



20/February/2018

## **COMMUNIQUE CALLING FOR CLOSURE OF GAPS IN JUSTICE BAMUGEMEREIRE LAND COMMISSION INTERIM REPORT**

### **1. Introduction**

On February 19, 2018, Africa Institute for Energy Governance (AFIEGO) organised a meeting at AFIEGO's head office in Kampala during which the interim report by the Commission of Inquiry on Land Governance challenges in Uganda was discussed. The interim report was handed over to President Yoweri Museveni by the Commission's chairperson, Justice Catherine Bamugemereire, on Friday February 16, 2018.

The meeting was attended by over 17 national Civil Society Organisations (CSOs) and Community Based Organisations (CBOs) from over six local governments in Uganda including AFIEGO, National Association of Professional Environmentalists (NAPE), Centre for Constitutional Governance (CCG), Global Rights Alert (GRA) and World Voices Uganda (WVU).

Others at the meeting included South Western Institute for Policy and Advocacy (SOWIPA), Kanungu Youth Initiative for Environment (KYIE), Guild Presidents' Forum on Oil Governance (GPF OG), Green Organisation Kyambogo, Amuru Community Foundation and Nyamirama Bahingi Barungi.

Yet others included Oil Refinery Residents Association (ORRA), Kwatanisa Women's Group, Kakindo Orphans, Youth on Oil Revenue Governance, Women's Taskforce on Oil and Equity in addition to the Environmental Justice Group.

At the meeting, participants expressed appreciation of the stakeholder consultations and work undertaken by the Commission so far. They noted that some of the national and grassroots CSOs at the meeting had presented views to the Commission and some of their views were reflected in the findings and recommendations made in the interim report.

With the above being said however, the CSOs at the meeting expressed dissatisfaction with some of the recommendations made in the interim report by the Commission. They noted that some of the recommendations made address symptoms and not the real causes of land governance challenges in Uganda.

They affirmed that land challenges in Uganda largely arise due to political and leadership failures in the country. Political patronage, political manipulation, selfish and greedy leadership, pervasive corruption and others are the real causes of land challenges in Uganda yet the interim report does not adequately address them.

Participants noted that the above and other fundamental leadership/governance failures have weakened state institutions such as Parliament, the judiciary, land administration offices, District Land Boards (DLBs) and Area Land Committees (ALCs) based at parish level. The institutions have been weakened through under-funding, influence peddling, lack of adequate independence to execute mandates and others.

Participants at the meeting noted that instead of addressing the leadership failures, the Commission erroneously proposed to kill DLBs and ALCs, which are not the root cause of land challenges in Uganda.

The CSOs at the meeting also observed that since 1965 when the Land Acquisition Act was enacted, the Minister of Lands who constituted the Commission has failed to effect Section 20 of the Act by putting in place regulations for the assessment and payment of compensation to address challenges such as defining what prompt, fair and adequate compensation is. With the above remaining undefined since 1965, challenges of inadequate, unfair and delayed compensation persistently dog compulsory land acquisition processes in the country.

Further, the CSOs noted that the Commission's report does not indicate that the Commission understands the grave impacts of a weak justice system on land governance.

More so, participants observed that there is no need to abolish the Mailo land tenure in Uganda as it is not a challenge. They noted that government needs to support and empower land owners and all those with interests under any tenure to use the land for development. Indeed, participants said, while the Mailo land tenure system was introduced in Uganda by the colonialists in 1900, to date, this tenure is integral to our customs and practices.

Participants also noted that the Commission erred in presenting the interim report to the President before subjecting it to stakeholder discussions to confirm whether or not the public views that had been presented to the Commission had been adequately captured. They noted that the interim report clearly indicates that the members of the Commission were either biased or were implementing directives by some government officials that have continued to undermine local government systems in favour of re-centralisation.

For instance, participants noted that the Minister of Lands and others have continually blamed DLBs for failures such as corruption and incompetence among. They noted that an honest analysis however would have helped government to appreciate that the Ministry of Lands is currently the worst institution governing over land in Uganda today. Local government land institutions' failures are caused by a weak, incompetent and pathetically corrupt lands ministry, participants said. Any

solution to address the challenges of governance in the country must begin with the ministry and the central government generally, they observed.

Below are key observations that arose out of the meeting. Recommendations are also made.

## **2. Discussion and observations**

**a).** The civil society groups commenced the meeting by appreciating the Commission for the wide stakeholder consultations in form of public hearings undertaken so far. They noted that some of the CSOs at the meeting including AFIEGO, GPFOG and ORRA among others submitted views to the Commission and some of these were reflected in the findings and recommendations in the interim report. Some of the recommendations submitted and included in the interim report include the need to issue customary land owners with certificates of customary ownership, requiring government to compensate project-affected persons prior to acquisition of their land, representing women's interests in land administration and halting encroachment on protected areas.

**b). Wider stakeholder input in interim report needed:** However, while they appreciated the Commission, they noted that the Commission's interim report needs to be subjected to wider stakeholder analysis and input to enable the development of recommendations that are pro-people. Participants noted that some of the recommendations in the Commission's interim report do not address the needs of Ugandans, especially the poor, and this can only be remedied through stakeholder input in the report.

**c). Area Land Committees central to addressing land challenges:** The participants observed that despite government's failure to issue appointment letters, pay salaries and provide other critical support, some ALCs have continued help their communities to register their customary land to get certificates of customary ownership. Participants at the meeting noted that the ALCs need funding from government and capacity building to gain skills to enable them execute their mandates. Moreover, participants said, district land boards and ALCs are better placed to administer over land in their areas because they are closer to the communities they serve, are knowledgeable about land matters in their areas and understand the norms of their respective communities. They noted that instead of disbanding ALCs, individual ALC members who make mistakes should be held accountable.

**d). Dissolving district land boards not a solution:** They further noted that dissolving district land boards to replace them with the proposed Land Authority was erroneous too. Participants observed that district lands boards in the country are suffering from underfunding and without funding, no institution can be effective. Participants observed that state institutions and authorities such as National Environment Management Authority (NEMA), National Forestry Authority (NFA), Electricity Regulatory Authority (ERA) and others are not any better than the land boards because most of the causes of their failures are general leadership and governance failures emanating right from Cabinet, Parliament, ministries and others who either fail to play their roles or use their powers to undermine the roles of the authorities.

**e). Creation of Land Authority amidst corruption waste of time:** Participants recognised that NFA, NEMA, district land boards and other government agencies and bodies are indeed pervaded by corruption. While they strongly affirmed that this vice must be decisively dealt with, they asked where the guarantees that corruption and underfunding will not undermine the Land Authority and the conservation agency being proposed by the Commission are. Will the creation of the new institutions without first addressing the problems that failed the old institutions including corruption and under-funding result in increased protection of sensitive ecosystems and address land injustices? Participants said it would not. Moreover, they recalled that district land tribunals were phased out because of lack of sufficient funding and corruption among others. Participants therefore noted that unless corruption, under-funding, poor training and other shortcomings in land administration are addressed, the proposed Land Authority and district land tribunals, which are urgently needed to address land injustices, will also fail. In any case, the Ministry of Lands and specifically the lands registry is the most corrupt institution issuing titles in wetlands, swamps, forests such as Bugoma and others, participants said. How will a Land Authority be effective under such a corrupt mother institution?

**f). Customary interests, under-compensation by government need more attention:** Participants expressed concern that the interests of customary owners were not adequately addressed. While they appreciated the Commission for recommending that customary land be titled to increase security of tenure for the majority of citizens who own land customarily, they noted that a timeframe within which the titling must be undertaken by relevant government agencies must be recommended by the Commission. This will enable Ugandans to hold government accountable to issue customary land titles. This is especially urgent because to date, government has issued customary land certificates in only a few districts. Participants also noted that to address delayed, unfair and under-compensation of citizens by government contrary to Article 26 of the 1995 Uganda Constitution, the Commission should have recommended that as mandated under Section 20 of the Land Acquisition Act (1965), the Minister of Lands must urgently put in place regulations for the assessment and payment of compensation to define terms such as prompt, fair and adequate compensation. This would help affected people to negotiate and fight against delayed, unfair and under-compensation in compulsory land acquisition processes.

**g). Shortcomings in the judiciary not addressed:** Participants also expressed concern over the Commission's failure to provide recommendations that address failures in the judiciary including corruption, political interference and delayed justice which help the rich against the poor. They also noted that RDCs and police are failing land justice in the country because they undermine the work of the judiciary yet the judiciary needs to be independent if its decisions are to be respected.

### **3. Recommendations**

In the face of the above, the CSOs at the meeting asked the Commission to make recommendations that advise government to do the following:

- i. **Improve funding and training of DLBs and ALCs:** Ministry of Lands and Parliament should work together to ensure that DLBs and ALCs are well funded and trained to execute their mandate. The DLBs and ALCs should not be disbanded.
- ii. **There is no need for a lands authority as creation of many or new institutions only further burdens the taxpayer while adding little to no value to citizens.** If well managed, district land boards and ALCs are better placed to administer over land in their areas because they are closer to the communities they serve, are knowledgeable about land matters in their areas and understand the norms of their respective communities. Creating the authority will only succeed in re-centralising land matters and this will fail to serve community needs.
- iii. **Fight corruption through individual criminal responsibility:** The Commission should recommend that in cases of corruption, a corrupt official should be held personally responsible without hiding behind institutional immunity.
- iv. **Fix timeframe for hearing land cases:** Any case relating to land justice should be determined in a period of not more than six months from the date of filing. Further, government should stop irregularities by RDCs and police including getting involved in land matters that are before court and disobeying court rulings.
- v. **District tribunals should be urgently re-established to operate alongside DLBs** to handle land matters at local governments. Unlike before, these institutions should be well facilitated but with harsher penalties against those who default on the rules.
- vi. **Government should take advantage of the National Environment Bill of 2017** that is currently before Parliament to strengthen the mandate and effectiveness of NEMA to protect the country's biodiversity. They should explore possibilities of merging NEMA, NFA and Uganda Wildlife Authority (UWA) to avoid duplication that creates legal contradictions thereby undermining effectiveness. If NEMA is well funded and has strong leadership, it will protect our environment.
- vii. **Finally, the Commission must recommend that in line with section 20 of the Land Acquisition Act (1965), the Minister of Lands must urgently put in place regulations** for the assessment and payment of compensation. The terms fair and adequate as they are provided for under Article 26 of the 1995 Uganda Constitution should be defined to remove ambiguities. This will act as a guide on how project-affected persons and government can reach consensus what prompt, fair and adequate compensation is.

Thank you.

On behalf of the signatories



Dickens Kamugisha,  
CEO, AFIEGO

**Signatories:**

- Africa Institute for Energy Governance (AFIEGO);
- National Association of Professional Environmentalists (NAPE);
- Centre for Constitutional Governance (CCG);
- Global Rights Alert (GRA);
- World Voices Uganda (WVU);
- South Western Institute for Policy and Advocacy (SOWIPA);
- Guild Presidents Forum on Oil Governance (GPFOG);
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