



7/March/2017

Open letter to Hon. Minister Betty Amongi on Cancellation of Land Titles in Buliisa

Stop political rhetoric; you have no powers to direct land boards, cancel land titles

Dear Hon. Betty Amongi,

Africa Institute for Energy Governance (AFIEGO), a public policy research and advocacy organisation dedicated to influencing energy and related policies such as those on land to benefit the poor and vulnerable, takes this opportunity to appreciate your efforts to address the land problems affecting Ugandans.

Among others, we recognise that since your appointment to the ministry of lands, you have taken several steps to find lasting solutions to end conflicts relating to land issues especially as regards land grabbing in the country. Land grabbing mostly affects the poor and vulnerable in Bunyoro and across the entire country and it is commendable that you are engaging in efforts to help the poor.

While we appreciate your efforts to address land challenges in Uganda, we also take note of the fact that a number of government's and your activities contravene the law and contribute to the land challenges you seem to seek to address.

First, we note that more often than not, many local communities in different parts of Uganda have been victims of government's high-handedness where government uses compulsory land acquisition to acquire and or possess private land without following the dictates of Article 26 of the Constitution. The above article provides that government can exercise her powers of compulsory land acquisition only after prompt payment of fair and adequate compensation prior to acquisition or possession of such property.

But, over the years, government has displaced local communities including the Kabaale-Hoima refinery-affected communities, the Bujagali dam project-affected communities, the 2005 Jinja-Kenya power transmission line project-affected communities, the 2005 Mbarara-Rwanda power transmission line project-affected communities, Hoima-Kaiso-Tonya road project-affected communities, Naguru Estate communities, Shimoni schools and more recently the Park Yard communities without respect to Article 26 of the Uganda Constitution. For the last five years, the Kabaale communities that were displaced by government to acquire land for a refinery and opted for relocation are still waiting for their compensation!

As regards your order to cancel all land titles issued between 2010 and 2017 in Buliisa district, we take this opportunity to remind you that your order is unconstitutional, unlawful and a danger to the socio-economic progress of the country. We highlight how below and demand that your order is rescinded immediately to save poor Ugandans from legal costs among others:

- i. **Government responsible for lands problems through running down lands institutions:** First, we recognise the need to protect Ugandans especially the poor and vulnerable communities in Buliisa and across the country against land speculators and grabbers. There is urgent need to address this challenge in a legal manner that promotes social justice, equity and economic progress. Let us not allow desperation to cloud our sense of judgment and make more mistakes in the process of looking for solutions. Land owners, buyers and sellers must be protected or and penalised in accordance with the law. As government, you must develop wisdom to differentiate between symptoms and diseases. We must face the reality. The biggest cause of land problems in the country is government's failure to sufficiently and efficiently fund and run land institutions.
- ii. **Re-centralisation of issuance of customary land certificates causing confusion, corruption:** For example, the central government and specifically the ministry of lands has failed or ignored the need to empower district land boards with skills and funds to deliver services to the people, appoint area land committees at parishes and sub-counties and give them appointment letters; this, in addition to failure to enable district land boards to pay and facilitate processes leading to the issuance of certificates of customary ownership to land owners who own customary land in Buliisa and other areas of Uganda. As a minister, it is your responsibility to empower land institutions rather than accusing them of corruption. Indeed, issuance of customary certificates that was supposed to be done by district land boards was re-centralised by your ministry through unnecessary procedures. Instead of addressing these technical matters, you spend most of your time issuing political directives that do not have any legal basis, national and international.
- iii. **Failure to prosecute corrupt lands officials:** All titles issued between 2010 and 2017 were issued by the district land board and other institutions of government but to date, no official from those institutions has ever been prosecuted and convicted for facilitating and engaging in fraud. Yet you want Ugandans to believe that you are committed to protecting the rights of the local communities. As you engage in acts that go against the law, the so called land grabbers will take government to court and it's the poor Ugandans' taxes that will pay those rich people who have the means to access and influence the courts. Ugandans cannot support your unlawful actions as they will not address their problems but rather, impose more costs on them.
- iv. **Land boards are independent; no one can direct them:** More so, section 56 of the Land Act of 1998 establishes a District Land Board for every district as a body

corporate with a common seal, with powers to sue and to be sued, while section 60 of the same law gives the Board independent powers to the effect that no one has powers to direct or control its operations. In this regard, where does the minister get powers to direct the Buliisa or any other district land board in Uganda to cancel a land title? ***Those are merely political statements and while they may excite citizens, they do not have any legal force and therefore should be ignored by all those who work to promote the rule of law in this country.***

- v. **Land certificates can only be impeached or terminated on the basis of fraud:** Further, section 59 of the Registration of Titles Act cap 230 states that a certificate of title is conclusive evidence of ownership, and can only be impeached or terminated on the basis of fraud attributed to the person holding it. Under the Constitution, only Parliament has power to make laws and as such, the president's directive issued in 2010 stopping issuance of land titles in Bunyoro was void ab initio (from the beginning). It has no force of law except if the government has abolished the Constitution and Parliament and therefore returned to rule by decrees. To this extent, where is the minister's basis to cancel a land title issued by an independent body of government?
- vi. **Powers to cancel fraudulently acquired land titles vested in commissioner for land registration, not minister:** It should be noted that even where there is fraud, it is only through court orders and or powers invoked by the commissioner for land registration that can legally cause cancellation of a certificate of title issued by a district land board or the commissioner for land registration. Consequently, a minister has no place in the law to cancel a certificate of title whether in Buliisa or any other part of the country, even where there is fraud. ***This is the reason why on December 27, 2016, the High Court in Masindi stopped the minister's order to cancel Bunyoro Kingdom's title for land purported to be part of Bugoma Forest Reserve.***
- vii. **Directive goes against principles of natural justice:** Further, the minister's directive offends the principles of natural justice. It is unfortunate that the minister is directing the Buliisa Land Board to cancel land titles without giving the owners of those certificates a chance to be heard. If the Board goes ahead to cancel the titles on the basis of such an unlawful order, it will be successfully challenged in court and result into payment of huge damages to the victims.
- viii. **Directive ignores community needs to sell land to access basic needs:** Another important question is, who benefits from the ministers directive? Bunyoro region is part of Uganda and is governed under the same Constitution where under Article 26, every citizen has a right to own land, buy, and sell and generally use his or her property freely without restrictions except under compulsory acquisition where government has paid fair and adequate compensation. But now, the minister is

creating conditions that paint the picture that Bunyoro is under a state of emergency. Yes, we want communities to be protected but such general orders can have both direct and indirect negative effects on the people. ***There are many who want to sell their land to send their children to school, get medical treatment, get capital to do business and other things. How do such orders help these people other than creating confusion in the public?***

- ix. Finally, the directive is coming at a time when the same minister is pushing to amend the Constitution to provide conditions where government can take over someone's property/land before compensation. It is also happening at a time when a commission of inquiry has been instituted to investigate and advise government on how to address land conflicts in Uganda. If there is no ill agenda on the part of the minister, why not wait for the commissions' findings that will allow government to make decisions based on evidence rather than political convenience that cannot stand a test of time and eventually will not benefit anyone?

We reiterate that anything done outside the Constitution by any person or authority is unlawful and Ugandans have a right to oppose and reject it more so when the actions taken will cost them dearly.

Thank you



Dickens Kamugisha

Chief Executive Officer, AFIEGO

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- H.E President Yoweri Kaguta Museveni
- The Minister for Energy and Mineral Development
- The Chairperson, Commission of Inquiry on Land
- Speaker of Parliament
- The Chairperson, Natural Resources Committee of Parliament
- Area MPs of Hoima and Buliisa districts
- The Chairperson, Hoima District Land Board
- The Chairperson, Buliisa District Land Board

