



July 20, 2017

COMMUNIQUE CALLING ON MEMBERS OF PARLIAMENT TO REJECT THE GOVERNMENT BILL TO AMEND ARTICLE 26 OF THE CONSTITUTION

Introduction & Background

On Wednesday, July 19, 2017, national and grassroots civil society organisations (CSOs) including Africa Institute for Energy Governance (AFIEGO), National Association of Professional Environmentalists (NAPE), Centre for Constitutional Governance (CCG), World Voices Uganda (WVU), South Western Institute for Policy and Advocacy (SOWIPA), Guild Presidents Forum on Oil Governance (GPFOG), Kanungu Youth Initiative for Environment (KYIE), Oil Refinery Residents Association (ORRA), Green Organization-Kyambogo, Empagi Zabunyoro, Buseruka Twimukye Women's Organization, Kigezi Coffee Development Academy, GRAFENI BUTIMBA Hoima, Kakindo Orphans-Buliisa and others met at AFIEGO's field offices in Hoima district and discussed the Constitutional Amendment Bill Number 13 of 2017 in which the government seeks to amend Article 26 of the 1995 Constitution to legalise illegal activities such as acquisition of private property before payment of fair and adequate compensation.

While recognising government's development efforts, the participants of the meeting expressed disappointment at government's failure to appreciate the dangers of unsustainable and inhuman development. They warned that the proposed amendments will worsen human rights violations which have been going on in disregard of the current Constitutional provisions. They further noted that the amendment, if effected will make worse the situation of land grabbing, displacements, delayed compensation, payment of unfair and inadequate compensation, poverty, land conflicts, food insecurity, destruction of protected areas such as lakes, rivers, parks, forests and others as the deprived communities by necessity struggle to find alternative survival including land for settlement.

More so, the participants observed with regret that since the discovery of oil, government's appetite to compulsorily acquire private land without payment of fair and adequate compensation prior to acquisition has increased. They noted that the current efforts to amend the Constitution is mainly intended to be used by government to give herself more discretionary powers on when and how much to pay in compensation. These powers will soon be used by government to acquire land

for the on-going oil developments in the country, they further added. “We know that the government and oil companies will need land for feeder pipelines from all the oil wells scattered in different locations including sensitive biodiversity areas such as national parks, forests and others to the central processing facilities (CPFs), land for CPFs, land for pipelines from CPFs to the refinery and export crude pipeline from Hoima to the border with Tanzania. Land will also be needed for the finished products’ oil pipeline from Hoima to Buloba in Wakiso near Kampala. More land will also be needed by the government for waste management plants, camps, roads, power stations and lines, heating centers and many others”.

The civil society organisations noted that it is indeed unfortunate that the government is able to fast track the amendment of Article 26 but for the last four years, the same government has failed to complete the process for the enactment of the new National Environmental law and formulation of the new Environmental Impact Assessment (EIA) and Strategic Environmental Assessment (SEA) Regulations. They noted that without such new laws, oil development activities will continue as usual making it difficult for the citizens to demand for social, environmental and economic accountability from those in charge of the oil and other sectors that are potentially harmful to conservation.

The participants of the meeting reminded the members of parliament (MPs) to take responsibility of protecting the rights of their people and reject the proposed amendments to Article 26 of the Constitution as a means to stop legalising injustice against citizens. In the same spirit, they invited the MPs to use their oversight powers to compel the Ministry of Water and Environment to immediately table before Parliament the new National Environmental Bill and formulate new EIA and SEA regulations in order to safe guard biodiversity and citizens against the dangers of oil.

They called upon the government to solve the problem of corruption and poor planning in order to maximize development opportunities while promoting human dignity and conservation. Below is the detailed discussion the participants had and the recommendations they made.

Discussion and observations

- a) The civil society organisations commenced the meeting by reviewing a number of government’s previous actions that have made many communities to suffer grave injustices. They noted that most of the injustices caused by the compensation challenges have been as a result of government’s reluctance to enforce and comply with Article 26 of the Constitution and other relevant laws which protect citizens from property deprivation. Participants cited 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 who were displaced without respect to Article 26. They further noted that for the last five years, the

Kabaale communities that were displaced by government to acquire land for the oil refinery and opted for relocation are still waiting for their compensation.

- b) The participants at the meeting also expressed disappointment at government's desire to misuse Parliament to amend the Constitution to legalise such an impunity. They noted that if parliament amends Article 26, this action will mark the end of property rights in Uganda and the protection of biodiversity at a time when land conflicts are at the highest level. Participants further noted that many communities have been forced out of their ancestral lands to live like refugees, in isolation and without dignity.
- c) The groups also noted that for the first time in the history of Uganda, the courts that are meant to guarantee justice to everyone irrespective of status will be used by the government to engage in promoting conflicts through keeping products of disputes. They noted that it is unfortunate because courts are meant to be impartial and adjudicate cases without sides. Participants further noted that courts are too expensive, far from most communities and cases take long to be decided on, denying majority citizens access to justice. They noted that depositing of the aggrieved parties' compensation as the only condition to allow government take over private property simply means the end of the right to prompt, fair and adequate compensation. It will introduce maximum dictatorship against property owners by the government, the participants noted.
- d) They also noted that 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 to facilitate issuance of certificates of customary ownership to land owners who own customary land in Uganda.
- e) The CSOs noted that in addition to weak district land boards is a lands system that has failed to enable the operation of land tribunals at districts yet these are the institutions that were meant to provide affordable justice to the poor. The groups observed that in 2006, the mandate of the district land tribunals which are provided for under Section 74 of the Land Act (1998) was outlawed and the-then Chief Justice directed that the hearing of land cases to be transferred to the Chief Magistrate and Grade One Magistrates' courts. They noted that without these tribunals, affected communities are left at the mercy of the government and project developers.
- f) The participants at the meeting observed that government is quickly fast-tracking oil sector developments to beat the 2020 first oil deadline through acquisition of land but the same government has for the last four years failed to complete the process for the enactment of the new National Environmental law and formulation of the new Environmental Impact Assessment (EIA) and Strategic Environmental Assessment (SEA) Regulations. They

noted that without adequate legal framework in place, Uganda will not escape the oil curse; the amendment may actually mark the beginning of the oil curse where plenty and misery mix, the participants pointed out.

- g) The groups pointed out weak institutions, corruption and poor planning as the biggest obstacles to development and human dignity. They noted that the single biggest cause undermining developments in Uganda is weak institutions, corruption and poor planning where most government officials focus on their own selfish interests rather promoting the common good. The participants questioned why government borrows funds and enters into contracts with contractors before securing land. They noted that it's because of the above-mentioned vices that the proposal to amend Article 26 will not promote development but help those in power and authority to take over protected areas and land from the poor who cannot defend themselves.
- h) Finally, the participants also observed that government has failed or ignored the need to put in place regulations for the assessment and payment of compensation as required by section 20 of the 1965 Land Acquisition Act. They noted that the absence of compensation regulations means that there is no formal framework that can help government and landowners negotiate and determine what is “timely, fair and adequate compensation”, as provided for under Article 26 of the Constitution.

Recommendations

In view of the above, they recommended the following:

That Parliament should reject the Bill No 13 of June 2017 and instead use her oversight powers to compel government to implement progressive legal reforms as follows:

- (i) **Put in place regulations for the assessment and payment of compensation in line with section 20 of the Land Acquisition Act:** Parliament should use her oversight powers to compel the Minister of Lands, in consultation with the public, to urgently, in line with section 20 of the Land Acquisition Act (1965), put in place regulations for the assessment and payment of compensation to act as a guide on how government and developers can negotiate with project affected persons to reach consensus on the promptness, fairness and adequacy of compensation. There should be clear time frames for when payments should be paid after assessment and valuation. The terms fair and adequacy should be defined to remove ambiguities. This reform will eliminate or at least reduce disagreements that delay government projects and most importantly ensure that victims of compulsory acquisition get adequate and timely remedies.
- (ii) **Like in parliamentary electoral cases, a time frame for resolution of cases relating to disputes under Articles 26 and 50 of the Constitution should be given:** Any case on land acquisition and compensation disputes should be resolved by courts and tribunals

within a period of six months from the date of filing it. Further, justice systems that are closer and conducive to the locals should be established. CSOs are ready to work with MPs to present a private members bill in order to effect progressive legal reforms.

(iii) Allocate sufficient budgets for equipping district land boards, Areas Land Committees and Recorders to deliver on their mandates: Parliament should use her oversight powers to ensure the above institutions are sufficiently facilitated with funds and skills to enable them update compensation rates in consultation with communities on annual basis for crops, building of non-permanent nature, customary and an unimproved land; the decisions of the above institutions should not be changed by the Chief Government Valuer.

(iv) Table and enact the new National Environmental Bill: Parliament should use her oversight powers to direct the government through the Ministry of Water and Environment to immediately table before Parliament the new National Environmental Bill and formulate and operationalise the new EIA and SEA regulations to strengthen conservation of biodiversity amidst oil challenges.

(v) Strengthen governance institutions, fight corruption and improve planning: Parliament should use her oversight powers to compel government to undertake development reforms to address the challenge of weak institutions, corruption and poor planning. Once these are addressed, the country will achieve sustainable development that supports human dignity and biodiversity.

(vi) Revive the district land tribunals: Parliament should use her powers to reform the laws on the functioning of tribunals to enable the communities to access affordable justice.

The leaders of CSOs that participated in the meeting are committed to mobilise communities across the entire country to oppose the Bill No 13 of June 2017 in order to guard against violation of citizens' rights.

For God and our country.

Signed by:

- Africa Institute for Energy Governance (AFIEGO);
- Centre for Constitutional Governance (CCG);
- World Voices Uganda (WVU);
- South Western Institute for Policy and Advocacy (SOWIPA);
- National Association of Professional Environmentalists (NAPE);

- Guild Presidents Forum on Oil Governance (GPFOG);
- Kanungu Youth Initiative for Environment (KYIE);
- Oil Refinery Residents Association (ORRA);
- Green Organization-Kyambogo;
- Empagi Zabunoro;
- Twimukye Womens Organization;
- Kigezi Coffee Development Academy and;
- GRAFENI BUTIMBA.