

RECOMMENDATIONS

on whether or not the acquisition in question is in line with the constitution and other relevant laws.

(i). Government and parliament should work together to put in place a law that provides for mandatory Social Impact Assessments (SIAs) for all oil, electricity, roads and other major development projects.

(ii). Civil society organizations should educate the populace about the importance of SIAs and support their implementation.

(iii). Institutions such as the National Environmental Management Authority (NEMA), Equal Opportunities Commission, Uganda Human Rights Commission, District Land Boards and others responsible for promoting environmental rights, property rights, transparency and protecting human dignity should take charge of conducting and implementing recommendations of SIAs in the country.

About Africa Institute for Energy Governance Africa Institute for Energy Governance (AFIEGO)

Africa Institute for Energy Governance (AFIEGO) is a public policy research and advocacy NGO dedicated to influencing energy policies to benefit the poor and vulnerable. Based in Kampala- Uganda, the organization was born out of the need to contribute to efforts to turn Africa's energy potential into reality; and to ensure that the common man and woman benefits from this energy boom. Through lobbying, research and community education, AFIEGO works with communities and leaders to ensure that energy resources are utilized in a way that promotes equitable development, environmental conservation and respect for human rights.

AFIEGO Vision

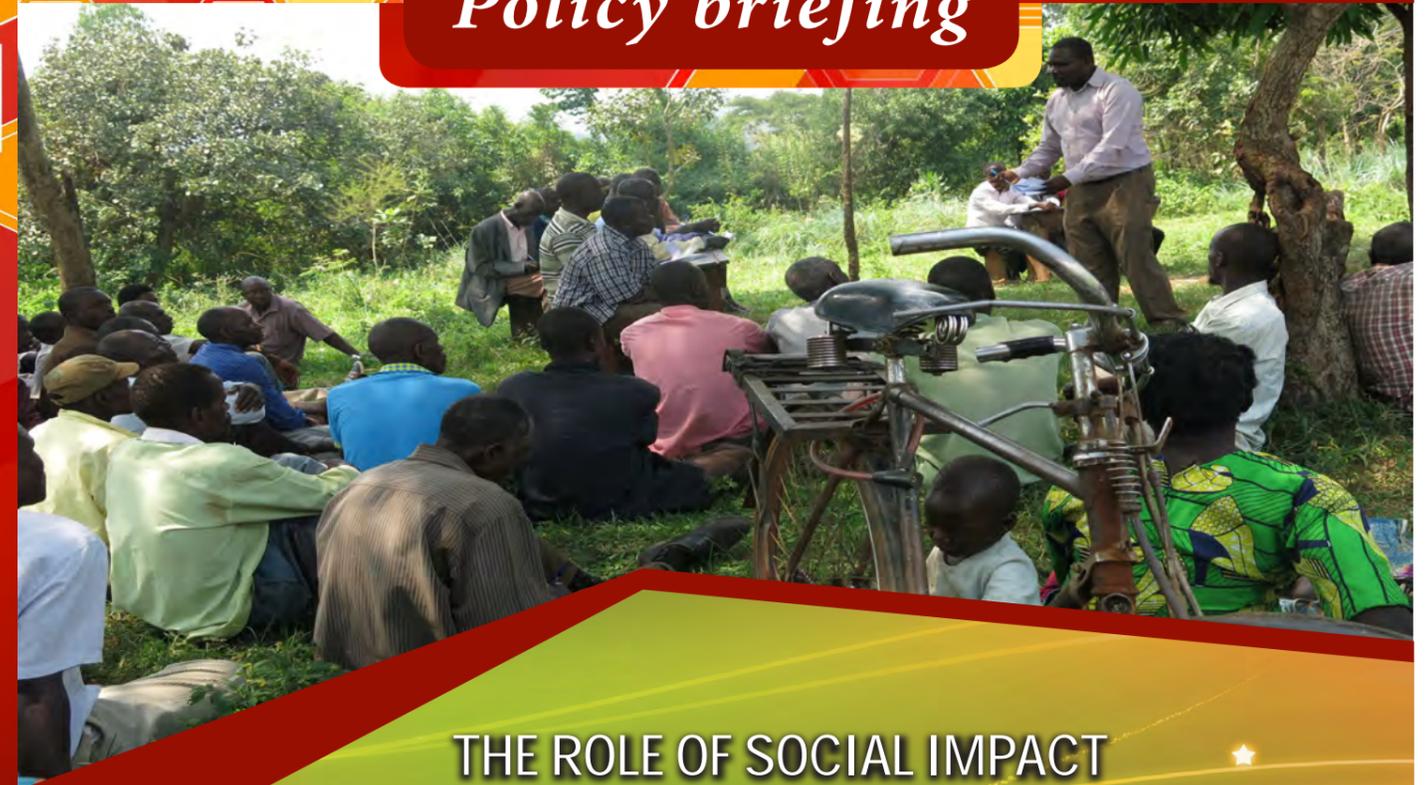
A society that equitably uses energy resources for socio-economic development

AFIEGO Mission

To promote energy policies that benefit poor and vulnerable communities



Policy briefing



THE ROLE OF SOCIAL IMPACT ASSESSMENTS IN PROMOTING HUMAN RIGHTS

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ABSTRACT

If well conducted and their recommendations implemented, Social Impact Assessments (SIAs) have the potential to stop human rights abuses including those that occur during compulsory land acquisitions in countries such as Uganda.

Through the SIA process, relevant information such as the social and economic life of people a project is likely to affect, the demographics such as age and gender of the people, their cultural norms and other important aspects of life and society can be generated.

Government and developers can use this information to make decisions on whether to develop a project in an area or not as well as using it to plan ways in which to mitigate the negative social and economic impacts that arise from implementation of that project.

The SIAs can also help government and developers to design resettlement and rehabilitation schemes that fit the needs of the various members of communities whose land is identified to be taken for development ensuring that each affected person's standard of living gets improved.

The SIA is based on the knowledge that society is not homogenous with the old living alongside the young, the landless alongside those who own land and the poor alongside the rich. As such, it is important to conduct assessments to understand the social and cultural life of the different members of a community to be affected by a project so as to plan

accordingly for them to enable them to live a dignified life.

In effect, the main goal of SIA is to help government and developers to put in place necessary mechanisms to ensure that planned developments do not undermine the living conditions of the people but rather, lead to improvement.

In countries such as India and others where SIAs are part of the legal framework, SIA processes have helped reduce tensions between developers and local communities. SIAs enable the affected communities to effectively participate in decision making processes throughout the project, thus promoting consensus and ownership of the project.

The main objective of this paper is to help government, citizens and other relevant stakeholders to understand the importance of SIAs and how they can be used to address human rights abuses relating to land acquisition for development. In particular, it is intended to promote respect for property rights amidst oil and other related developments in Uganda.

a project is the absolute bare minimum in a social impact and environmental impact assessment to enable the right quantity of land to be acquired for projects. This way, unless it is necessary, people will not be deprived of their property even when it is within the law.

Whether land acquisition at an alternate place has been considered and found not feasible

A social impact assessment determining whether land can be acquired at alternative places which say are less populated, have less property or sites of cultural significance, have less vulnerable groups of people and have less property of great importance to communities say schools and property of immense cultural value among others can help see that cultural and other rights are respected.

Study report of environmental and social impacts of the project, and the nature and cost of addressing them and the impact of these costs on the overall costs of the project vis-à-vis the benefits of the project

Does acquisition of property for a project result in more costs than gains to be made from that project? Will construction of a refinery in Kabaale-Buseruka, Hoima result in the loss of say a museum that generates more revenue for locals than oil will? Are vulnerable people going to live a life of pain and indignity because of the project? A social impact assessment should answer these questions to guide on whether investment in that project is socially and economically feasible.

Particulars of the rehabilitation and resettlement entitlements of each land owner and the landless whose livelihoods are primarily dependent on the lands being acquired

A social impact assessment that addresses the particulars of the rehabilitation and resettlement entitlements of each land owner and the landless whose livelihoods are primarily dependent on the lands being acquired would see to it that even the landless have property from which they can make a living.

CONCLUSION

Social Impact Assessments (SIAs) have immense potential to enable communities affected by compulsory land acquisition for projects such as oil refineries, electricity dams, transmission lines, roads and others to live a life of dignity where their rights are respected. If SIAs are made compulsory for all oil, electricity, roads and other major developments, clear mechanisms for assessment of adequate and fair compensation for the affected will be established. Monetary values on social aspects of life which previous acquisitions have been ignoring leading to untold suffering to the affected will also be established.

Further, SIAs will minimize cases of corruption where government officials have for decades used constitutional powers of public use, defense, health and others to compulsorily acquire community land without meeting other conditions provided for under the same Constitution.

the property rights of the 47 families that are not getting houses would not be abused. Government would also be in position to mobilize resources in good time and as such, would be able to construct houses for the refinery-affected families in a shorter period than the three years it has taken. It is important to note that the prolonged stay in the refinery area has resulted in abuse of rights such as the right to a clean and safe environment as the 93 refinery-affected are living in bushy villages inhabited by wild life, the right to clean water as weeds have overgrown wells and the right to education and health as schools and health centers collapsed.

Extent of lands, public and private, houses, settlements and other common properties likely to be affected by the proposed acquisition

A social impact assessment determining the extent of public and private lands, houses, settlements and other common properties to be affected by a project would help implementers of the project to determine whether many families are to be affected by the project. If for instance the property to be acquired for a project is public property, the likelihood of many families or households being affected by the project is limited. If the property is private however, the likelihood of many households being affected is big. As such, government would need to design a resettlement and rehabilitation scheme that will address the needs of the project-affected households. Without this type of information, government may design an inadequate resettlement and rehabilitation scheme resulting in prolonged stay in project areas as has happened in the refinery area.

The number of vulnerable people including children, child-headed families, women, widows, elderly, disabled and others, and how those people will be facilitated should the project proceed would be determined.

While projects in the oil sector have negatively impacted on all projected-affected people, we have witnessed vulnerable groups of people including women, children, child-headed families, widows, the elderly and the disabled suffering more than others. We have also seen their human rights being abused more. In the case of the refinery project for instance, we saw more women opting for relocation. Other vulnerable groups such as the elderly and disabled were also persuaded to accept relocation as opposed to compensation. Because of lack of an assessment of the total number of vulnerable people that were affected by the refinery project, government failed to adequately provide for them by constructing houses for them in the shortest possible time. Because they continue to live in the refinery area, their rights such as that to a clean water, education and health are being abused.

It is important to note that information on vulnerable groups to be affected by a project could enable designing of resettlement and rehabilitation schemes that would see their rights such as that to dignity, to own land regardless of sex and disability and that to education being respected.

Whether the extent of land proposed for acquisition is the absolute bare minimum needed for the project

A social impact assessment where the public is involved in aiding the National Environment Authority (NEMA) determine whether the amount of land being requested for a project is the absolute bare minimum would help stem wastages such as the ones we witnessed in the Naguru estates project. When tenants were evicted in 2011, it was said that the eviction was for purposes of constructing low cost housing for the poor. For such a project, perhaps that amount of land the Naguru estate was sitting on was all required. Perhaps it was not. We cannot determine this now because the land was given to the Aga Khan Foundation for construction of a hospital. Yet poor Ugandans lost property.

As such, it is important to determine whether the amount of land being acquired for

BACKGROUND

Since the commencement of oil exploitation in the Albertine region, many communities have lost property in an unconstitutional manner. Article 26 of the 1995 Ugandan Constitution provides every person with the right to own property either individually or with others and while the same article provides for compulsory

taken.

Despite the above provision, citizens in the Albertine region and indeed those all over the country have continued to lose their property to government and other land grabbers in the name of development. The citizens' land is compulsorily acquired by the above-mentioned parties before prompt, fair and adequate compensation to affected people is made.

In the last ten years, government and her agents have compulsorily acquired land for power transmission lines between Jinja and Kenya and those between Mbarara and Rwanda - these lines covered over 300kms - and some families that have been affected by these projects have not received compensation.

Land has also been acquired for the 21km Northern Bypass road, 40km Entebbe Express Highway, the 90km Hoima Kaiso-Tonya road, and 29.34sq km for the oil refinery in Kibaale-Hoima. Families which refused compensation in

the refinery project on grounds that it was low have not received compensation yet. Additionally, 93 families with over 465 members which opted for relocation have not been relocated yet despite the cut-off date for use of land in the refinery area having been put on June 2, 2012.

This is unconstitutional yet today, government has started on the process of acquiring land for the crude export and finished products' oil pipelines. Furthermore, processes for securing land totaling 8,000 acres for the Standard Gauge Railway are underway. So are other developments.



Communities in Kiziranfumbi, Hoima, at a training organized by AFIEGO to discuss a proposed displacement by the government to acquire land for oil pipelines.

acquisition of property for public use, in public interest or defense, for public safety, public order, public morality and public health by the government, government is strictly required by the same Constitution to provide prompt, fair and adequate compensation before the property is

http://www.statehouse.go.ug/sites/default/files/attachments/Constitution_1995.pdf

Unless the unconstitutional problems of delayed compensation and relocation that beset the projects named above are addressed, the pipelines and other new projects are likely to result in the abuse of property rights of people the projects will affect.

Yet this need not be the case if government conducts SIAs and designs tailor-made resettlement and rehabilitation schemes that take into account needs of the different social groups such as those of women, the elderly, child-headed families, the landless and those with land, among others.

It is important to note that while the government has conducted Environmental Impact Assessments (EIAs) as a tool to determine the possible negative environmental and social impacts of selected proposed development projects, EIAs done in Uganda have not adequately enabled the determination of negative social effects of a project or the needs of

different social groups affected by a project yet these are important to citizens.

In some projects such as the acquisition of land for the oil refinery, the government did not conduct an EIA but instead opted for a Resettlement Action Plan (RAP) which is not specifically provided for in our national laws. The RAP was inadequate, unlike an SIA, and this could perhaps explain why some of the affected people in Kabaale-Buseruka have not been compensated and others have not been relocated for over three years.

It is important to note that Ugandan laws do not require developers to mandatorily conduct stand-alone SIA studies for any land acquisitions and this is a big problem.

This paper will demonstrate the role of SIAs in addressing human rights abuses relating to land acquisition for development in sectors such as oil, electricity, roads and others where many abuses have been witnessed.

OBJECTIVES

GENERAL OBJECTIVE

The main objective of this policy brief is to promote SIAs as tools that should be used to promote human rights during compulsory land acquisition for development in Uganda.

SPECIFIC OBJECTIVES

The specific objectives of this policy brief include:

- (i). To simplify and educate the public on the importance of SIAs as tools that should be used to promote and defend human rights during land acquisition for development projects;
- (ii). To mobilize the public against violation of property rights in Uganda's oil sector;
- (iii). To make policy recommendations for action against land conflicts associated with compulsory land acquisition.

SOCIAL IMPACT ASSESSMENTS

A Social Impact Assessment is a study done before a project to determine the social and cultural consequences of that project. Rabel J. Burdge and Frank Vanclay say that social impacts include changes in ways people "live, work, play, relate to one another, organize to meet their needs, and generally cope as members of society."

INTERNATIONAL PROVISIONS

At the international level, the right to own property is affirmed in various human rights instruments including the Universal Declaration of Human Rights (UDHR). Article 17 of the UDHR says that "Everyone has the right to own property alone as well as in association with others ... [and that] no one shall be arbitrarily deprived of his property."

Rabel J. Burdge and Frank Vanclay say that among others, Social Impact Assessments (SIAs) help increase the acceptability of a project especially when project-affected people are involved in the assessment. Additionally, they say that SIAs help mitigate the anxiety that arises with project implementation.

ROLE OF SIA(S) IN ADDRESSING HUMAN RIGHTS ABUSES DURING COMPULSORY LAND ACQUISITION

Generally, SIAs help to generate important information that has the potential to guide decision makers in coming up with decisions which impact on citizens. Among other things, if well conducted, SIAs can generate the following information which can be used to stop or reduce arbitrary decisions that lead to violation of human rights especially property rights. The information includes:

Whether the proposed acquisition serves a public purpose

More often than not, government has used its powers of compulsory acquisition of land to serve a public purpose to acquire land for individual interests. Some of the land acquired has remained idle for decades. Some of this land includes that of the former Shimoni Schools. Naguru Estate tenants were also displaced. Thousands of poor UPE school children and low income families were displaced ostensibly for public purposes only for the land which was taken away from them to lay idle, and not serving any public purpose.

The misuse of land as demonstrated above serves to underscore the importance of an SIA. Through it, the public, which has to be involved in the SIA process, will together with government determine whether the land government wants to acquire will serve the public good.

Determining the negative social effects a project will have on host communities through an SIA will help prepare the host communities for the change. Say it is determined that the host community is going to shift from an agrarian way of life to a manufacturing one because of the project, the community has to be enabled to acquire skills for manufacturing. This way, the host communities may ably continue to make a living so that they may access basic needs such as food, education, health services and others.

Estimation of affected families and the number of families among them likely to be displaced

An estimation of affected families and the number among them that is likely to be displaced helps government plan better for the families to be displaced. In the case of the refinery project, government underestimated the number of families that had requested for relocation; the estimated number was 30. For this reason, government is struggling with its decision to construct houses for only 46 families as opposed to all the 93 families that requested for relocation. With the right information, government would be in position to construct houses for all the families, other factors such corruption notwithstanding, and

³http://www.statehouse.go.ug/sites/default/files/attachments/Constitution_1995.pdf

⁴<http://www.humanrights.se/wp-content/uploads/2012/01/African-Charter-on-Human-and-Peoples-Rights.pdf>

Finally, in times of disease outbreaks, government can take over property to stop the spread of disease and uphold public health. Government may take over property for other public health reasons too.

It is important to note that while the state may compulsorily acquire land on the conditions stated above, the same Article 26 of the Constitution states the conditions which must be followed by the government before any acquisition and they include:

- (i). That the “compulsory taking of possession or acquisition of property [must be] made under a law which makes provision for ... prompt payment of fair and adequate compensation, prior to the taking of possession or acquisition of the property and,
- (ii). That a right of access to a court of law by any person who has an interest or right over the property is guaranteed.”

In addition to Article 26, Article 237 of the constitution provides that land in Uganda is owned under three tenures:

- Customary;
- Freehold;
- Mailoland;
- Lease hold.

Article 237 above further requires both central and local governments to hold in trust for the people and protect natural lakes, rivers, wetlands, forests reserves, game reserves, national parks and other natural resources for the common good of all citizens. It is therefore important to appreciate that the citizens’ right to enjoy and defend property rights goes beyond private property. It extends to all public resources and as such, they have a right to demand for SIAs for acquisitions and projects on both private and public land.

LAND ACT PROVISIONS

Article 240 and 241 of the Constitution and Section 56 of the Land Act establish the district land boards and these boards, which are mandated to act independently, are supposed to perform the duty of compiling and updating compensation rates among others. These rates are supposed to be used when calculating compensation payable for crops and buildings of a non-permanent nature among others to the affected people.

When compiling compensation rates, district land boards are required to consult people in their respective districts to ensure that the rates compiled reflect the market values of those areas.

LAND ACQUISITION ACT PROVISIONS

The Land Acquisition Act which was enacted in 1965 provides for compulsory acquisition of property by government. It has shortcomings such as failure to provide for fair and adequate compensation as provided for in the Constitution. Additionally, the right to access to court is restricted to only an appeal on the amount awarded as compensation payable irrespective of whether other conditions are met.

REGIONAL PROVISIONS

Article 14 of the African Charter on Human and People’s rights says that “The right to property shall be guaranteed. It may only be encroached upon in the interest of public need or in the general interest of the community and in accordance with the provisions of appropriate laws.”

As has been shown above, the Constitution states the purposes for which property may be compulsorily acquired by government and the Constitution says that prompt, fair and adequate compensation has to be made before the property is acquired.

SOCIAL IMPACT ASSESSMENTS & PROPERTY RIGHTS

Cultural impacts on the other hand “involve changes to the norms, values, and beliefs of individuals [or societies].”

For example, if the acquisition of land for the refinery in Kabale-Buseruka results in refinery-affected families being constructed for three-roomed modern houses, a good development, compared to the grass thatched houses they had, where the all the family members including boys, girls, parents, relatives and others are compelled to live together in one house, then the cultural norms of the affected people will have been violated and changed. This development will affect their social fabric and distort the entire social set up of the affected community. If an SIA is done with care, it has the potential to guide the planners to avoid such risks.

For purposes of this paper, a SIA is defined as a study done before a decision is made to acquire and establish a project in a specific location in any part of the country to determine the social set-up, cultural norms, social status and economic status of a community of people who are to be displaced.

KEY TERMS USED IN SIA PROCESSES

To understand the role and relevance of SIAs in addressing conflicts regarding compulsory land acquisition and other developments in Uganda, it is necessary to first appreciate a number of terms used in land acquisition and SIA processes.

Affected family

An affected family includes:

- (i). A family whose land or other immovable property has been acquired or identified to be acquired by the government;
- (ii). A family which does not own any land but a member or members of such a family may be agricultural laborers, tenants, or artisans or who may be working in the affected area prior to the acquisition of the land; this family’s primary source of livelihood is affected by the land acquisition in which they are renting land, providing labor in the agricultural sector or are working as artisans;
- (iii). A family whose primary source of livelihood prior to the acquisition of the land is dependent on forests or water bodies and includes gatherers of forest produce, hunters, fisher folk and boatmen and such livelihood is affected due to acquisition of land;
- (iv). A member of the family who has been assigned land by the local government or the central government under any of its schemes and such land is under acquisition.

It is important to pay attention to affected families because identification of the different types of families, their state of land ownership and ways in which the landless make a

living will have implications on the success of any compensation process. An SIA that identifies the types of families, their state of land ownership and ways in which the landless make a living and survive will help inform both the government and developers whether it is socially and economically feasible to acquire specific land for a project. It will also enable those responsible for resettlement and rehabilitation to design a resettlement scheme that will ensure that affected families are restored to their original position, or better one, so that they may lead decent lives where human rights are upheld.

For instance, an extended family where different family members own houses in the same compound requires that the family set up is maintained; the different family members will require their own house each when they are resettled. The landless that make a living by renting land from land owners need to be compensated with land so that they can continue to make a living. Those who make a living from forests, lakes and other natural resources also need to be resettled in such a way that they are able to continue making a living.

Agricultural land

means land used for the purposes of:

- (i). Agriculture or horticulture;
- (ii). Dairy farming, poultry farming, fish farming, seed farming, breeding of livestock or nursery growing, medicinal herbs;
- (iii). Raising of crops, trees, grass or garden produce and;
- (iv). Land used for grazing of cattle.

Crops and investments in dairy farming, poultry farming, fish farming and all the types of farming mentioned above require compensation. So does land used for grazing cattle. An SIA would show whether the land sought for a project say has many dairy farmers with expensive investments requiring compensation or whether it does not. Where it does, an alternative site for the project would be sought. If it does not, a resettlement scheme enabling restoration of affected people to their original position would be designed.

It is important to note that without information on the social life of affected people (to quantify social values of the affected people), it is difficult to restore them to their original position prior to acquisition of their land. Human rights abuses are also likely to be perpetrated in an environment where the social life of affected people is ignored.

Displaced family

means any family who on account of acquisition of land has to be relocated and resettled from the affected area through cash compensation or relocation to a resettlement area.

Family

includes a person, his or her spouse, minor children, minor brothers and minor sisters dependent on that person. Widows, divorcees and women deserted by families are vulnerable persons and as such, they have to be considered as special families.

<http://www.hardystevenson.com/Articles/SOCIAL%20IMPACT%20ASSESSMENT%20A%20CONTRIBUTION%20TO%20THE%20STATE%20OF%20THE%20ART%20SERIES.pdf>

Land

includes benefits that arise out of land, and things attached to the earth or permanently fastened to anything attached to the earth. In resettling people, it is important to compensate them for all the land that they have lost.

Landless

means persons without land whose welfare also needs to be taken into account when land in the area in which they were making a livelihood is acquired.

Other than the above, it is important to understand property rights and some of the provisions made in international, regional and national laws that mandate governments to acquire property in a constitutional manner.

PROPERTY RIGHTS

CONSTITUTIONAL PROVISIONS

Property rights are provided for in a number of international, regional and national laws. Among the national laws providing for property rights in Uganda is the 1995 Constitution. Article 26 in the 1995 Constitution provides that “Every person has a right to own property either individually or in association with others [and that] No person shall be compulsorily deprived of property or any interest in or right over property of any description except where the following conditions are satisfied”.

These conditions include “the taking of possession or acquisition is necessary for public use or in the interest of defense, public safety, public order, public morality or public health.”

What does compulsory acquisition of property for public use, in the interest of defense, public safety, public order, public morality or public health entail?

Acquisition of land for public use entails government clearly demonstrating that the property is needed for purposes of providing a common good such as a road, a railway line and other services that will benefit the public. It must demonstrate that taking the property will benefit members of the community, including those from whom the property is being acquired. For example, the oil refinery project in Kabaale if well implemented may benefit Ugandans including the host communities and is therefore one of the important projects for which government has a right to compulsorily acquire property.

Acquisition of property in the interest of national defense entails acquiring property to ensure the security of Ugandans. If property interferes with law and order and puts the public at risk, government may decide to acquire it.

Acquisition of property for public safety and order entails government taking property if it is a threat to public safety and government finds that taking it is the only way to protect the public from danger.

On the other hand, acquisition of property for purposes of maintaining public morality happens if acquisition of the property enables upholding of moral values. If property is being used to stage strip tease shows (*kimansulo*) and the only way government can protect moral values is through acquisition of that property, then government may acquire it.