



**14/March/2018**

Rt. Hon. Rebecca Kadaga,  
Speaker of Parliament,  
Parliament of Uganda,  
Kampala (U).

Dear Madame,

**OPEN LETTER TO PARLIAMENT TO USE ITS OVERSIGHT POWERS TO ACT ON THE FINDINGS AND RECOMMENDATIONS OF THE DECEMBER 2017 AUDITOR GENERAL REPORT ON INJUSTICES AGAINST THE REFINERY AFFECTED PEOPLE OF KABAALÉ PARISH, HOIMA**

On behalf of Africa Institute for Energy Governance (AFIEGO) and on my own my own behalf, I take this opportunity to thank you for the continued efforts to keep this country on a democratic path and to maintain constitutional order despite the many challenges around us.

The objective of writing this letter is to further the democratic principles to which Uganda aspires by requesting that you, Rt. Hon Speaker and your Parliament, use your legislative and oversight powers to ensure that the findings of the December 2017 Auditor General report capturing among other things, the injustices against refinery-affected people of Kabaale parish, Buseruka sub-county, Hoima district, are acted upon and the refinery-affected people get justice.

As you recall, in 2013, AFIEGO and partners petitioned your office calling upon Parliament to prevail over government and in particular the Ministry of Energy and Mineral Development (MEMD) to stop the violation of the refinery-affected people's constitutional rights as provided for under Article 26. In that petition, we brought to your attention how the MEMD and its contractors had gravely violated and caused untold suffering against the refinery PAPs of Kabaale-Buseruka, Hoima district.

While Article 26 of the Uganda Constitution provides that every citizen is entitled to own property and where that property is to be acquired by the government under compulsory acquisition, to ensure that the affected person or people individually and collectively get paid by government promptly, fairly and adequately prior to any acquisition, the MEMD violated these rights with impunity during the compulsory land acquisition in which the refinery-affected people of Kabaale-Buseruka, Hoima district were affected.

Unfortunately, your Parliament did not take effective action to protect the affected people perhaps due to lack of sufficient evidence and as a result, the over 7,000 people including over 3,500 women, 1,300 children, 926 pupils, 106 sick people, 200 elderly persons and others have been going through life of deprivation, misery, desperation, isolation and death.

In 2017, the Auditor General (AG) of Uganda completed an audit of the implementation of the Refinery Resettlement Action Plan for the Refinery Project of 2012 and made a number of findings, contained in the AG's annual report of December 2017, which confirmed issues we had presented to you in our 2013 petition. The findings include:

- a) **Compensation delayed for over five years:** The AG found that despite an investment of UGX 64,000,000,000/ (UGX 64 billion) and considering the sensitivity of the project with over 3,500 women and 1,300 children affected, the compensation process that was to commence on June 13, 2013 and end on February 13, 2014 was not yet complete by December 2017. This means that the compensation process lasted for a period of over five years since 2013 and this is injustice against the refinery project-affected people (PAPs) especially the women and children.
- b) The AG also found that out of the 2,680 refinery PAPs who had opted for cash compensation, only 104 (4%) were compensated within the agreed time between June 2013 and February 2014. This means that 2,657 (99%) of the PAPs who opted for cash compensation were not paid in line with Article 26 of the Constitution that makes it mandatory that any one affected by compulsory land acquisition is entitled to prompt, fair and adequate compensation. To date, seven years since 2011/2012 financial year, some of the above PAPs are still waiting for their compensation. Who is responsible for this grave violation of the Constitution? Parliament must ensure that such questions get answers as a matter of urgency to enable the victims get justice.
- c) **Using an unapproved valuation methodology:** Further, the failure or omission by the MEMD and SFI to use the valuation methodology approved by the Chief Government Valuer (CGV) in some of the affected villages alone resulted into a loss of UGX 295,750,800/ (over UGX 295 million) on the part of taxpayer and UGX 16,172,100/ on the part of the refinery PAPs. The officials responsible should pay back these lost funds.
- d) **Use of obsolete rates:** The AG also found that all the PAPs were compensated based on compensation rates of 2011/2012 which were not approved by the Hoima District Land Board and were obsolete, contrary to Article 26 of the Constitution and section 59 of the Land Act (1998) as amended. This clearly means that government, through the MEMD, violated the rights of all the PAPS including women and as such, the victims of such violations must get justice. Parliament has the opportunity to enable the 31 PAPs who are yet to be paid to be re-assessed and paid based on the current rates.

- e) **Discrimination in payment of compensation:** The AG also found that the MEMD paid some of the PAPs higher or lower than the purported rates set by the HDLB. This again clearly indicates violation of the PAPs' rights to fair compensation and someone responsible must be held accountable.
- f) **Some PAPs yet to receive compensation:** Further, the AG found the failure by the CGV to approve the Hoima District Land Board's rates of 2013/2014 and 2015/2016 caused many of the grievances and thus resulted into delays of compensation process. Unfortunately, some of the PAPs are yet to receive their compensation due to those delays and as such, those responsible on the part of government should pay the cost.
- g) **No consideration for inflation:** While over 90% of the PAPs were paid beyond the stipulated compensation timelines, which is after February 2014, the MEMD did not adjust the compensation to reflect increase in prices caused by inflation and depreciation of the shilling. Consequently, almost all the PAPs including the over 3,000 women did not get fair compensation to restore them to their original life.
- h) **Right to fair compensation violated:** Delays in compensation meant that over 90% of the PAPs could not use the compensation to buy land equivalent to the size they had lost to the government. It is therefore clear that such compensation could and can never be fair which is contrary to Article 26 of the constitution. To the extent, the constitutional right of over 90% of the PAPs to get timely and fair compensation was violated. The responsible government officials should account as a matter of urgency.
- i) **Insider dealing to favor some PAPs:** The AG also found that in the 2016/2017 financial year when the CGV approved the Hoima rates, only two PAPs (who the report does not mention) got their rates adjusted. Their compensation increased from UGX 1.029 billion to UGX 2.220 billion. The other PAPs' compensation increased from and UGX 74,222,200 to UGX 189,250,750. While the AG report does not point out how these 2 PAPs managed to get their compensation adjusted, it is clear that the whole exercise was mired in corruption. Parliament should investigate collusion and corruption in the increase of this compensation for the two PAPs. It is indeed unfair that over 90% of the PAPs were paid out of time (delay of 2 to 6 years yet only two managed to get their compensation increased by more than UGX 1, 000,000,000/ (UGX 1 billion) and 100,000,000/ (UGX 100 million) respectively. If this was a genuine adjustment due to inflation, then it should apply across all the years to benefit all the PAPs who suffered compensation delays.
- j) **Ghost PAPs paid:** While the Resettlement Action Plan report 2012 had listed 2,473 people as the directly affected land owners and licenses, by December 2017, the MEMD had paid or considered for payment over 2,600 affected people. No explanation was given on how the numbers moved from 2,473 to over 2,600. It appears that the MEMD and SFI had a discretion to add or reduce the numbers and in such cases, corruption could not be ruled

out. Parliament should inquire into this irregularity and cause action against officials found culpable for corruption.

- k) Delayed relocation:** While the construction of houses and schools for the PAPs who opted for relocation was to be completed by November 2013, only 46 houses got completed in 2017 while the school was not yet complete. This means that the said PAPs who the government had put a cut-off date of 2 June 2012 on stopping them from using their own land did not get compensation for 6 years and are still counting.
- l) Denying some PAPs houses:** While government had committed to build for all the PAPs who opted for relocation in the RAP report of 2012, government only built 46 houses out of the 74 PAPs. There was no clear methodology for selecting those to get and those not to get houses which created room for discrimination. Most importantly however, government violated her own agreement with the said PAPs. Government did not even consider that the PAPs had waited for over 6 years and had suffered years of inflation in provision of the houses.
- m) Delay in implementation of livelihood restoration programme:** The livelihood restoration program for the refinery PAPs who opted for relocation which was meant to be completed by September 2013 only commenced in August 2017 and this means that the PAPs were kept waiting in pain and misery for over 5 years. Some of their families collapsed as a result and all these deserve quick justice.
- n) Failure to ensure transparency and accountability:** While the compensation funds of UGX 64 billion included an item for hiring an NGO to monitor and audit the entire RAP implementation process from 2013, in December 2017 and even to date, the NGO has not been hired. As such, there is no independent entity to support the refinery PAPs. This also means that the RAP implementation was done by MEMD in secrecy at the expense of the PAPs. The MEMD should be asked to account why they defaulted on the RAP commitments.
- o) Causing loss to taxpayer through extended contract:** Further, the AG's report shows that the MEMD without clear reasons extended the contract of Strategic Friends International (SFI) five times and this extension alone cost the taxpayer an extra charge of over UGX 1,200,000,000 (UGX 1.2 billion). This amount would have been enough to support the restoration program for the refinery PAPs at Kyakaboga. In our view, this should be considered as corruption and/or misuse of public resources on the part of the MEMD and the culprits should be held accountable.

**p) No clear grievance handling mechanisms:** The MEMD failed to create a clear grievance mechanism to resolve the complaints of the PAPs and therefore the PAPs who faced challenges had questions were left helpless or forced to accept anything that they were given. Others had to depend on well-wishers to look for redress in traditional courts. Ministry of Energy should account for its failure to have clear grievance handling mechanisms in which PAPs' grievances were adequately handled.

### **Other injustices not identified by the AG which Parliament should conduct further investigations**

- (i) Coercing 22 families to sign for 2012 compensation rates in 2018:** In January 2018, Ministry of Energy through its RAP implementation contractor, SFI, intimidated and coerced 22 families to sign compensation forms based on 2011/2012 rates. The 31 families had rejected the rates in 2012 because they were unlawful and low as the Auditor General noted. Today, the 22 families that were coerced to sign for their compensation in 2018 are living in regret because based on appreciation of land values in their neighbourhood in Kabaale-Buseruka, they cannot afford to buy land and resettle their families.
- (ii) Discrimination in the payment of a disturbance allowance:** Section 77 of the 1998 Land Act provides for the payment of a disturbance allowance of up to 30 percent on property acquired by government. In conformity with the law, the Ministry of Energy committed to pay this allowance in the RAP report to all refinery PAPs and on this basis, over UGX 70 billion was allocated by government to the Ministry of Energy for the resettlement process of the refinery PAPs. Despite the commitment however, the Ministry of Energy did not pay a 30% disturbance allowance to the 74 families that were eventually physically relocated.
- (iii) Failure to provide houses for 28 households:** Following the commissioning of the resettlement for the refinery PAPs that opted for physical relocation by Ministry of Energy in 2017, the families that opted for physical relocation started occupying their houses. However, 28 households including women-headed families were not constructed for houses. This is despite the fact that the Ministry of Energy committed to providing houses for the households that opted for relocation and based on this commitment, over UGX 70 billion was allocated for the resettlement process of the refinery PAPs.
- (iv) Resettling refinery PAPs in special settlement/camp:** Despite committing to buy land on a case-by-case basis and not resettling the refinery PAPs in a camp/special settlement, Ministry of Energy set up a camp for the refinery PAPs amidst several protestations by the PAPs to Ministry of Energy, Uganda Human Rights Commission (UHRC), the Inspector General of Government (IGG) and Parliament among others. The camp set up by government does not only raise questions of value for money as the Ministry of Energy alleges that it spent over built cost UGX 150 million to construct the small houses it did, it also propagates the abuse of the cultural, social and economic rights of the PAPs.

- (v) **Failure to provide land titles:** Further, to date, the Ministry of Energy has failed to provide land titles for all the 74 families that relocated to Kyakaboga. All the families that relocated were given replacement land by government but without land titles, the refinery PAPs cannot claim ownership of the land and houses in which they live yet money was allocated to the Ministry of Energy to process the land titles.
- (vi) **Failure to provide social services and basic amenities:** Finally, while the RAP commits the government to provide water, electricity, a good quality murrum road, a community centre, a cemetery, a nursery school and two churches (an Anglican and Catholic one), the Ministry of Energy has not sufficiently provided any of the above. A school has been constructed but it is not functional yet because of the sub-standard workmanship yet pupils should be in school. In addition, only one borehole has been constructed and currently, families are living in a situation of water stress. Further, none of the 46 houses built has a lightning conductor yet the area is prone to lightning. The rest of the amenities including churches, a nursery school, community centre and a cemetery have been ignored despite the fact that the refinery area had four schools, 13 churches, one mosque and 15 water sources.

## RECOMMENDATIONS

Based on the above, parliament should implement the recommendations identified in the section above. Parliament should also use its oversight powers to ensure the following is done urgently.

- a) Task Ministry of Energy to explain why the 74 PAPs who opted for relocation did not get paid their full disturbance allowance including the value of land and other fixed assets. The MEMD should be directed to urgently pay with interest the said PAPs while the responsible officials should be punished for violating the law.
- b) Ask the Ministry of Energy to comply with the RAP that remains the only agreement between the government and the PAPs, and construct houses for the remaining 28 families that opted for physical relocation. Moreover, these families have been waiting since 2012 when a cut-off date was placed on their land and that longer wait tapped them into object poverty and misery. Why should a democratic government breach an agreement with her own people? How does the government expect such people to build houses for themselves?
- c) To promote fair compensation as mandated by Article 26 of the Uganda Constitution, Parliament should use its oversight powers to recommend that the 22 families that were coerced into signing for compensation based on 2011/2012 rates have their property re-assessed and are paid using 2017/2018 rates.
- d) Parliament should also compel the Ministry of Energy to provide the refinery PAPs with land titles, open the school in Kyakaboga, provide adequate water and electricity services

as provided for in the RAP but also to save the environment which is under pressure and to provide all the basic amenities it committed to provide.

- e) Further, we call upon the Parliament to use her oversight powers to ensure all the AG's findings and recommendations listed above that need action are implemented for the good of the PAPs and to save the tax payer.



Dickens Kamugisha,  
CEO, AFIEGO  
CC

- Minister of Energy and Mineral Development
- The Chairperson, Natural Resources' Committee of Parliament
- Chairperson, Bunyoro Parliamentary Caucus
- Chairperson, Natural Resources' Committee of Parliament
- The Auditor General
- The Inspector General of Government
- The Chairperson, UHRC