought land after compensation – a figure that should seem alarmingly low – and added that problems in purchasing land were due to the fact that residents sought to move closer to cities such as Hoima where land is more expensive – an understandable trend given the disruption of livelihoods for households that will stay in the vicinity of the oil fields, and the socio-environmental risks related to living in this area.<sup>212</sup>

Regarding the value of houses, RAP 1 for Tilenga affirms that “due to limited reliable market information within and near the Project Area, a Sales Comparison approach could not be applied in the valuation of the affected structures. As a result, the structures have been valued based on the ‘reproduction cost’ i.e. the cost of reconstructing an identical structure by using the same materials and design at the time of appraisal without depreciation.”<sup>213</sup> In the ESIA of the Tilenga project, Total affirms that “[t]he potential impact is remediable as right-holders losing structures will be entitled to cash compensation at full replacement cost and where the affected structure is a primary residence, they are also eligible for in-kind compensation in the form of replacement houses.”<sup>214</sup> This would indicate that secondary or temporary homes, unlike primary homes, would not trigger the option for resettlement, as confirmed by PAU who explained that in those cases affected persons are deemed to have access to primary residence and cash is considered adequate enough to put up another structure.<sup>215</sup>

Indeed, certain families claim not to have been offered the replacement option for what companies have called secondary or temporary homes, and in some cases have not received any compensation at all. In many cases they claim companies have decided that the more precarious houses are temporary and have no value that can be included in the compensation assessment. While PAU explain that only 9 affected persons still have unresolved compensation disputes and claim they are not aware of any outstanding grievance for lack of compensation, from interviews with communities, it appears that some residents only declared their homes as secondary on the basis of a linguistic misunderstanding,<sup>216</sup> whereas they should have been declared and assessed as primary homes. As a result, these residents were deprived of compensation.

Furthermore, residents explained that newly built homes were not taken into account in the asset surveys, and for houses which were not the main construction (usually defined as the house belonging to the father or leader of the family or clan, around which are constructed smaller houses for their relatives and descendants), cash compensation was the only option offered. A similar situation was faced by residents who owned one house in a grazing area and one on more fertile land. Despite the fact that both houses are key to their survival and are occupied seasonally due to the long distance between the two and the different activities required in each season, the RAP offers the choice of receiving replacement land only to households losing what it defines as “residential” land.

Moreover, during assessment of family property, some residents claim their main residence was considered a secondary home. As a consequence, they received compensation for the crops, trees, and a share of this family land, but were not given the option of land-for-land compensation.

Beyond houses, an inhabitant emphasized during a focus group discussion that his sanitation facility (i.e. a latrine) and burial grounds were not considered during valuation. Residents explain that while

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212. Minutes of FIDH & FHRI meeting with Total, February 2020, Kampala.

213. Total et al., “Resettlement Action Plan RAP 1 for the proposed Industrial Area and N1 Access Road” (Tilenga Project, January 2018), p. 11.

214. CNOOC, Total, Tullow “Environment and Social Impact Assessment” (Tilenga Project, February 2019), Volume IV, February 2019, pp. 16-213.

215. CNOOC, Total, Tullow “Environment and Social Impact Assessment” (Tilenga Project, February 2019).

216. See subsection “Lack of access to information,” above.



Local crops. © Martin Dudek

Total has agreed to relocate their burial sites, they have not considered that the cultural value of such sacred places goes beyond the worship of a specific place, but rather is tied to the ecosystem around it.

In RAP 1 of the Tilenga project, Total identified 49 graves, two sacred clan sites, and 15 family shrines.<sup>217</sup> Residents of the affected areas said the company offered to relocate sacred sites, moving the relevant rocks or trees to another place where they would be accessible to the community. However, the residents explained this was against their beliefs, insofar as the sacred sites are sacred because nature and gods had put them in a specific place for the clans to worship. By displacing them to a new location, the companies would be detaching these objects from the environment from which their sacred nature derives.

Plantations and trees have in most cases not been compensated, or were compensated at a very low rate which does not take into account the maturity of the tree, beyond the price of its seed or fruit.<sup>218</sup> Nor was the time and work involved in the growing of those plants adequately taken into consideration, in clear contradiction of the LARF, especially given the increasing drought in the area, which according to residents, has reduced the harvest and extended the time of cultivation. Furthermore, some of the trees which are considered not to be “economic trees” but which have a practical function for communities, as they provide shade or are a source of medicine, were not considered for compensation. Although PAU explained these trees qualify for in-kind compensation, according to communities they were not adequately considered. This clearly contradicts the

217. Total et al., “Resettlement Action Plan RAP 1 for the proposed Industrial Area and N1 Access Road” (Tilenga Project, January 2018), p. 11.

218. According to interviews with residents in Buliisa and Hoima.







Regarding cut-off dates, Total has admitted the difficulties and confusion created by the delay of the project, particularly after the announcement by Tullow of the end of its participation in the project. The company affirmed that, in order to mitigate the impacts on the families whose compensation process was affected by the suspension, their local staff and authorities “do a lot of communication” to tell families to continue farming, including by broadcasting radio messages. CNOOC claims that they have made compensation within reasonable time frames, upon approval of the Resettlement Action Plans.

Yet many affected people do not seem to understand the conflicting messages, and claim that some authorities continue to prevent them from farming.<sup>220</sup> Regarding Resettlement Action Plan 1, whose cut-off date was in May 2017, civil society organisations report that communities initially received instructions not to use their lands for farming, nor to make repairs or improvements to their houses. Although later, in October or November 2017, Total and Atacama informed the affected residents that they could return to their lands to cultivate seasonal crops, given that the farming season had passed most of them did not effectively return to the fields. They were further discouraged by the declarations allegedly provided by company representatives in February or March 2018, informing them that they would not be fully compensated for any new crops or structures on their lands, and the installation during the autumn of 2017 of a police station of the Oil and Gas Protection Unit, which created fears among the residents willing to return to their lands despite the new announcements by the companies. Similar confusing messages appear to have been sent in the resettlement process for RAPs 2 to 5.

The data collection process revealed a gap between testimonies of affected communities and CLOs’ understanding of the situation. On the one hand, CLOs affirmed that most residents were growing crops freely during the suspension of operations, as a result of their active communication and monitoring, and were prompt to denounce “speculators” among those who complained about the situation.<sup>221</sup> On the other hand, local NGOs reported that in March 2020 no family had come back to their land to farm it. This behaviour can be explained on the basis that despite the messages of the companies, for the farmers it appears as a fundamental contradiction to be partially deprived of their property rights, as the work undertaken on the land during the suspension period would not be valued and compensated, while being encouraged to continue their activities as usual. Unlike some other industries, agriculture requires a long-term investment, and due to the uncertainties created by the cut-off date, families felt that they could not afford to put work and time into an asset they might lose at any moment.<sup>222</sup> Residents in Buliisa reported that “during the suspension of the project they were still not allowed to plant crops that take longer than 3-4 months to mature.” This is critical insofar as cassava, one of their main sources of food, is a crop that currently requires one or two years to mature. Residents have already seen the impacts, for instance lack of sufficient food and income to pay rent or school fees for children, forcing them to move away and find new jobs. They are afraid that worse is to come, and anticipate difficult periods of hunger, as there still remains uncertainty as to when the compensation and relocation will occur.<sup>223</sup>

The approach of the Tilenga resettlement process is not only contrary to the social and economic dynamics in the community and the dictates of the Constitution of Uganda, which requires prompt and adequate compensation, but it also contradicts the basic rules of property and contract law: the limitations to the *usus* and *fructus* of the residents’ land are being made without any counterpart, as

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220. Meeting among FIDH representatives and Total S.A. and Total E&P Uganda representatives, November 20, 2019.

221. Meeting of FIDH and FHRI with Total E&P Uganda, February 24, 2020.

222. See section III.3.2 on the findings regarding the impacts on the adequate standard of living.

223. Interview with a resident in Buliisa, June 10, 2020.

they are being deprived of the right to enjoy the benefit of their property before the sales contract has been executed. Furthermore, the issue of prior compensation was discussed in Constitutional Petition No. 40 of 2013,<sup>224</sup> where the Constitutional Court nullified Section 7(1) of the Land Acquisition Act to the extent of its inconsistency with Article 26(2) of the Constitution, to the extent that the Act fails to provide for prior payment of compensation before government compulsorily acquires or takes possession of a person's property. As a result, the Court declared that the taking of land prior to payment of compensation contravenes the right to property enshrined in Article 26(2) of the 1995 Constitution.

### ***The impacts on non-agricultural business***

Beyond the cases of families whose lands will be used by the project, and thus need to be relocated, those who remain have also been affected. On the one hand, the shops bordering many of the roads in the area of the project have lost value, and their activities have been reduced due to inadequate construction works and design. For instance, on the Kayso-Tonya road,<sup>225</sup> constructed by the Turkish company Kolin Insaat Turizm Sanayi Ve Ticaret ("Kolin"), many of the businesses are either at a higher or lower level than the road and thus have become almost inaccessible for the cars passing through. This construction, which should have increased the value of the businesses which represent many families' livelihood, has instead impacted them negatively. Yet compensation has only covered those whose land has been formally expropriated: the families living on the sides of the road have received only a small disturbance allowance as a result of the project, when in reality they have suffered a *de facto* expropriation, as their businesses are no longer operational and cannot provide a livelihood. In another instance, communities living close to the stone quarrying site of the Kyenjojo road have seen their plantations destroyed by the rocks that fly into their gardens following explosions to break the rocks for construction of the road.

Yet again, regarding the Kalso-Tonya road, local authorities claim that while they know the amounts of compensation are inadequate, they were not involved in the process of fixing these amounts. Decision-making is, according to them, concentrated at the national level. The Chief Government Valuer, meanwhile, explained that for every road construction, its office performs an assessment of the value of the land. These valuations are, as in other cases, based on a market value analysis. Discrepancies in the understanding of compensation procedures and rates among the different levels of administration render this issue even more complex.

#### **2.2.4. Gender discrimination**

Linked to the lack of adequate redress is an evident lack of a consideration of gender discrimination. In an already complex context for women's rights, insofar as ownership is concentrated among men, the compensation process has aggravated the dynamics of discrimination and negatively underlined gender roles. Despite the lopsided control of property by men, it is usually women who carry out farming and thereby provide food for their families. As the ESIA for the Tilenga project rightly points out, "[i]t is likely that women will be particularly vulnerable to economic displacement as they generally carry out subsistence farming in the affected area and they traditionally have limited

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224. Advocates for Natural Resources Governance and Development; Irumba Asumani; Peter Magelah vs. Attorney General Uganda and National Roads Authority; Constitutional Petition No. 40 of 2013.

225. This road construction managed and contracted by the Uganda National Roads Authority UNRA is part of several other infrastructural developments that the Government is undertaking in the Albertine Region in preparation for oil production. According to Energy Minister Peter Lokeris, the road has already started facilitating easy movement of oil drilling equipment. See Oil in Uganda, "Hoima Kalso Tonya Road Completed," December 17, 2014, <https://oilinuganda.org/features/economy/hoima-kalso-tonya-road-completed>.



Woman carrying fish in a fishing community near Kingfisher oil fields. © Martin Dudek

input in the management of household finances.”<sup>226</sup> Companies did attempt to minimize the impact on subsistence farmers by locating the industrial area in a predominantly grazing area, and to offer the affected women compensation at replacement cost for all lost assets, in-kind compensation for eligible cases, and livelihood restoration programmes.<sup>227</sup> Yet in practice the effective implementation of these protocols and programs is questionable.

Cultural prohibitions against women’s ownership of land are often more powerful than statutory laws that allow women to own land. These cultural norms may determine which rights to land a woman can exercise freely. For example, women may have the right to use a parcel of land or the right to gather fruit from it, but not the right to bequeath it through inheritance, a right instead reserved for their brothers and husbands. Men gain rights by membership in a lineage, and their rights last for life. In contrast, women gain rights through a relationship with a male of that lineage – often her father or husband. Land is generally handed down from father to son; if a man does not have any sons, his brother, nephew, or another male relative in his lineage often inherits his property. Daughters do not inherit land from their fathers, even though they are of the same lineage. Marriage and divorce practices may also create barriers to women’s land rights. Women may have more difficulties than

226. CNOOC, Total, Tullow “Environment and Social Impact Assessment” (Tilenga Project, February 2019), Volume IV, February 2019, pp. 16-215.

227. CNOOC, Total, Tullow “Environment and Social Impact Assessment” (Tilenga Project, February 2019), Volume IV, February 2019, pp. 16-215. These include food distributions for those losing land, crops and trees, programs to encourage household income diversification, and targeted interventions to bring improvement to education, health, water and sanitation, according to Talking Points from a meeting of FIDH and FHRI with the Petroleum Authority of Uganda, held on February 25, 2020.

men enforcing their rights because of a lack of information among customary leaders, communities, and the women themselves; limited access to decision makers; or due to their lower status within the community. Furthermore, a woman may have less influence over how her rights to land are exercised because of her subservient role in the household. Despite the protections that have been set up in the law to preserve the rights of usage for women, for example by requiring their consent for any transaction affecting the lands they cultivate, or the land of their husband, these provisions are far from being effectively implemented. Staff at the Chief Government Valuer confirmed they had numerous examples of the non-enforcement of these protections, yet stated that conflicts of ownership between women and their fathers or brothers were frequently resolved by community mediation, and that “fathers’ [or brothers’] claims were usually proven right.”

Residents report that when compensation agreements have been signed, in many cases women are not informed, and men spend the money received without consulting them, and leave these women with neither land nor any alternative sources of income. Indeed, the ESIA of the Tilenga project noted that “[w]omen are particularly vulnerable as they traditionally have limited input in the management of household finances,”<sup>228</sup> and recognized that they “have limited land rights and therefore will have difficulties accessing administrative or legislative authorities provided by the formal legal system,”<sup>229</sup> this latter impact being “moderately irremediable.” Total has added a “behavioural module” to mandate financial literacy training, requiring both spouses’ signatures on the compensation contract, as well as providing compensation directly to women for property or crops which belonged to them.<sup>230</sup> Interviews on the ground, however, reveal the limited effectiveness of such measures. CNOOC, for their part, claim that they have supported the participation of vulnerable groups, including by requiring the participation of spouses in project activities.

Discrimination against women in access to land and its ownership is aggravated during compensation and relocation processes. This is particularly true for single women and widows, who cannot rely on their husbands to preserve their access to land.

The case of women in Kyakaboga illustrates this challenge. In this community, women who were single or had lost their husbands had homes on their fathers’ land prior to resettlement. They explain that when the time for compensation or relocation came, only their fathers were compensated for the land and homes.

Similar cases were described by several women.

The challenges are also numerous in the case of polygamous families. When asked about the methods of compensation in those cases, the companies said that no cases of polygamy had been identified so far. These assertions show that these challenges were not given adequate consideration, as this is an area where polygamy is common.

According to local authorities,<sup>231</sup> despite the additional efforts made to create joint bank accounts where both spouses could equally access compensation money, there remain abuses and sexual

228. CNOOC, Total, Tullow “Environment and Social Impact Assessment” (Tilenga Project, February 2019), Volume IV, February 2019, pp. 16-214.

229. CNOOC, Total, Tullow “Environment and Social Impact Assessment” (Tilenga Project, February 2019), Volume IV, February 2019, pp. 16-215.

230. Meeting of FIDH and FHRI with Total E&P Uganda, February 24, 2020.

231. Meeting with local authorities, May 28, 2019.



and gender-based violence (SGVB) by men who force women to take the money out of the bank and give it to them. These authorities believe that there are cases of polygamy that further complicate the issue, and while they admit there is a need to make further efforts to address what they consider a “patriarchal culture,” they have not taken specific actions to change the situation. They claim that most of the complaints do not come to the attention of local authorities, but are only raised inside clans, so they have no data or statistics about these cases.

The weaknesses of women’s land rights highlight the inadequacy of the legal framework and are aggravated in the context of “land rush” generated by the development projects, where the economic actors involved have failed to adopt adequate protective measures. The Land Act includes two key provisions that directly address women’s land rights:

- Section 27 recognises customary tenure except in “a decision which denies women or children or persons with a disability access to ownership, occupation or use of any land.”
- Section 39 paragraph (1)(c) prohibits the sale of land “on which the person ordinarily resides with his or her spouse and from which they derive their sustenance, except with the prior written consent of the spouse.”

These provisions are subject to criticism insofar as they treat women as entitled to land rights due to their situation as a vulnerable group, “rather than their rights being promoted as the rights of citizens, as is the case for men. The language of vulnerability infantilizes women, relegating them to the periphery of land rights discourse,”<sup>232</sup> and fails to recognize women as equals to their male partners when speaking about ownership. Although some recognition has been given within the Land Act to the need for spousal consent over land management, efforts to extend women’s rights by including co-ownership clauses have failed.

Despite these criticisms, Ugandan law excludes customary ownership wherever it leads to discrimination against women or children. This policy reinforces companies’ obligation under local law, and more importantly under international law, to abide by international standards including, in particular, protection against discrimination based on gender. The complexity of cultural dynamics on the ground have nonetheless rendered most of the prevention and mitigation measures ineffectual. This may be partly linked to the primacy given to an individual, rather than a communal approach, to the land acquisition and relocation process.

*The oil issues have caused serious divisions between people. The land has become commercial so people are selling it. But customary land is not for sale; it is for families. People came last year to buy the land, making women especially struggle as we have no rights and we aren’t listened to. I am trying to change that; I tell other women in the group to be bold like me.*<sup>233</sup>

In instances where land belongs to clans or families, in which cases land is held in trust for present and future generations, women’s rights can be better protected than in individual, bilateral, and asymmetrical relations. Thus placing communal management of resources and women’s consent at the centre of the process may increase the capacity of government and companies to adequately guarantee and protect women’s rights.

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232. NAWAD, NAPE and WomanKind, *Digging Deep: The impact of Uganda’s land rush on women’s rights* (2018), <https://www.business-humanrights.org/sites/default/files/documents/DiggingDeep%20Report%20March%202018.pdf>.

233. NAWAD, NAPE and WomanKind, *Digging Deep: The impact of Uganda’s land rush on women’s rights* (2018), <https://www.business-humanrights.org/sites/default/files/documents/DiggingDeep%20Report%20March%202018.pdf>.



### **2.2.5. Constraint and duress in compensation agreements: Justice as a threat rather than a remedy**

Situations of constraint and duress have also been reported in Kigwera and Katikara, two areas in the Tilenga and Kingfisher license areas respectively. Residents complained about being forced to sign compensation agreements. Some threats are economic: a resident reported that “[w]hen you refuse to sign ... they tell you you will have to go to court,” which is a long and expensive process. This was confirmed by others, who said they were informed that the government rates for compensation were 3.5 million UGX per acre, and if residents rejected the rates they would have to go to court for redress; one added that “many PAPs accepted the compensation because they were afraid of going through an even longer process than the already long time it has taken to get compensation for other communities.” Although the companies claim this information is provided in line with legal requirements and due process in cases where the offered compensation is not accepted, this information seems to be provided before the grievance process is exhausted, explaining why it is misleading and perceived as a form of pressure by community members.

Company representatives also “come door to door, telling you other people have already signed,” according to community members. Although they were informed in advance about the compensation and relocation process, residents explain that in some cases they were asked to sign the same day they were presented with the contract. This was seen as a strategy to prevent residents from organising collectively in order to claim their rights. During a focus group discussion conducted in the resettlement camp in Kyabagoya, it was stated that the PAPs discovered the compensation rates as they were signing the agreements, meaning that there was no disclosure beforehand.

This is particularly problematic in a cultural and legal framework where, as explained above, property is not understood only as an individual right but essentially as a collective one. Without strong community organizations capable of articulating and mobilizing members of the community, communal land is not considered in the compensation rates or is appropriated by other economic actors.

Only one case where compensation was received through a communal land association was documented in the Kingfisher area. The Buhuka Parish was originally a game reserve with a few unlicensed landing sites. Former village chairpersons and other local leaders had applied to the central Government through the local authorities and the Uganda Wildlife Association (UWA) for recognition and degazettement of their land. In 2001 the area was degazetted and partly registered in the names of Buhuka Communal Land Association (BCLA). It was approved by the Ministry of Housing and Urban Development as comprising the five villages of Nsonga, Kyabasambu, Kyakapere, Nsunzu, and Kiina. When operating companies initiated the relocation and compensation process, compensation for the land was granted to the Association, while only the construction and crops held by families were individually compensated. The impact of the collective compensation is described as positive insofar as the association was able to identify land where the entire community was relocated.

The policies of Total and CNOOC have been to implement company grievance mechanisms to address conflicts related to land. In practice, these have been useful in addressing a number of claims. Figures provided by companies show that 82% of claims had been addressed in less than three months in February 2020, and mostly concern land issues or crops. Such grievance mechanisms are considered good practice, as they can be effective, especially in resolving small complaints or disputes. But as illustrated by the example of human rights defenders’ protection, grievance mechanisms by their nature cannot provide redress and protection for key human rights, particularly if guarantees of independence are not provided. Moreover, they are not adequate to address weightier conflicts

between communities and companies, such as allegations of intimidation or constraint. States must complement non-judicial bodies with independent, effective, and accessible judicial mechanisms. In the case of Uganda, the state's policy to "promote alternative dispute mechanisms"<sup>234</sup> rather than to reinforce judicial bodies or to resolve the distrust of communities in the effectiveness of courts and other related problems in access to justice, are extremely detrimental to the protection of human rights of local communities.

Other residents have also denounced threats to their physical security. A case in point is the testimony of two human rights defenders who assisted PAPs, especially in Buliisa district. They reported that an announcement was made on the radio in June 2019 offering money in exchange for information that would lead to their arrest.

In the same area, academics have since 2019 denounced reports that "[r]esidents in various villages said that suspected security agents had been threatening land owners to take what the government had offered them and leave the area."<sup>235</sup> Similar episodes of aggressions were reported during interviews with residents, and were said to be increasing during the period of quarantine due to the Covid-19 pandemic.

In other cases, organisations have claimed that violent evictions have also taken place. "[I]n August 2014 when a big number of people were evicted from land in Rwamutonga village, Bugambe sub-county, Hoima district. In this incident, a total of 250 families were violently evicted (two people died) from 485 hectares of land by businessman Joshua Tibagwa to pave way to oil waste management by the American based waste management firm."<sup>236</sup>

## 2.3. Who is responsible for the impacts on the right to land?

The diversity of situations described above amount to multiple violations and abuses of the right to land, by both the State of Uganda and the Joint Venture Partners. The former, as regulator, has failed in its duty to protect and guarantee residents' right to land; as an economic actor in the refinery, it has failed to respect it. The latter, despite the efforts deployed, have failed to uphold their human rights responsibilities and commitments in practice.

First, the State of Uganda has failed to guarantee secure and effective access, and use and control of land and related natural resources<sup>237</sup> to the residents of the Albertine Region from the onset, due to the gaps and insufficiencies in the legal framework. Indeed the High Court of Uganda has found that the Ugandan Government's failure to enact a comprehensive legal framework and procedure protecting those facing eviction to be a breach of the rights to life, dignity, and property under Articles 22, 24, 26, 27, and 45 of the 1995 Constitution of Uganda.

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234. Meeting of FIDH and FHRI with staff of the Chief Government Valuer, February 26, 2020.

235. Ogwang T., Vancly F., den Assem A., "Impacts of the oil boom on the lives of people living in the Albertine Graben region of Uganda" (Jan 2018), *The Extractive Industries and Society*, Volume 5, Issue 1, <https://www.sciencedirect.com/science/article/pii/S2214790X17301624>, accessed January 7, 2020.

236. Edward Ssekika, "Oil rich Hoima struggles to solve the land question", *The Observer* (July 29, 2015), <https://www.observer.ug/business/38-business/38987-oil-rich-hoima-struggles-to-solve-the-land-question>, see also, "Tycoon Kahwa Francis influences on land Grabbing and human Rights violations in Bullisa and Hoima Districts", *Albertine Watchdog* (January 27, 2018), <https://www.albertinewatchdog.org/2018/01/27/tycoon-kahwa-francis-influences-on-land-grabbing-and-human-rights-violation-in-bullisa-and-hoima-districts/>.

237. FIAN, *The Human Right To Land: Position Paper* (November 2017), [https://www.fian.org/fileadmin/media/publications\\_2017/Reports\\_and\\_Guidelines/FIAN\\_Position\\_paper\\_on\\_the\\_Human\\_Right\\_to\\_Land\\_en\\_061117web.pdf](https://www.fian.org/fileadmin/media/publications_2017/Reports_and_Guidelines/FIAN_Position_paper_on_the_Human_Right_to_Land_en_061117web.pdf), accessed April 24, 2020.

The protection of the right to land under Ugandan law falls short of upholding international standards insofar as it has focused on the economic value of land and failed to reflect the wholistic approach of international and regional human rights law, which establish a clear and necessary link between land and natural resources as means of subsistence,<sup>238</sup> as well as an integral element of cultural values and practices.<sup>239</sup> This is particularly reflected in the narrow interpretation of the requirement to provide prior, adequate, and fair compensation in cases of eviction or forced acquisition of land, as a principle that would require only an analysis of financial equivalence.<sup>240</sup> Such an approach has been progressively implemented by the successive reforms of the legal framework and in particular by the Land Acquisition and Resettlement Framework (LARF), elaborated in collaboration with the Joint Venture Partners. In fact, while the LARF explicitly excludes any special value not included in the market value,<sup>241</sup> international law requires that non-monetary losses be subject to redress, and that access to food, water, housing, and other basic resources equal in quality be provided as an integral part of full redress.<sup>242</sup> Yet the LARF goes so far as to state that owners should not be “better off [...] from a financial point of view,”<sup>243</sup> in contradiction of IFC standard 5, which sets out as an objective to improve the livelihoods, standards of living, and living conditions among physically displaced persons, and to which companies claim to adhere. These deficiencies provide fertile ground for human rights violations and abuses by economic actors.

Second, Joint Venture Partners and the State of Uganda (in its capacity as an economic actor in the refinery) have failed to guarantee that evictions and forced acquisition of land be conducted in line with international law requirements. Resettlement and compensation have often resulted in a decrease rather than an improvement in the quality and adequacy of housing, sanitary conditions, access to education, and basic resources.

The shortcomings in the resettlement linked to the construction of the refinery, which include long delays, non-restitution of secure and registered tenure of an equivalent legal status, and a reduced quality of life due to limitations to access to education and natural resources, are attributable to the State of Uganda and the investing consortium. The Joint Venture Partners should exercise their leverage to ensure that these shortcomings are addressed, insofar as the refinery is part of the overall oil development and is directly linked to the extraction project through its value chain. Moreover, the key point where feeder pipelines will meet the EACOP is located within Kabaale Industrial Park. Furthermore, such violations are likely to recur in the relocations linked to the Lake Albert extractive project, insofar as the social and cultural considerations related to relocation and compensation appear to be at least partially overlooked.

Long delays, disregard for communal land tenure, low compensation rates, cultural misconceptions, and land-grabbing have already taken a heavy toll on communities who await relocation and compensation in the license areas operated by the Joint Venture Partners. Particularly in RAPs 2 to 5 in the Tilenga Area, which are currently being implemented by Total.

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238. FIAN, *The Human Right To Land: Position Paper* (November 2017), [https://www.fian.org/fileadmin/media/publications\\_2017/Reports\\_and\\_Guidelines/FIAN\\_Position\\_paper\\_on\\_the\\_Human\\_Right\\_to\\_Land\\_en\\_061117web.pdf](https://www.fian.org/fileadmin/media/publications_2017/Reports_and_Guidelines/FIAN_Position_paper_on_the_Human_Right_to_Land_en_061117web.pdf), accessed April 24, 2020.

239. Africa Court on Human and People's Rights, *Ogiek vs. Kenya*, App. no. 006/2012, Judgement of May 26, 2017, paras. 162-169.

240. Resettlement Advisory Committee, *Land Acquisition and Resettlement Framework: Petroleum Development and Production in the Albertine Graben* (2017) point 8.3.1.

241. Resettlement Advisory Committee, *Land Acquisition and Resettlement Framework: Petroleum Development and Production in the Albertine Graben* (2017) point 8.3.1.

242. UN *Basic Principles and Guidelines on Development Based evictions and Displacement*, UN Doc A/HRC/4/18m, [https://www.ohchr.org/Documents/Issues/Housing/Guidelines\\_en.pdf](https://www.ohchr.org/Documents/Issues/Housing/Guidelines_en.pdf); Communication 276/03, Centre for Minority Rights Development (Kenya) and Minority Rights Group (on behalf of Endorois Welfare Council) v. Kenya, 25 (November 2009), para. 112, pp. 231-232.

243. Resettlement Advisory Committee, *Land Acquisition and Resettlement Framework: Petroleum Development and Production in the Albertine Graben* (2017) point 8.3.1.

Due to delays in the implementation of the project, many residents have been deprived of the full enjoyment of the rights derived from their ownership of land, yet have not been compensated or relocated. Specifically, the residents in RAP 2 to 5 in the Tilenga Area, operated by Total, have had to wait in some cases over one year since the initial assessment of their lands and after the cut-off dates, with limited capacity to use their lands, and total uncertainty about the timeline for compensation and relocation. This situation constitutes a violation of the requirement under the Ugandan Constitution to ensure that adequate compensation is provided promptly and prior to the taking possession of or acquisition of land, and the loss of livelihood; of the general rules of contract and property law which provide that the exchange or limitations on property should result from a reciprocal transaction; and of international standards on development-based evictions. As a result of delays, the valuation amounts should, in line with Ugandan law and case law, be considered void and be reassessed at the value of the date when the relocation effectively takes place. In addition, residents should be compensated for the material and moral damages caused by the uncertainty linked to prolonged suspensions that impacted their livelihoods, their children's right to education, and their right to land.

A disregard for communal land tenure and an individualised approach to the valuation of land has also led to shortcomings in companies' fulfilment of their obligations to respect and restore communities' right to land. While the LARF requires the restoration of communal land tenure, the tendency in the area seems to be towards an increasing individualization of property, which is not capable of ensuring the sustainable protection of communities' livelihoods and resilience capacity in a context of decreasing available resources, leaving the most vulnerable behind, rather than empowering them. While Total has claimed to have offered assistance to PAPs to form communal land associations to increase security of tenure, these measures have proved inefficient in practice, and compensation for collective resources has thus fallen through the cracks of an individualized approach. As a result, the company has failed to live up to its commitment to apply IFC Performance Standard 5 as well as international law requirements to ensure the improvement and restoration of the livelihoods and living conditions of displaced persons.

Cultural misconceptions have led to a lack of compensation for the loss of use of communal resources and grazing lands. Forcing families to relocate within the area of the project will necessarily reduce their quality of life to a degree proportional to the reduction of available lands and resources, and leave them persistently exposed to the project's future impacts, creating a risk of re-victimization. Despite the efforts of Total to elaborate a detailed and comprehensive RAP, the mitigation and redress measures provided therein are neither coherent nor capable of adequately addressing the risks identified, and achieving the objective of maintaining and improving the standard of living of affected persons.

Furthermore, compensation rates for land, houses, crops, and trees fall short of the expectations of communities to maintain their standard of living. Specifically, they have failed to consider the non-economic value of the loss and the work required, in a context of a severe climate crisis that is already generating impacts on communities' capacity to produce food, and to grow crops and trees to the stage of maturity they had reached before the relocation or compensation occurred. While the State is responsible for approving rates that have proved insufficient, failing in its obligation to ensure adequate redress and restoration of livelihoods, the Joint Venture Partners have also failed in their responsibility "to respect human rights wherever they operate" and to "seek ways to honour the principles of internationally recognized human rights when faced with conflicting requirements," in line with the United Nations Guiding Principles on Business and Human Rights.

Women bear an important part of these burdens due to the patriarchal culture of control over land, as well as the role they play in families, being in charge of farming, fetching water, and taking care



of children. Despite the efforts of the companies in identifying and addressing such impacts, the measures adopted have not been adequate and sufficient to prevent human rights abuses.

Limited access to information, in a context where pressure and harassment are common, have prevented residents from providing free and informed consent to the conditions for the acquisition of their land or their relocation, which under Ugandan law should render such transactions void. Despite the number of meetings held by Total, the quality of communications and exchanges with affected communities appeared to be poor, and dominated by a fear that is based on specific episodes of attacks and threats against human rights defenders, as well as the imbalance of power between corporate actors in connivance with state authorities on the one hand, and community members on the other.

Finally, beyond the deficiencies in its legal framework, the State of Uganda has also failed to guarantee that the right to land is free from arbitrary and illegal interference through pollution and eviction, including by corporate actors. The lack of access to justice or other forms of State-based effective remedies aggravates the violations and abuses attributable to economic actors. Justice in this context has generally been a threat rather than a recourse for the most vulnerable, and the delays and capture of local jurisdictions have allowed for situations of land-grabbing to multiply, and for disputes between companies and landowners reluctant to accept the proposed conditions of relocation and compensation to remain unresolved.

### **3. The Right to an Adequate Standard of Living**

The right to an adequate standard of living is protected under international instruments as an autonomous right. Yet it is deeply interconnected and interdependent with the rights to adequate housing, food, water, and sanitation, as well as the right to manage natural resources and occupy land in line with traditional cultural practices. While the legal framework described below evidences the thin protections that the right to an adequate standard of living has been granted under national law, international and regional human rights norms shed a light on the violations that the present Assessment has identified.

#### **3.1. Adequate standard of living: A multidimensional right**

In the international realm, the right to an adequate standard of living is a broad notion that requires, at a minimum, that everyone may fulfill their basic needs and enjoy the conditions necessary to live in dignity, including adequate housing, food and nutrition, water, clothing, medical care, and social services, in line with their cultural practices and ecological conditions. According to the Universal Declaration of Human Rights, Article 25(1), “everyone has the right to a standard of living adequate for the health and well-being of himself and his family.” Article 11 of the International Covenant on Economic, Social, Cultural and Rights (ICESCR) uses equivalent terms and has been detailed in the general comments of the Committee on Economic, Social and Cultural Rights (CESCR).

The right to adequate housing, as part of the right to an adequate standard of living, is “the right to live somewhere in security, peace and dignity.”<sup>244</sup>

According to the interpretation of the CESCR, for housing to be adequate, a State must, at a minimum,

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244. OHCHR, *The Right to Adequate Housing*, Factsheet no. 21, rev1, [https://www.ohchr.org/documents/publications/fs21\\_rev\\_1\\_housing\\_en.pdf](https://www.ohchr.org/documents/publications/fs21_rev_1_housing_en.pdf).



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provide security of tenure; access to services, materials, facilities and infrastructure, such as drinking water, energy for cooking, heating and lighting, sanitation, site drainage, and emergency services; housing must be accessible and habitable – offering adequate space, protection from cold, damp, heat, rain, wind, or other threats to health, structural hazards and disease vectors, that guarantee the physical safety of its occupants; it must allow access to employment options, health-care services, [...] both in large cities and rural areas; and be culturally appropriate.<sup>245</sup> The 2007 report of the UN Special Rapporteur on adequate housing confirms that, in addition to the aforementioned criteria, the right to adequate housing must include the following essential elements: “privacy and security; participation in decision-making; freedom from violence; and access to remedies for any violation suffered.”<sup>246</sup>

Initiatives that have helped clarify the scope and content of the right to adequate housing include general comments of the CESCR No. 4 (1991) and No. 7 (1997) on the topic of forced evictions. In these comments, the Committee affirms that the right to adequate housing should not be interpreted narrowly. Rather, it should be seen as the right to live somewhere in security, peace and dignity. In addition, Comment No. 7 states that the right to adequate housing contains freedoms such as protection against forced evictions and the arbitrary destruction and demolition of one's home; the right to be free from arbitrary interference with one's home, privacy, and family; and the right to choose one's residence, to determine where to live, and to freedom of movement.

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245. Human Rights Council, “Report of the Special Rapporteur on adequate housing, as a component of the right to an adequate standard of living”, Miloon Kothari (February 4, 2007), A/HRC/4/18, paragraph 55.

246. *Ibid.*

Beyond international treaties, other standards specifically related to land acquisition and involuntary resettlement also refer to the improvement of the standard of living or of the livelihoods of affected individuals or groups. For instance, Performance Standard 5 of the International Finance Corporation (IFC) includes among its requirements that the redress offered for forced displacement help “improve or restore their standards of living or livelihoods,”<sup>247</sup> taking particular consideration of cases of economic displacement of persons whose livelihoods are land or natural resource-based.<sup>248</sup> The IFC also requires that the provision of compensation and proper planning for the provision of the restoration of livelihoods of those affected be ensured prior to any actual resettlement. The Standard requires that possession of land for project activities may take place only after compensation has been paid, or alternatively, if adequate guarantees of compensation have been made to the PAPs’ satisfaction.

The right to food “may be defined as the right, alone or in community with others, to be free from hunger and malnutrition, to have at all times physical and economic access to adequate food – in quality and quantity – that is nutritious and culturally acceptable or means for its procurement in a sustainable and dignified manner, while ensuring the highest level of physical, emotional and intellectual development.”<sup>249</sup> Indeed, the UN Committee has stated that the concept of adequacy is closely determined by prevailing social, economic, cultural, climatic, ecological, and other conditions, and is linked to the notion of sustainability, which implies food sovereignty, meaning that the right to food should be protected for present and future generations.

The right to water and sanitation is one of the most fundamental rights, and will be developed in a dedicated section below. It is however important to recall at this stage that the CESCR has stated that “ensuring that everyone has access to adequate sanitation is not only fundamental for human dignity and privacy, but is one of the principal mechanisms for protecting the quality of drinking water supplies and resources.”<sup>250</sup>

At the regional level, although the African Charter on Human and Peoples’ Rights does not expressly recognise a right to an adequate standard of living, housing, or food, these rights largely fall within the scope of the Charter and are covered under articles 5 and 14 through 18. The African Commission has found violations of the right to food and housing, despite the lack of explicit reference in the Charter, through a holistic interpretation of the rights to enjoy the best attainable standard of mental and physical health, to property, and to the protection of the family.<sup>251</sup> The African Commission and the African Court have interpreted the right to food as being in some cases inextricably linked to the rights to natural resources and land, in particular for indigenous peoples and agricultural communities.

In the *Ogiek case*,<sup>252</sup> the African Court found a violation of the right to natural resources as a result of the deprivation of the traditional food produced by the land the plaintiffs had occupied ancestrally. The Court held that the right “to [...] economic, social and cultural development with due regard to their freedom and identity and in the equal enjoyment of the common heritage of mankind”<sup>253</sup> belongs to “all

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247. International Finance Corporation (IFC), Standard 5: Land Acquisition and Involuntary Resettlement (January 1, 2012), para. 9, [https://www.ifc.org/wps/wcm/connect/75de96d4-ed36-4bdb-8050-400be02bf2d9/PS5\\_English\\_2012.pdf?MOD=AJPERES&CVID=jqex59b](https://www.ifc.org/wps/wcm/connect/75de96d4-ed36-4bdb-8050-400be02bf2d9/PS5_English_2012.pdf?MOD=AJPERES&CVID=jqex59b).

248. International Finance Corporation (IFC), Standard 5: Land Acquisition and Involuntary Resettlement (January 1, 2012), para. 28.

249. FIAN, “The right to food and nutrition: beyond security, towards food sovereignty” (Struggle for the Right to Food and Nutrition, July 2016), [https://www.fian.org/fileadmin/media/Publications/30th\\_Anniversary/Right\\_to\\_Food\\_and\\_Nutrition\\_Beyond\\_Food\\_Security\\_towards\\_Food\\_Sovereignty.pdf](https://www.fian.org/fileadmin/media/Publications/30th_Anniversary/Right_to_Food_and_Nutrition_Beyond_Food_Security_towards_Food_Sovereignty.pdf).

250. CESCR, General Comment 15 “Right to Water,” para. 29.

251. The Social and Economic Rights Action Centre et al. V. Nigeria, African Commission on Human and People’s Rights, Communication 155/96 (2001).

252. *Ogiek vs. Kenya*, African Court on Human and Peoples’ Rights, App. no. 006/2012 (May 26, 2017).

253. African Charter on Human and Peoples’ Rights, Article 22.

populations of the State.” This right should be interpreted in line with the right to be actively involved in developing and determining health, housing, and other economic and social programs: the right to an adequate standard of living is necessarily interlinked with the right to manage natural resources, including land, so as to ensure development in line with traditional occupations and cultural practices.

At the national level, certain provisions of the Constitution of Uganda relate to the right to an adequate standard of living, although they do not mention it specifically.<sup>254</sup> Its General Social and Economic Objectives guarantee Ugandans fundamental rights to social justice, economic development, access to clean and safe water, health, and decent shelter. According to Principle XIV of the National Objectives and Directive Principles of State Policy,

- (a) “all developmental efforts are directed at ensuring the maximum social and cultural well-being of the people;” and
- (b) “all Ugandans enjoy rights and opportunities and access to education, health services, clean and safe water, work, decent shelter, adequate clothing, food security and pension and retirement benefits.”

Article 40 of the Constitution states that laws enacted by Parliament should be conducted with the goal of ensuring “equal payment for equal work without discrimination.” Similarly, Objectives XIV and XXII provide that the State shall take appropriate steps to encourage people to grow and store adequate food, and should encourage and promote proper nutrition in order to build a healthy state. In that sense, the Uganda Food and Nutrition Policy promotes the nutritional status of all the people of Uganda through multi-sectoral and co-coordinated interventions that focus on food security, improved nutrition, and increased incomes.

Uganda Vision 2040 is dedicated to development that will move the country “from a predominantly peasant and low-income country to a competitive upper middle-income country.” This Vision is meant to be achieved through National Development Plans (NDP). Uganda’s NDP II, which was for the period of 2015/2016 – 2019/2020, had a goal of raising the per capita income of all Ugandans to USD 1,039 by 2020. The Vision mentions that Ugandans no longer wish to struggle with hunger and that they want to have “strong social safety nets.” Strong social safety nets are defined as non-contributory measures designed to provide regular and predictable support to poor and vulnerable people.<sup>255</sup> They may include welfare, unemployment benefits, universal healthcare, homeless shelters, and sometimes subsidized services such as public transport, all of which prevent individuals from falling into poverty beyond a certain level by “provid[ing] effective income support to and build[ing] the resilience of poor and vulnerable households in Northern Uganda.”<sup>256</sup>

### 3.2. Housing, livelihoods and social networks disrupted

The findings of this Assessment suggest a consistent violation of the right to an adequate standard of living, in particular concerning the right to housing, food, and employment, which are closely interlinked. Interlinked geographically, because the economic activities of communities in the Albertine region are generally located in or close to the place of residence. And interlinked substantially, as displacement

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254. See Constitution of Uganda, National Objective XIV (b), XX, XXI.

255. World Bank Group, *The State of Social Safety Nets 2015* (2015). <http://documents.worldbank.org/curated/en/415491467994645020/pdf/97882-PUB-REVISED-Box393232B-PUBLIC-DOCDATE-6-29-2015-DOI-10-1596978-1-4648-0543-1-EPI-1464805431.pdf>, accessed June 18, 2020.

256. World Bank Group Disaster Risk Financing & Insurance Program, *Uganda: Better data, better resilience: lessons in disaster risk finance from Uganda*, <http://documents.worldbank.org/curated/en/509541505891128000/pdf/119821-BRI-PUBLIC-18-9-2017-18-47-43-BrochureUgandaLESSON.pdf>.



from the place of residence may result in a rupture with the former residents' sustainable sources of food. These rights will thus be treated together.

The findings of this Assessment reveal four main sources of impacts on the right to an adequate standard of living. They result from (1) material damage to homes, (2) damage to the health and environment of the residents of the areas of exploration, (3) disruption of social networks, and (4) limitations on the freedom of movement.

### **3.2.1. Exploration and construction activities' impacts on the stability and security of housing**

Seismic data collection is the most common technique used to identify potential oil and natural gas deposits. Seismic surveys are based on discharging focused energy pulses into the subsurface land (more than 6,000 metres deep), and are refracted or reflected back to the surface where they are detected by seismic receivers (for example, nodes). Different techniques may be used, ranging from underground dynamite explosions to the use of thumper trucks. The impacts of the variable levels of vibrations generated by the different techniques may fluctuate depending on the environmental and infrastructure conditions of the area where they are conducted. Fragile traditional constructions are susceptible to damage from seismic testing, if the testing is conducted in close proximity to these traditional structures.

Similarly, construction of major infrastructure, such as roads, generates a significant amount of vibrations. These vibrations can come from the blasting of rocks, or the drilling across rocky uneven surfaces.

The characteristics of land and houses in the area are therefore key to understanding the impacts of such activities. In the Albertine region, many of the residential constructions are made of mud bricks, along with fragile structures of thin wood. As a result, they are particularly vulnerable to the effects of oil exploration and infrastructure construction techniques. This poses several risks, including structural damage to the buildings where people live and sleep, which can lead to their collapse and can cause severe injuries or death.

The Tilenga ESIA acknowledges that "vibration produced by the development has the potential to cause annoyance to human receptors, to disturb wildlife receptors, and to cause damage to building structures"<sup>257</sup> during the construction phase.

As has been documented by other observers,<sup>258</sup> in Kyenjojo, after explosions were conducted to break rock formations in order to open the way for the construction of a road, the houses showed cracks. Residents explained that this affected more than 100 inhabitants, who filed a representative suit before the High Court of Uganda in January 2015.<sup>259</sup> The complainants, who are residents of affected areas of the Kyenjojo, Hohwa, Nyakaseke, Buseruka, and Kabwoya sub-counties, Hoima district, claimed that their houses and other property were negligently destroyed during the stone blasting that accompanied the construction of the Hoima-Kaiso-Tonya Road. They argue that Kolin, the construction company, did not take any precautionary measures to mitigate harm, loss, and injury to the neighbourhoods affected by the blasting of rocks, leading the plaintiffs to suffer damages mainly

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257. CNOOC, Total, Tullow "Environment and Social Impact Assessment" (Tilenga Project, February 2019), Volume II, Chapter 7, section 7.1.

258. During the rock blasting, stones could explode and this caused destruction of properties, crops and even animals. Most of the houses around those villages developed cracks and became uninhabitable and people abandoned them."

259. Bin Khalili and Ors vs Kolin Insaat Turizm Sanayi Ve Ticaret and Uganda National Roads Authority, Civil suit No. 34/2015.





Man shows cracked house as the result of oil exploration. © Martin Dudek



destructions of houses, plantations, harvest stores, and crops, among other property. Furthermore, they argue that the Uganda National Roads Authority under whose control and supervision the construction took place, was negligent in the execution of its work, thus causing damage, loss, and injury to the plaintiffs and others in the process of rock blasting. The case is still pending.

Local authorities deny their responsibility to investigate and provide redress for these impacts. They rather abdicate their responsibility by maintaining that these events occurred before the creation of the new administrative district of Kikuube, where the claimants are located, and thus cannot be held responsible. They suggest that the issue should be dealt with by the authorities previously in charge, who govern the Hoima district. Although the research team was not able to enter into an exchange with Hoima authorities, residents complain of being shuffled between the authorities of the two districts.

Similarly, several inhabitants of Kisamere in Buliisa have explained how their houses revealed cracks after oil exploration teams conducted seismic surveys with what the residents of the area describe as a “sound and vibration underground similar to explosive charge.” Cracks in the buildings observed are of different sizes, but appeared, according to residents, after specific episodes of exploration by the oil companies.



In Kisomere, Ngwedo subcounty, Buliisa, a resident shows the impacts caused to her home. Arriving at her home from a dirt road and across her neighbours' plantations, it is impossible not to see the huge crack that has split her front garden, where her family dries cassava, through the middle of the house floor, up until the base of the walls. The resident explains that the crack appeared in 2018 when what sounded like heavy explosions were heard in different points around the area surrounding her house. “At the beginning it was small, but over time, rain has made the crack grow bigger and extend across the house.” She explained: “This allows poisonous snakes, which can be found in the area, to enter the house, where children sleep on the floor.” As the crack continues to grow it increasingly threatens the foundations of the whole building.

Before the probes, sonar and radars became common in the oil industry, explosives were largely used in seismography. The method consisted in using the explosive to create a shockwave within the soil, which would propagate and generate echoes. These echoes could be measured in sonars placed on ground level. Then, specialists would build an approximated map of the underground from the information collected by the sonar. These maps could be used to guide the drilling operations.<sup>260</sup>

Seismic activity for oil exploration, including with more advanced technologies such as thumper trucks, has been described in other cases as similar to an earthquake.<sup>261</sup> Each thumper truck can have a weight of around 67,100 pounds, and creates seismic signals by vibrating the ground surface with a hydraulic 8x4-foot, 7-inch thick steel plate which may apply over 61,000 pounds of peak force to vegetation, soils, and wildlife habitat at each source point. To map an area, a truck's plate is pressed against the ground, vibrates, and then moves on to the next "source point."<sup>262</sup> Numerous adverse impacts on soils, plants, hydrology, and wildlife have been documented.<sup>263</sup> For instance, "wetlands have water at or near the surface, even during the dry season when the survey is proposed to occur. The weight of thumper trucks in predominantly wet, soft soils will result in severe soil disturbances, leading to long-term changes in vegetation composition and greatly increasing the risk of introducing invasive vegetation."<sup>264</sup>

When questioned about the use of underground explosives during the exploration phase, Total explained that they did not use such methods, but a more modern and environmentally-friendly technique: thumper trucks, which, according to them, use a low vibration level to identify petroleum deposits.<sup>265</sup> Tullow, for their part, explained they used underground dynamite and weights to conduct seismic mapping. Although they claimed that Environmental Impact Assessments (EIAs) were conducted and approved by NEMA, few details were provided regarding the location of the explosive charges or the criteria for setting up the source points and the buffer zone, or about any mitigation measures adopted. Tullow maintains that no impact occurred as a result of their exploration activities,<sup>266</sup> and explained that the technologies used by the company have evolved, particularly since 2010.<sup>267</sup> Whereas before 2010, Tullow claims to have "very carefully created a ground dataset that laid

260. Erick Galante, Assed Haddad, Nathália Marques, "Application of Explosives in the Oil Industry" (2013), *International Journal of Oil, Gas and Coal Engineering*. Vol. 1, No. 2, 2013, pp. 16-22. doi: 10.11648/j.ogce.20130102.11.

261. Jennifer Kovalski, "Oil and gas 'thumping trucks' rattle Colorado homeowners" (April 24, 2019), *The Denver Channel*, <https://www.thedenverchannel.com/news/contact7/oil-and-gas-thumping-trucks-rattle-colorado-homeowners>.

262. *United States District Court of Florida, Natural Resource Defense Council, Center for Biological Diversity, National Park Conservation Association, Conservancy of SouthWest Florida, Earth Works, South Florida Windlands Association vs. National Park Service, Sally Jewell, Jonathan V. Jarvis and Stan Austin* (July 27, 2016), [https://www.biologicaldiversity.org/programs/public\\_land/energy/dirty\\_energy\\_development/oil\\_and\\_gas/pdfs/Big\\_Cypress\\_Complaint\\_2016-07-27.pdf](https://www.biologicaldiversity.org/programs/public_land/energy/dirty_energy_development/oil_and_gas/pdfs/Big_Cypress_Complaint_2016-07-27.pdf).

263. *United States District Court of Florida, Natural Resource Defense Council, Center for Biological Diversity, National Park Conservation Association, Conservancy of SouthWest Florida, Earth Works, South Florida Windlands Association vs. National Park Service, Sally Jewell, Jonathan V. Jarvis and Stan Austin* (July 27, 2016), Paragraph 89, [https://www.biologicaldiversity.org/programs/public\\_land/energy/dirty\\_energy\\_development/oil\\_and\\_gas/pdfs/Big\\_Cypress\\_Complaint\\_2016-07-27.pdf](https://www.biologicaldiversity.org/programs/public_land/energy/dirty_energy_development/oil_and_gas/pdfs/Big_Cypress_Complaint_2016-07-27.pdf).

264. *United States District Court of Florida, Natural Resource Defense Council, Center for Biological Diversity, National Park Conservation Association, Conservancy of SouthWest Florida, Earth Works, South Florida Windlands Association vs. National Park Service, Sally Jewell, Jonathan V. Jarvis and Stan Austin* (July 27, 2016), Paragraph 90, [https://www.biologicaldiversity.org/programs/public\\_land/energy/dirty\\_energy\\_development/oil\\_and\\_gas/pdfs/Big\\_Cypress\\_Complaint\\_2016-07-27.pdf](https://www.biologicaldiversity.org/programs/public_land/energy/dirty_energy_development/oil_and_gas/pdfs/Big_Cypress_Complaint_2016-07-27.pdf).

265. Interview with Total representatives on February 24, 2020.

266. Meeting of the research team with Tullow Oil, June 26, 2020. Tullow explained that "[t]he placement [of the seismic source and sensors] was further refined by taking local ground conditions, ground use, infrastructure etc into consideration. Indeed, seismic lines were deviated around trees as well as villages and houses. In all cases industry best-practices were employed regarding the safe operating distances from infrastructure." Nevertheless, the lack of specific information about the location, buffer zones, avoidance criteria, and other prevention and mitigation measures prevent us from corroborating the adequacy of those measures.

267. Initially, industry standard down-hole dynamite charges were employed and conventional sensors connected together by cables. In 2010, Tullow claims to have introduced a low-footprint light-weight drop seismic source specifically to reduce



out very carefully where housing was located and avoided it. The same point applies to well sites.”<sup>268</sup>

The impacts described and observed by the research team indicate poor practice by the companies. According to best practices in the sector, seismic testing should not have occurred in the immediate vicinity of homes, and a minimum range of 200 meters should have been observed from the source points and the seismic line from any sensitive environmental site, including homes. While Tullow argues that they used industry best practices when selecting offset distances for the various seismic sources, they claim that best practices involve monitoring vibration levels, and that references to a 200-meter-range protected area are “out-dated.”

The research team inquired whether environmental and social impact assessments were conducted prior to exploration. Although EIAs were published and validated, neither companies nor the National Environmental Management Agency (NEMA) transmitted the relevant studies, which are not publicly available.<sup>269</sup> Consequently, it was not possible to fully assess the alternative methods considered,<sup>270</sup> the length of source lines, the location of the source and receiver points, or the wetlands traversed by the trucks, including the avoidance strategy to prevent damage on property and nature, by the Joint Venture Partners.

The succession of companies in the area since the beginning of the oil activities complicates the analysis and attribution of these impacts. Furthermore, as the project moves forward into the construction and operation phases, sources of vibrations such as truck traffic, drilling, use of power generation plants, construction of infrastructure and facilities, excavation, aircraft movement, and operation of the CPF and the pads will become even more frequent, increasing the risk of new impacts and aggravating those already identified.

### **3.2.2. Exploration and construction activities' impacts on livelihoods**

Some of the construction and exploration activities have limited people's capacity to produce food. These impacts are in some cases consequences of limited activities and in others of durable transformations of the environment, thus hampering the short-term and long-term capacity to produce food and to conduct normal labour and commercial activities.

Firstly, road construction activities have been a source of disruption for nearby communities who live mainly from agricultural production. On the road construction site of Kyenjojo, a local representative explained how rock explosions took place to open the path for the Kaiso-Tonya road. These explosions ejected rocks onto their agricultural land, destroying their crops and posing a risk to their physical security. In the same area, the research team observed a water well which broke and is unusable due to the vibrations generated by the construction. The above-mentioned suit was filed by residents of the affected areas – Kyenjojo, Hohwa, Nyakaseke, Buseruka, and Kabwoya sub-counties, Hoima district – in January 2015 against the contractor Kolin and the Uganda National Roads Authority for their negligence and lack of due diligence. However, the case has been pending before the Masindi High Court for four years.

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the environmental footprint, along with cable-less (nodal) recording systems, passive seismic technology, and Full Tensor Gravity Gradiometry (FTG).

268. Written response by Tullow, dated August 8, 2020.

269. See more on EIAs in the next chapter.

270. In its written response to the report Tullow mentions that mounted seismic sources were not employed in wetlands, but no detailed information concerning the full analysis and impact assessment was provided to verify and complement this information.





Rocks in field due to road construction. © Martin Dudek





Other impacts related to roads are linked to the generation of massive amounts of dust during the construction, and as a result of the passage of trucks. For example, the company China Railway 7 Group is in charge of design and construction of the Masindi-Biso, Kabaale-Kizirafumbi, and Hohwa-Nyairongo-Kyarushesha-Butole roads. Besides generating impacts for nearby communities, they have not upheld their promises of constructing boreholes to improve and facilitate access to water.

When questioned about the impacts related to road construction, Total explained that the majority of those infrastructures are not related to the oil project and are the responsibility of the State. State authorities, for their part, argued that the oil project will have positive indirect economic benefits thanks to a spill-over effect, by stimulating the construction of new infrastructure that would help further develop other sectors of the economy.<sup>271</sup> "This will be through the various linkages of the Oil and Gas Sector to other sectors of the economy thus enabling a [holistic] growth. [...] The PAU is working with the various players in Uganda's economy to ensure these linkages are harnessed to ensure the economy is delinked from the volatile exhaustible oil revenues."<sup>272</sup> Roads in particular are considered to be an asset by facilitating the transport of agricultural goods, and improving tourism infrastructure by making protected areas more easily accessible, yet they have provided limited, if any, added value for local residents, and the impacts resulting from their construction and use are necessarily experienced cumulatively with the impact of the project infrastructure.

Secondly, well-testing activities conducted by Tullow Oil during the exploration phase have had an impact on the standard of living of the residents of Kakindo. "During the period in question, Tullow acted as a contractor to the Government of Uganda and to the Ministry of Energy and Mineral Development who also supervised and approved Tullow's work programmes under the EA-2 Production Sharing Agreement."<sup>273</sup>

Well-testing is used to determine the performance of oil and gas wells, the quality of hydrocarbons, and their economic potential. During-well testing, gas, water, and oil are produced, as they flow through the wellbore and up to the surface. It has been noted that, globally, "[i]ncreased concerns from well testing activities about the environmental impact have left several oil industry challenges," and although techniques have improved over time to reduce negative impacts, they are expensive and require specialised engineering skills for complex test well design.<sup>274</sup> Furthermore, given that many operators do not conduct well-testing on a routine basis, their lack of experience may create risks.<sup>275</sup>

In 2009, Tullow Oil conducted well-testing activities which produced emissions and the burning of gases, loud noises, and disruptive lights.<sup>276</sup> Inhabitants of the surrounding areas were informed by the company about the activities that were to be held. The company notified the residents living within 300 meters of the well that they would be requested to leave the area for four days, and would be compensated for the disruption caused.<sup>277</sup> Residents requested to be compensated with at least 300,000 UGX per day per person, but the company agreed to provide only that amount per day per household.

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271. Meeting with the Petroleum Authority of Uganda, February 25, 2020.

272. PAU, Talking Points for Meeting with Foundation for Human Rights Initiative (February 25, 2020).

273. Tullow's written response of August 7, 2020.

274. L. Duthie, J.O. Arukhe, S. Namlah (Saudi Aramco), "The Evolution of Well Testing Practices From Conventional to Zero Flaring in a Saudi Aramco Oilfield Development" (2015), SPE Middle East Oil & Gas Show and Conference, 8–11 March, Manama, Bahrain.

275. See Test Wells, Test or no test? <https://www.testwells.com/test-not-test-exploration-appraisal/>. Tullow explained: "as is normal practice within the industry, the oil companies holding the licences do not carry out this work themselves. All well testing between 2006 and 2007 was conducted by Schlumberger, an internationally renowned and highly experienced contractor."

276. For more details on the episode of well-testing and its effects see section III.4 below.

277. Tullow explained they deployed Community Liaison Officers to explain the well testing process, "Testing was delayed from the end of January 2009 to the start of March to allow the socialisation and temporary relocation of a few residents to take place."



An oil well undergoes testing in the Albertine region in 2010. © AP Photo/Monitor Publications Ltd, File

The description of the episode provided by communities does not coincide with the description of Tullow, which explains that “the flare pit design was specially constructed of concrete to burn effectively and for ease of cleaning. It was enclosed with reflective material to minimize heat and light to the surrounding area. The flare was elevated... Brush was cut around the flare pit to minimise any contamination and diesel was available to spike the flare in the event of poor weather. [...] Furthermore, this part of the testing programme used a new greenburner imported for 2009 which was even better than the one used in 2007. Press were invited to see the greenburner in action as Tullow wished to highlight its work.”<sup>278</sup> The discrepancies between the communities’ accounts and Tullow’s could not be resolved as the latter refused to provide access to its EIA, arguing that “it is the property of the Government of Uganda and requires their consent to be disclosed to a third party,” despite the provisions of the Environmental Impact Assessment Regulation (1998) which state that “any project brief, environmental impact review report, environmental impact evaluation report, environmental impact statement, terms of reference, public comments, report of the presiding officer at a public hearing or any other information submitted to the Executive Director or the Technical Committee under these regulations shall be public documents.”<sup>279</sup>

278. Tullow’s written response to the report dated August 8, 2020.

279. The Regulation further provides that “any person who desires to consult the documents...shall, subject to section 85 of the Act, be granted access by the Authority on such terms and conditions as the Authority considers necessary.” Cf. Environmental Impact Assessment Regulation, S.I. No. 13/1998, Article 29. It is also important to note that ESIA reports for later phases of the project are publicly available online.



Since land in the area is not fenced, and grazing is carried out on a vast territory comprising different forms of land sharing, when the well-testing started, animals of residents beyond the 300-meter radius were scared away by the loud noises, explosions, and lights. The trial lasted for twelve days,<sup>280</sup> by the end of which many families were unable to retrieve their cattle. The resulting loss heavily impacted their livelihoods. Women explained that after this event they could no longer afford the education of their children, and to this day, have not been able to fully recover from the economic impact the episode had on their lives and those of their children.

After the gas-flaring that accompanied Tullow's well-testing, soldiers in uniform were posted in the area, prohibiting people from passing by at night. Some of the local residents used to go through the area on their way to go fishing, and the limitation on movement impacted their capacity to bring food home. Residents reported being beaten up very badly by the soldiers, who were finally removed a few years ago.

While Tullow provided partial compensation to the families within the 300-meter radius, communities explained that Tullow refused to provide compensation for the loss of their cattle or for any impact caused beyond the 300 meter radius. Even when compensation was granted to families within the 300 meters radius, according to Tullow, and in line with the agreements negotiated and agreed by the regulators and local governments, they only received 600,000 UGX for two days of activities, and the remaining balance was never paid. Residents who managed to have the companies recognise their right to an indemnity for damages resulting from the well-testing, deplored the fact that copies of the compensation agreement concluded with Tullow were not given to community members, limiting their capacity to claim the rights described therein.

Tullow's disregard for people's right to produce food and sustain their livelihood by conducting their normal labour activities is also evidenced by the alleged longer-term effects of the well-testing on the productivity of the surrounding area. During well-testing, as has been demonstrated on other sites,<sup>281</sup> gas-flaring has a direct impact on the productivity of the land and the growth of vegetation in the areas surrounding the site where it is conducted. Despite Tullow's claims to have used greenburners with no spillout, these phenomena have been described in the same terms by people living in the area surrounding the site where well-testing was conducted by Tullow. The gas-flaring took place in early 2009, and the effects are still observable a decade later in the health of the residents, and based on their descriptions, in the decrease in quality of the land. The loss of cattle aggravated the situation in Kakindo, insofar as this meant that after the well-testing, agriculture became the main and sometimes the only economic activity to sustain and provide food for their families.

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280. The company maintains that the actual periods of well-testing in Kasamene-1 in 2009 were limited to a period of non-continuous testing over four days starting on March 5 and lasting until March 8. Although this coincides with the official announcements made to communities at the time, it does not correspond to the alleged actual duration of the activities, which according to the communities' accounts extended for twelve days.

281. Multiple studies have shown that gas-flaring has serious consequences on crop growth in the area. Research into this has been done mostly in the delta region in Nigeria, where huge amounts of gas-flaring occur. A study published in *GeoJournal* in 2008 has found that air and soil temperature were found to be higher in locations closer to gas flare sites. They found that "[t]he amount of crop yield varied spatially with the intensity of heat from the gas flaring; with better crop yields at distances away from the gas flares." The higher heat also causes the synthetic reactions in the plant to slow, leading to less synthesis of starch, and thus a degradation of tuber protein. Studies by researchers (e.g., Chindah et al. 2004; Osuji and Onojake 2004 a, b; Fakayode 2005; Hart et al. 2005, etc.) have "documented environmental pollution from increasing concentration of heavy metals on aquatic systems, soils and cultivated crops in the Niger Delta region." These heavy metals have adverse effects on the fertility of the soil. Furthermore, the 2008 study noted deformations, lesions, and solar variations in plants near the gas flare sights. These are probably a result of the reduced chlorophyll accumulation in the plants due to the increase in heat and gas flares. The report also found that "[l]eaves of plants nearest the flares were shorter and reduced in width than those farther away. The approximate number of plants bearing flowers also increased at a distance farther away from the flares." Finally, the report found that "waste-gas flares also appear to reduce the nutritional quality of the crops harvested as evidenced in the lower levels of ascorbic acid (Vitamin C) and starch content of cassava crops near the gas flare."

Total was alerted by the research team of the documented impacts during a meeting in February 2020. In their response, Total underlined that the events occurred before they joined the venture in 2011. However, they emphasized the need to conduct impact assessments before well-testing in future years, and acknowledged that the 300-meter radius should have been larger. Total E&P Uganda affirmed that “in the design stage [they] have not planned for well testing to take place, but in the future, if it was needed, [they] will use the green-burner technology.”

Tullow, on the other hand, was more reluctant to engage in a dialogue, and only responded substantively to the research team in the last stage of the documentation process, after the research team reached out to the headquarters. When questioned about well-testing activities, Tullow explained that their standards and practices have evolved since the beginning of the exploration activities. Although since 2010<sup>282</sup> the company claims to use enclosed flaring for these types of activities, as a result of the evolving legal framework, before 2010, given the absence of strict regulation limiting flaring, they used open flaring. According to the company, the procedure requires that every well-testing campaign be preceded by an EIA as well as a certificate for approval. For the Kasemene-1, well specifically, the preparation for well-testing started in February 2008 and the certificate for the testing campaign was issued in July of that year. According to local representatives of the company, their well-testing campaigns usually last around two weeks.<sup>283</sup> Consequently, the inaccurate information and the limited compensation provided to residents in the immediate proximity of the Kasemene-1 well, appear to constitute clear negligence. Although the company was aware of the approximate duration of the activities (two weeks), they appear to have knowingly misinformed the residents in order to provide lower amounts of compensation.

After the announcement of the agreement through which Total acquired Tullow’s participating interests in the Lake Albert development project, including the EACOP, on April 23, 2020, FIDH alerted Tullow to the human rights impacts which to date remain at least partially unaddressed. If Tullow does not resolve this liability, it will be up to Total, as the purchaser of Tullow’s shares – and therefore of its assets and liabilities, including its human rights obligations – to address the consequences of the abuses observed.

### **3.2.3. Disruption of social networks and livelihood-sustaining resources**

Construction and oil exploration activities force people to move, leaving behind not only land, but also precious social networks on which their livelihood is based. In this area, basic needs are often met by means of mutual help among households of the same family or of neighbouring families, within or among clans. Neighbour relations are fundamental to sustaining livelihoods that are extremely fragile, particularly in an environment increasingly threatened by the climate crisis.

This potential for disruption is closely intertwined with the protection of the right to land – the principal local means of making a living – but it also touches non-agricultural businesses. The risks in both cases derive from an inadequate consideration of the extent of businesses’ importance, leading to inadequate mitigation, compensation, and redress measures, as will be explained below.

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282. Information provided by the company with regard to the dates where improved technologies started to be used was contradictory: while the minutes of the meeting held on June 26, 2020 indicate that 2010 was the year they started using better oil testing techniques, in their written response to the Report, on August 7, 2020, they claim these changes occurred before 2007, when they would have started to use “green burners, flare screening and concrete flare pits for all well testing.” However this information could not be verified as the company was unable or unwilling to provide access to the relevant Environmental Impact Assessments.

283. Meeting of the research team with Tullow Oil, June 26, 2020.

With regards to land and agriculture, the impact of the loss of communal land and of the social networks constructed around it has been partially ignored, leading to a reduction in communities' standard of living and their capacity for resilience.

On the one hand, while the value of individual land holdings has been assessed, ensuring the sustainability of communities' social, economic, cultural, and ecological practices would require considering the replacement value for extensive lands where not only a family but a whole community could relocate. In this regard, the Tilenga ESIA concluded as follows:

*Bagungu, Alur and Acholi cultures are strongly intertwined with their livelihood systems. [...] [thus] [p]otential indirect impacts of the land acquisition and resettlement process on traditional land tenure systems can also lead to an erosion of the customary leadership structures and family and clan networks that traditionally manage community land and resources. The resettlement process itself risks breaking up community support networks if communities are not resettled together. This may include, for example, village savings groups, self-help groups, livelihood groups, water resources committees, village health teams and environmental committees.*

The assessment also anticipated a risk of irremediable consequences in regard to the right to family life.<sup>284</sup> While identifying these risks, it considered that "the potential impact [was] remediable as right-holders losing their housing [would] be entitled to cash compensation and additional support to re-establish or improve livelihoods and standards of living,"<sup>285</sup> though without foreseeing clear and adequate measures to overweight the severe impact of the disruption of community networks.<sup>286</sup>

Although RAP 1 mentions the option of identifying land that is available and suitable for the development of a resettlement village, this does not seem to have been the option implemented in practice. Such an option would, according to RAP 1, require the identification and acquisition of a residential plot large enough to accommodate the envisaged replacement structures, and which would hold the same value as the lost land. The weakness in this measurement is precisely that it focuses on the equivalence from an economic perspective ("the same value"), rather than on the social value and the capacity of such replacement land to ensure the maintenance and even improvement of the standard of living of affected groups, in line with their economic, social, and cultural practices.

This narrow economic approach limits families' options when considering available land for relocating collectively, which helps to explain the perception among affected communities that compensation has been insufficient. In Kasenyi, a resident explained that the compensation received for the land was not sufficient to provide land for him to move with his entire family. At the same time, because the land he obtained was too far from the site of his previous location, this disconnected his household from the mutual help he could have received from neighbours. The same problem was highlighted by residents of Kigwera and Kisamere, who explained that people in the area accepted the relocation out of fear, and without adequate information,<sup>287</sup> and now find themselves at risk of being separated from broader social networks on which they rely to sustain their lives. Again, it must be noted how the focus on market valuation of land, crops, and cattle is incapable of taking into account the economic, social, and affective support produced by the social networks that are destroyed by the relocation policies.

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284. CNOOC, Total, Tullow "Environment and Social Impact Assessment" (Tilenga Project, February 2019), Volume IV, pp. 16-215.

285. CNOOC, Total, Tullow "Environment and Social Impact Assessment" (Tilenga Project, February 2019) Volume IV, pp. 16-215; see also see 16.8.3.2.1.

286. See also paragraph below on livelihood restoration programs and CNOOC, Total, Tullow "Environment and Social Impact Assessment" (Tilenga Project, February 2019) Volume IV, February 2019, pp. 16-229.

287. See above for more details on the specific situations where community members felt misled or coerced.

The only measure pointed out by Total in this regard, albeit repeatedly, is “a deliberate effort made to ensure the social networks of the families and the communities [are] not broken ...by ensuring the PAPs [find] alternative land within the vicinity of the nearby villages.”<sup>288</sup> However, these efforts appear to be deficient in practice for four main reasons: (1) By requiring communities to remain in the vicinity they expose them once again to the threat of rights violations and abuses, as they will become immediate neighbours of the project and thus vulnerable to re-victimisation;<sup>289</sup> (2) land is already scarce in the area;<sup>290</sup> (3) insofar as the majority of the affected households have opted for cash compensation, remaining in the area offers no guarantee of the preservation of social networks; and (4) the main argument of Total to reject the choice of replacement land for PAPs in another district seems to have been based on the higher cost of such land, rather than on concern for its social impacts.

Despite the fact that the RAP affirms that “the selection of resettlement sites should provide people with reliable access to productive resources (arable and grazing land, water, and woodlands), employment, and business opportunities [which] is key to the restoration of livelihoods,”<sup>291</sup> the numerous delays in relocation, the multiple failures of previous land-to-land relocations, and the restriction of such resettlements to an already land-stressed area, have led an ever-growing number of residents to prefer financial compensation, and thus to relocate individually, transforming their cultural ways of life.

On the other hand, the communal and active use of natural resources has also been marginalised in the mitigation and redress strategy in place. RAP 1 provides some illustrative examples of the downsides.

### ***Loss of communal resources: A marginalised impact***

When assessing the best option for the location to site the Central Processing Facility (CPF), RAP 1 presents two options, one more densely populated (CPF Option 1), and the other consisting mostly of customary grazing lands for local communities (CPF Option 2), 55% of whose families own cattle. The plan concludes that “CPF Option 2 [is] the more favourable location. Land acquisition in Option 2 may be more complex due to the perceived prevalence of communal ownership. However, CPF Option 2 would require less physical displacement compared to Option 1, and economic displacement would be mostly limited to pastureland. Furthermore, the relative lack of social infrastructure and agriculture compared to Option 1 means that there is less interdependence on the land in the area, which would limit the impact for the whole region.” The report fails to adequately address why these are the two only options for implementation of the CPF, or to adequately consider the extent of economic displacement.<sup>292</sup> However, it makes clear that companies and authorities were fully aware of the impacts on communal grazing and access to land, and on the capacity of communities to access water sources.

Furthermore, having identified that 55% of the affected households own cattle, the redress measures provided for the grazing land lost to the CPF are unsatisfactory. While RAP 1 of Tilenga affirms that there were “perceived communal land ownership structures in the area of Option 2” and that land

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288. Meeting between the research team and Total E&P Uganda representatives, February 24, 2020.

289. See section III.2, above, on the right to land: among the families relocated for the construction of the refinery, some are now going to be affected by one of the feeder pipelines.

290. Total et al., “Resettlement Action Plan RAP 1 for the proposed Industrial Area and N1 Access Road” (Tilenga Project, January 2018), p. 178.

291. Total et al., “Resettlement Action Plan RAP 1 for the proposed Industrial Area and N1 Access Road” (Tilenga Project, January 2018) p. 14.

292. The relative lack of social infrastructure and agriculture are not the only relevant indicators to assess the impact of economic displacement that the use of grazing land may cause. Crossing of communal lands is essential for community survival. Beyond pasturing the use of these lands may affect community paths, and as a consequence limit their access to natural resources (i.e. water and wood).



was “mostly dedicated to grazing activities,”<sup>293</sup> under no control or demarcation “under either formal or traditional administrative structures,”<sup>294</sup> it resolves that grazing lands would only be compensated for individual landowners with proven ownership.<sup>295</sup> This conclusion is in clear contradiction with the responsibility to fully remediate any adverse human rights impacts, inasmuch as grazing lands that did not belong to individual owners and were not formally recognized as customary communal lands were forfeited by their users, who only received a livelihood restoration program but no replacement of their traditional source of income or the social networks linked to these forms of land-sharing.<sup>296</sup>

### ***Livelihood Restoration Plans: An unfit mitigating measure***

RAP 1 acknowledges that “[i]t is not possible to provide alternative land for grazing or natural resource harvesting as there is no land that is not occupied or used by others in the area, so the emphasis here is on the development of alternative livelihoods.”<sup>297</sup> There is no clarity as to the extent of the area referred to, and no consideration is given to the possibility of searching for alternative land in a “nearby area.” For people displaced in return for financial compensation, RAP 1 only provides for the possibility of “transitional support [...], based on a reasonable estimate of the time required to restore...income-earning capacity, production levels, and standards of living.”<sup>298</sup> For users of grazing lands, it translates more concretely into the provision of livelihood restoration support,<sup>299</sup> which, from a rights-based perspective, has failed the objective of enhancing livelihoods.

Bagungu, Buliisa, residents explained that the dry ration packages provided by Total as transitional measures did not correspond to the staple foods traditionally consumed by the beneficiaries. As a consequence, they decided to sell the posho and beans they received to buy the cassava, cassava flour, and fish they normally eat. Furthermore, residents reported that the rations were only supplied for six months, while compensation and relocation took longer than that. Community Liaison Officers

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293. Total et al., “Resettlement Action Plan RAP 1 for the proposed Industrial Area and N1 Access Road” (Tilenga Project, January 2018), 5.3, p. 73.

294. Total et al., “Resettlement Action Plan RAP 1 for the proposed Industrial Area and N1 Access Road” (Tilenga Project, January 2018), 4.5.3, pp. 48, 66: “Two-thirds of the proposed Industrial Area and N1 access road is comprised of unfarmed communal resource land. This land is actively used for cattle grazing and natural resource harvesting by local communities. While the land is used communally, it is not strictly communal land. Rather, families or clans have claims of ownership to the land under local customary practices. As the land is not actively used, the owners do not enforce any claims and local communities freely access that land for grazing or harvesting natural materials.”

295. Total et al., “Resettlement Action Plan RAP 1 for the proposed Industrial Area and N1 Access Road” (Tilenga Project, January 2018), pp. 12-13, 132, 163, 191. For the permanent loss of grazing areas, RAP 1 states that “for cash compensation, persons must prove ownership and interest (not necessarily through title) at the time of final asset surveys,” but for the users of grazing lands it only provides for the possibility of “transitional support should be provided as necessary to all economically displaced persons, based on a reasonable estimate of the time required to restore their income-earning capacity, production levels, and standards of living.” For the establishment of livelihood restoration plan, RAP 1 acknowledges that “[i]t is not possible to provide alternative land for grazing or natural resource harvesting as there is no land that is not occupied or used by others in the area, so the emphasis here is on the development of alternative livelihoods.”

296. In contrast, communal land ownership was recognized for the Kingfisher area (see section III.2, above, on the right to land). For more information of the communal and traditional ways of land sharing see Uganda Consortium on Corporate Accountability, *Handbook on Land Ownership, Rights, Interests and Acquisition In Uganda* (2018), [https://www.iser-uganda.org/images/downloads/Handbook\\_on\\_Land-Rights\\_Interests\\_and\\_Acquisition\\_Processes\\_in\\_Uganda.pdf](https://www.iser-uganda.org/images/downloads/Handbook_on_Land-Rights_Interests_and_Acquisition_Processes_in_Uganda.pdf), which describes the communal land tenure system including communal customary land, family customary land, and individual customary land as three elements of the customary land tenure system.

297. Total et al., “Resettlement Action Plan RAP 1 for the proposed Industrial Area and N1 Access Road” (Tilenga Project, January 2018), pp. 12-13, 132, 163, 191. For the permanent loss of grazing areas, RAP 1 states that “for cash compensation, persons must prove ownership and interest (not necessarily through title) at the time of final asset surveys,” but for the users of grazing lands it only provides for the possibility of “transitional support should be provided as necessary to all economically displaced persons, based on a reasonable estimate of the time required to restore their income-earning capacity, production levels, and standards of living.” For the establishment of livelihood restoration plan, RAP 1 acknowledges that “[i]t is not possible to provide alternative land for grazing or natural resource harvesting as there is no land that is not occupied or used by others in the area, so the emphasis here is on the development of alternative livelihoods.”

298. Total et al., “Resettlement Action Plan RAP 1 for the proposed Industrial Area and N1 Access Road” (Tilenga Project, January 2018), p. 143.

299. Total et al., “Resettlement Action Plan RAP 1 for the proposed Industrial Area and N1 Access Road” (Tilenga Project, January 2018), p. 238.

(CLOs) refuted these allegations, arguing that communities appreciated the food packages so much that “there were requests for additional food in the packages, but not change to the contents.”<sup>300</sup> Communities replied that they requested bigger amounts that they could consume, not because they were eating more, but precisely because they were selling them. However the company affirmed that “no information had been received [by them] that the food was being sold.”<sup>301</sup>

Moreover, regarding livelihood restoration plans, communities denounce their ability to enhance their livelihoods. In Kyakabooga, residents explained that they had received vocational training (e.g. for hairdressing), but highlighted that such skills were not of much use to increase their income, given that all women in the village had received a similar training and thus had no need of the service they had acquired the skills to perform. Furthermore, affected households traditionally adopt a variety of strategies rather than relying on a single means of sustaining livelihoods. “Th[ese] strateg[ies] reduce a household’s vulnerability to externally induced shocks (for example, droughts or diseases), which may undermine a specific livelihood. As such, households tend to engage in agriculture, livestock rearing, natural resource harvesting, fishing, and trade in basic goods largely at the same time.”<sup>302</sup> Notwithstanding, neither the measures mentioned in RAP 1, nor the ones described by the company, the government<sup>303</sup> or the communities, adopted a corresponding and comprehensive approach that will restore such a capacity for resilience to the households.

Livelihood restoration measures are articulated around notions of food sufficiency and security rather than the right to food and food sovereignty, income diversification rather than preservation, and targeted developmental interventions to the improve education and healthcare facilities of selected individuals and groups rather than replacement of the collective and social resources, such as grazing areas, which are determinative in ensuring these communities’ resilience. The weaknesses in these core principles explain why, despite the many efforts of the companies, communities’ expectations have not been met and their rights have not been adequately protected. The alternative principles, constitutive of a rights-based approach, would have proposed redress measures that privilege collective relocations to areas with equivalent ecological conditions, including sufficient grazing land, fertile areas, and accessible water sources, rather than focusing exclusively on the location (i.e. district) and market value, and assuming that the residents’ livelihood must necessarily be transformed.

A similar logic is at play in the displacement of non-agricultural businesses. Some residents of Kyenjojo earned their living by selling goods in shops established permanently along the Kaiso-Tonya road, in the vicinity of the village. The new road was built in the same place as the previous one, but was dug deeper into the ground, such that the former side of the road is now a few meters above ground. The shops placed there cannot be moved to the road, since the road-side is now too narrow. The company Kolin did not provide for stairs to connect the shops to the road either, unlike what has been done elsewhere. The only compensation given to the shop owners was a disturbance allowance defined according to the law: a sum given to affected land owners, calculated as a percentage of the value of the land (15% of that value if the disturbance is less than six months long, 30% if it is more than six months). Again, this calculation does not take into account the fact that these shop owners were in some cases unable to place their shops in any other place where they could effectively find clients and continue sustaining their livelihoods, and disregards the fact that a permanent and *de facto* expropriation will have occurred if the shops cannot reactivate their activities. To this problem was added the issue, highlighted above,

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300. Meeting of the research team with Total E&P Uganda, February 24, 2020.

301. Meeting of the research team with Total on February 24, 2020.

302. Total et al., “Resettlement Action Plan RAP 1 for the proposed Industrial Area and N1 Access Road” (Tilenga Project, January 2018), p. 44.

303. While PAU explains livelihood restoration programs took into account the traditional sources of income and livelihood but also aimed to diversify PAPs skills, by improving their agricultural skills and providing vocational training like hair dressing, financial management and driving, these were unfit to overcome the above-mentioned challenges.



New road, dug far under the shops, which have closed. © Martin Dudek

of the disputed market rates used to value the land and the businesses situated on them. These issues were put forward in a court case filed before the Masindi High Court.

This impact on commercial activities can also affect other rights. Thus, in Katikara, a resident explained how the land acquisition process to open the way for the future construction of a feeder pipeline necessitated the closure of a private school that he had been running successfully for several years. He had obtained the license in 2018, and hosted 400 children at his school. After the closure, he was not compensated for the loss of his livelihood, and no other school facility was proposed for the children who had been attending classes there. While the school was not public or free, its closing not only affected the employment and livelihoods of its owner and employees, but also the already fragile provision of schooling for some of the children of the area.

#### **3.2.4. Limitations on the freedom of movement**

Tilenga's ESIA's has characterised the risk of limitations on the freedom of movement as low-intensity, considering "the low population density across the Project Area and the fact that the proportion of land take is relatively small when compared to the total land available in the area means that it is likely that most PAPs will be able to relocate livelihood activities within an area of their choice."<sup>304</sup> Nonetheless, what the exchanges with community members show is a high-intensity impact insofar

304. CNOOC, Total, Tullow, "Environment and Social Impact Assessment" (Tilenga Project, February 2019), Vol IV, pp. 16-215.



as the water and livelihood sources in the area are increasingly limited. As mentioned above, RAP 1 asserts that replacement of grazing land is not possible due to the limited amount of land available in the area. Furthermore, as superficial and underground water sources become more scarce (see section III.4 on the right to a healthy environment, water and health), residents have to cross dangerous roads and walk longer distances to get access to resources (specifically water, grazing areas, fish, or wood). In some cases the boreholes they used are in the zone of the oil development and have thus become inaccessible, and no equivalent alternative has been provided. In other cases, particularly in the Kingfisher area, natural changes in the environment, such as the rise of the lake, have limited the land available to some fishermen's communities, which will find what little land they have left squeezed between the project infrastructure and the rising levels of the lake.

Regarding road construction, security considerations have also been underestimated. For example, on the Kabyoya-Buhuka road, the lack of speed bumps has affected schoolchildren who have to cross it daily; car and truck traffic thus creates a significant risk to their physical safety and freedom of movement.

### **3.3. Who is responsible for the impacts on communities' adequate standard of living?**

The diversity of situations described above amount to several violations and abuses of the right to an adequate standard of living, by the State of Uganda, the Joint Venture Partners, and their contractors. The deficiencies in the legal framework identified with respect to an adequate standard of living fall short of international obligations, leading to a breach of the State's duty to protect. In this framework, companies have failed to adequately consider the extent of the impacts of their activities, due to a minimization of their consequences, and leading to inadequate mitigation, compensation, and redress measures.

First, the State of Uganda has failed in its duty to protect the right to an adequate standard of living of the residents in the Albertine Graben, as a result of an excessive economic focus instead of a rights-based approach to relocation and compensation. Although EIAs were conducted, and submitted to and approved by NEMA at the exploration phase, the lack of redress for some of the impacts of these activities – which have for example harmed the stability of houses or the functioning of the water supply infrastructure – reveals insufficiencies in mitigation and redress measures that should have been identified and addressed by monitoring authorities. Furthermore, limitations on the freedom of choice of one's residence have been imposed, as a result of the narrow interpretation of the national legal framework. As a result, rather than improving or restoring residents' standard of living, many have seen their quality of life deteriorate since the beginning of the activities.

This deterioration is also due to the inadequate management of adverse impacts by the Joint Venture Partners and their contractors, starting with a minimization of their consequences and leading to the adoption of inadequate mitigation, compensation, and redress measures. On the one hand, contractors in charge of road construction have disregarded the social impacts of their activities, causing the loss of livelihoods for families owning shops by the roads. On the other hand, Joint Venture Partners' exclusively economic approach to relocation and livelihood restoration has hampered the short- and long-term capacity of communities to ensure that their development is sustainable and in line with traditional occupational and cultural practices. Relocation has hampered communities' capacity to produce food, particularly due to the loss of communal resources, such as grazing lands and social support networks. The focus on market valuation of land, crops, and cattle is incapable of taking into account the economic, social, and affective support produced by the social networks



that are destroyed by the relocation policies. Relocation policies have also created a risk of impacting affected communities more than once, in an area where land and resources will become increasingly scarce. While land-for-land compensation offered, in the LARF and RAP, a suitable redress option, in practice the shortcomings of their initial experiences have led many residents to prefer financial compensation, which cannot guarantee the full restoration of their standard of living.

Livelihood restoration measures have been articulated around the notions of food sufficiency and security rather than the right to food and food sovereignty,<sup>305</sup> income diversification rather than preservation, and targeted developmental interventions to improve the educational and healthcare facilities of selected individuals and groups rather than replacement of the collective and social resources, such as grazing areas, which are determinative in ensuring these communities' resilience. The weaknesses in these core principles explain why, despite the many efforts of the companies, communities' expectations have not been met and their rights have not been respected. From a rights-based approach, relocation and livelihood restoration would have been two indivisible elements, leading to a prioritization and encouragement of collective relocation to areas of equivalent ecological conditions, including sufficient grazing lands, fertile areas, and accessible water sources, rather than focusing exclusively on the location (i.e. district), market value, and assuming a necessary transformation of residents' livelihood, outside of their traditions and cultural practices. But neither relocation nor cash compensation appear to be capable of adequately restoring or improving PAPs' livelihoods adequately and comprehensively.

Regarding exploration activities, Tullow Oil failed to apply best practices in the sector, causing damages to the structures of the houses (near to the seismic lines), and negatively impacting the livelihood of residents (in Kasemene-1). The company's behaviour shows that they profited from the weakness in the legal framework. This behaviour sounds the alarm on what could happen in the future if Ugandan legislation is not strengthened, and monitoring bodies are not provided with adequate means to strictly monitor compliance by the Joint Venture Partners.

## **4. The Rights to a Healthy Environment, Water and Health**

The rights to water, health, and a healthy environment are strongly intertwined. They are all essential guarantees for securing an adequate standard of living, and thus interdependent. But at the same time, they need to be understood as autonomous rights whose content has been developed at the regional, national, and international level. The research for this Assessment revealed that the oil projects under consideration present numerous impacts or risks of negative impacts, simultaneously on local populations' health, on their access to natural resources, and on their environment, phenomena which are described in this chapter.

### **4.1. Legal framework on the rights to a healthy environment, water and health**

At the international level, the human right to water is enshrined in Article 11.1 of the International Covenant on Economic, Social, Cultural and Rights (ICESCR). Although not mentioned explicitly therein, the Committee on Economic, Social and Cultural Rights (CESCR) has affirmed that "the right to water clearly falls within the category of guarantees essential for securing an adequate standard

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305. While food security focuses only on the capacity to physically and economically access nutritious food to meet their dietary needs and food preferences in order to lead a healthy and active life, food sovereignty focuses on people's needs, understanding food is more than a commodity, aiming to localize food systems, supporting sustainable livelihoods, and placing control and knowledge over food in the people. For more on these concepts, see FAO, *Food Security and Sovereignty* (2013), <http://www.fao.org/3/a-ax736e.pdf>.

of living, particularly it is one of the most fundamental conditions for survival.”<sup>306</sup> As such, it is also intrinsically linked to the right to the highest attainable standard of health,<sup>307</sup> to the rights to adequate housing and adequate food,<sup>308</sup> and to the right to life and human dignity.

As consecrated in this instrument, the right to water “entitles everyone to sufficient, safe, acceptable, accessible and affordable water.”<sup>309</sup> Water should be available in a sufficient and continuous manner for personal and domestic uses. It should be safe, that is “free from any micro-organisms, chemical substances and radiological hazards that constitute a threat to a person’s health.”<sup>310</sup> Finally, it should be accessible, including by guaranteeing physical safety, so as to ensure physical security is not threatened during access to water facilities and services; by ensuring access to information and participation regarding issues that may impact their right to water; and by ensuring women and other groups disproportionately affected are not excluded from decision-making processes concerning water resources and entitlements. Consequently, water should be understood not as an economic good, but rather as a “social and cultural good”<sup>311</sup> that is to be managed sustainably, in order to be guaranteed and realized for present and future generations. Recalling the Committee’s comment on the right to water, the UN General Assembly adopted in 2010 a resolution that formally “[r]ecognizes the right to safe and clean drinking water and sanitation as a human right that is essential for the full enjoyment of life and all human rights.” The resolution further encourages international cooperation “to provide safe, clean, accessible and affordable drinking water and sanitation for all.”<sup>312</sup>

The Albertine oil wells will be located in an extremely sensitive natural area, especially the Tilenga project, which is in an area that comprises a national park, a protected wetland,<sup>313</sup> and one of the tributaries of the Nile, the longest river in the world, which flows through 11 countries. As a result, Uganda has specific obligations under international law.

First, the Ramsar Convention of 1971,<sup>314</sup> ratified by Uganda in 1988, sets a number of obligations aimed at the conservation and “wise use” of wetlands through local and national action and international cooperation. Uganda has 12 protected wetlands under the convention, i.e. representative, rare or unique wetland types, and/or sites of international importance for biological diversity conservation. This includes the Murchison Falls-Albert delta wetland system, a 17,293 hectare area that will be affected by the project.<sup>315</sup> The central concept of “wise use” of wetlands, reflected in Uganda’s National Environment (Wetlands, River Banks,

306. United Nations, General Comment no. 15 “The Right to Water” (Articles 11 and 12) HRI/GEN/1/Rev.7 (2002).

307. International Covenant on Economic, Social and Cultural Rights, Article 12 para. 1.

308. International Covenant on Economic, Social and Cultural Rights, Article 11 para. 1.

309. United Nations, General Comment no. 15 “The Right to Water” (Articles 11 and 12) HRI/GEN/1/Rev.7 (2002), para. 2.

310. United Nations, General Comment no. 15 “The Right to Water” (Articles 11 and 12) HRI/GEN/1/Rev.7 (2002), para 12. The Committee refers States parties to WHO, *Guidelines for Drinking Water Quality*, 2nd Edition, vols. 1-3 (Geneva 1993).

311. United Nations, General Comment no. 15 “The Right to Water” (Articles 11 and 12) HRI/GEN/1/Rev.7 (2002), para 11.

312. United Nations General Assembly, Resolution (July 2010) A/RES/64/292.

313. Wetlands are areas where water is the primary factor controlling the environment and the associated fauna and flora.

314. UNESCO, Convention on Wetlands of International Importance especially as Waterfowl Habitat, as amended by the Protocol of 3.12.1982 and the Amendments of 28.5.1987 (1994).

315. The site of the Ramsar Secretariat gives more detail: “01°57’N 031°42’E. National Park (partly), Important Bird Area. The site stretches from the top of Murchison Falls, where the River Nile flows through a rock cleft some 6m wide, to the delta at its confluence with Lake Albert. The convergence between Lake Albert and the delta forms a shallow area that is important for water birds, 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 savannas 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. Ramsar site no. 1640. Most recent RIS information: 2006.”

and Lake Shores Management) Regulations of 2000, is defined by “the maintenance of their ecological character, achieved through the implementation of ecosystem approaches, within the context of sustainable development.” According to Article 3 (2), “[e]ach Contracting Party shall arrange to be informed at the earliest possible time if the ecological character of any wetland in its territory and included in the List has changed, is changing or is likely to change as the result of technological developments, pollution or other human interference. Information on such changes shall be passed without delay to the organization or government responsible for the continuing bureau duties specified in Article 8.”<sup>316</sup> The Ramsar Convention Secretariat later defined “change in ecological character” as “the human-induced adverse alteration of any ecosystem component, process, and/or ecosystem benefit/service,”<sup>317</sup> further emphasizing the need for environmental impact assessments of activities likely to induce change to the ecological character of protected wetlands. Finally, parties “shall consult with each other about implementing obligations arising from the Convention especially in the case [...] where a water system is shared by Contracting Parties. They shall at the same time endeavour to coordinate and support present and future policies and regulations concerning the conservation of wetlands and their flora and fauna.”

Second, Uganda has recently ratified<sup>318</sup> the Agreement on the Nile River Basin Cooperative Framework.<sup>319</sup> This agreement has been ratified only by four of the six countries needed for its entry into force, though six countries have already signed the document (Ethiopia, Rwanda, Tanzania, Uganda, Kenya, and Burundi). Even though the treaty is not yet in force, under international law Uganda is obliged to refrain from acts that would defeat the object and purpose of any treaty.<sup>320</sup> The Agreement balances the principles of sovereignty and territorial integrity with a principle of “equitable and reasonable” use of waters (Article 4). States shall also “take all appropriate measures to prevent the causing of significant harm to other Basin States,” and must “eliminate or mitigate” any significant harm and, “where appropriate...discuss the question of compensation” (Article 5). Moreover, ratifying states agree to “take all appropriate measures...to protect, conserve and, where necessary, rehabilitate the Nile River Basin and its ecosystems, in particular, by: (a) protecting and improving water quality within the Nile River Basin; (b) preventing the introduction of species, alien or new, into the Nile River system which may have effects detrimental to the ecosystems of the Nile River Basin; (c) protecting and conserving biological diversity within the Nile River Basin; (d) protecting and conserving wetlands within the Nile River Basin; and (e) restoring and rehabilitating the degraded natural resource base.” (Art. 6). “For planned measures that may have significant adverse environmental impacts,” comprehensive assessments of impacts on States’ own territories and the territories of other Nile Basin States must be conducted at an early stage.

Uganda’s Minister of Energy stated in 2017 that water extraction from Lake Albert, which is planned by oil companies, “requires the approval of the Ministry of Water and Environment and the Nile Basin Initiative.”<sup>321</sup>

316. UNESCO, Convention on Wetlands of International Importance especially as Waterfowl Habitat, as amended by the Protocol of 3.12.1982 and the Amendments of 28.5.1987 (1994).

317. Ramsar Convention Secretariat, “wise use of wetlands: Concepts and approaches for the wise use of wetlands” (Ramsar Handbooks, 4th edition, vol. 1, 2010), <https://www.ramsar.org/sites/default/files/documents/library/hbk4-01.pdf>.

318. Mfae, “Ethiopia, Uganda joint press statement in Entebbe”, Borkena (March 13, 2020), <https://borkena.com/2020/03/13/ethiopia-uganda-joint-press-statement-in-entebbe/>.

319. Nile Basin Initiative, Agreement On The Nile River Basin Cooperative Framework (2010). <https://nilebasin.org/images/docs/CFA%20-%20English%20%20FrenchVersion.pdf>.

320. United Nations, Vienna Convention on the Law of Treaties between States and International Organisations or between International Organisations (1986), article 18, [https://legal.un.org/ilc/texts/instruments/english/conventions/1\\_2\\_1986.pdf](https://legal.un.org/ilc/texts/instruments/english/conventions/1_2_1986.pdf).

321. Halima Abdallah, “Uganda needs consent to use Nile”, *The East African* (October 12, 2017), <https://www.theeastafrican.co.ke/business/Uganda-needs-consent-to-use-Nile-water/2560-4136278-qkt9v5/index.html>.

Closely interlinked to the right to water is the right to health, as access to an adequate supply of safe and potable water is an underlying determinant of health, together with food, nutrition, and environment. As defined in the CESC and various other international instruments,<sup>322</sup> the right to health is “the right of everyone to the enjoyment of the highest standard of physical and mental health.”<sup>323</sup> Such a standard is not confined to the mere absence of disease but includes physical, mental, and social well-being,<sup>324</sup> and as such embraces a wide range of socio-economic factors, including resource distribution, gender, violence, conflict, and climate change. Health must be accessible without discrimination in these conditions. States should not only ensure access to health but prevent harms to health, particularly by reducing exposure to harmful substances, chemicals, or other detrimental environmental conditions that affect health directly or indirectly.

The State’s obligation to respect and protect the right to health is thus interdependent with the right to a healthy environment, which, as with the right to water, is an underlying determinant of health. Indeed, public health concerns are at the origin of environmental law. Regulations in the field of “pollution and nuisances” stem from health concerns. The recognition of the right to a healthy environment has its origin in the Declaration adopted by the Stockholm Conference on the Human Environment, held in June 1972, whose first principle recognizes that “[b]oth aspects of man’s environment, the natural and the man-made, are essential to his well-being and to the enjoyment of basic human rights the right to life itself.” Ten years later, in 1982, the World Charter for Nature was adopted by the United Nations General Assembly. Although not legally binding, it was a ground-breaking document at the time, as it identified the intrinsic link between humans and nature and acknowledged the need to preserve nature and use resources sustainably, including the use of best available technologies to minimise risks, and demanded an exhaustive examination and proportionality assessment when activities may pose a risk to the integrity of natural environment and resources.<sup>325</sup> Among other things, the Charter promotes the principles of sustainable development and the conservation of natural habitats. Similarly, Article 24 of the 1989 Convention on the Rights of the Child protects the right to the environment in order to guarantee the right of the child to enjoy the highest attainable standard of health. Furthermore, the Rio Declaration adopted in 1992, to which Uganda is committed, reflects the recognition of the increasingly clear interdependence between poverty, under-development, and environmental degradation.

In this context, the environment has come to be understood as both the cultural and the natural environment: the cultural environment relates to the living environment, whether urban or rural, that humans have built for themselves, and the transformations they have brought about in the world and through which they seek to provide themselves with comfort; the natural environment comprises natural resources, both abiotic and biotic, such as air, soil, water, fauna and flora, climate, atmospheric marine or terrestrial life, and landscape, as well as the alteration of the interactions among these factors.<sup>326</sup> Therefore, an environmental harm or violation includes effects on both natural dimensions and cultural heritage or socio-economic conditions, resulting from or affected by alterations to the above-mentioned factors.

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322. Including the International Convention on the Elimination of all Forms of Racial Discrimination (1965), Articles 11.1 (f) and 12, the Convention on Elimination of all Forms of Racial Discrimination against Women (1979), Article 24, and the Convention on the Rights of the Child (1989).

323. International Covenant on Economic, Social and Cultural Rights (1966), Article 12.1.

324. See the Preamble of the Constitution of the World Health Organisation.

325. United Nations General Assembly, World Charter for Nature, 49th Plenary Meeting (October 29, 1982) A/RES/37/7.

326. See e.g. Convention on the Regulation of Antarctic Mineral Resource Activities (1988), Article 1[15]; ILC, Draft Principles on Allocation of Loss in the Case of Transboundary Harm Arising Out of Hazardous Activities, Principle 2; Lugano Convention; Nagoya-Kuala Lumpur Protocol on Liability and Redress to the Cartagena Protocol on Biosafety, Article 2(2)(b).



Uganda has ratified several conventions which acknowledge human-led environmental degradation, and which seek to fight such trends. Under the United Nations Convention to Combat Desertification (UNCCD) of 1994, the country commits itself to combating desertification, to mitigate the effects of drought, and to implement “strategies that focus [...] simultaneously on improved productivity of land, and the rehabilitation, conservation and sustainable management of land and water resources, leading to improved living conditions, in particular at the community level.” Under the United Nations Framework Convention on Climate Change (UNFCCC) and its Kyoto Protocol of 1997, State parties commit to the “stabilization of greenhouse gas concentrations in the atmosphere at a level that would prevent dangerous anthropogenic interference with the climate system” (Article 2). Following the guiding principle of “common but differentiated responsibilities,” which acknowledges that countries don’t all have the same capacities in combating climate change, Uganda committed to a series of policies and measures in the energy supply, forestry, and wetland sectors, intended to achieve a 22% reduction of national greenhouse gas emissions by 2030 compared to a business-as-usual scenario (77.3 million tons of carbon dioxide equivalent per year in 2030 (MtCO<sub>2</sub>eq/yr)).<sup>327</sup> Furthermore, the UN Convention on Biological Diversity (CBD), ratified by Uganda in 1993, posits that, even if States have “the sovereign right to exploit their own resources pursuant to their own environmental policies,” they also bear “the responsibility to ensure that activities within their jurisdiction or control<sup>328</sup> do not cause damage to the environment of other States or of areas beyond the limits of national jurisdiction” (Article 3). This applies to the UK, France, and China as well, as States hosting the parent companies of Tullow, Total, and CNOOC, who also have a duty to limit extraterritorial damage by virtue of this Article. The Convention also requires States to create protected areas and to regulate activities authorised inside and outside of these areas, to ensure the sustainable management and maintenance of biodiversity, and to establish procedures that require EIAs for projects that may have significant adverse effects on biological diversity, with a view to avoiding or minimizing side effects and, where appropriate, to allow public participation in such procedures.

Rights to a healthy environment, water, and health should, moreover, be enjoyed on a non-discriminatory basis. In particular, women and populations from rural and deprived urban areas should have access to properly maintained health and water facilities. In fact, the Convention on the Elimination of all Forms of Discrimination Against Women stipulates the obligation of States to ensure adequate living conditions to women, particularly with regard to water supply.<sup>329</sup>

Furthermore, any retrogressive measure taken in relation to the right to water, health, and environment, as well as to any other related right, are prohibited under the CESCR. States shall be responsible for “the suspension of legislation or the adoption of laws and policies that interfere with the enjoyment of the any of the components of the right[s].”<sup>330</sup> Consequently, States should aim at always attaining higher levels of fulfillment of those rights. This includes preventing third parties from interfering with the enjoyment of these rights, and taking positive measures and effective strategies towards their realization. Such strategies should be comprehensive and integrated. For instance, regarding the right to water, they should aim at

- (a) reducing depletion of water resources through unsustainable extraction, diversion and damming;

327. Ministry of Water And Environment, Uganda’s Intended Nationally Determined Contribution (October 2015), <https://www4.unfccc.int/sites/ndcstaging/PublishedDocuments/Uganda%20First/INDC%20Uganda%20final%20%2014%20October%20%202015.pdf>.

328. An interesting definition of the notions of control, authority jurisdiction, and decisive influence is provided by the Maastricht Principles on Extraterritorial Obligations of States in the Area of Economic Social and Cultural Rights.

329. Convention on the Elimination of all Forms of Discrimination Against Women (1979), Article 14, para. 2.

330. United Nations, General Comment no. 14 (2000) “The right to The Highest Standard of Attainable of Health” (Article 12 of the Covenant on Economic Social and Cultural Rights), para. 50.

- (b) reducing and eliminating contamination of watersheds and water related ecosystems by substances [...];
- (c) monitoring water reserves;
- (d) ensuring that proposed developments do not interfere with access to adequate water;
- (e) assessing impacts of actions that may impinge upon water availability and natural ecosystems, watersheds, such as climate changes, desertification, [...]<sup>331</sup>

through laws, regulations, and monitoring mechanisms.

At the regional level, The African Charter on Human and Peoples' Rights, Article 24, states: "All peoples shall have the right to a general satisfactory environment favourable to their development." Similarly, and from a gender perspective, the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa affirms that "[w]omen shall have the right to live in a healthy and sustainable environment." On the basis of these provisions, the African Commission on Human and People's Rights has not hesitated to recognize violations of the right to a healthy environment in an autonomous manner, thereby affirming the subjectivity of such right without looking at it through the prism of the right to health or the right to life. This is notably the case in *Social and Economic Rights Action Center v. Nigeria*,<sup>332</sup> where the plaintiff alleged that the State administration of an oil exploitation consortium was causing serious damage to the environment and, as a result, health problems among the Ogoni population. The Commission confirmed violations of Articles 16 and 24 of the Charter and requested the Government to ensure adequate compensation to the victims, including to carry out a total clean-up of the polluted land and rivers, and to ensure that in the future an assessment of the social and ecological impact of the oil operations be carried out.

At the national level, Uganda has demonstrated its "commitment to sustainable development policies" through the ratification of the aforementioned documents, but also through its adoption of the Millennium Development Goals (MDGs), and its "active and continued participation in international and regional processes on sustainable development, [which] include the World Summit on Sustainable Development (WSSD), the Commission for Sustainable Development (CSD), Rio-Conventions, the New Partnership for Africa's Development (NEPAD) Environment Action Plan and the Comprehensive African Agriculture Development Programme (CAADP)."<sup>333</sup>

Regarding the country's legislation, Article 39 of the 1995 Constitution of Uganda states that every Ugandan has a right to a clean and healthy environment. According to Principle XXVII of the National Objectives and Directive Principles of State Policy, the utilisation of natural resources of Uganda are to be managed sustainably to meet the environmental needs of the present and future generations.<sup>334</sup> This Principle further obliges the Government to ensure public awareness of the management of land, air, and water resources. In the Constitution, the rights to health and water are provided for under Principle XIV of the "National Objectives and Directive Principles of State Policy," according to which (a) "all developmental efforts are directed at ensuring the maximum social and cultural well-being of the people," and (b) "all Ugandans enjoy rights and opportunities and access to education, health services, clean and safe water, work, decent shelter, adequate clothing, food security and pension and retirement benefits." Objective XXI further clarifies that it is the duty of the State to take all practical measures to promote good water management levels.

331. United Nations, General Comment no. 15 "The Right to Water" (Articles 11 and 12) HRI/GEN/1/Rev.7 (2002), para. 28.

332. Communication 155/96. See <https://www.globalhealthrights.org/africa/the-social-and-economic-rights-actions-center-and-the-center-for-economic-and-social-rights-v-nigeria>.

333. Government of Uganda, *National Report on Progress on the Implementation of the Rio Commitments on Sustainable Development in Uganda* (June 7, 2012), <https://sustainabledevelopment.un.org/content/documents/974uganda.pdf>.

334. Constitution of the Republic of Uganda (1995), Principle XXVII.

Section 3 of the National Environment Act of 2019 guarantees every Ugandan the right to a clean and healthy environment. Every person – natural or legal – also has a duty “to create, maintain and enhance the environment, including ... to prevent pollution.”<sup>335</sup> Accordingly, the Act allows any person who has reason to believe that their right to a safe and healthy environment has been violated to file a civil suit before a competent court, which can order a series of preventive, monitoring, redress or remediation measures in case of activities with actual or potential negative impacts, or even halt “any act or omission deleterious to human health or the environment.” In *Greenwatch vs. Attorney General and NEMA*,<sup>336</sup> the High Court of Uganda found that the Government’s failure to regulate the sale, distribution and manufacture of plastic bags in Uganda was in breach of its duty to protect the environment on behalf of the citizens of Uganda. This decision underlines the general obligation to regulate economic activities that are harmful to the environment, which include economic activities such as oil exploration and exploitation. In *Uganda Electricity Transmission Co Ltd vs. De Samaline Incorporation Ltd*,<sup>337</sup> the Court found that when a person complains that their right to a clean and healthy environment has been violated, they do not necessarily need medical evidence to prove their case: proof of degradation or threats of degradation suffice. In this case, based on the NEMA report, the Court held that the release of 1.6 to 8.7 milligrams per cubic metre of dust onto the applicant’s premises was beyond the accepted 0.2 milligram per cubic metre, and thus a violation of the applicant’s right to a healthy environment. The Court further cautioned the respondent to always take precautionary measures to ensure that damage is minimised.

The Act also gives rights to Nature itself and posits that “a person has a right to bring an action before a competent court for any infringement” of such rights, while “Government shall apply precaution and restriction measures in all activities that can lead to the extinction of species, the destruction of the ecosystems or the permanent alteration of the natural cycles.” The Act provides explicitly for the oversight of the oil industry by demanding that “activities relating to extractive processes ... are carried out in a sustainable manner.”

Article 52 states that NEMA “shall, in collaboration with the relevant lead agency, ensure that natural lakes and rivers are conserved for the common good of the people of Uganda,” a wording later used for wetlands (Article 4). The Act establishes a long list of activities that cannot be undertaken around lakes and rivers, before adding that “the Authority may ... authorise any of the[se] activities ... subject to conditions prescribed by the Authority” and “guidelines for the management of the environment.” According to Article 53, “[t]he relevant lead agency shall identify the riverbanks and lakeshores within its jurisdiction which are at risk from environmental degradation or which have other value to the local communities and take necessary measures to minimise the risk or recommend to the Authority the need for the protection of those areas.” If the Act provides for numerous avenues for the protection of the environment, encompassing the protection of cultural and natural heritage (in Article 68), the management of climate change impacts on ecosystems (in Article 69), and waste management (in Article 96) it also, similarly to Article 52, leaves a lot of discretion to authorities, especially NEMA, to approve projects susceptible of having negative impacts on the environment.

Under Article 81, a “person shall not carry out an activity likely to pollute the air, water or land in excess of any standards or guidelines prescribed or issued under this Act except under and in accordance with a pollution control licence,” which shouldn’t be issued “unless [the issuing Committee] is satisfied that the licensee is capable of compensating the victims of the pollution and of cleaning the environment in accordance with the ‘polluter pays principle.’”

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335. For an in-depth analysis see: Ben Kiromba Twinomugisha, “Some Reflexion on the Right to a Clean and Healthy Environment in Uganda” (2007), *Law Environment and Development Journal*, <http://www.lead-journal.org/content/07244.pdf>.

336. Misc. Application No. 371 of 2002, High Court of Uganda.

337. Misc. Cause No. 181 of 2004, High Court of Uganda.

The Act also provides for the undertaking of ESIA's for a number of industries, notably the oil and gas industries. The quality of the assessments is "the responsibility of the developer." The developer "shall use and integrate environmental and social impact assessment, human rights risk assessment and environmental risk assessment in the project design" (Article 111). NEMA must also "require a net gain in respect of projects in critical habitats or projects that may impact species of concern" (Article 115), such as Tilenga and Kingfisher. A certain number of sections consider the responsibilities of petroleum firms, notably Article 96, under which companies "shall be responsible for the proper management of petroleum waste in accordance with the applicable law," or Article 93, which provides for a national Oil Spill Contingency Preparedness and Response.

The Act has reinforced liability and sanctions in the event of illegal environmental degradation, with possible fines, imprisonment, lifting of permits, or obligations to compensate victims, depending on the conduct. This is also the case for enforcement mechanisms: Article 25, for instance, creates an "Environmental Protection Force to enforce the provisions of th[e] Act," while under Article 130, authorities can issue "Environmental Restoration Orders."

At the institutional level, the National Environment Act creates two key state organs, the Policy Committee on Environment and the National Environmental Management Authority (NEMA). The Policy Committee on Environment's functions include providing guidance to policymakers for a number of environmental issues. NEMA, as the management authorities, notably validates ESIA's and issues relevant certificates and environmental licences, and coordinates and undertakes environmental monitoring measures.

The Petroleum Act of 2013 (Upstream) creates an obligation for oil companies to prevent pollution, and "where pollution occurs [to] treat or disperse it in an environmentally acceptable manner." Passed as a replacement of a 1985 law, it also establishes more robust clauses on the health and safety of workers and affected individuals. The Petroleum Act reinforces sanctions for non-compliance with such provisions, but also enforcement and oversight, notably through the creation of the Petroleum Authority of Uganda (PAU). The Petroleum Act also limits flaring to a certain extent, although it stops short of outlawing it. It first provides that "all facilities shall be planned and constructed so as to avoid gas venting or flaring under normal operating conditions," and outlaws flaring and venting "in excess of the quantities needed for normal operational safety" *unless authorized by the government*. Although such provisions are more and more common in law and regulatory frameworks regarding oil, they largely depend on the will of authorities to limit gas-flaring and venting. The Act further creates an obligation to demand prior authorizations, unless operators are facing an emergency, and a reporting obligation when they vent or flare.

Furthermore, the Water Act of 1997 has among its objectives the provision of a clean, safe, and sufficient supply of water for domestic purpose to all persons. Section 5 further provides that all rights to investigate, control, protect, and manage water in Uganda for any use are vested in the Government, and shall be exercised by the appropriate ministers and directors in accordance with the Water Act. Section 6 states that no person shall acquire or have a right to construct or operate any works, or cause or allow any waste to come into contact, whether directly or indirectly, with any water, other than under specific conditions highlighted in the provisions of Part II of the Act. In 1999, a subsequent National Water Policy was developed to provide access to clean and safe water to the majority of Ugandans who lack access to this essential resource. The National Water Policy envisioned laws intended to put its goals into effect, for instance the Ugandan Plan of Action for Children (UNPAC) of 1992, which includes a strategy to provide Ugandans with the basic minimum in terms of clean water.



## **4.2. The impacts of exploration and construction activities on the life and health of local populations**

### **4.2.1. Air pollution**

#### ***Well-testing and flaring***

The Assessment revealed several impacts on the health of community members due to the decrease in air quality, limitations in access to clean drinking water, and transformation of their physical and ecological environment, as a result of past exploration activities and the construction of new infrastructure connected to oil development in the region, such as roads.

In the villages of Kasenyi and Kakindo, Buliisa, residents reported a number of health impacts that appeared after flaring during well-testing activities (described in section III.3.2, above), which took place in the area. According to the testimonies of the residents, in January/February 2009 Tullow scheduled meetings to which only residents living within 300 meters of the Kasemene-2 well were invited. The reduced group of residents was alerted to the need to leave the area, and were offered compensation of 300,000 UGX per day.

When the well-testing activities started, the days to follow were described by community members as some of the most stressful they had ever experienced. Residents started to notice a very thick, smelly smoke around the village, and to hear extremely loud noises. The earth shook and caused all their animals to run away. As the days passed and the smoke, noises, and lights continued day and night, the residents started to feel impacts on their health.

A resident of Kakindo, who was pregnant at the time of the events, explains that a couple of days after the gas-flaring started she felt an intense pain in her abdomen and went to the hospital (Buliisa Health Centre 4), and after being treated went back home that same day. The pain continued and four days after the start of the disturbances she had a miscarriage. The research team collected similar testimonies from at least three women who were pregnant at the time, and who suffered complications and/or miscarriages during or after the episode of well-testing.

Furthermore, during a focus group discussion in Kakindo, residents claimed that the well-testing caused temporary blindness or affected their eyesight due to the smoke and lights. Other reported effects, including from the intense noise, included temporary loss of hearing, cough, and other respiratory ailments. These impacts for some people lasted only a few days, but others claim to feel the effects to this day. Medical records are rare in the area, as the culture is mainly oral, and house-fires occur often, limiting the capacity to document such impacts. Furthermore, some residents claim that doctors were reluctant to indicate the cause of the ailments observed during and after the well-testing activities, for fear of the pressure that authorities and corporate actors could exert. Some of these residents, whose sight was affected, explained that their doctor had identified exposure to heat and smoke as causes of their symptoms, but preferred to name the use of charcoal stoves as the formal cause, even if the patients were not regular users of such items in the house, rather than indicate that the sufferings could be linked to the well-testing activities.

When the research team questioned Tullow Oil representatives about its suspicion that the company had used open pit flaring, with no proper flare stack to elevate the flame and limit impacts, the company confirmed that it used “open” flaring and that well-testing operations usually lasted 14 days, before



A focus group with women who experienced miscarriages after the flaring episodes. © Martin Dudek

contradicting this affirmation in a written statement.<sup>338</sup> This technique is known to be particularly harmful to nearby communities and the environment, and doesn't reflect "best available technology" at the time to limit harms. The best available technology would consist in the use of an enclosed ground flare with no visible flare. Company operatives confirmed that enclosed flaring started to be used by the company only in 2010.<sup>339</sup> However, surprisingly, the company reported to have identified "no pending redress" in the areas concerned.

Tullow's impact assessments for Uganda are not accessible and were not transmitted by the company or the authorities upon request, preventing communities and the research team from verifying the thoroughness of the company's baseline study of environmental conditions, or if a transparent analysis of all flare mitigation options had been conducted. Tullow claimed that they used greenburners, which produce loud noises but are used intermittently and generate no smoke and only limited emissions,<sup>340</sup> but the techniques used could not be verified without access to the above-mentioned assessments. Nevertheless, in similar projects in Kenya, some of the impacts identified by the company include "deterioration to local air quality, creation of nuisance to local communities and reduction in availability of vegetation used for animal grazing due to the generation of dust from the use of vehicles. Reduction in the availability of local groundwater supplies and groundwater over abstraction resulting in deeper saline water mixing of with upper freshwater horizons due to

338. FIDH online meeting with Tullow Oil Uganda and TLC, June 26, 2020.

339. FIDH online meeting with Tullow Oil Uganda and TLC, June 26, 2020.

340. Tullow's response to the report dated August 8, 2020.

the abstraction of groundwater from boreholes. [...] Soil and groundwater contamination due to the generation of hazardous and non-hazardous waste.<sup>341</sup> [...] Deterioration to local air quality (non-GHG emissions) and contribution to global climate change (GHG emissions) due to the potential for a release of gas to occur owing to a surge in gas volume during well testing.”<sup>342</sup> This impact assessment cites only moderate impacts on communities in Kenya, although in that case the well-tests happened seven kilometers from the nearest community. This is far from being true for this case study, where the well-testing occurred just 60 meters away<sup>343</sup> from the closest resident’s house.<sup>344</sup>

Gas-flaring releases carbon dioxide and methane, the two major greenhouse gases which contribute to climate change, as well as ozone, which creates photochemical smog.<sup>345</sup> There have been over 250 identified toxins released from flaring including carcinogens such as benzopyrene, benzene, carbon disulfide, carbonyl sulphide, and toluene; metals such as mercury, arsenic, and chromium; sour gas containing hydrogen sulfide and sulphur dioxide; and unburned hydrocarbons, carbon monoxide, and nitrogen oxides, which produce acid rain, smog, ozone at ground levels, and greenhouse gases in the upper atmospheres.<sup>346</sup> Consequences can include respiratory ailments, acid rain, and temperature increases which can negatively impact the immediate environment, including surface waters and terrestrial plant growth.<sup>347</sup>

During interviews, authorities emphasized that new legislation has outlawed flaring, an assertion only partly true: though flaring has been very limited since 2013 (see section III.4.1), it is not fully outlawed. Total dissociated itself from Tullow’s activities conducted before Total became involved in the project. However, after the recent announcement of the acquisition by Total of Tullow’s entire interest in the Lake Albert project,<sup>348</sup> our organisations alerted them again to this problem, underlining that as purchaser of Tullow’s participation, they would inherit the responsibility for unaddressed abuses even if they occurred prior to Total’s joining the project.

For future activities, Total said it had committed to no “routine flaring” or venting of gases during operations, and that the Tilenga installations allowed for “vapour recovery,” i.e. the recycling of gases for energy production. Oil companies will nonetheless occasionally use flaring during their operations. Total will commit to a maximum duration of 48 hours of flaring before shutdown of facilities, and the use of “best available technology” to minimize impacts.<sup>349</sup> Tullow on their side affirmed that they had a commitment to “no flaring” in the rift from 2010 onwards. Close monitoring and control of these activities by relevant authorities will be key to ensure that the company lives up to its commitments.

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341. This affects groundwater ecology as a result.

342. Tullow, *Environment project report study: extended well testing amosing 1* (October 2014), <https://www.tulloil.com/application/files/3515/8490/6960/4081-01-amosing-1-epr-study-rev-00-10-24-2014.pdf>.

343. Tullow itself points out that “the nearest house in 2009 was located 60 meters away from the well site which was fenced off and securely enclosed.” (Tullow’s written response to the Report, dated August 8, 2020.)

344. Flaring can also affect wildlife by attracting birds and insects to the flame. Approximately 7,500 migrating songbirds were attracted to and killed by the flare at the liquefied natural gas terminal in Saint John, New Brunswick, Canada on September 13, 2013. Similar incidents have occurred at flares on offshore oil and gas installations. [https://en.wikipedia-on-ipfs.org/wiki/Gas\\_flare.html](https://en.wikipedia-on-ipfs.org/wiki/Gas_flare.html).

345. Soltanieh, M., Zohrabian, A., & Javad, M. (2016). “International Journal of Greenhouse Gas Control. A review of global gas flaring and venting and impact on the environment : Case study of Iran.” *International Journal of Greenhouse Gas Control*, pp. 49, 488-509. <https://doi.org/10.1016/j.ijggc.2016.02.010>.

346. Ismail, Olawale & Umukoro, Ezaina. (2012). Global Impact of Gas Flaring. *Energy Power Eng.* 4. 10.4236/epe.2012.44039.

347. Ajugwo, A. (2013). “Negative Effects of Gas Flaring: The Nigerian Experience.” *Journal of Environment Pollution and Human Health*, 1(1), 6–8; Nwankwo, C. N., & Ogagarue, D. O. (2011). “Effects of gas flaring on surface and ground waters in Delta State Nigeria.” 3 (May), pp. 131–136.

348. Total, “Total acquires Tullow entire interest in Uganda Lake Albert Project” (April 23, 2020), <https://www.total.com/media/news/press-releases/total-acquires-tullow-entire-interests-uganda-lake-albert-project>.

349. This includes using “green-burner technology,” which may address some environmental impacts but remains inadequate. Wells must be sited as far as possible from sensitive environments and with due consideration of factors such as prevailing winds and terrain, to ensure minimal impact to the surrounding environment by noise, heat, and pollutants.





A truck circulating at a road construction site. © Martin Dudek

### ***Road dust***

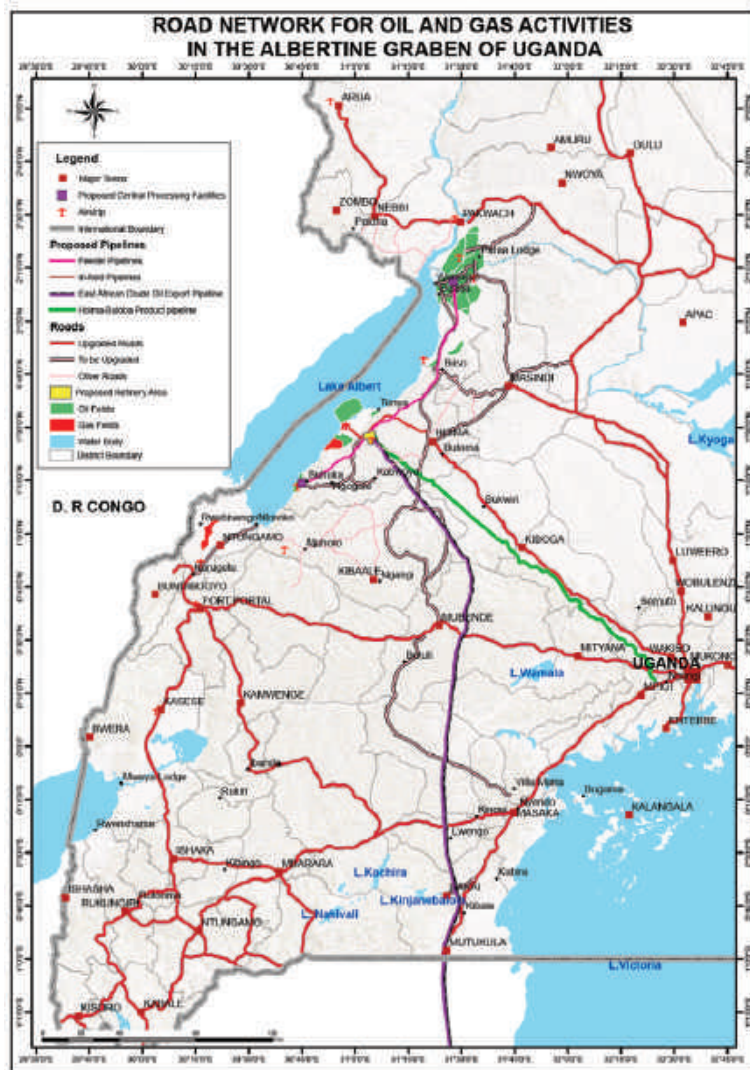
The project infrastructure also includes the construction of new roads and upgrades to existing roads (whereby they are widened and surfaced with asphalt or gravel), and some of the roads necessary to meet the access requirements are constructed or upgraded by the Joint Venture Partners. Other roads considered supporting and associated facilities for the construction and operation of the project are undertaken by the Uganda National Roads Authority (UNRA). According to the Tilenga ESIA, four new roads will be constructed, seven roads will be upgraded, and 27 inter-field access roads will be constructed or upgraded by Total in the Tilenga concession area.<sup>350</sup> Furthermore, the Tilenga ESIA indicates that UNRA will improve 11 “critical oil roads” of which five are considered to be associated with the project.<sup>351</sup> Furthermore, the Kayso-Tonya developments are considered “separate projects where [the Joint Venture Partners] are working in partnership.”<sup>352</sup>

350. CNOOC, Total, Tullow, “Environment and Social Impact Assessment” (Tilenga Project, February 2019), tables 4-9, 4-10 and 4-11.

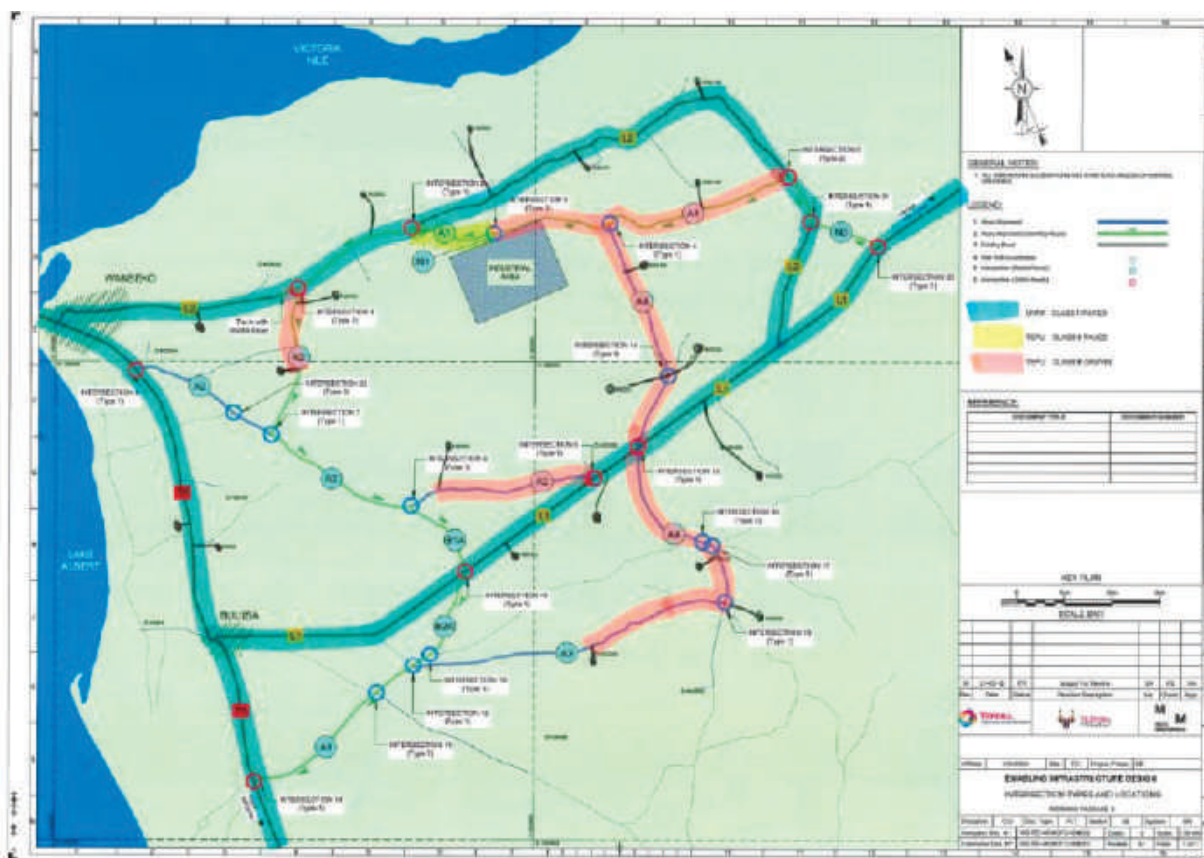
351. CNOOC, Total, Tullow, “Environment and Social Impact Assessment” (Tilenga Project, February 2019), tables page 4-37. The five associated roads include: Kisanja-Park junction (R3), Wanseko-Kasenyei-Kirango-Bugungu Camp (L2), Buliisa-Paraa (L1), Masindi-Biiso (R2), Hoima-Wanseko (through Biiso) (R1).

352. CNOOC, Total, Tullow, “Environment and Social Impact Assessment” (Tilenga Project, February 2019), tables on pp. 4-37.





Map of Road Network for the Oil and Gas Activities in the Albertine Graben of Uganda



Map of road upgrades provided by Total for the Tilenga project. Roads in Blue will be upgraded or constructed by UNRA (paved), in red (paved) and yellow (non-paved) by Total E&P Uganda.

Consequently, since 2013 an increased number of trucks have been circulating. According to Total's ESIA, "[d]uring Site Preparation and Enabling Works Phase there will be an increase in the volume of traffic using local roads with a total additional 806 daily traffic movements expected."<sup>353</sup> Although in the areas where the roads have already been paved, the impact of truck traffic has been limited, in the areas where many unpaved roads remain, the amount of dust produced by truck traffic is considerable, particularly in periods of drought. As a result, residents of the affected areas notice an increase in the amount of people complaining of coughs, for which the health centres only prescribe cough syrup or amoxicillin. For instance, in Kisamere, Buliisa, residents say that while the traffic has decreased since the beginning of the project, when trucks used to circulate regularly, now they do not circulate during long periods but then appear massively, in groups of 20 or more trucks. On the contrary, in Kyenjojo, Kikuube, a resident explains that there has been daily truck traffic on the dirt road of his town during the last four years, which has resulted in a reported increase in the flu and in other breathing problems.

As an aggravating factor to the above-mentioned impacts on health, authorities seem to be unequipped to measure the evolution of the impacts of the project on the health of surrounding communities and the environment. Specifically, when presented with these findings, Buliisa district authorities confirmed that there is currently no procedure for evaluating the impact of the projects on health, for instance eyesight and breathing problems.

#### 4.2.2. Reports from health professionals

During a visit to Buliisa General Hospital, a hospital built thanks to CSR funds from Tullow Oil, staff confirmed an increase in the number of cases of miscarriages well after the flaring episodes. An interview with the medical superintendent at the hospital highlighted that the hospital management had a meeting about this trend on February 20, 2020 and were investigating the cause of the increase in the number of cases. The hospital records showed an increasing number of miscarriages from six in 2014 to 145 in 2019. The hospital also documented an increase in the amount of respiratory diseases in Buliisa, from 2,118 cases in 2014 to 4,401 in 2019.<sup>354</sup> Flaring, but also a number of gas emissions linked to petroleum extraction, are known to increase the prevalence of miscarriages, according to scientific research.<sup>355</sup> A major potential threat to communities' health could also be linked to inadequate waste disposal. Until 2015, Tullow accumulated waste in "waste consolidation sites" which were close to communities in Ngara and Kisinja. Communities allegedly complained to the company about bad smells emanating from these open deposits. Only later was waste disposed of in proper landfills. Meanwhile, the development of construction sites directly or indirectly linked to Tilenga and Kingfisher, the development of roads, the increase in truck traffic, and the increased levels of road dust all could have had an impact on the health of communities.

Although it is difficult to establish a precise causal link between the increase in the above-mentioned illnesses and any specific activities, under the precautionary principle – by virtue of which preventive measures are to be taken when there are reasonable grounds for concern that harm is or could be

353. CNOOC, Total, Tullow "Environment and Social Impact Assessment" (Tilenga Project, February 2019), pp. 16-236.

354. The hospital wasn't built in 2009, and thus didn't have any data on earlier episodes of flaring documented in this report.

355. "Pregnant women in close proximity to oil polluted areas may be at higher risk of experiencing hypertensive disorders of pregnancy, gestational diabetes mellitus, maternal depression, miscarriages amongst others and three major pathways of exposure were identified as through air, water and soil. Studies reviewed employed different types of methodologies and cut across different fields of study." Oghenetega, Onome & Ana, Godson & Okunlola, Michael & Ojengbede, Oladosu, "Oil Spills, Gas Flaring and Adverse Pregnancy Outcomes: A Systematic Review" (2020), *Open Journal of Obstetrics and Gynecology*, pp. 10, 187-199. 10.4236/ojog.2020.1010016. See also Damian Carrington, "Air pollution as bad as smoking in increasing risk of miscarriage," *The Guardian* (January 11, 2019), <https://www.theguardian.com/environment/2019/jan/11/air-pollution-as-bad-as-smoking-in-increasing-risk-of-miscarriage>, Zhang et al., "Air Pollution-induced missed abortion risk for pregnancies" (September 2019), *Nature Sustainability*, [https://www.researchgate.net/publication/336020454\\_Air\\_pollution-induced\\_missed\\_abortion\\_risk\\_for\\_pregnancies](https://www.researchgate.net/publication/336020454_Air_pollution-induced_missed_abortion_risk_for_pregnancies) which all can be produced at different steps of oil activities.

caused to the environment and human health, even if a cause-and-effect relationship is not fully established – the State and companies shall take measures to prevent these trends from increasing. In parallel, human rights due diligence principles require companies to identify, prevent, mitigate, and remediate adverse impacts, which would imply investigating the situation and providing redress to already affected individuals.

### Precautionary principle

The Rio Declaration, the United Nations Framework Convention on Climate Change (UNFCCC), and the UN Convention on Biological Diversity (CBD) have contributed to establish the precautionary principle under international law, in matters related to the environment. According to the UNFCCC, “[t]he parties should take precautionary measures to anticipate, prevent, or minimize the causes of climate change and mitigate its adverse effects. Where there are threats of serious or irreversible damage, lack of full scientific certainty should not be used as a reason for postponing such measure, taking into account that policies and measure to deal with climate change should be cost-effective so as to ensure global benefits at the lowest possible cost,” while the CBD argues that “[w]here there is a threat of significant reduction or loss of biological diversity, lack of full scientific certainty should not be used as a reason for postponing measures to avoid or minimize such a threat.”<sup>356</sup> These principles are now considered to be part of customary international law.<sup>357</sup>

#### 4.2.3. Water pollution and limited access to clean and safe drinking water

Populations denounce the increasingly limited amount of available drinking water in the areas affected both by Kingfisher and Tilenga. The Assessment revealed that both underground and surface waters are being and will potentially continue to be increasingly impacted by the oil exploration and exploitation activities.

##### *Underground waters*

In past years, underground water has been affected mainly as a result of two issues: on the one hand, the destruction of boreholes during construction activities, and on the other hand, the effects of exploration activities.

Regarding the destruction of boreholes, the research team collected data indicating that during the widening of the Kaseeta-Mwera road, the contractors poured soil on a community borehole causing its cylinder to break. Since the bore-hole served over 500 people and no longer works, residents now have to fetch water either from the nearby stream or at the border of the road, in very dangerous places.<sup>358</sup>



Broken borehole. © Martin Dudek

356. Convention on Biological Diversity (1993), Preamble.

357. International Tribunal for the law of the Sea, *Advisory opinion on the responsibilities and obligations of States* (February 2011), p. 41, paragraph 135, and thus applicable to all States sponsoring persons and entities with respect to activities in the area, [https://www.itlos.org/fileadmin/itlos/documents/cases/case\\_no\\_17/17\\_adv\\_op\\_010211\\_en.pdf](https://www.itlos.org/fileadmin/itlos/documents/cases/case_no_17/17_adv_op_010211_en.pdf).

358. Meeting with Kikuuve authorities, May 29, 2019.





Communities forced to fetch water in a nearby polluted river. © Martin Dudek



On the one hand, the nearby stream has become a source of health complications due to the poor water quality. Many residents have contracted diseases such as typhoid fever. The treatment of typhoid requires them to incur transport costs (as the local health centre does not have the capacity to treat them) and to buy costly medicine.

On the other hand, women collecting water from a stream at the border of a high-speed and curvy section of the road risk their lives.<sup>359</sup> At the time of this Assessment, no replacement of the borehole had been planned for the community.

359. In fact, "during ESIA consultations it was reported that speeding on roads increased following road upgrades (e.g. Hoima Municipality and Purongo and Got Apwoyo sub-country). This suggests there is a risk that speeding by non-Project vehicles will increase the risk of accidental collision along these roads," CNOOC, Total, Tullow "Environment and Social Impact Assessment" (Tilenga Project, February 2019), pp. 16-237.





Communities fetching water on the side of a dangerous road. © Martin Dudek

In a meeting conducted during an international mission in May 2019, Kikuuve authorities confirmed their knowledge of the broken boreholes, but claimed they had no responsibility for them as they considered the matter to be under the jurisdiction of Hoima district. Based on the recent creation of Kikuuve as an independent district, local authorities maintain that the destruction occurred when the area belonged to Hoima, and thus disclaim responsibility for fixing the problem. As for the lack of sufficient water sources, they claim that the risks to which women and girls are exposed by fetching water in dangerous places or at dirty sources is due to people's unwillingness to "line-up in a water-stressed area," and wait their turn to get water. Such arguments are in clear contradiction of their obligation as organs of the State, to protect and fulfill the human rights of residents of their district.

The negative impacts of oil exploration activities were less blatant, but felt more broadly across the region. In interviews, community members from two villages in Buliisa and two villages in Kikuuve had similar complaints about a decrease in water quality. In fact, an oily layer can be observed atop the water fetched from some of the boreholes nearby.<sup>360</sup> In Kismere, Buliisa, the affected borehole is located close to the pads that will be serving four of the wells drilled in the area, and surrounding communities have simultaneously complained of explosions and drilling.

360. PAU and Tullow Oil considered the presence of an oily substance the natural consequence of the Albertine Graben being an active petroleum system. However no scientific support was provided to explain such assertions.



Polluted borehole water in Buliisa. © Martin Dudek

Other affected regions were subjects of a water quality study published in the Kingfisher ESIA. Without posing the question of whether water could have been contaminated by past exploration activities,<sup>361</sup> it states that “[g]roundwater quality on the Buhuka Flats is generally poor. Boreholes in Kiina and Kyabasumbu have high pH, very high salinity and very high hardness which significantly exceeds potable water quality standards. Groundwater quality along the escarpment and pipeline route is generally good and within the drinking water standard, with the exception of some trace metals occurring naturally. Long-term exposure to these elements in drinking water pose some health risk to users. In most boreholes on the Flats and along the pipeline route, groundwater is contaminated with coliforms, including *E. coli*, caused by poor sanitary practices, and leading to outbreaks of diarrhoea and cholera. No organic (hydrocarbon) pollution was found in any sample.” This points to the already-degraded water quality some populations are exposed to.

With most of the impacts of the construction phase and the production phase yet to come, communities are particularly worried about the degradation of the quality of drinking water, and the availability of water in boreholes. Total has planned on digging new boreholes and pumping underground waters during the site preparation and enabling phase. Its ESIA states that “[i]mpacts on groundwater quality could result from accidental spillages and leaks of fuels and chemicals from bulk storage and vehicle and plant refuelling; the management of concrete lorry washout water... With the implementation of ... mitigation measures, as well as regular water quality monitoring ... the significance of the impact is

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361. In a follow-up response, CNOOC indicated that “[t]he scientific findings from the Baseline survey do not point at any exploration activities as being the trigger for poor water quality.”

classed as being of low to moderate adverse significance, depending on the relationship between the borehole location(s) and the location of potential contaminants.” Even if not true for all communities, this analysis confirms that some residents could be substantially affected by these risks.

Indeed, there is no certainty about the exact extent of the potential impacts. The research team inquired about the location of pads and production wells to be drilled, as well as the estimated flow rate schedule for each well. However, Total E&P Uganda replied that these were still to be determined. Insofar as the location is not determined, it is not possible for the research team to identify the number of villages and residents within the range of potentially affected water sources, nor to identify potential environmental threats. Nonetheless, from the observation of existing infrastructure, it is clear that some communities and boreholes are in the immediate proximity of oil wells, and thus particularly prone to negative impacts.

Worse, the ongoing projects risk further degrading the quality of underground and surface waters and soils through the use of drilling and disposal techniques that – contrary to companies’ claims – do not reflect best available technologies to limit human rights and environmental impacts. Assessments of the Tilenga and Kingfisher ESIA published by an expert engineer pointed out that both projects were planning to use synthetic-based mud (SBM) for some parts of the drilling process, an agent with much more toxicity than water-based mud; they recommend using the latter in all drilling operations.<sup>362</sup> The engineering assessment also points to the dangers involved in the disposal of produced water, drilling cutting, drilling fluids, and sewage effluents, all of which risk polluting surrounding waters and soils and impacting communities’ health: whereas best available technology would allow the reinjection of these products underground at the location of different well pads, the projects chose options more likely to have adverse impacts.<sup>363</sup> This is especially true of the disposal of drilling cuttings and fluids, which “comprise the overwhelming majority of hazardous waste”; they will be disposed of in landfills, increasing the risks of leakages into the soil and necessitating thousands of additional truck trips around the area.<sup>364</sup>

A further concern is the availability of water in the boreholes, another fear in many communities which are aware that the companies will abstract water from the boreholes. Kingfisher’s ESIA states that “water for the project will be drawn from Lake Albert and not from local rivers or boreholes. Direct impact on communities will therefore not occur.” Total insisted to the research team that if production of crude oil did indeed create a void in the reservoirs, this would be compensated for by water injection: “[a]ll produced water will be reinjected, and the additional required volume will be abstracted from Lake Albert.”<sup>365</sup> Yet there seems to be no clarity about the transmissivity levels of water in the area, which could trump the provisions of the ESIA, as well as subsequent monitoring

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362. Although Total maintains that SBM will be used to “drill highly 2D and 3D deviated well (lower friction factors, thin mud cake) to improve well bore stability, and to improve the ability to run casings and screens to bottom,” this is far from abiding by best practices. The US National Petroleum Council writes that “[t]he development of high performance WBM may be ideal when considering the needs of an extended-reach or multilateral wellbore.”; see National Petroleum Council, North American Resource Development Study, *Sustainable Drilling of Onshore Oil and Gas Wells*, Paper #2-23, prepared by the Technology Subgroup of the Operations & Environment Task Group, September 15, 2011, p. 13.

363. N.B. The Tilenga ESIA provides for the reinjection of produced waters, contrary to Kingfisher. The rest of the affirmations apply to both projects. PAU replied that cuttings re-injection (CRI) could be more damageable to the environment in case of migration of waste into the aquifers and that it would require “more specialized equipment” that could increase surface footprint and noise levels. Total wrote that CRI “was not technically recommended”, but didn’t provide any further explanation when asked.

364. Bill Powers, P.E., E-Tech International, *Review of Adequacy of ESIA for the TEP Uganda Tilenga Oil Development Project* (November 27, 2019), <https://www.albertinewatchdog.org/wp-content/uploads/2020/01/27-november-19-E-Tech-evaluation-of-Total-Tilenga-ESIA.pdf>; Bill Powers, P.E., E-Tech International, *Review of Adequacy of ESIA Environmental Mitigation for the CNOOC Kingfisher Oil Development Project* (May 12, 2019), [https://www.albertinewatchdog.org/wp-content/uploads/2019/05/12-may-19\\_BP\\_FINAL\\_CNOOC-Kingfisher-ESIA\\_review-adequacy-of-mitigation.pdf](https://www.albertinewatchdog.org/wp-content/uploads/2019/05/12-may-19_BP_FINAL_CNOOC-Kingfisher-ESIA_review-adequacy-of-mitigation.pdf). Total answered that “[c]utting re-injecting (CRI) was considered as possible solution, but after studies was not technically recommended. At this stage, recommended solution is conventional waste management (landfilling after deoiling)” without any further explanation.

365. FIDH & FHRI meeting with Total, February 24, 2020, in Kampala.





A man and his dog observe the future site of the Kingfisher Oil fields and the Buhuka flats, on the shores of Lake Albert. © Martin Dudek

and mitigation measures regarding water quantity and quality.<sup>366</sup> According to an underground water expert analysis, decrease in water levels could be significant in a perimeter of 0.5 km, and reach to a distance of about two km. Thus, the Joint Venture Partners should determine the number and locations of production wells to be drilled, estimate the flow rate schedules for each well, determine the number and locations of existing village wells within two km of the proposed production wells, and perform additional calculations using different probable ranges of aquifer transmissivity and storage coefficients.<sup>367</sup>

### **Surface Waters**

Risks of impacts on Lake Albert's waters, such as pollution or excessive water abstraction, are also particularly present. Located on the shores of the lake, the CNOOC-operated Kingfisher project represents a particularly high risk. The Kingfisher ESIA enumerates a certain number of mitigation measures to avoid pollution of the lake, but they are far from eliminating the risks of surface water pollution. Whereas respect for international best practices would have led the company to locate its well-pads, Central Processing Facility (CPF), and associated infrastructure away from the shores, as well as from the most sensitive natural areas and traditional fishing villages, the Kingfisher project decided instead to maintain its infrastructure on the location of the original exploration wells.<sup>368</sup>

366. PAU indicated that "a groundwater investigation was undertaken in 2018 which was meant to plug some of the gaps identified during the ESIA process". The agency shared the objectives of the study, not its findings.

367. F. Marinelli, Tilega Project, Scoping Calculation to Evaluate the Effects of Groundwater Pumping (February 19, 2020).

368. Bill Powers, P.E., E-Tech International, *Review of Adequacy of ESIA Environmental Mitigation for the CNOOC Kingfisher Oil*



These risks are only aggravated by the lack of commitment to a system of proper and sound disposal of produced water, sewage, drilling cuttings, and fluids, and the use of chemical-based drilling mud (see section above). The ESIA for the Kingfisher projects explicitly states that “[d]espite ... control systems, the small buffer between the CPF and the Lake and surrounding ecosystems, and the natural storm-water drainage towards these ecosystems, coupled with the large volumes of effluent and solid waste to be handled, increases the risk that hydrocarbon-contaminated drainage could occasionally escape into River 1 or the Kamansinig River and its wetlands, and/or reach the near-shore habitats of the Lake, in the absence of a very high level of control of day-to-day effluent and waste management activities.” The Kingfisher ESIA envisages that “if fail safe measures to prevent oil and hydrocarbon pollution on the Flats can be certain, this potential impact will be reduced to low significance,” without confirming whether a failsafe mechanism has been chosen. Even if such a mechanism were implemented, the ESIA makes clear that a risk-reduction strategy cannot guarantee the avoidance of such impacts.

Any oil spill into the lake would have “grave” consequences, according to CNOOC’s ESIA. These would affect the exceptional ecosystem, but also potentially the livelihoods, right to water, and health of a colossal number of people. This is especially true because the remote area in which Kingfisher will be developed would make clean-up activities particularly challenging. On November 25, 2019, 23 civil society organisations addressed a petition to the Executive Director of Uganda’s National Environmental Management Authority (NEMA), emphasizing that oil production will impede conservation of the lake and threaten the livelihoods of communities in the Democratic Republic of Congo (DRC), where 100,000 households rely on Lake Albert to meet their water needs and over 20,000 fishermen depend on it to make a living. The petition asserts that “[b]oth the Tilenga and Kingfisher project developers failed to put in place adequate mitigation measures that would protect Lake Albert, 46% of which is found in the DRC, from pollution.” Signatories recall that under the 2007 Uganda-DRC Ngurdoto agreement, the Congolese have to be consulted about the Tilenga and Kingfisher projects. In response to these concerns, PAU, the regulating authority, wrote that it considered the ESIA “is cognizant of the potential risks and impacts of the activities to the water and has provided sufficient mitigation impacts e.g. spill contingency plans and waste management plans as part and parcel of the project.”

The latter document reveals the deep concerns of communities on both sides of the lake regarding potential spills or pollution, but also regarding plans to abstract water from Lake Albert during the site preparation and enabling phase, the production phase, and the decommissioning of the project. Despite technical proposals that would limit lake-water abstraction, the companies still intend to use Lake Albert water throughout the production phase.<sup>369</sup> Total emphasizes that only a small proportion of the water of the lake will be abstracted (“0.03% of the water flow”),<sup>370</sup> while CNOOC’s ESIA argues that “even with other oil projects in the region drawing water from the Lake, the Lake water level will not be significantly affected (the total oil industry demand is not expected to affect water levels across the whole Lake by more than 2 mm).” Figures from Uganda’s Directorate of Water Resources Management, conversely, “show that over 500,000 cubic litres of water will be required per day when oil production starts.”<sup>371</sup> There remain uncertainties, however, about the exact significance of the impact on surface waters from a cumulative point of view – that is, by adding up the impacts of each

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*Development Project* (May 12, 2019), [https://www.albertinewatchdog.org/wp-content/uploads/2019/05/12-may-19\\_BP\\_FINAL\\_CNOOC-Kingfisher-ESIA\\_review-adequacy-of-mitigation.pdf](https://www.albertinewatchdog.org/wp-content/uploads/2019/05/12-may-19_BP_FINAL_CNOOC-Kingfisher-ESIA_review-adequacy-of-mitigation.pdf).

369. Bill Powers, P.E., E-Tech International, *Review of Adequacy of ESIA for the TEP Uganda Tilenga Oil Development Project* (November 27, 2019), [https://www.albertinewatchdog.org/wp-content/uploads/2020/01/27-november-19\\_E-Tech-evaluation-of-Total-Tilenga-ESIA.pdf](https://www.albertinewatchdog.org/wp-content/uploads/2020/01/27-november-19_E-Tech-evaluation-of-Total-Tilenga-ESIA.pdf).

370. Meeting FIDH & FHRI with Total, February 24, 2020 in Kampala.

371. Francis Mugerwa, “Congo-Kinshasa: CSOs Reject Uganda’s oil exploration in Lake Albert”, *All Africa* (January 20, 2020), <https://allafrica.com/stories/202001310697.html>.

of the activities to be conducted in the fields operated by each of the Joint Venture Partners, and those fields that are to be developed in the future, such as the Ngassa oil fields, which will be exploited through offshore drilling in the lake.<sup>372</sup>

#### 4.2.4. Protected areas and sacred natural sites

The Tilenga and Kingfisher project locations are exceptional by virtue of the sensitivity of their ecosystems and their location in “one of the most ecologically-diverse regions in the world,” which hosts an exceptional array of animal and plant species, “including 52% of all African birds, and 39% of African animals.” Its “numerous water bodies including Lake Albert, Rivers Nile, Wambabya and Semuliki; Budongo forest and Murchison National Park ... forms key habitats for endangered, vulnerable and endemic species like elephants, lions.”<sup>373</sup>

Since 2016, scientists decried the potential impacts of oil extraction in biodiversity and ecology, expressing the scientific community’s dismay for the drilling of oil in the East African Great Lakes and particularly in Uganda. They pointed out the great risks and catastrophic consequences of potential oil spills, as well as the impacts on communities’ food security, on the existence of thousands of endemic species. They considered the risks of such activities, had been largely underestimated.<sup>374</sup>

#### **Wetlands**

Beside the lake are a number of wetlands, among which is one registered under the Ramsar Convention, and home to protected and indigenous species. These wetlands themselves are disappearing and are endangered by the effects of climate change and development, which is displacing animals from their habitats. Wetlands are known to benefit communities through unique microclimates and a variety of soils, which allow for crop diversification. Some water sources are also considered sacred sites in local belief systems. The implantation of oil facilities risks further accelerating their endangerment, and also risks breaking Uganda’s commitment to protect its wetlands.

The Kingfisher ESIA points to “potential construction impact caused by access roads, flowlines and the extension of well pad 1 on wetlands and rivers on the Buhuka Flats. The long-term wetland loss due to construction of the production facility is 2.7% of the seasonal wetland area on the Flats. The wetland habitat loss that will be caused by the extension of well pad 1 is 1.6 ha,” accounting only for wetlands directly destroyed by construction. But the wider industrialisation of the area and the increase in interference with natural protected sites could have a much larger impact. Communities concerned about their future capacity to sustain their families have detailed the disruption of their environment. For example, the disappearance of sacred wetlands has been accompanied by a reduction in precipitation in the area, according to interviewees. Residents in the area recount that where they used to produce 38 to 40 sacks of cassava, now they produce only 15 to 25. Although it is difficult to draw a direct causal link between the implementation of these specific projects in the region and the changes in local climate and harvest, the draining and urbanization of wetlands have been proven to correlate with higher temperatures and lower humidity, which impacts harvests.<sup>375</sup>

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372. PAU wrote that “Efforts are underway to establish a Government lead Regional Cumulative Impacts Management strategy to facilitate collaborative approaches on selected Valued Ecosystem Components (VEC) including surface and groundwater.”

373. Greenwatch, “The Oil Spill Scare in Uganda” (April 10, 2020), <https://greenwatch.or.ug/oil-spill-scare-uganda>.

374. Erik Verheyen, “Oil Extraction Imperils Africa’s Great Lakes”, *Science* Vol. 354, Issue 6312, pp. 561-562 (November 04, 2016), <https://DOI.org/10.1126/science.aal1722>.

375. See Wei Zhang, Yubi Zhu and Jingang Jiang. “Effect of the Urbanization of Wetlands on Microclimate: A Case Study of Xixi Wetland, Hangzhou, China” (September 5, 2016); Li, Xia, Mitra, Chandana, Dong, Li, and Yang, Qichun, “Understanding land use change impacts on microclimate using Weather Research and Forecasting (WRF) model.” United States: N. p., (2017); Liu, Y., Sheng, L. & Liu, J. “Impact of wetland change on local climate in semi-arid zone of Northeast China” (2015) *Chin. Geogr. Sci.* 25, 309–320; Ç. Kuşçu Ş. Halime Ödülâ, “Investigation of the effects of wetlands on micro-climate” (August 2018),



Lion and Ugandan Kob in Murchison Falls National Park. © Daryona

With the availability of lands rapidly decreasing, the ability of communities to adapt and remain resilient when confronting environmental changes is considerably reduced.

It is important to note that because a wetland is a large connected network of waterbodies, any impacts will absolutely extend beyond the local footprint or area of use. The conversion of a small area of a wetland can also have hydrologic impacts on other areas of the wetland, potentially changing water levels. Water levels are also affected by groundwater withdrawals. Biodiversity can radically change as water levels are affected in so far as these levels are a key control on biodiversity and determining factor on the species that inhabit the area. Just a small change in water levels can for example influence the places where plants are growing, and affect plant biomass.<sup>376</sup>

### ***Biodiversity***

The Murchison Falls National Park (MFNP), Uganda's largest national park, and Bugungu Wildlife Reserve, which together form the Murchison Falls Conservation Area, are affected by the Tilenga project as well. The park is bisected by the Victoria Nile for a distance of about 115 km, and is the location of the Murchison Falls, where the waters of the river flow through a narrow gorge only seven metres wide before plunging 43 metres. The area is home to an incredible array of rare – often indigenous – fauna and flora.

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*Applied Geography*, Volume 97, pp. 48-60.

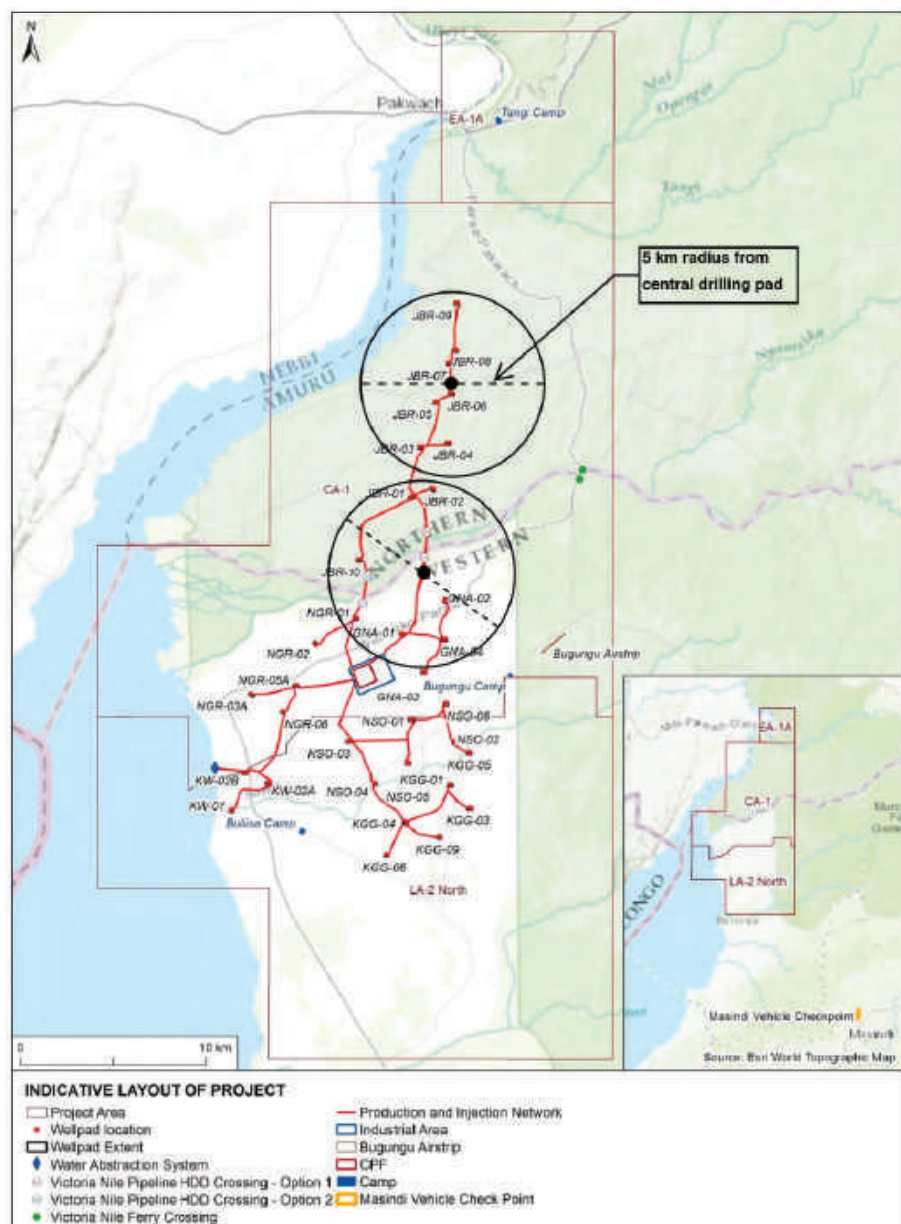
376. Fang-Li Luo, Xing-Xing Jiang, Hong-Li Li, Fei-Hai Yu; Does Hidrological fluctuation alter impacts on species biomass in wetland plant communities?, *Journal of Plant Ecology*, Vol. 9, Issue 4 (August 2016), <https://academic.oup.com/jpe/article/9/4/434/2222431>.



Total and CNOOC's ESIA's identify at great length the different ecosystems, animals and plants that could be affected by the project. They include a number of endangered or critically endangered species, according to domestic and international standards.

Yet these findings did not prevent Total from deciding to implement, among other infrastructures, 10 well-pads within the territory of the MFNP, covering between 32 to 45 hectares of territory, and directly affecting a much larger area.<sup>377</sup> When asked, the company asserts that the implementation in such a sensitive area is "an absolute economic necessity" for the viability of the project. Total further attributes these decisions to its avoidance strategy, points to its limitation of the number of well-pads to 30 as compared to the 45 planned well-pads. However, an independent expert study showed that Total could have chosen to reduce the number of well-pads in the MFNP from 10 to one, and to use extended reach drilling to reach its underground targets located under the Park, citing the "high negative impacts on the wildlife in the Park, specifically elephant migration," of exploratory drilling pads.<sup>378</sup>

Alternative Well Pad Locations to Reach Oil Deposits in MFNP, with Greater Use of Directional Drilling and Extended Reach Drilling Than Current Plan



377. CNOOC, Total, Tullow, "Environment and Social Impact Assessment: Non-technical summary" (Tilenga Project, February 2019), [http://nema.go.ug/sites/all/themes/nema/docs/ESIA\\_NTS\\_Tilenga\\_ESIA\\_13-09-18.pdf](http://nema.go.ug/sites/all/themes/nema/docs/ESIA_NTS_Tilenga_ESIA_13-09-18.pdf).

378. Bill Powers, P.E., E-Tech International, *Review of Adequacy of ESIA for the TEP Uganda Tilenga Oil Development Project* (November 27, 2019), [https://www.albertinewatchdog.org/wp-content/uploads/2020/01/27-november-19\\_E-Tech-evaluation-of-Total-Tilenga-ESIA.pdf](https://www.albertinewatchdog.org/wp-content/uploads/2020/01/27-november-19_E-Tech-evaluation-of-Total-Tilenga-ESIA.pdf).



Total asserts in its ESIA that after the implementation of mitigation measures, “the residual impacts on species and on threatened ecosystems will generally not be significant.” However, it concedes that “[t]he exception is for the MFNP (& Karuma WR) where direct residual impacts on grassland habitats within the MFNP could occur... This would result in direct loss of the threatened ecosystem Hyparrhenia Grass Savanna receptor.” To cope with these losses, Total has announced the launch of its biodiversity conservation strategies, a “complex” project aimed at “improving protection of existing protected areas, particularly savanna, wetlands and forests; improving connectivity between areas of natural habitat; and improving the quality of existing habitats.” The company warns that “success of these initiatives relies therefore heavily on an optimum multiple Parties partnership,” including governmental and civil society actors. Nonetheless, these promises seem perhaps too complex to fulfill, in a context where the capacity and resources of monitoring bodies remain limited and rely heavily on companies’ human and technical resources, and where many other energy projects are flourishing in the Park and around Lake Albert, each having an impact on biodiversity. And meanwhile, civil society’s capacity to voice its concerns about the project appear limited by the pressures described above (see section III.1, above).

Although both companies and authorities strongly minimize any risk of oil spills, and emphasize the contingency plans and other mitigation measures that have been taken to limit risks, previous experience has shown that oil spills – due to engineering failures, to accidents, to natural phenomena, or to sabotage or theft attempts – are not uncommon. In fact, Uganda is a territory where earthquakes of important magnitude (greater than magnitude 4) are common.<sup>379</sup> These are all considered “unplanned events,” yet are envisaged by the various ESIAs. Needless to say, any such events could have disastrous effects on the ecosystems and the increasingly endangered species in the region, as well as repercussions on a dozen riparian States on the Nile, thereby undermining Uganda’s international law commitments to protect its exceptional natural resources.

Since the discovery of oil in 1956, Nigeria has chosen a development strategy based heavily on petroleum extraction. Today, the country is Africa’s largest oil producer, and hosts a number of multinational companies such as Shell and ENI in the oil-rich Niger Delta. Among other negative impacts,<sup>380</sup> oil spills have been extremely common. A study published in 2018 by the Journal of Health and Pollution found that more than 12,000 oil spill incidents had occurred between 1976 and 2014, with approximately 40 million litres of crude oil spilled every year.<sup>381</sup> “Pipeline corrosion and tanker accidents caused more than 50 percent of them. Other incidents can be attributed to operational error, mechanical failure, and sabotage mostly from militant groups.”<sup>382</sup> A recent report by leading NGOs showed that nearly 10 years after the UN Environment Programme (UNEP) reported on the devastating impact of the oil industry in the region of Ogoniland, and set out urgent recommendations for clean-up, “work has begun on only 11% of planned sites while vast areas remain heavily contaminated.” Such a case-study emphasizes both how often spills can happen, especially in areas where companies benefit from an atmosphere of relative impunity, but also the diversity of factors that can trigger oil spills, which are not always directly linked to a company’s action.<sup>383</sup>

379. Earthquake Track, Recent Earthquakes Near Uganda, <https://earthquaketrack.com/p/uganda/recent>.

380. FIDH, “Italian energy superpower Eni and Nigerian community reach historic agreement to mitigate chronic flooding of village” (October 8, 2019), <https://www.fidh.org/en/region/Africa/nigeria/italian-energy-superpower-eni-and-nigerian-community-reach-historic>.

381. <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6257162/>.

382. Bukola Adebayo, “Major new inquiry into oil spills in Nigeria’s Niger Delta Launched”, CNN World (March 27, 2019), <https://edition.cnn.com/2019/03/26/africa/nigeria-oil-spill-inquiry-intl/index.html>.

383. Friends of the Earth Europe, Amnesty International, Environmental Rights Action, Milieudefensie, “No clean up, no justice: Shell’s oil pollution in the Niger Delta” (June 18, 2020), <https://www.amnesty.org/en/latest/news/2020/06/no-clean-up-no-justice-shell-oil-pollution-in-the-niger-delta>.

These risks come in addition to a longer-term increase in emissions, and to the water pollution discussed earlier in this chapter, but also to wider dynamics already at play in the region, linked to oil and gas implementation – and the consequent development of other sectors – in the Albertine region.

A report from USAID found “that oil-related land acquisitions and weak local government enforcement have driven degradation of forest and fishery resources in the region, particularly in Hoima and Buliisa districts,” that two main threats to local biodiversity are “in-migration of people to the area in search of employment opportunities” and “displacement of people, by resettlement or eviction,” which thus populates new areas, leading to increases in human-wildlife conflicts. These trends are particularly exacerbated by land-grabbing and other speculative practises that increase deforestation: “Some local elites take advantage of weak enforcement and the surplus of casual labour, to make claims on forest reserves, and hire laborers to cut them, so that they might be able to profit from the land either through oil or through farming.”<sup>384</sup>

Forests comprising the Forest-Savanna Mosaic, a threatened ecosystem, are at particular risk of disappearing in the Albertine region. Total’s Tilenga ESIA identifies the latter ecosystem as exceptional:

This ecosystem represents the remnant forest patches within the overall savanna landscapes, which are generally outside of protected forests. This ecosystem is already under threat particularly due to rapid loss of its remaining forest patches. Indirect impacts of the Project, due to induced influx of people to the area, are likely to increase as the Project progresses and this will mean increasing pressure on remaining forested areas as they are cleared for subsistence farming and for fuel. The impact on this receptor is defined as Moderate significance and is a significant adverse impact.

Identifying such an impact should lead companies and the State to immediately elaborate satisfactory mitigation and remediation measures – but which have not been proposed at this stage, in spite of the legal requirement to achieve “net gain” in biodiversity in respect of projects in critical habitats, or projects that may impact species of concern (see section III.4.1) – and even to reconsider the feasibility value of the project against the gravity of the environmental impacts it entails. These trends should also encourage companies to stop a relocation policy that is aimed at maintaining local communities, but that displaces them into the immediate vicinity of the oil projects (see sections II and III).

#### 4.2.5. Displacement of animals from their natural habitats

The above-mentioned trends and the construction of infrastructure have transformed the natural habitat not only for the residents, but also for the animals in the region. As a result of the reduction in water sources, as well as the incursion into Murchison Falls National Park, some dangerous animals have been displaced from their natural habitats into human communities.

Communities have complained about the increased presence of snakes in areas close to their homes. In Kasenyi, Buliisa, residents located close to the Kasemene-1 oil well explain that snakes accumulate in the pools inside the perimeter of the well, and often come close to their family homes.

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384. USAID, *Biodiversity and extractives political economy assessment: Case Study Oil developments in Uganda* (2017), <http://www.integrallc.com/wp-content/uploads/2017/09/USAID-Uganda-PEA-BEP-Summary-Final.pdf>.

Furthermore, they link the presence of snakes in the area to the reduction and disappearance of surrounding swamps. Total argued to the research team that human-wildlife conflict was caused by other “problem animals,” in order of prevalence “elephants, buffalo, hippopotamus, baboons, vervet monkeys and bush pigs,” and that the effects of such conflicts “included revenge killing of wildlife, crop raiding, and predation of domestic animals.”<sup>385</sup>

ESIAs for Tilenga and Kingfisher identified as a “potential impact of the project...increased incidences of human-wildlife conflicts,” despite the operators’ insistence that such phenomena were pre-existing and not merely the results of individual companies’ activities. The planned “mitigation” measures, however, appear ineffective for certain animals such as snakes, and threaten to further reduce the territory available to animals while potentially intensifying human destruction of ecosystems. Apart from “digging trenches at the park boundaries,” “enhancing law enforcement,” and “support[ing] growing of unpalatable crops such as chilli in communities neighbouring protected areas,” Total simply stated “that surface water management for facilities in the park will take care not to change the hydrology of the habitat. TEPU continues to work with authorities to minimize impact on wildlife in the park, particularly on water availability for animals.”<sup>386</sup>

### **4.3. A major underestimation of environmental risks**

The Environmental and Social Impact Assessment (ESIA) reports for Tilenga and Kingfisher include extensive analysis and a number of mitigation measures to try to minimize the negative impacts of oil exploration, preparation, production, and rehabilitation of wells. These are nonetheless insufficient to properly safeguard human rights and the environment over the course of the project.

The ESIAs are particularly thorough in exposing the potential negative impacts of the companies’ operations, and they provide important data on the sensitivity of the affected human and natural environment. But they draw heavily on “mitigation” measures, some of which have been detailed above, as an illustration of the operators’ reasoning. Mitigation of this nature starts with a limited “avoidance strategy” that does not prevent the installation of 10 well-pads in an extraordinary national park, or of drilling and processing facilities in internationally-protected wetlands and on the shore of Lake Albert, contrary to international best industry practices. While, according to the companies, such mitigation measures virtually always keep the risks of impacts low, nonetheless the number of unlikely events that could have an impact on extremely sensitive ecosystems is quite significant, mathematically increasing the likelihood that some events could occur, with potentially irreversible consequences.

The ESIAs have also been criticized for understating the risks. The Netherlands Commission for Environmental Assessment (NCEA) pointed out a number of technical and legal flaws in the documents. They pointed out the presence of inconsistent numbers, incomplete design, unfinished decision-making, lack of justifications for the choice among different alternative, lack of credibility of the net gain concept, non-transparent trade-offs between oil development and other potential uses of natural resources and ecosystem services, absence of mitigation measures regarding some of the identified impacts, and an insufficient ambition to abide only by good international industry practice, while best available technique would be more appropriate.<sup>387</sup>

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385. Meeting between FIDH & FHRI and Total in Kampala, February 24, 2020.

386. Meeting between FIDH & FHRI and Total in Kampala, February 24, 2020.

387. NCEA, *Review of the Environmental and Social Impact Assessment (ESIA), Report for the Tilenga Project*, findings of the NCEA Working Group (July 26, 2018).

Though companies claim to always use best international practices and best available technology to minimize the risks of adverse impacts, an expert assessment of the ESIA's showed that this is questionable in a number of areas.<sup>388</sup>

At this level of sensitivity, it is of utmost importance that not only the Ugandan people, especially local communities, be able to express informed consent before the project moves ahead, but also the people of the DRC and other affected Nile Basin States.

In fact, Lake Albert and its surrounding area have recently been the victims of an oil spill linked to geothermal exploration company Royal Techno Industries Ltd, which has further concerned local communities. On April 4, 2020, the Daily Monitor reported that "[r]esidents and local leaders in Kibiro Village, Kigorobya sub-county in Hoima district have expressed worry over an oil spill after a geothermal exploration hole exploded, letting off spillage into the village and Lake Albert."<sup>389</sup> The Energy and Mineral Development Ministry Permanent Secretary later minimized the accident thus: "it may be erroneous to dub the incident an oil spill [...] this is because of the composition of the observed materials that were released into the environment – predominantly sand/water/clay from the subsurface while oil is in trace levels mainly recognizable by the characteristics of hydrocarbon smell." Yet the Ministry halted temperature gradient holes drilling activities in Hoima and Pakwach districts "until a comprehensive environment and social impact assessment is done."<sup>390</sup>

This raises the more fundamental issue of the capacity of the Ugandan authorities to implement effective monitoring. In February, when the research team met with officials in Kampala, the main regulatory body, the Petroleum Authority of Uganda, was running at only about 50% of its staff capacity, while the Chief Government Valuer was staggering under the piles of market analyses it needs to validate. Harshly criticized a few years ago for its "poor quality" EIAs,<sup>391</sup> the Government seems to be issuing licences for oil and gas exploration and production to companies that have much lower levels of professionalism in assessing their impacts than CNOOC and Total, and to continue to do so without proper EIAs. Furthermore, these problems in capacity raise a key issue: how effective will the "multi-agency" review and monitoring systems implemented by the Government to oversee the implementation of the Tilenga and Kingfisher ESIA be?<sup>392</sup> In practice, much of the monitoring and evaluation around these projects are in the hand of the companies themselves, rather than State-led or independent mechanisms.

Despite their thousands of pages of analysis, the ESIA carried out reveal a certain number of particularly disturbing blind-spots and limitations. On the question of climate change, for example, the ESIA for Tilenga notes that "Project activities may have an effect on local climate regulation," either through "clearance of vegetation...the release of polluting emissions from plant and vehicle movements or the operation of power generation sets." But apart from "limited impairment to the ability of local ecosystems to moderate local climatic conditions, especially during drought periods," "the magnitude

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388. Bill Powers, P.E., E-Tech International, *Review of Adequacy of ESIA for the TEP Uganda Tilenga Oil Development Project* (November 27, 2019), [https://www.albertinewatchdog.org/wp-content/uploads/2020/01/27-november-19\\_E-Tech-evaluation-of-Total-Tilenga-ESIA.pdf](https://www.albertinewatchdog.org/wp-content/uploads/2020/01/27-november-19_E-Tech-evaluation-of-Total-Tilenga-ESIA.pdf); Bill Powers, P.E., E-Tech International, *Review of Adequacy of ESIA Environmental Mitigation for the CNOOC Kingfisher Oil Development Project* (May 12, 2019), [https://www.albertinewatchdog.org/wp-content/uploads/2019/05/12-may-19\\_BP\\_FINAL\\_CNOOC-Kingfisher-ESIA\\_review-adequacy-of-mitigation.pdf](https://www.albertinewatchdog.org/wp-content/uploads/2019/05/12-may-19_BP_FINAL_CNOOC-Kingfisher-ESIA_review-adequacy-of-mitigation.pdf).

389. Elizabeth Kamurungi, "Oil spill scare causing panic in Hoima District", *Daily Monitor* (April 4 2020), <https://www.monitor.co.ug/News/National/Oil-spill-scare-causing-panic-in-Hoima-District/688334-5513766-atcq9pz/index.html>.

390. Javira Ssebawami, "Government rules out spills in Hoima District", *PML Daily* (April 17, 2020), <https://www.pmldaily.com/news/2020/04/govt-rules-out-oil-spills-in-hoima-explosion.html>.

391. A failure partly admitted by NEMA, cf. Oil in Uganda, "NEMA admits to failing to assess the full impacts of oil" (September 7, 2012), <http://oilinuganda.org/features/environment/nema-admits-failing-to-assess-the-full-impacts-of-oil>; Oil in Uganda, "Uganda's Environmental impact assessment process under fire" (September 13, 2012), <http://oilinuganda.org/features/environment/ugandas-environmental-impact-assessment-process-under-fire>.

392. Meeting between FHRI & FIDH and PAU, February 25, 2020.



of these impacts on local- and global and climate regulation is likely to be low... Average annual GHG emissions are anticipated to be highest during the Commissioning and Operations phase emitting around 891,200 tCO<sub>2</sub>e per annum; or just over 1.1% of the national GHG emissions, with the main contributor relating to the power generation.” This completely avoids the question of climate-related impacts stemming from the consumption of the oil generation, and how the choice of becoming an oil and gas producer could affect Uganda’s commitments under the Paris Agreement, according to which the country should achieve a “22 percent emission cuts on a business as usual basis by 2030.”<sup>393</sup> Although most of the produced oil will be consumed outside of Uganda, the urgency of the climate crisis must lead stakeholders – especially multinational companies – to consider the rise in fossil fuel production and consumption and related impacts on a global level. In this respect, recent research shows that “there is about three times more fossil fuel in reserves that could be exploited today” than is compatible with an increase of only 2°C in global temperature by 2100, and over 10 times more fossil fuel resources that could be exploited in future. Twenty-one percent of the oil discovered in Africa must stay in the ground in order for the goals of the Paris Agreement to be achieved.<sup>394</sup> A recent shareholder proposal submitted at Total’s general assembly in June 2020 asked the company to include downstream consumption in its assessment of impacts on GHG emissions, and to step up its commitments under the Paris Agreement. It was fought by the board and rejected by around 80% of shareholders.<sup>395</sup>

Moreover, individual ESIAs largely fail to grasp the cumulative impacts on people and the environment as a consequence of the multiplication of oil and gas projects, and the development of related industries. For instance, the Netherlands Commission for Environmental Assessment (NCEA) pointed out that cumulative impacts on water levels and quality were not clear.<sup>396</sup> Regulating authorities and companies have had very few concrete measures in place to assess and respond to an accumulation of real or potential impacts. PAU emphasized the need for a series of “project level” assessments, which seem by definition unable to grasp impacts by other projects.<sup>397</sup> Total “recognize[d] that addressing cumulative impacts is dependent on working with the other developers in the project area, and government. The plan is to set up a committee for discussing and following up on cumulative impacts,” citing “some actions ... already initiat[ed] between the Joint Venture Partners and other developers such as UNRA, with the undertaking of a chimpanzee study” to better understand animal movement.<sup>398</sup> These plans appear meagre at a stage where both the Tilenga and Kingfisher ESIA have already been validated, and where multiple other licences for exploration and production of oil and gas have been granted. Furthermore, the cumulation of impacts does not seem to have guided these decisions.

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393. UNDP, “Uganda targets 22% emissions cut to achieve low carbon growth” (November 16, 2015), <https://www.ug.undp.org/content/uganda/en/home/presscenter/articles/2015/11/16/uganda-targets-22-emission-cuts-to-achieve-low-carbon-growth-by-2030.html>.

394. Damian Carrington, “Leave fossil fuels buried to prevent climate change, study urges”, *The Guardian* (January 7, 2015), <https://www.theguardian.com/environment/2015/jan/07/much-worlds-fossil-fuel-reserve-must-stay-buried-prevent-climate-change-study-says>.

395. “Total: rejet d’une résolution climatique portée par des investisseurs”, *Good Planet Mag* (June 3, 2020), <https://www.goodplanet.info/2020/06/03/total-rejet-dune-resolution-climatique-portee-par-des-investisseurs>

396. NCEA, *Review of the Environmental and Social Impact Assessment (ESIA), Report for the Tilenga Project*, findings of the NCEA working Group (July 26, 2018).

397. Meeting between FIDH & FHRI and PAU, February 25, 2020.

398. Meeting between FIDH & FHRI and Total in Kampala, February 24, 2020.

#### **4.4. Who is responsible for the impacts on the right to a healthy environment, water and health?**

##### ***State failure to uphold its international obligations***

Although the State of Uganda has reinforced its domestic legal framework to a certain extent since the beginning of oil extraction, many remaining loopholes undermine its commitments to protect the right to a healthy environment, and to water and health. The numerous possibilities of exceptions or derogations to environmental protection are key examples of such weaknesses. Despite an effort to reinforce oversight and regulation mechanisms of petroleum companies, the capacity or willingness of the State to exercise strict enforcement and monitoring of economic activities remains very much in question. Destruction of biodiversity, spills, and pollution of underground waters are phenomena increasingly present in the Albertine region since the initial exploration for extractives, with little accountability for perpetrators or redress for victims. Against this backdrop, the installation of oil facilities in Tilenga and Kingfisher areas, two extremely sensitive zones, poses a major threat to the rights to a healthy environment, water, and health. This is particularly true given the unresolved issues posed by the companies' ESIs.

The State is failing in its duty to protect the rights to a healthy environment, to water and to health from the negative impacts caused by third parties, notably the companies operating since the beginning of oil exploration activities. By validating the ESIs and authorizing the companies to pursue projects that pose a great risk of further abusing these rights, the State also risks being responsible for future violations.

Documentation of negative impacts of road construction activities has also demonstrated that the State has not only undermined its duty to respect and to fulfill the rights to water and health, but also the right to life, by destruction of boreholes, through water pollution, and by forcing communities to put themselves in danger to fetch water.

Finally, the State is also failing in a number of its obligations in other areas of law, notably international environmental law, and in its international commitments to protect shared watercourses, as outlined in section III.4.1. With ongoing land-grabbing and destruction of forests, fragilization of wetlands and biodiversity, and increased human-wildlife conflict in the Albertine Graben, Ugandan authorities are already showing their inability or unwillingness to uphold their commitments in respect of the UN Conventions on Desertification and Biodiversity and the Ramsar Convention. In such a context, the State and the companies' tendencies to adopt a very lenient interpretation of international environmental law, and to move forward with projects in protected areas will most certainly lead to further violations of the aforementioned instruments.

##### ***Companies' failure to respect human rights and the environment***

The UN Guiding Principles on Business and Human Rights posit that, though States have a primary role in upholding human rights, businesses "should respect human rights" regardless of the State's willingness or capability to do so.<sup>399</sup> It is thus of the utmost importance that CNOOC and Total provide further guarantees for the protection of the environment and of related human rights, in the design of the next phases of the project.

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399. The OECD Guidelines on Multinational Enterprises (2011) also explicitly mention that "[a] State's failure to enforce relevant domestic laws, or to implement international human rights obligations or the fact that it may act contrary to such laws or international obligations does not diminish the expectation that enterprises respect human rights." <http://mneguidelines.oecd.org/guidelines/>.

A scientific review of the projects at stake clearly indicates that potential impacts in decades to come could hugely surpass past negative effects documented during the exploration phase. However, the findings highlighted in section III.4.2 show that the companies have already been responsible for a substantial number of abuses of the rights to water, health, and a healthy environment. Inadequate prevention and mitigation measures have notably led Tullow Oil to violate its duty to respect the right to a clean environment and to health through air pollution and alleged water pollution during well-testing activities, and through inadequate disposal of waste. These abuses have also been left with no redress provided to affected individuals and communities. Although EIAs were allegedly conducted at the exploration phase, flaring massive amounts of natural gas, with outdated techniques, for up to two weeks illustrates a blatant lack of preventive and mitigation measures. Increased road dust and traffic to and around the area are also poorly accounted for in the companies' ESIs, which include particularly weak mitigation measures.

Although it is difficult to establish a precise causal link between road dust, waste disposal, or other impacts of the projects, and specific cases of health problems in communities, reports from health professionals in the area that the prevalence of respiratory illnesses and miscarriages are rapidly rising should lead companies and the State to apply the precautionary principle, and introduce swift measures to guarantee to local citizens the rights to health and to a healthy environment.

# IV. GENERAL CONCLUSION AND RECOMMENDATIONS

## 1. General Conclusion

In a context of global economic and climate crises, which have sunk oil prices and require a fundamental energy transition, the promises of development linked to major oil discoveries in Uganda are overshadowed by the great perils they entail for human rights and the environment. In the absence of strong safeguards, the human and environmental costs of oil could surpass its potential economic benefits, particularly in a country with a weak and nascent regulatory framework, a fragile enforcement capacity, and over a decade of unresolved abuses and violations. This Human Rights Impact Assessment revealed a considerable number of past and present human rights violations and abuses, which sounded the alarm for the grave risks that the current project poses for the future of Uganda and the rights of its people. The many past and present violations and abuses documented are red lines to be addressed before the project can move forward. Violations may remain unpunished and the risks of further impacts overlooked, to the extent that impunity and a lack of regulation create fertile ground for abuses by Government and corporate actors. Key economic players, despite having adopted certain measures, have not been ambitious enough in effecting change or in stopping the pattern of human rights and environmental violations from repeating itself.

Building and operating the extraction sites in Hoima, Buliisa, and Kikuube requires major land acquisition processes that have already been marred by rights violations and abuses, which are not limited to infringements on communities' right to land, but impact their livelihoods, their capacity for resilience, and their ability to maintain an adequate standard of living in line with their traditions and cultural practices.

Before the arrival of Total and CNOOC into the picture, human rights violations were already occurring frequently as a result of exploration activities and infrastructure works connected to oil development. Well-testing conducted by Tullow Oil resulted in serious impacts on the health of surrounding communities, including respiratory and vision problems, as well as miscarriages, and the loss of livelihood. Tullow failed to abide by international best practices, due to the limited buffer zones it established to minimize the impacts and the insufficient compensation it paid, or to provide effective redress to affected communities. The violations resulting from those failures must be fully redressed and addressed through adequate mitigation measures and through measures to prevent them from recurring.

Since the land acquisition process began, the alarm bells on human rights violations have been ringing. The relocation process in Kabaale by State authorities, to clear the space for the industrial park to be constructed by the Albertine Graben Refinery Consortium of companies, was chronologically the first sign of the risks entailed in such operations. Delays in relocations, a lack of consideration for communities' ways of living, inadequate infrastructures for water supply and waste disposal, as well as the low quality of land and insecurity of tenure, have transformed communities ways of living,



threatened their right to land, and consequently threatened their cultural development as well as their children's right to education.

Unfortunately, too few lessons were learned from this experience, and some of the mistakes that precipitated rights violations in Kabaale were repeated in the relocation of affected communities in the Tilenga concession area, operated by Total. Delays in compensation and relocation due to the project's suspension continue to threaten the livelihoods of communities, and have considerably limited their use of land; inadequate compensation rates are unable to provide sufficient means for them to restore or sustain their standard of living; and the increasing pressure on natural resources and the reduction in available nearby land further limit their capacity for resilience, in an area where the effects of the climate crisis are already translating into longer periods of drought and reduced harvests. An individualistic approach to land acquisition has led to an underestimation of the value of community networks, and of collective management of natural resources such as grazing lands. Cultural misconceptions have led to an underestimation of the value of houses, structures, plantations, and trees.

Although Total and CNOOC have adopted measures to counter the consequences of land-grabbing, include a gender-sensitive approach in the land acquisition and resettlement process, as well as to receive grievances from the affected people, these have proven insufficient to adequately prevent, address, and redress the risks of human rights abuses. Cases brought by the original landowners against land-grabbers are still pending before local tribunals. Single women have in many cases not been able to benefit from compensation, as they usually live on and farm their fathers' land, and married women have sometimes been left behind by husbands who collect their compensation and leave no land or economic alternatives for their wives to sustain their families. Grievance mechanisms, while attracting a number of complaints, have been unable to address the most critical challenges: cases of threats or attacks against communities or human rights defenders who speak up.

Similar violations are attributable to the construction contractors in the area, such as Kolin, which under the supervision of UNRA have created considerable impacts on the houses and livelihoods of communities residing close to construction sites. The explosions of rocks to open the way for roads has destroyed community gardens and boreholes, the vibrations generated have affected the structure of the houses in the area, inadequate road design has indirectly expropriated business owners on the borders of the road by rendering them inaccessible, and the lack of adequate security measures on the roads puts at risk the lives of children who live and study in their proximity.

These situations are certainly not the sole responsibility of the companies. The State of Uganda is responsible for regulating, approving, and monitoring the implementation of resettlement action plans and compensation rates, and for providing access to fair and timely trials. It has failed in its obligations to guarantee the rights to land and to an adequate standard of living, and has also failed to require companies to fulfill their legal obligations to provide prior, prompt, and adequate compensation. In operations conducted in the early phases of oil development, the State has clearly shown that it intends to prioritize economic development over the human rights of local communities.

For these populations, there is all the more reason to be pessimistic, as the attacks against human rights defenders opposed to the project, the climate of fear, intimidation, and violence in the area, and the slow pace of a justice system inaccessible to the most modest populations, augur very badly for the freedom of action of future whistle-blowers and protest movements, in a country where the legislative and regulatory context remains unfavourable to NGOs and human rights defenders.<sup>400</sup>

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400. See, e.g., the NGO Act of 2016, discussed in section III.1, above.

Companies should suspend their operations until guarantees are given that human rights defenders can work freely and safely, as they will play an essential role in identifying, preventing, and addressing the human rights and environmental challenges that are still to come in the next phases of the project. Although Total has opened the doors for dialogue with the research team, further efforts need to be made in order to ensure that a red line is drawn where the security of defenders is at stake.

While two decades of oil exploration, displacement, and expropriation have already had a disastrous impact on the rights of the people living along the route, and on their environment, the Report highlights that the worst impacts could be yet to come. As the extraction project is located in an area with an exceptional ecosystem, at the crossroads of the magnificent Lake Albert, the cradle of the Nile, Uganda's largest nature park, and a wetland protected under international law, any oil spill could have disastrous consequences. While companies claim to be implementing the industry's "best available techniques" to limit their social and environmental impact, the Report highlights that this is not always the case, especially when Total seeks to drill 10 oil wells on 45 hectares of the Murchison Falls National Park, and CNOOC decides to centre its infrastructure on the lake's shores, in the sensitive Buhuka Flats. These bad practices may clear the way for other business actors to embark in oil exploration and extraction activities on the other great lakes, many of which have hundreds of endemic and irreplaceable species and ecosystems. These environments are unique and even small disturbances could have cascading effects that influence biodiversity.

As the impacts on the environment – so far linked to well-testing, dust generated by truck traffic, reduction in available water sources, and inadequate waste disposal – are already translating into health impacts for local populations, the fear of seeing those impacts aggravated over time, as the project advances, is well-founded. Yet the capacity of the Government to hold companies to their commitments, and to monitor the levels and quality of water and air, is questionable.

In light of this complex reality, and having sounded the alarm concerning the huge human and environmental costs of oil in the Albertine region, we address the following recommendations to the State of Uganda, the Joint Venture Partners, and other business actors involved in operation and construction activities linked to the oil development in the Albertine region. Many of these recommendations must be addressed urgently – that is, before extraction commences – to avoid a human rights and environmental catastrophe.

## 2. Recommendations

### 2.1. On the Protection of Human Rights Defenders

The State of Uganda must respect its international obligations to take all necessary measures to ensure the protection of human rights defenders (HRDs) by ensuring their physical safety and personal integrity and by creating an environment conducive to carrying out their activities without fear of any acts of violence, threats, reprisals, discrimination, pressure, or any arbitrary acts by State or non-State actors as a result of their human rights activities. In order to abide by its obligations, **the State of Uganda shall require the suspension of all activities related to the project until sufficient guarantees for the free and secure work of human rights defenders are put in place.**

The guarantees to be put in place by the State of Uganda to guarantee the protection of HRDs shall 1) facilitate access to information, 2) repeal limitations on the activities of NGOs, journalists, researchers, and civil society organisations, 3) ensure the transparency and accountability of public and private

security forces, 4) ensure effective access to justice. In each of these fields specific recommendations are formulated:

1. Refrain from imposing a fee on access to information requests;
  - 1.1. reducing the excessive delays in responding to information requests; and
  - 1.2. making all key information, authorizations, licences, and impact assessments available online on the webpages of PAU and/or NEMA, including those concerning the exploration phase.
2. Ensure the pluralistic participation of civil society and fully meet the standards of the EITI Protocol on Participation by repealing any limitations on NGOs, civil society organisations, and journalists' activities, and allow them freely to fulfill their purpose of promoting and protecting human rights, in particular by:
  - 2.1. **removing any requirements for authorizations and MoUs imposed on NGOs, journalists, and researchers when they carry out activities related to the oil project**, as well as any other development projects in any part of the territory, in particular those imposed by the NGO Act of 2016 and any other unnecessary bureaucratic procedures;
  - 2.2. lifting any requirement for authorization by public authorities to engage with corporate actors, in particular the Joint Venture Partners of the Lake Albert oil project; and
  - 2.3. revoking the power of the National Bureau for NGOs to revoke NGOs' operation permits.
3. Ensure the transparency and accountability of public and private security forces, in line with EITI principles, by:
  - 3.1. **making the Production Sharing Agreements for oil exploration and exploitation publicly accessible**, including all clauses that contain relevant information regarding the agreed-to tax conditions, and the distribution of benefits among Joint Venture Partners and the State;
  - 3.2. **making all MoUs and contracts concluded with armed or police forces for the protection of personnel or infrastructure linked to the Lake Albert oil project publicly available**; and
  - 3.3. **including provisions in domestic law and clauses in contractual instruments to safeguard human rights** and prevent abuses of force by private or public security, by and military and police forces.
4. Ensure effective access to justice by:
  - 4.1. establishing special court sessions for easier adjudication of cases related to oil and gas;
  - 4.2. providing legal aid programs in order for courts to be more accessible to communities in the Albertine region;
  - 4.3. providing basic legal training to community members in order to improve their understanding of their rights and the means available to defend them in case their rights are violated; and
  - 4.4. providing economic, material, and human resources to the Masindi Court in order to resolve the backlog of cases yet to be decided.

The Joint Venture Partners and other business actors must respect the rights of human rights defenders to carry out their work in a safe and open environment. To comply with this obligation, **Joint Venture Partners and other economic actors operating in the framework of the oil developments in the Albertine region must halt all activities related to the project until sufficient guarantees for the free and secure work of HRDs are put in place.**

To comply with their obligations, businesses operating in the area must take measures to address the attacks and harassment experienced by HRDs in the past, and put in place mechanisms to address similar situations that may arise in the future.

5. With regard to the cases of attacks and harassment documented in the present Report,
  - 5.1. **Total shall investigate through an independent mechanism and using a methodology established in consultation with civil society, the alleged spread of misinformation and threats by its employees or contractors.** The result of such inquiry shall be made accessible to NGOs and human rights defenders. It shall include specific sanctions and redress measures if the alleged harassment is confirmed.
  - 5.2. Total shall maintain a continuous, constructive, and open dialogue with UN special procedures as well as with local and international NGOs who monitor the situation of HRDs in the area.
  - 5.3. The Joint Venture Partners shall request the State to investigate and sanction any abuse by police and military forces against HRDs.
6. To address the persistent risk of attacks against HRDs,
  - 6.1. all business actors operating in the area must avoid stigmatization through antagonistic rhetoric, and by spreading misinformation to discredit the activities of HRDs, as this may put them at risk within their own communities; and
  - 6.2. all business actors operating in the area must refrain from requesting authorizations from PAU or any other governmental authorities before engaging in dialogue with local or international civil society actors.
7. Business actors operating in the area must adopt specific policies and procedures to protect HRDs, including
  - 7.1. **independent mechanisms to identify and sanction the use of misinformation and other forms of pressures by CLOs against community members, and in particular HRDs;**
  - 7.2. a channel of communications whereby complaints regarding the behaviour of company representatives can be raised safely and in anonymity, and can be considered and assessed at the highest levels of decision making; and
  - 7.3. reinforced and adapted grievance mechanisms that are independent and accessible to HRDs.

## 2.2. On the Right to Land

The State of Uganda must respect, protect, and fulfill the right to land, understood broadly as encompassing not only the right to property, but also to land as a source of livelihood. It shall protect this right in its individual and collective dimensions, including in respect of traditional practices in the access, use, and management of natural resources, as well as ensure that its conduct is in line with constitutional and international guarantees of gender equality. **To comply with these obligations, the State of Uganda must** 1) urgently reinforce the legal framework and institutional framework on the right to land, 2) revise key elements of the relocation and compensation principles and procedures, 3) take actions to formalize land tenure to prevent land-grabbing and conflicts, 4) redress the past and persisting violations that have occurred in the land acquisition and resettlement process in Kabaale, 5) redress the loss of land and business caused by the construction of roads commissioned directly by UNRA, and 6) require the Joint Venture Partners to align their practices with international and constitutional principles and laws.

1. The State must urgently reinforce the legal and institutional framework on the right to land by:
  - 1.1. aligning the Land Act and Land Acquisition and Resettlement Framework with regional and international law, in particular by ensuring that the broad interpretation of the notion of adequate, prompt, and full compensation is not limited to an economic assessment but includes social, cultural; and ecological considerations;



- 1.2. fast-tracking the passing of the Land Acquisition bill and Valuation bill into law, and ensuring that the provisions contained therein abide by international standards;
  - 1.3. reviewing and revising when necessary the Land Acquisition and Resettlement Framework, the Guidelines for Compensation Assessment under Land Acquisition and Resettlement Action Plans to align them with the constitutional requirement to provide prompt payment of a fair and adequate compensation prior to the taking of possession or acquisition of property, as well as with international treaties;
  - 1.4. closely monitoring the implementation of Resettlement Action Plans by Joint Venture Partners and imposing sanctions and requiring redress when the requirements contained therein are not respected; and
  - 1.5. strengthening independent, effective, and accessible judicial mechanisms to address disputes related to the oil and gas exploration and exploitation activities as a condition *sine qua non* for the start of the construction and operation phases of the project. These may include:
    - 1.5.2. the creation of a specialised and accessible High Court circuit to handle land related disputes in the Albertine region; and
    - 1.5.3. the establishment of an independent and accessible alternative dispute resolution mechanisms to handle disputes that arise as a result of compensation and relocation processes.
2. Revise key elements of the relocation and compensation principles and procedures in light of obligations contained in regional and international treaties by:
- 2.1. **prohibiting the relocation of communities whose physical and/or cultural survival may be put at risk by relocation, due to the strong attachment to the land and natural resources they have inhabited and managed for generations;**
  - 2.2. adopting a collective rather than individualistic approach to land evaluation, compensation, and relocation, to adequately take into consideration social networks and the collective management of natural resources;
  - 2.3. ensuring and requiring the substantial participation and prior consent of local community members in the relocation process to assess the quality of land, and specifically to assess if it suits the growth of their traditional crops; and
  - 2.4. **revising the market value approach for the calculation of compensation rates to include a qualitative social and cultural analysis that aligns this methodology with international norms which require non-financial losses and assets to be compensated.** Such a revision shall:
    - 2.4.2. ensure that the compensation provided for all trees and crops takes into account the maturity of the crop/tree and the time and work involved in growing it, in light of the changing environmental conditions; and
    - 2.4.3. impose equivalent redress measures for residential and non-residential homes as well as for primary and secondary houses and structures, so as to ensure that all properties are adequately assessed and compensated.
3. Take actions to formalize land tenure to prevent land-grabbing and conflicts by,
- 3.1. supporting customary landowners in the registration of their lands as provided for under the laws of Uganda; and
  - 3.2. promoting the creation of land associations to formalize the tenure of land and resources managed collectively.
4. Redress the past and persisting violations that have occurred in the land acquisition and resettlement process in Kabaale, by:

- 4.1. providing land-ownership titles to all the families relocated to the Kyakaboga resettlement and ensuring that they are recognised as landowners in any further process for land acquisition and compensation;
  - 4.2. urgently providing solutions to the hygiene and sanitation problems caused by the proximity of the houses and latrines in the Kyakaboga resettlement; and
  - 4.3. providing alternative redress measures to compensate for the low productivity of the land allocated to resettled families, and its limited access to natural resources (such as potable water and wood) and education.
5. Redress the loss of land and business caused by the construction of roads conceded directly by UNRA:
- 5.1. when the construction of roads has caused the indirect expropriation of businesses as a result of the loss of their value, provide full compensation for the original value of the land and business rather than only a disturbance allowance.
6. Require business actors in the area to align their practices with international and constitutional law, in particular by requiring Joint Venture Partners to:
- 6.1. **reassess the value of compensation whenever the payment or relocation is delayed beyond the initial announced date (even for delays of less than a year), and include new planted crops or constructions in those reassessments;**
  - 6.2. demand that companies offer a variety of possibilities for relocation, including to other districts when this is necessary to prioritize community relocations, or to ensure the preservation of available grazing and arable land, traditions, cultural practices, and livelihoods, among other considerations;
  - 6.3. consider the access to and value of natural resources managed collectively (such as grazing areas and water sources, etc.) in relocation and compensation, to ensure that families do not see their standard of living negatively impacted; and
  - 6.4. provide a five-year relief support to persons who opt for land-for-land compensation.

**The Joint Venture Partners** and other business actors must respect the right to land of communities in the Albertine region. They **must abide not only by the international standards they adhere to (notable IFC Performance Standard 5), but more importantly by the requirements deriving from international and regional treaties**. To comply with this obligation, Joint Venture Partners must ensure full access to accessible and complete information and meaningful spaces of consultation, and must align relocation and compensation practices with international standards and treaties.

7. They must ensure full access to accessible and complete information.
- 7.1. Joint Venture Partners must provide access to the full version of the RAP before its approval by the CGV, in order to allow for communities' considerations to be taken into account.
  - 7.2. Road contractors and UNRA must conduct Environmental and Social Impact Assessments and Resettlement Action Plans, render them accessible to inspection, and adapt them in line with communities' and civil society organisations' comments and concerns.
  - 7.3. When land and asset surveys are conducted, Joint Venture Partners must immediately provide a copy of the assessment conducted to the concerned resident(s), in order to allow them to verify that the process of compensation is conducted satisfactorily.
  - 7.4. Cancel budget cuts, and reinvest budget and staff on the ground to ensure proper access to information for residents.

8. They must ensure spaces for consultation are not a one-way but a two-way conversation, wherein communities' concerns are heard and effectively taken into account, including by:
  - 8.1. providing sufficient time for questions and answers;
  - 8.2. providing complete information, including references to the potential risks, using a language that is understandable by community members; and
  - 8.3. ensuring the participation of civil society organisations from the region or at the national level.
9. Align compensation and relocation practices with international standards and treaties. This requires them to:
  - 9.1. improve the implementation of resettlement principles and procedures, including by,
    - 9.1.2. reinforcing measures to support and encourage communities to privilege collective relocation over individual compensation; and
    - 9.1.3. **refraining from restricting the choice of replacement land to the district where the residents are originally from whenever this is necessary to preserve their livelihood and standard of living, particularly considering the ecological characteristics of land, and the increasing pressure on available land and resources in the area of influence of the project.**
10. Revise compensation rates and procedures to ensure an adequate level of compensation that better preserves the standard of living of affected families and communities, taking into account the value of social networks and collective use of natural resources. In particular, Joint Venture Partners shall:
  - 10.1. reassess the amount of compensation per acre of land and adapt it in a way that allows community members to move with their families to locations where they will not continue to be impacted by the project, and where they can find equivalent social, cultural, and ecological conditions;
  - 10.2. provide compensation prior to depriving residents (totally or partially) of the use and enjoyment of the rights derived from their property;
  - 10.3. offer similar compensation for all property, regardless of the primary or secondary nature of the homes;
  - 10.4. avoid a delay of more than three months between the survey and valuation and the effective cash payment or relocation, to prevent negative impacts from long waiting-periods after cut-off dates;
  - 10.5. provide compensation for the crops planted and structures built by residents, including after the cut-off date, to ensure that in case of delay in the project implementation, families are not deprived of their sources of livelihood and are appropriately compensated, regardless of whether the delays are inferior or superior to a year; and
  - 10.6. ensure that the compensation provided for all trees and crops takes into account the maturity of the crop/tree and the time and work involved in growing it, especially in light of the changing environmental conditions.

Specifically regarding the impacts of road construction on the right to land, **UNRA and constructing companies, such as Kolin Insaat Turizm Sanayi Ve Ticaret, must provide compensation equi-valent to the value of businesses when the construction of roads has resulted in their *de facto* expropriation as a result of the loss of their initial value**, and compensation adequate to the impacts when the construction has resulted in the degradation of property or the destruction of gardens. Similarly, Joint Venture Partners must ensure that the same compensation is guaranteed by the sub-contractors for the associated roads and infrastructure included in their respective concession areas.

## 2.3. On the Right to an Adequate Standard of Living

The State of Uganda must respect, protect, and fulfill the right to an adequate standard of living, which is closely linked to the right to land but has an autonomous existence and encompasses, among other rights, the right to adequate housing, food, water, and sanitation. Given that the impacts on this right derive mainly from exploration and well-testing activities on the one hand, and road construction on the other, **to uphold its international obligations the State of Uganda must provide full compensation and access to justice to the residents affected by road construction, reinforce the legal framework to guarantee access to information, and limit further flaring activities in current exploration and future exploitation activities.**

1. The State must provide full compensation and access to justice to the residents affected by road construction, and more specifically must:
  - 1.1. ensure the case filed by the inhabitants affected by the construction of Kayso-Tonya road is promptly solved before the competent courts; and
  - 1.2. require and provide full compensation, beyond a disturbance allowance, when the value of a business is lost as a result of the construction of a road or any other infrastructure, considering that these losses result in an indirect expropriation of the affected families' means of livelihood.
2. The State must reinforce the legal framework to guarantee access to information, and must limit further flaring activities in current exploration and future exploitation activities, and more specifically by,
  - 2.1. making the ESIAs of the exploration phase easily and freely available to the public, including through NEMA's and PAU's webpages; and
  - 2.2. reinforcing the limitations on gas-flaring introduced in the Petroleum Act of 2013 by clarifying the strict conditions under which authorities are allowed to admit exceptions to such prohibition.

The Joint Venture Partners and other business actors must respect the right to land of communities in the Albertine region.

**Given that some of the impacts are a result of well-testing activities conducted by Tullow Oil, this company must immediately and urgently adopt the necessary measures to ensure full redress for affected people.** As future successors to Tullow's shares (once the acquisition of shares is finalised), **Total must ensure that such redress measures are provided or will inherit responsibility for Tullow's human rights abuses and bear the responsibility to provide full redress.** In particular Tullow must:

3. conduct an immediate **inquiry** on the ground to collect all pending demands for redress following the negative impacts of the exploration phase, notably as a result of well-testing, and duly address them before the departure of Tullow Oil from the Lake Albert region;
  - 3.1. explain in detail the activities conducted in the Kasemene-2 well between 2009 and 2012, and **provide full redress**;
  - 3.2. for families within the 300-metre radius, by at least paying the agreed compensation of 300,000 UGX per day per household, plus the interest for the years of delay in such payment, calculated from the day on which well-testing activities were finalised; and
  - 3.3. for households located beyond the 300-metre radius established as a buffer zone, provide compensation for the impacts on their health and loss of livelihood.



- 3.4. Such redress measures must be addressed by Tullow and Total during the negotiation for the acquisition of Tullow's participation. Unless they are fully addressed before the transfer of property, the human rights impacts will be inherited by Total.

Regarding past, present, and future impacts of construction activities and roads, the contractors of UNRA and the Joint Venture Partners must operate in conformity with national laws and international standards. Both UNRA and the Joint Venture Partners bear the responsibility to exercise due diligence and to ensure that their business partners respect human rights and the environment.

4. UNRA and Kolin Insaat Turizm Sanayi Ve Ticaret, as well as other identified constructors in the area, must provide redress to the residents whose houses and other structures have been affected by the vibrations generated from road construction and the seismic activities during the exploration phase. Such redress shall not only be financial but should include effective reparations to the damaged property.
  - 4.1. The Joint Venture Partners and UNRA must ensure that construction companies operating in the area of the project meet a minimum standard regarding respect for human rights and the environment as a first step in preventing and mitigating aggravated cumulative impacts. Specifically, they must:
    - 4.1.2. **for future construction and/or seismic activities, establish broader buffer zones and avoid areas close to communities in line with best practices and international standards and treaties;** and
    - 4.1.3. assess and adequately mitigate the damage that can potentially be caused to structures in the upcoming phases of the project as a result of increased truck traffic, drilling, construction, use of power-generating plants, excavation, and aircraft movement, among other activities.
    - 4.1.4. Contractors shall provide replacement of structures such as boreholes and other water sources when the existing structures are damaged as a result of their activities. New boreholes must provide the same or better water quality and secure access.

## 2.4. On the Rights to a Healthy Environment, Water, and Health

Under human rights and environmental treaties, at the regional and international levels, the State of Uganda is obligated to respect, protect, and fulfill the rights of people to water, health, and a healthy environment. These rights cannot be fully protected unless the State abides by the obligations derived from environmental conventions such as the Convention on Biological Diversity, the Ramsar Convention, and the Agreement on the Nile River Basin Cooperative Framework.

Furthermore, in the current context of accelerating climate crisis, and considering the particular vulnerability of Uganda to this phenomenon, the efforts of Uganda to fulfill the objectives enshrined in instruments such as the United Nations Framework Convention on Climate Change, the Kyoto Protocol, and the Paris Agreement are intrinsically linked with its obligations in respect the rights to water, health, and a healthy environment.

Nonetheless, by authorizing exploration and exploitation activities near the shores of Lake Albert, inside the Murchison Falls Natural Park and other protected areas, and without adequate prevention and mitigation measures that align with best available technologies, it has failed to honour its international obligations. To align its practices with the obligations contained in the above-mentioned instruments, the Government of Uganda must:

1. In line with international obligations which prohibit the authorization of industrial activities, such as oil exploration and extraction, in protected areas:
  - 1.1. **revoke licences for the exploration and exploitation of oil and gas within natural protected areas and near water sources;**
  - 1.2. **refrain from authorizing any further exploration, construction, or exploitation activities within protected natural areas or their buffer zones;**
  - 1.3. amend domestic laws, including the Environmental Act and the Petroleum (Upstream) Act to limit the exceptions that State bodies can grant to activities at risk of polluting natural protected areas; and
  - 1.4. adequately inform and consult neighbouring and riparian States of the potential negative impacts of the projects on Lake Albert and the Nile.
  
2. Adopt redress measures to address the human and environmental consequences of exploration, well-testing, and other activities conducted in the area. To achieve this objective it must:
  - 2.1. conduct an immediate inquiry on the ground to collect all pending demands for redress, following negative impacts of the exploration phase, including during seismic exploration and well-testing, and duly redress them before the departure of Tullow Oil from the Lake Albert region;
  - 2.2. investigate the causes of, and mitigate and remediate the upsurge in respiratory illnesses, miscarriages, and other conditions in the Albertine Graben;
  - 2.3. provide access to adequate health services to treat the impacts that continue to be felt by residents of the area; and
  - 2.4. equip health centres in the area with the relevant equipment, materials, technology, and personnel to address the health issues that have already been identified, and those that may, according to the ESIA's, increase at the different stages of the project.
  
3. Reinforce the legal framework for the protection of the rights to a healthy environment, health, and water, and ensure that independent monitoring bodies have sufficient technical, human, and economic means to control and sanction respect for such norms. This requires specifically that the State:
  - 3.1. **further regulate exceptions to the prohibition of gas-flaring and venting. Such regulations must specify a high standard and specific criteria to be met for the relevant authorities to be able to exceptionally authorize such activities;**
  - 3.2. sign and ratify the UN Convention on the Law of the Non-Navigational Uses of International Watercourses;
  - 3.3. **establish mechanisms to monitor the evolution of health impacts and hold the companies accountable in case of negative impacts;**
  - 3.4. implement further measures to protect biodiversity, including through an immediate protection plan for the Forest Savanna mosaic ecosystem;
  - 3.5. require companies to adopt stronger precautionary measures to protect Lake Albert from pollution from sewage and other waste treatments, as well as potential oil spills;
  - 3.6. **require companies to fully implement best available technology, including through further avoidance measures and reinjection of produced waters, sewage, and waste, before the start of oil extraction; and**
  - 3.7. ensure that commitments to use best available technology and best practices are effectively respected by the companies throughout the project. Prevent the companies from stepping back on those commitments on the basis of economic considerations.
  - 3.8. Prior to the beginning of the operations and the licensing of other oil fields, assess the cumulative impacts of all the projects, in particular regarding the level of water in the lake, and potential sources of pollution.

4. To specifically guarantee the adequate and continuous access to potable water sources for communities in the area, the State must:
  - 4.1. ensure that boreholes from which communities fetch water are functioning and have adequate water quality and quantity, and monitor their evolutions throughout the life of the project;
  - 4.2. if any irregularities or malfunctions are identified, make sure an alternative safe and accessible water source can be used by the community; and
  - 4.3. develop robust independent mechanisms to monitor water quality (surface and underground), air quality, biodiversity, and climate evolutions in the Albertine Graben.

**The Joint Venture Partners** also bear the responsibility to respect the rights to water, health, and a healthy environment, abiding not only by the commitments they have voluntarily made, but also the national legal framework, including international treaties, applicable in Uganda. To do so, Joint Venture Partners must above all refrain from conducting any exploration and exploitation activities within natural protected areas, their buffer zones, and any other sensitive ecosystems.

Furthermore, for all their operations, Joint Venture Partners must:

5. **review ESIA's and other management plans to fully implement best available technology, including through further avoidance measures and reinjection of produced waters, sewage, and waste. This includes conducting an independent review of the project design in light of Best Available Techniques before the start of oil extraction, duly taking into account other experts' recommendations to the ESIA, such as those in Bill Power's (E-Tech) assessment ; and**
6. step up commitments under the Paris Agreement, engage in a meaningful transition from fossil fuels to renewable energy, and include downstream consumption in all assessment of impacts on GHG emissions. A recent shareholder proposal submitted at Total's general assembly in June 2020 asked the company to step up its commitments under the Paris Agreement.
7. Regarding past violations resulting from well-testing activities, full redress including guarantees of non-repetition shall be provided before the departure of Tullow Oil from the area. As such,
  - 7.1. Tullow must conduct an immediate inquiry on the ground to collect all pending demands for redress following negative impacts of the exploration phase, including during seismic exploration and well-testing, and duly redress them before its departure; and
  - 7.2. Total must ensure such redress is comprehensive and effective before finalizing the acquisition of shares. If adequate and full redress is not provided before the departure of Tullow Oil, as future successor of Tullow, Total must provide redress.
  - 7.3. **CNOOC, Total, and UNOC, and any other Joint Venture or operating partner that would join the project, must commit not to conduct well-testing unless strictly necessary. If well-testing appears to be necessary in a future stage, they must abide by best available technologies and best practices, including the establishment of a sufficiently broad perimeter to prevent impact on nearby communities.**

Finally, in light of the French Duty of Vigilance law, Total must adequately take into account the above findings in the risk mapping ('cartographie des risques') and include adequate measures to address them in its Vigilance Plan ('Plan de Vigilance'), in line with the recommendations formulated herein.

In the same spirit, it is recommended that all joint-venture partners conduct a Human Rights Impact Assessment which adequately takes into account the voices of communities and of civil society, and adopt further measures to prevent, address, mitigate and redress any past, present or future impact on human rights and the environment caused or linked to their activities.





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