

Mission on Human Rights Defenders, Uganda (10-17 April 2021)

Total Exploration & Production Uganda (TEPU) is currently carrying out a project for the development of oil and gas activities in the Albertine region of Uganda. In recent years, the company has faced allegations of links to intimidation of Human Rights Defenders which it has systematically investigated. TEPU has not found any evidence which suggests that such allegations¹ are substantiated.

TEPU wishes to establish a more formal framework for the management and investigation of alerts and allegations of this nature connected to its activities, in addition to its existing procedures for handling grievances.

TEPU is aware that even where the company is not involved in such cases, there is an expectation by civil society that the company will exercise its leverage when made aware of allegations related to Human Rights Defenders in proximity to its activities and wishes to consider how best to exercise such leverage.

TEPU has benefited from the independent expertise of Mr. Michel Forst to help address these issues. The objective of the mission was to provide an independent report summarizing observations collected including recommendations regarding TEPU public statements on Uganda's human rights defenders, recommendations on management of grievances related to human rights defenders, and applicable internal procedures.

The mission took place between 11th and 17th April 2021. Michel Forst was accompanied, at his request, by a protection officer made available by an active NGO in the work of Human Rights Defenders to provide knowledge of the context, personal contacts, cultural background and translation.

The Total Group is strongly committed to the defence of Human Rights in its activities all over the world. In particular Total recognizes the importance of protecting Human Rights Defenders and does not tolerate any attack or threats against those who peacefully and lawfully promote Human Rights in relations to its activities. Total seeks to promote dialogue and exchanges with Human Rights Defenders in the framework of its activities. Where appropriate as recommended by the UN Guiding Principles on Business and Human Rights, Total seeks to exert its leverage to influence others to respect these principles.

¹ <https://africatimes.com/2020/01/02/rights-groups-fear-for-safety-of-ugandan-witnesses-in-Total-case/>
<https://www.google.com/search?q=Fred+Mwesigwa+and+Pastor+Jelousy+Mulimba+arrested+and+detailed+at+Entebbe+airport&oq=fred&aqs=chrome.0.69i59j46i275i433j35i39j46i2j0j46i131i433j0j46.1356j0j4&sourceid=chrome&ie=UTF-8>
<https://oxfamlibrary.openrepository.com/bitstream/handle/10546/621045/rr-empty-promises-down-line-101020-en.pdf>

A Definition of Human Rights Defenders

The United Nations Declaration on Human Rights Defenders² was adopted on 9 December 1998 by consensus of the General Assembly, on the 50th anniversary of the Universal Declaration for Human Rights after 14 years of negotiation. It is the most important reference point today.

The Declaration:

- Identifies human rights defenders as individuals or groups who act to promote, protect or strive for the protection and realization of human rights and fundamental freedoms through peaceful means.
- Recognizes the key role of human rights defenders in the realization of the human rights enshrined in the Universal Declaration of Human Rights and legally binding treaties and in the international human rights system.
- Represents a paradigm shift: it is addressed not just to States and to human rights defenders, but to everyone. It emphasizes that there is a global human rights movement that involves us all and that we all have a role to fulfil in making human rights a reality for all.

B Context: reduction of civil space in Uganda in relation to petroleum issues

Natural gas and oil projects have been declared “in the national interest” in Uganda. According to NGOs and journalists met, those who wish to investigate human rights questions in the oil and gas sector in the district of Buliisa, Hoima and Kikuube must obtain an authorisation from various authorities. Such authorisation can take more than 6 months to be obtained and there is no right to information or appeal.

In addition, according to certain Human Rights defenders, TEPU staff are insufficiently accessible to discuss human rights issues in the oil and gas sector and in particular to respond to complaints of PAPs.

During the mission TEPU provided examples of how responses to complaints are made (notably through the grievance handling mechanism). TEPU management stated that it is open to meeting the Human Rights Defenders directly to discuss their complaints.

1. “Threats” and intimidation

In this report the term “threats” is defined broadly to include both serious factual incidents confirmed by witnesses and material evidence but also threatening or intimidating behaviour (phone calls, text messages, graffiti), official or unofficial demands by the police or security services, arrests or administrative detentions, friendly “warnings” by anonymous people, attitudes or behaviour which gives rise to fear.

² Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms

During the mission, several persons mentioned that the sites of oil and gas platforms and installations in Buliisa are protected by three types of security services: special forces government agencies, the oil and gas police and private security.

Civil society and persons affected by the oil and gas project (PAP) are prohibited from accessing these sites and complain that they are therefore unable to carry out investigations. TEPU explained that such prohibition is common for industrial sites due to the need to ensure the safety of people and integrity of equipment.

Concern was also raised that taking a photo of oil and gas activities is strictly prohibited and that even government officials are refused access to oil and gas facilities. TEPU indicated that Petroleum Agreements expressly provide a right of access to facilities for government and their representatives.

The chain of command of the security services is not well understood by the PAPs, or civil society actors wishing to bring complaints. Where cases relating to security services are raised, they are often said to be met with a refusal to register such complaints. The attorney general's office is said to have refused to transfer complaint files.

TEPU indicated that it promotes VPSHR rules and organises training on human rights for private and public security forces.

During the missions repeated accounts of behaviour which could be interpreted as threats, intimidations or warnings were given, and additional explanations and individual meetings were held to explore the reality and nature of such accusations.

Conclusions

Generally, during the mission no statements or evidence of serious threats were gathered, but accounts of behaviour, words, messages and brutal attitudes including by personnel and contractors in the field, which could amount to threats or intimidation or be interpreted as threats or intimidation were heard.

PAPs and community leaders were not aware of any action taken by TEPU in response to such threats. TEPU stated that the company had not received any grievances in this regard, but that when they are informed of threats they make appropriate enquiries and intervene with the authorities where necessary.

Repeated testimonies suggest that there are still doubts about this and that it is therefore necessary to put in place additional investigation mechanisms and enhance dialogue to reassure organizations and individuals that they can make complaints or raise questions securely and in confidence, and that these will be properly and promptly handled by TEPU.

TEPU insists on the need for complainants to provide as much detailed information about any incident as possible (circumstances, location, alleged perpetrators). This allows the company to ensure that investigations are thorough and carried out properly.

A high-level meeting by TEPU with Ugandan police could encourage the latter to always be diligent in registering complaints and escalating them so that they are centralised and processed correctly.

With the permission of the persons and organisations in question the specific cases of three human rights defenders were raised with Total, discussed in detail and a corrective action plan proposed.

2. Consultations and conduct of meetings

A recurrent issue raised during my mission was the subject of consultations and meetings organised by TEPU. Many perceive these as unproductive, pointless, intended to diffuse large quantities of information without leaving sufficient time for discussions and questions.

This situation gives rise to a significant level of frustration by some PAPs and organisations. Complaints revolve around meetings predominantly held in Kampala, duration of meetings and poor organisation, unclear diagrams, unequal speaking time, meeting agenda not communicated, too many documents released prior to meetings, cultural issues, need to hear women's voices and opinions, need to answer questions.

TEPU holds many regular engagements with its stakeholders in the Buliisa district (including on site) and at national level. The company is open to working on improving meeting.

It is strongly recommended that the format and conduct of meetings and consultations be reviewed and that training be organized to improve conduct of meetings. The criticisms heard are severe, and repeated and this issue tarnishes the image of TEPU. Meetings should be designed first and foremost to meet the needs of participants.

It would be desirable for TEPU to consider putting in place a formal mechanism for dialogue with civil society concerning human rights issues. TEPU could consider employing the meeting format used by the European Union delegation. Also, a group of non-governmental organizations could be regularly invited to dialogue with TEPU specifically in relation to human rights and defenders to ensure that messages are duly passed on to the Project and site.

3. Land compensation mechanisms

Although the issue of the land compensation mechanism was not specifically included in the scope of the mission, it became clear that this compensation process is at the heart of the allegations of threats and intimidation. During consultations and meetings held about human rights defenders, the compensation mechanism was consistently raised. The main criticism given was lack of transparency. Lack of dialogue can cause grievances to accumulate, criticisms to be repeated and

an environment of suspicion to build up. Rumours then contribute to the spreading of such information.

Allegations included: land and asset valuation tables are not public; absence of written records of valuations; compensation paid lower than expected; differences between valuation of fruit trees and actual payment; disputes over primary residences; spouses leaving with compensation money and abandoning family; dissension between family members; failure to respect sacred cultural sites, court action.

TEPU gave a detailed presentation of land procedure implementation and proposed that names of individual complainants be provided to them so that the files can be reviewed individually and checked.

4. Handling complaints

Finally in relation to extra-judicial treatment of complaints from civil society organizations and PAPs, it was observed that TEPU's grievance handling mechanism is carefully monitored and it is possible at any time to search the database to verify the status of a complaint in real time.

Interviews with civil society in Kampala and on site, indicated that the grievance handling mechanism appears to be distant, obscure and inaccessible. Several PAPs said that they did not know how to ask TEPU questions on specific cases, or where to find information on complaints registered. This may be reflective of a level of misunderstanding and mistrust which should be addressed.

This finding is at odds with the independent expert's report on RAP 1 commissioned by TEPU (Giovanetti Report June 2019) and which is published on the internet as part of TEPU's transparency initiative. This seems to suggest that the grievance procedure is well known and used by the PAPs.

Although TEPU already has an office close to stakeholders in Buliisa, TEPU is regarded as insufficiently accessible because its headquarters are located in Kampala. The opening of a permanent TEPU office in Hoima could be considered and used to display additional information on land and compensation mechanisms, complaints processes and so on.

In order to develop closer relationships between companies and NGOs, TEPU could encourage the French embassy to organise meetings between NGOs and French companies, and suggest that European companies be invited to meetings with Human Rights Defenders organised by the Delegation of the European Union. TEPU could also organize a briefing with European companies based in Kampala to present TEPU's commitments on human rights including human rights defenders.

Conclusion

Given the number of testimonies heard, the diversity of sources and the concordance of issues raised by different actors, the issues raised above should be promptly addressed and investigated thoroughly.

It was agreed that a second exchange would take place in the coming months to review recommendations related to Human Rights Defenders.

Summary of recommendations

1. « Threats » and Intimidation

- Continue TEPU's high-level contacts with the Ugandan police to sensitize them to the need to respect human rights and in particular to register complaints and their follow-up.
- Set up a hotline to record reports of intimidation. Analyse and report on them.
- Continue to work on training and “capacity building”, along with Atacama, for personnel working on site including Community Liaison Officers (CLOs). Investigate any allegation of reprehensible behaviour on the part of individuals and take appropriate measures (warning, sanctions, etc).
- Provided that such a meeting does not interfere with ongoing litigation meet the Human Rights Defenders interviewed during this mission in Kampala, in the presence of a neutral third party. Listen to them carefully and inform them of the measures taken by TEPU with the Ugandan authorities to sensitise such authorities on the need to respect human rights as well as the rights of defenders.
- Display at TEPU headquarters and sites in Kampala and Buliisa, as well as in publications and on its website, a TEPU statement on respect for human rights and fundamental freedoms, as well as on recognition and respect for the rights of Human Rights Defenders (as set out in the United Nations Declaration on Human Rights Defenders) as well as a commitment not to tolerate any violations of the human rights of defenders in connection with TEPU activities.

2. Consultations and conduct of meetings

- Review the format and conduct of meetings and consultations.

- Organise training on conduct of meetings.
- Pursue regular contacts with civil society on the issue of PAPs, and consider improvements for instance using the example of meetings organized by the European Union delegation.

3. Land Compensation mechanism

- Following authorization from the Ugandan authorities, make public and display land and asset valuation grids in TEPU offices in Buliisa and in Kampala.
- Ensure that the valuator has systematically provided the PAPs with a document outlining the assessment of land and assets, as well as the amount of compensation concerned and PAPs signatures.
- Provided that the bank permits this and IFC principles are complied with, set up a banking mechanism requiring spouses to withdraw funds together and preventing one of the two from substituting themselves for the other.

4. Handling complaints

- Consider opening a permanent TEPU office in Hoima, with clearly identified staff similar to the office in Buliisa or strengthen the opening hours and presence of TEPU in its Buliisa office in order to give a "face" at TEPU.

5. Communication with other stakeholders:

- Suggest to the French Embassy that they invite a few selected NGOs to working meetings along with TEPU and other French companies present in Uganda.
- Suggest to the French Embassy that the relevant personnel in TEPU and the European companies be invited to meetings with human rights defenders organized by the European Union Delegation.
- Organize a briefing with European companies located in Kampala in order to present TEPU's commitments on human rights and human rights defenders
