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IMPLEMENTATION OF EXPROPRIATION LAW IN RWANDA: CHALLENGES AND WAYS FORWARD



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IMPLEMENTATION OF THE EXPROPRIATION LAW IN RWANDA

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1. INTRODUCTION

This policy brief aims to inform policy and current practices governing land expropriation in Rwanda drawing on recent research carried out by the LAND Project. The brief elaborates on the legal framework and procedures guiding expropriation and on reported practice based on information gathered from primary and secondary sources. It then proposes measures that would potentially strengthen implementation of expropriation exercises countrywide.

In drafting this policy brief, the authors examined laws and policies governing expropriation, reviewed relevant literature and articles in the media, and interviewed key informant interviews from government institutions and civil society organizations (CSOs). Key informants¹ were selected based on their knowledge of and involvement in expropriation issues.

Following this introduction, Section 1 presents legal definitions of expropriation and discusses the history land expropriation in Rwanda, including factors that led to the drafting and promulgation of law and policies that have influenced the practice of expropriation. In Section 2, we elaborate on domestic policies and laws as well as international legal instruments to which Rwanda is signatory that guide how expropriation is implemented. We examine in depth Law no 18/2007 relating to expropriation in the public interest and the different organs involved in expropriation.

In Section 3, we highlight factors driving expropriation in Rwanda and issues emanating from the implementation of expropriation of Rwanda, particularly in urban zones. Drawing on information reported by key informants, the media, and published papers; we examine the practice of expropriation and the outcomes experienced by those who have been expropriated. In the fourth section, we policy and other recommendations based on lessons learned from expropriation exercises in Rwanda and analysis of how they can be improved to facilitate more favorable outcomes.

2. DEFINITION AND CONTEXT OF URBAN LAND EXPROPRIATION IN RWANDA

Legal sources define expropriation as “government taking by eminent domain”² and “compulsory taking of private property by the state”³. Articles 2 and 3 of Law No 18/2007 of 19/04/2007 relating to expropriation in the public interest (hereinafter referred to as the 2007 Expropriation Law) defines expropriation as the “taking of the private property in the public interest aiming at development, social welfare, security and territory integrity.”⁴ The definition provided in Law No 43/2013 of 16/06/2013 governing land in Rwanda (hereinafter referred to as the 2013 Land Law) is more specific. It reads,

¹ MINIRENA, RNRA (Lands & Mapping Department), Rwanda Housing Authority, MINIJUST, MINALOC, Parliamentary Commission on Agriculture, Animal Husbandry and Environment, Office of the Ombudsman, RSSB, RDB, Institute of Real Property Valuers; City of Kigali, Land Bureaus of Gasabo District, Bugesera District, Kamonyi District, Karongi District, Musanze District, and Nyabihu District; Rural Environment and Development Organization (REDO); TRANSPARENCY International Rwanda Chapter; The Community of Potters of Rwanda (COPORWA); KANYARWANDA “ASBL”; Bona Fide Law Chambers; Human Rights First Rwanda Association; COOHAKI; Coopérative GOBOKA; and Institut d’Enseignement Supérieur de Ruhengeri (INES Land Administration Department)

² B, Garner (2000): Balack’s Law Dictionary, p.477. 7th edition, Dallas

³ D.J. Harris (1998): Cases and Materials on International Law, p. 548. Published by Sweet and Maxwell, 5th ed., London

⁴ Law n° 18/2007 of 19/04/2007 relating to Expropriation in the public interest, O.G., no. special of 21/05/2007.

“expropriation is an act of taking away individuals land by the state due to public interest in circumstances and procedures provided by law and subject to fair and prior compensation.”⁵

Expropriation has paved the way for Rwanda’s extraordinary transformation of urban land.⁶ According to the law, expropriation is to be carried out to support implementation of land use master plans and establishment of basic infrastructure, such as hospitals, schools and roads.⁷ In practice, it has been utilized by the Government of Rwanda (GOR) as a tool to manage land allocation in a context of rapid urban development and population growth against a backdrop of poor urban planning and regulations prior to the mid-2000s.⁸ Aspirations enshrined in Rwanda’s Vision 2020 and series of Economic Development and Poverty Reduction Strategies (EDPRS) center on ambitious levels of economic growth and enhanced standards of living through the encouragement of internal and foreign investment, expansion of the country’s urbanization rate from 10% to 30%, and development of commercial, social and service sectors nationwide.⁹ These policies call for significant transformation of land uses, and have therefore further contributed to expropriation pressures.

Statistics reveal that the population of Rwanda has more than quintupled from 1,595,500 people in 1934 to 9,344,399 in 2007 within a period of less than 70 years.¹⁰ According to the Fourth Rwanda Population and Housing Census (RPHC 4), the population now stands at 10,515,973, which is 2.4 million more than the 2002 census. Rwanda has experienced an average annual growth rate of 2.6%.¹¹ At 415 inhabitants per square kilometer, Rwanda has one of the highest population densities in Africa.¹² Rwanda’s capital, Kigali, has a population of 1.3 million and a density of 1,522 inhabitants per square kilometer.¹³

The pace at which urbanization in Rwanda has progressed is staggering with an anticipated annual urban population growth rate of 4.5% (2010-15).¹⁴ This trend has been fueled by waves of refugees returning after the genocide in 1994¹⁵ most of whom settled in cities and towns, together with rural-urban migrations as a result of rapid economic growth, emergence of urban employment opportunities, and expansion of basic infrastructure. Recent redrawing and demarcation of administrative boundaries has

⁵ Organic Law N° 08/2005 of 14/07/2005 Determining the Use And Management Of Land In Rwanda, in O.G. n° special of 15/09/2005

⁶ Goodfellow, Tom (2014): Rwanda’s political settlement and the urban transition: expropriation, construction and taxation in Kigali, *Journal of Eastern African Studies*, 8:2, p. 311 – p. 329. Published by Routledge. Retrieved on May 22, 2014, from <http://dx.doi.org/10.1080/17531055.2014.891714>

⁷ Law No. 18/2007 of 19/04/2007 relating to Expropriation in the Public Interest, O.G., no. special of 21/05/2007, Article 5

⁸ Goodfellow, Tom (2014): Rwanda’s political settlement and the urban transition: expropriation, construction and taxation in Kigali, p. 315, *Journal of Eastern African Studies*, 8:2, p. 311 – p. 329. Published by Routledge. Retrieved on May 22, 2014, from <http://dx.doi.org/10.1080/17531055.2014.891714>

⁹ MININFRA (2008): National Urban Housing Policy for Rwanda, p.7.

¹⁰ MININFRA (2008): National Urban Housing Policy for Rwanda, p.4

¹¹ NISR (2014): Fourth Population and Housing Census, Rwanda: Main Indicators Report, p.9. Retrieved on May 22, 2014, from <http://www.statistics.gov.rw/publications/rphc4-thematic-report-migration-and-spatial-mobility>

¹² NISR (2014): Fourth Population and Housing Census, Rwanda: Main Indicators Report, p.6. Retrieved on May 22, 2014, from <http://www.statistics.gov.rw/publications/rphc4-thematic-report-migration-and-spatial-mobility>

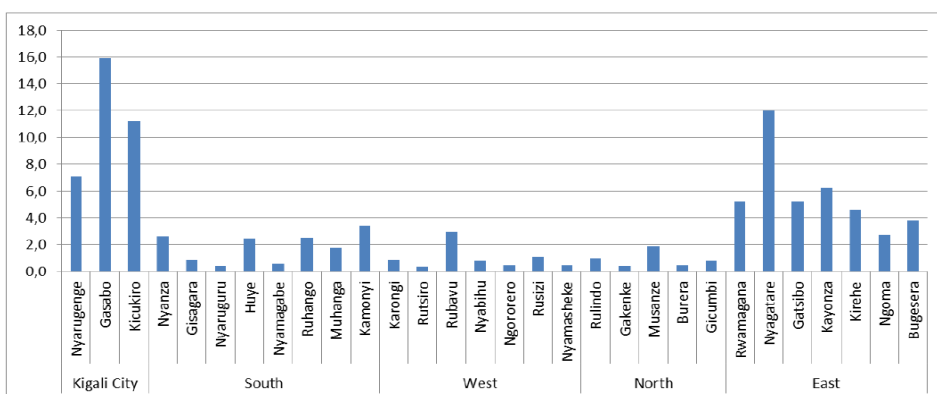
¹³ NISR (2014): Fourth Population and Housing Census, Rwanda: Migration and Spatial Mobility, p.6. Retrieved on May 22, 2014, from <http://www.statistics.gov.rw/publications/rphc4-thematic-report-migration-and-spatial-mobility>, and UMUSEKE (2013): Igishushanyombonera cy’umugi wa Kigali kizaca akajagari mu myubakire.

¹⁴ IndexMundi (2014): Kenya vs. Rwanda: Demographics. Retrieved on July 17, 2014, from <http://www.indexmundi.com/factbook/compare/kenya.rwanda/demographics>

¹⁵ Goodfellow, Tom (2014): Rwanda’s political settlement and the urban transition: expropriation, construction and taxation in Kigali, *Journal of Eastern African Studies*, 8:2, p. 311 – p. 329. Published by Routledge. Retrieved on May 22, 2014, from <http://dx.doi.org/10.1080/17531055.2014.891714>

also led to the expansion of land designated as urban.¹⁶ Recent estimates of migration show that Kigali City, where most non-farm wage-is found, received nearly 209,000 in-migrants in the last five years with many coming from Rwanda’s Southern, Western, and Northern provinces (see Figure 1 and Table 1). Among Kigali’s three districts, the share of non-native residents is 13% in Gasabo, 9% in Kicukiro (9%), and 7% in Nyarugenge (7%).¹⁷

Figure 1: Percentage of Internal recent Migrants by District of Destination



Source: Rwanda 4th Population and Housing Census, 2012, Migration and Spatial Mobility Report, p.29 (NISR 2014)

Table 1: Recent migration (in the preceding 5 years) Matrix by Province

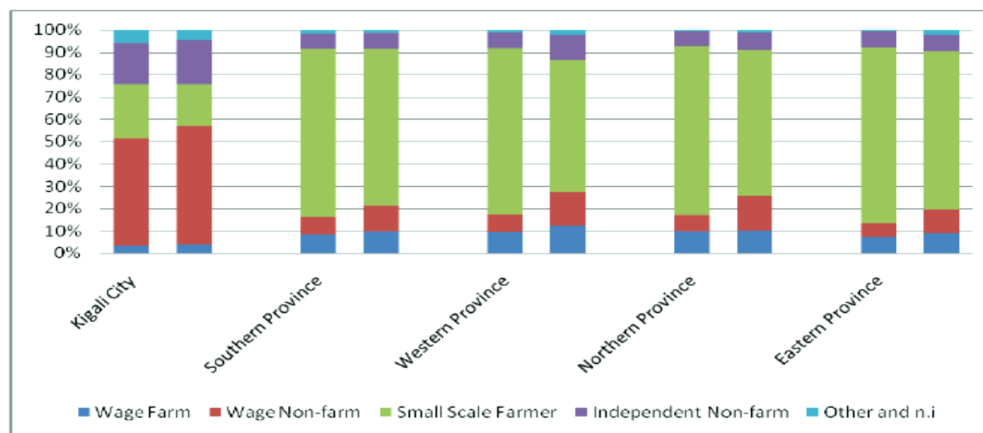
Previous Province of residence (Origin)	Current Province of residence (Destination)					Out-migrants
	Kigali City	South	West	North	East	
Kigali City	78,116	19,820	6,663	8,304	50,025	84,812
South	84,902	67,528	5,807	3,768	48,463	142,940
West	54,029	24,806	39,004	8,869	57,959	145,663
North	31,356	3,609	4,900	12,186	97,294	137,159
East	38,177	6,201	2,156	4,339	79,378	50,873
Not stated	23,204	4,214	2,695	1,194	5,864	
In-migrants	208,464	54,436	19,526	25,280	253,741	561,447

Source: Rwanda 4th Population and Housing Census, 2012, Main Indicators Report, p.13 (NISR 2014)

¹⁶ NISR (2014): Fourth Population and Housing Census, Rwanda: Migration and Spatial Mobility, p.29. Retrieved on May 22, 2014, from <http://www.statistics.gov.rw/publications/rphc4-thematic-report-migration-and-spatial-mobility>

¹⁷ MINECOFIN (2013): Economic Development and Poverty Reduction Strategy 2013 – 2018: Shaping Our Development. p.29

Figure 2: Job Types, EICV 2 (left bars) and EICV 3 (right bars)



Source: The Third Integrated Household Living Conditions Survey (EICV 3), p.94 (NISR 2012)

Urban in-migration, especially in Kigali City, has been accompanied by the creation of informal settlements representing between 80% and 90% of common housing; these settlements are inhabited mainly by poor migrants from rural areas.¹⁸ Demand for housing is around 35,000 units annually in Kigali City, and 15,000 units for other urban centers combined. With the country topography characterized by mountains, many of these houses are located on steep slopes where residents live in precarious conditions.¹⁹ In this context of rapid growth of informal settlements and demand for housing, urban planning and organized settlement has become an enormous challenge for the government of Rwanda (GOR).

Faced with these challenges and a vacuum of urban regulation, starting in the mid-2000s the GOR adopted a series of policies and legal instruments aimed at governing urban development, focusing on urban land use planning, land allocation and transformation.²⁰ Framed by the Land Policy (2004) which stressed rational and planned use of land through sound land management and efficient land administration, the GOR instituted land use master plans, beginning with the Kigali City Master Plan, which was first published in 2007 but not formally approved by the GOR until 2013. The National Urban Housing Policy (2008) emphasized zoning and upgrading of unplanned settlements while the Human Settlement Policy (2009) sought to modernize cities in Rwanda with interventions to curb the proliferation of unplanned housing and improve population living standards in irregular neighborhoods. Building Regulations were instituted in 2009 to serve as a standard reference for the regulation of building design and construction. Established the same year, the Clients Charter articulated the process of land development for potential investors and was accompanied by a National Investment Strategy aimed at expanding public and private investments in Rwanda.

On the heels of these legislative reforms came widespread urban expropriation, particularly in the City of Kigali, as an instrument to enable compliance with new policies, master plans and other regulations. The extent of expropriation and the controversy surrounding its practice were evidenced by the numerous

¹⁸ MININFRA (2008) : National Urban Housing Policy in Rwanda

¹⁹ Idem, p.5

²⁰ Goodfellow, Tom (2014): Rwanda’s political settlement and the urban transition: expropriation, construction and taxation in Kigali, *Journal of Eastern African Studies*, 8:2, p. 311 – p. 329. Published by Routledge. Retrieved on May 22, 2014, from <http://dx.doi.org/10.1080/17531055.2014.891714>

newspaper articles that began to appear on the practices and outcomes of expropriation following passage of the 2007 expropriation law.

3. LEGAL AND REGULATORY FRAMEWORK GOVERNING EXPROPRIATION

Expropriation is not a new concept in Rwanda's domestic legislation. Before the enactment of the 2007 Expropriation Law, several legal provisions were in place to govern the process in Rwanda. Before independence, expropriation was governed by the decrees of 5/02/1932 and of 30/07/1953 on expropriation for public interest.²¹ These decrees were modified by the Decree of 24/07/1956 on expropriation in the public interest.²² These legal instruments were applicable both to Congo-Belge and Rwanda-Urundi. After independence, different constitutions²³ adopted by the Republic of Rwanda included the principle of expropriation for public interest, potentially influenced by Article 17 of the Universal Declaration of Human Rights which maintains that declares that no person shall be arbitrarily deprived of his poverty.²⁴ In order to implement the constitutional principle, Decree-law no 21/79 of July 23rd 1979 was established during the Second Republic to govern expropriation,²⁵ followed by several implementing regulations.²⁶

Today, domestic law governing expropriation derives from the Rwandan Constitution of June 04th, 2003 as amended to date, article 27 of which states, "the right to property may not be interfered with except in public interest, in circumstances and procedures determined by law and subject to fair and prior compensation,"²⁷ The primary law governing expropriation is the 2007 Expropriation Law, there are other legal provisions containing provisions relating to expropriation, including Law No 43/2013 of 16/06/2013 governing land in Rwanda,²⁸ Law No 17/2010 of 12/05/2010 establishing and organizing the real property valuation profession in Rwanda, and Ministerial Order No 001/16.00 of 23/11/2009 determining the reference land prices in the city of Kigali.²⁹

Important features of the 2007 Expropriation Law are:

²¹ Decree of 1932 and 1953 published on the Official Bulletin 1956, no 16 of 15 August 1956, pp. 1418-1428.

²² F., Reyntjens (1980) : C.L.R., Vol. II, Butare, UNR, p.310.

²³ Constitution of 24/11/1962, Article 23, in O.G., 1962, n0 23 bis of 1st December 1962; Article 23 of the Constitution of 20/12/1978, in O.G., 1978 bis, n0 24 bis of December 20th 1978; Article 23 of the Constitution of June 10th 1991, in O.G., 1991, special number of 10th June 1991; article 29 of the Constitution of June 4th, 2003, in O.G., special number of June 4th, 2003.

²⁴ Article 17 of the Universal Declaration of Human Rights states 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".

²⁵ Decree-law no 21/79 of July 23 1979 relating to expropriation as confirmed by Law no 01/82 of January 26, 1982.

²⁶ Presidential Order no 08/01 of May 20, 1997 relating to the transfer of competences to the prefecture of Kigali City, in O.G. no 11 Of June 1st 1997; Ministerial order no 18.08/1185 of April; 22, 1996 relating to modification in compensation of expropriated people for public utility; Ministerial order no 02/79 of July 15, 1979 determining the rate of compensation for expropriation for public utility, in O.G., no 14 bis of July 25, 1979.

²⁷ Constitution of June 4th, Article 29, 2003, in O.G., special number of June 4th, 2003.

²⁸ Article 2 (14°), the law no 43/2013 of 16/06/2013 governing land in Rwanda defines the term expropriation without providing much details on it.

²⁹ Ministerial Order no 001/16.00 of 23/11/2009 determining the reference land prices in the city of Kigali, Official Gazette no 51 Of 21/12/2009.

- Only the government may carry out expropriation, and only for purposes deemed to be in the public interest³⁰ and with prior and just compensation.³¹ Although the term “government” is not defined in the law, articles 8, 9 and 10 make clear that districts and the City of Kigali have the powers to order for expropriation in public interest in addition to central government. Moreover, the exclusive authority granted to government to carry out expropriation is obscured by article 2, paragraph 5, which defines a person requesting for expropriation as, “a State organ, non-governmental organizations, legal associations operating in the country or an individual who intends to carry out the act of expropriation and who is obliged to apply to the expropriator.”
- Expropriation is conducted “only in the public interest and with prior and just compensation”³². Moreover, a person to be expropriated must be informed prior to their land being surveyed for purposes of expropriation.
- Proposals made by the government to expropriate must be evaluated and approved by different land commissions, including land commissions at the district level when expropriations concern only a single district, the land commission at the City of Kigali when the proposal concerns more than one of the City of Kigali districts, and the land commission at the national level when the proposal concerns the national level. Land commissions are charged with evaluating expropriation proposals by the Government. However, by virtue of the 2013 Land Law omitting these commissions and its Article 75 repealing all prior provisions contrary to this law, the commissions no longer exist to perform these functions.
- Expropriated persons have the right to appeal against any decision taken by the relevant land commission to the immediate superior land commission within thirty (30) days after the decision is taken. If the appeal is not successful, the case may be referred to a competent court.³³
- Valuation of land to be expropriated for purposes of determining compensation shall consider the value of the land and land-based activities, such as crops, forests, buildings or any other activity aimed at efficient use of land or its productivity³⁴; it shall also consider the size, nature and location of the land, as well as the prevailing market prices for the land³⁵. This was an important departure from prior domestic legislation governing expropriation which provided only for valuation of improvements on the land as a basis for determining compensation, and not the land itself.
- Compensation may be monetary or in the form of alternative land and building equal to the value of the land to be expropriated;³⁶ compensation must be awarded prior to expropriation and within 120 days of the land commission approving the amount of compensation.³⁷

³⁰ The concept of public interest is very wide as it includes safeguard national security, infrastructures, public projects such as school, hospital, government buildings as well as urbanization and development projects (see article 5 of the Expropriation in the public interest, O.G., no. special of 21/05/2007)

³¹ Article 3 of the Law n° 18/2007 of 19/04/2007 states that ‘ ‘ Only Government shall carry out expropriation’ ’.

³² Article 3 of Law n° 18/2007 of 19/04/2007 Law No. 18/2007 of 19/04/2007 relating to Expropriation in the Public Interest,

³³ Article 19 of Law n° 18/2007 of 19/04/2007 Law No. 18/2007 of 19/04/2007 relating to Expropriation in the Public Interest

³⁴ Article 21 of Law No. 18/2007 of 19/04/2007 relating to Expropriation in the Public Interest

³⁵ Article 22 of Law No. 18/2007 of 19/04/2007 relating to Expropriation in the Public Interest

³⁶ Article 23 of Law No. 18/2007 of 19/04/2007 relating to Expropriation in the Public Interest

³⁷ Article 24 of Law No. 18/2007 of 19/04/2007 relating to Expropriation in the Public Interest

In addition to the domestic legislation, several international instruments to which Rwanda is a party apply to issues of expropriation in Rwanda. Article 17 of the Universal Declaration of Human Rights of 10 December 1948³⁸ states 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. Article 14 of the African Charter of Human and Peoples Rights³⁹ provides that, “the right to property shall be guaranteed and 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.

4. IMPLEMENTATION OF LEGAL FRAMEWORK GOVERNING EXPROPRIATION

While the legal framework embodies many sound principles, a number of concerns have arisen in the process of its implementation. Whereas the law provides that expropriation can only be carried out when the purpose is one of “public interest,” many claims have arisen over the interpretation and application of the concept by government authorities. Valuation of property has also incited controversy, particularly following a ministerial order which set reference prices for valuing land in the City of Kigali, prices which are considerably below market values for property. Claims of delayed and ‘unfair’ compensation have been widespread. The process has also been plagued by weak institutional coordination and failure to consult with and sensitize concerned citizens on expropriation procedures prior to implementation.

4.1. The Concept of “Public Interest”

In consulting with key informants, the study team found that there is no unanimous agreement over the concept of public interest when referring to land expropriation in Rwanda. Most agree that purposes such as putting in place roads, public schools, hospitals, electric lines, and water and sewage facilities qualify as being in the public interest given that they generate clear public benefits. However, the definition of acts of public interest in the expropriation law includes, “activities to implement master plans of the organization and management of cities and the national land in general” as well as “any other activities aimed at public interest which are not indicated on this list that are approved by an Order of the Minister in charge of expropriation, at own initiative or upon request by other concerned persons.” The broad scope given to acts which can qualify as “public interest” has given room for many private commercial activities to be considered in the public interest, including those that support implementation of the Kigali City Master Plan. Many we interviewed argue that these should not qualify as being in the public interest.

Faced by upsurges in land prices in Kigali, private investors have lobbied the government to consider their projects as serving the public interest. If successful, investors benefit from the government assuming responsibility for locating, surveying and expropriating land on their behalf.⁴⁰

Real estate development activities have been particularly criticized, including the Vision 2020 Estate Project in Gaculiro by Rwanda Social Security Board (RSSB). A special correspondent in Rwanda Today

³⁸ Rwanda acceded on 18th September 1962 by the fact of its admission as member of the UN) It was approved and ratified through the presidential order N° 159/01 of 31st December 2002 (O.G. No 12 of 15th June 2003)

³⁹ Rwanda adopted it on 27th June 1981. It has been ratified by Rwanda through Presidential Decree n° 10/1983 of 1st July, 1983 (Official Gazette n° 13 of 01/07/1983)

⁴⁰ Goodfellow, Tom (2014): Rwanda’s political settlement and the urban transition: expropriation, construction and taxation in Kigali, *Journal of Eastern African Studies*, 8:2, p. 317. Published by Routledge. Retrieved on May 22, 2014, from <http://dx.doi.org/10.1080/17531055.2014.891714>

wrote, “This has been a point of controversy between city authorities and land owners with the latter accusing the former of colluding with private investors to deprive them of their constitutional property rights,”⁴¹ According to one of the affected land owners, “Real estate business cannot be a public interest affair... the real estates are apartments, not hospitals, and since the land is for commercial purposes, we should be given room to negotiate the price of land on that basis.”⁴² Incentives to exploit the master plan as justification for expropriation in the public interest are not confined to investors.

Interviews with District Land Officers revealed that expropriating land in the name of public interest is sometimes carried out to advance their performance contract (*Imihigo*) commitments toward implementation of master plans,⁴³ feeding a win-win situation between private investors and the GOR.

Informants we interviewed maintained that these types of projects carried out in the name of public interest only benefit a small number of more affluent persons. They recommended that decisions to inform expropriation on the grounds of implementing the master plans should be preceded by an assessment of their socioeconomic benefits to the public.

4.2. Property Valuation for Purposes of Determining Compensation

Another observed challenge relates to land and property valuation required for compensating those who are expropriated. Both the 2007 Expropriation Law and the Real Property Valuation Profession Law of 2010⁴⁴ call for land to be valued based on market prices. According to the Deputy Director General of Lands and Mapping at the Rwanda Natural Resources Authority (RNRA), valuation done for purposes of compensating for expropriation is sometimes in contradiction to these laws.⁴⁵ Tensions are rooted in competing mandates to provide landowners with just compensation and a desire to keep land costs down to encourage investment.⁴⁶

Arguments over expropriation were particularly high in 2006-07 before expropriation and land valuation legislation were in place. Expropriation of 336 households from Ubumwe cell in Kiyovu Sector, which borders Kigali’s city center, caused uproar when the Rwanda Social Security Board (RSSB) with the help of Nyarugenge District sought to make way for the new central business district envisaged in the Kigali City Master Plan.⁴⁷ Conflicts arose based on how the government handled the valuation of land of the expropriated families. The compensation value offered, not including structures built on the land, was around Rwf 1,000 per square meter, whereas land nearby was fetching Rwf 77,000 per square meter on the market.⁴⁸ Lilian Mupende of the Kigali City One-Stop Center and a representative of RSSB maintain

⁴¹ Rwanda Today (2014): Rwandan landowners demand better terms for their properties. Retrieved on June 20, 2014, from <http://www.theeastafrican.co.ke/Rwanda/News/Pay-us-at-the-market-price--landowners-now-tell-Rwanda-govt/-/1433218/2317622/-/item/1/-/vm4i89/-/index.html>

⁴² Rwanda Today (2014): Rwandan landowners demand better terms for their properties. Retrieved on June 20, 2014, from <http://www.theeastafrican.co.ke/Rwanda/News/Pay-us-at-the-market-price--landowners-now-tell-Rwanda-govt/-/1433218/2317622/-/item/1/-/vm4i89/-/index.html>

⁴³ Interviews with District Land Officers, March 2014 – April 2014

⁴⁴ Law no 17/2010 of 12/05/2010 Establishing and Organizing the Real Property Valuation Profession in Rwanda, Official Gazette, no 20 of 17/05/2010.

⁴⁵ Interview with Eng. Didier Sagashya, DDG at Lands and Mapping Department, RNRA, April 2014

⁴⁶ Goodfellow, Tom (2014): Rwanda’s political settlement and the urban transition: expropriation, construction and taxation in Kigali, *Journal of Eastern African Studies*, 8:2, p. 317. Published by Routledge. Retrieved on May 22, 2014, from <http://dx.doi.org/10.1080/17531055.2014.891714>

⁴⁷ Goodfellow, Tom (2014): Rwanda’s political settlement and the urban transition: expropriation, construction and taxation in Kigali, *Journal of Eastern African Studies*, 8:2, p. 317. Published by Routledge. Retrieved on May 22, 2014, from <http://dx.doi.org/10.1080/17531055.2014.891714>

⁴⁸ Interview with RSSB representative, March 2014

that this considerable discrepancy in pricing emerged partly because systematic criteria for land valuation were lacking.⁴⁹

In an effort to prevent further such controversies, the Kigali City Council intervened in 2009 to fix land prices paid by the government in cases of expropriation, initially to levels that would ensure adequate compensation to persons to be expropriated. This was regulated by Ministerial Order No. 001/16.00 of 23/11/2009 determining reference of land prices in the City of Kigali, which established prices for land in different locations of Kigali based on consideration of its market value. In Kiyovu where previous expropriation had caused such a disturbance, the cost was fixed at Rwf 16,000 per square meter.⁵⁰ These prices, however, were contested by government and investors. When combined with the cost of compensating for the destruction of manmade structures, which the government was now also legally obliged to pay according to the expropriation law, the price of expropriation became significantly higher. With private investors reluctant to pay such prices to acquire land,⁵¹ the Ministry of Local Government urged land officials to reassess the prices, with the effect that in September 2009 the list was revised. In Kiyovu, prices were slashed to RWF 1,531 per square meter.⁵² As one land official we interviewed noted, “We were asked in no uncertain terms to review this list in view of the need to implement the Master Plan and generate economic development.”⁵³

The fact that some plots of land in Kiyovu were then put on the market by RSSB for as much as Rwf 109,000 per square meter further fueled the polemic. In our interview with RSSB, the representative remarked that this enormous difference is justifiable and reflects the cost of compensating for the land-based improvements, which tend to be much more costly than compensating for the land itself, as well as the cost of infrastructure installed after expropriation.⁵⁴ Similar outcries emerged during the 2009 expropriation of 36,000 households in Gaculiro cell of Kigali City to construct a new ‘satellite town’ dubbed Vision 2020.⁵⁵

An article in Rwanda Today maintained that government recommendations capped compensation for a square meter of land at Rwf 2,297 in Kiyovu, Rwf 1,355 in Nyarutarama, Rwf 1,470 in Kibagabaga and Rwf 1,240 in Gaculiro, whereas valuers told the newspaper that a square meter in the upscale city suburbs fluctuates between Rwf 100,000 and Rwf 150,000 when sold on the market.⁵⁶ The same article also reported that reference prices were supposed to be reviewed every two years but that this was yet to happen. A senior private property valuer acknowledged that the process of compensation is unfair in comparison to prices fetched by the proposed projects on the same piece of land. The expert asserted that set prices to compensate those removed from prime areas around Kigali, including Gaculiro, Kanombe and Gahanga, were unreasonable in comparison to the planned investments on the land, such as real estate projects.⁵⁷ Speaking about the reference prices, one key informant complained, “This provision has

⁴⁹ Interview with RSSB representative and Lilian Mupende, Director of Kigali City One-Stop-Centre, March 2014

⁵⁰ Goodfellow, Tom (2014): Rwanda’s political settlement and the urban transition: expropriation, construction and taxation in Kigali, *Journal of Eastern African Studies*, 8:2, p. 319. Published by Routledge. Retrieved on May 22, 2014, from <http://dx.doi.org/10.1080/17531055.2014.891714>

⁵¹ Idem

⁵² Idem

⁵³ Interview with District Land Officer, March 2014

⁵⁴ Interview with RSSB representative, March 2014

⁵⁵ Goodfellow, Tom (2014): Rwanda’s political settlement and the urban transition: expropriation, construction and taxation in Kigali, *Journal of Eastern African Studies*, 8:2, p. 319. Published by Routledge. Retrieved on May 22, 2014, from <http://dx.doi.org/10.1080/17531055.2014.891714>

⁵⁶ Rwanda Today (2014): Rwandan landowners demand better terms for their properties. Retrieved on June 20, 2014, from <http://www.theeastafrican.co.ke/Rwanda/News/Pay-us-at-the-market-price--landowners-now-tell-Rwanda-govt--/1433218/2317622/-/item/1/-/vm4i89/-/index.html>

⁵⁷ Idem

perpetuated land injustice of great magnitude, particularly in Kigali City.”⁵⁸ About 40 families from Gaculiro cell who were involved in a compensation battle with Rwanda Social Security Board and the District of Gasabo are still resisting eviction orders and disputing the amount of compensation due to them.⁵⁹ While the residents say they are not resisting expropriation, they are insisting that the government should compensate them according to the market value of their land to enable them purchase alternative land.

Debate persists over whether valuation of land for expropriation in Kigali should be guided by the 2007 Expropriation Law and the 2010 Real Property Valuation Profession Law, which call for use of market prices, versus the Ministerial Order of 2009,⁶⁰ which places a cap on land prices in Kigali City. According to one district officer we spoke to, this is an ongoing source of confusion.⁶¹ Many district officials we interviewed claimed that even old laws that formerly fixed valuation prices are utilized in the rural areas.⁶² While there are pockets of resistance from local residents targeted for expropriation, some district officials told us that many accept meager compensation for fear of losing a costly battle if brought to the courts, which they perceive as representatives of the state expropriating them.⁶³

Pressures from the central government for districts to promote investment and planned urbanization contribute to the valuation controversy. One district official noted, “There have been cases when following the land market price, the valued just compensation during expropriation was way higher than what was budgeted by the district considering outsourced land and property valuers mandated by the law to carry out land and property valuation. According to a district official we spoke to, what happens in this case, the district uses a ‘loophole’ in the Real Property Valuation Profession Law 2010 which allows district officials to conduct land and property valuation with a second round of counter-evaluation carried out basing the exercise on lower fixed prices set by the District Council. The owed just compensation is then feasible for the district, but not for the residents who are facing compulsory eviction.⁶⁴ The 2007 Expropriation Law, however, lacks a definition of market value and guidelines for calculating it. Representatives of CSOs we interviewed argue compensation should reflect the market value of the property on the date of expropriation reflecting the price of a transaction between a willing seller and a willing buyer. Yet, this view is dismissed by many representatives of public institutions we consulted who only refer to the rates set by the Ministerial Order No 001/16.00 of 23/11/2009 determining the reference land prices in the City of Kigali.⁶⁵

Further problems concerning property valuation emanate from corruption and failure to follow ethical codes of conduct; limited skills among those in the valuation profession; and inadequate management and capacity of the Institute of Real Property Valuers (IRPV) which is comprised of 90 certified property valuers. According to the Deputy Director for Lands and Mapping at RNRA in an interview with IGIHE,⁶⁶ some people are not qualified valuers. Rather, they pretend to be valuers and use forged documents. Others who are bonafide property valuers lack knowledge and professionalism, a statement that was echoed by a member of the IRPV who said, “Here there is a problem of poor professionalism and

⁵⁸ Interviews with Key Informants on the implementation of expropriation, March 2014 – April 2014

⁵⁹ Idem

⁶⁰ Law no 17/2010 of 12/05/2010 Establishing and Organizing the Real Property Valuation Profession in Rwanda, Official Gazette, no 20 of 17/05/2010.

⁶¹ Interview with District Land Officer, April 2014

⁶² Interviews with District Land Officers, April 2014

⁶³ Interviews with District Land Officers on the Implementation of Expropriation Law, April 2014

⁶⁴ Interview with District Land Officer, April 2014

⁶⁵ Interview with

⁶⁶ IGIHE (2014): Abagenagaciro bahangayikishijwe n’abakoresha inyandiko mpimbano mu guha imitungo agaciro. Retrieved on June 14, 2014, from http://www.igihe.com/ubukungu/ubucuruzi/article/abagenagaciro-bahangayikishijwe-n?page=article_mobile

those with fraudulent papers.” This results in inconsistent land pricing. Others, including district officials, the President of IRPV, and a former Chair of the Commission on Agriculture, Land, Environment, Habitat, and Natural Resources, attribute this variation in land pricings to the ambiguity in laws governing expropriation, and the lack of criteria for conducting valuation.⁶⁷

Respondents we interviewed all agreed that poor professionalism among property valuers stems from the fact that valuers lack technical credentials necessary to conduct a proper valuation. The president of the IRPV, and the Deputy Director General of RNRA Lands and Mapping Department, asserted that most property valuers are engineers and do not possess the appropriate qualifications such as land economics, property valuation, etc. to fully value the land at international standards.⁶⁸ Frustration over irregularities in land and property valuation is expressed by those targeted for expropriation. In the case of a modern housing project initiated in Kinyinya cell in Gasabo District, a resident rejected the Rwf 18 million he was offered as compensation for expropriation. An alternative valuation he commissioned assigned his property a value of Rwf 53 million, and he voiced his preference to negotiate with the investor who had not been disclosed to residents by the district.⁶⁹

Corruption and embezzlement cases further plague valuation exercises. In Mageragere Sector where Kigali City’s main prison will be relocated, property valuers and local officials were accused of colluding to reduce the valuation of properties targeted for expropriation.⁷⁰

According to its president, the IRPV, which is mandated to rectify these challenges, is still handicapped in terms of financial capacity to address improper behavior, provide capacity building to registered property valuers, and carry out research on market prices.⁷¹ However, by the time of writing this brief, a training had been set to strengthen the quality and credentials of property valuers. The Institute has also produced a book documenting prices at which houses and land in different zones had been sold. The book contains guidelines on minimum and maximum prices for valuation purposed. They are also planning to employ technology that would provide banks with a list of registered property valuers.

4.3. Other Issues Surrounding Compensation

Claims over delayed compensation have also been numerous in many expropriation exercises. In some areas, evictees have waited several years to be compensated, which is contrary to what the law stipulates. Specifically, article 24 of the 2007 Expropriation Law provides that just compensation approved by the competent authorities shall be paid within a period not exceeding 120 days from the day when the amount of compensation is determined. In cases where it exceeds that period, the expropriation is supposed to be rendered invalid, unless the person to expropriate and the one to be expropriated come to terms. In this case, during the time the person to be expropriated is still waiting for payment, he or she has the right to cultivate crops within a period not exceeding 90 days and harvest the crops still on his/her land.⁷²

Many of the key informants we spoke to and accounts in the newspaper blame failure to observe law mandating prior compensation on the haste and limited financial capacity to implement master plan

⁶⁷ Interviews with Key Informants on the Implementation of Expropriation Law, March 2014 – April 2014

⁶⁸ Interview with Gatsirombo Egide, President of the Institute of Real Property Valuers and Eng. Didier Sagashya, Deputy Director General of RNRA Lands and Mapping Department, March 2014 – April 2014

⁶⁹ IGIHE (2013): Family Appeals for Help as their House is Bulldozed. Retrieved on June 15, 2014, from <http://en.igihe.com/news/family-appeals-for-help-as-their-house-is.html>

⁷⁰ The New Times (2008): Quartet nabbed in expropriation scam. Retrieved on June 16, 2014, from <http://www.newtimes.co.rw/news/index.php?a=10632&i=13708>
http://www.igihe.com/amakuru/u-rwanda/article/kamonyi-imyaka-irindwi-ishize?page=article_mobile

⁷¹ Interview with Gatsirombo Egide, President of the Institute of Real Property Valuers, March 2014

⁷² Law No. 18/2007 of 19/04/2007 relating to Expropriation in the Public Interest, Article 24

projects combined with poor planning and coordination among government institutions charged with implementing expropriation. For example, expropriated residents in one village in Kacyiru Sector, Gasabo District bemoaned delays in payment of compensation after 39 homes were demolished to construct new embassies.⁷³ One of the dwellers who used to run a small but busy bar in the area lamented that the dwellers had agreed to move because the government was to build something that benefited the general public, yet the government failed to pay them on time. While awaiting compensation, residents were forbidden to repair their halfway demolished houses or do any business activity, even though the project had stalled. The concerned officials noted that compensation delays were due to multiple procedures required before compensation can be released to ensure that the process is transparent.⁷⁴ These cases have been similar to the ones faced by residents of Gahanga Sector in Kicukiro⁷⁵ District and Rilima Sector in Bugesera District⁷⁶ where the state-of-the art stadium and national airport are to be built, respectively. Newspaper articles report that some of the expropriated families awaiting compensation have suffered starvation and hardship because they are not allowed to cultivate their fields or repair their houses. Likewise, occupants of homes in Gacurabwenge Sector, Kamonyi District where the district headquarters is to be built claim they have not been paid compensation since being informed of their expropriation in 2006. Since then, they have not been permitted to repair their houses or cultivate any crops that require more than three months to harvest.⁷⁷

A sector official from Bugesera District we interviewed noted that delayed compensation occurs when disputes over land ownership have to be resolved.⁷⁸ These problems occur when more than one person claims to be the owner of the property and therefore entitled to compensation. Tracked by the Office of the Ombudsman⁷⁹ and the Ministry of Local Government,⁸⁰ these cases include child survivors of the genocide who have claimed original rights to the expropriated land which had been taken over by others or the government. Compensation processes were delayed because the disputes needed to be resolved first to determine who should legitimately be entitled to compensation.

Capacity to manage and wisely invest cash compensation presents another challenge for those who are expropriated. According to article 23 of the 2007 Expropriation Law, just compensation may be monetary or an alternative land and a building equivalent in value to the monetary compensation.⁸¹ Although some expropriators have relocated people, interviewees informed us that most opt to provide monetary compensation.⁸² Respondents noted that management of cash received has become problematic

⁷³ Rwanda Today (2013): Kigali Residents in the Cold as City Hall Dithers on Cash. Retrieved on June 17, 2014, from <http://www.theeastafrikan.co.ke/Rwanda/News/Kigali-residents-in-the-cold-as-City-Hall-dithers-on-cash/-/1433218/2047482/-/item/1/-/14kq0kk/-/index.html>. Also found in IGIHE (2013): Abagomba Kwimurwa Inyuma ya IGIHE (2013): Abagomba kwimurwa inyuma za Minisiteri mu Ruhuri rw'Ibibazo. Retrieved on December 2013, from <http://www.igihe.com/amakuru/u-rwanda/article/kacyiru-abagomba-kwimurwa-inyuma>

⁷⁴ Idem

⁷⁵ Rwanda Today (2014): Compensate the displaced quickly, now MPs urge government. Retrieved on June 20, 2014, from <http://www.theeastafrikan.co.ke/Rwanda/News/Compensate-the-displaced-quickly/-/1433218/2261090/-/item/2/-/29f9qdz/-/index.html>

⁷⁶ IGIHE (2013): Bugesera: Umushinga w'ikibuga cy'indege wateje inzara. Emmanuel Kwizera, 23/05/2013, <http://www.igihe.com/amakuru/u-rwanda/article/bugesera-umushinga-w-ikibuga-cy>

⁷⁷ IGIHE (2013): Kamonyi: Imyaka irindwi ishize bategereje ingurane ariko barahebye. Retrieved on June 3, 2013, from http://www.igihe.com/amakuru/u-rwanda/article/kamonyi-imyaka-irindwi-ishize?page=article_mobile

⁷⁸ Interview with Gashora Sector Official, Bugesera District, March 2014

⁷⁹ Office of the Ombudsman (2011): Annual Report 2010/11, p.29. Retrieved on August, 2013, from http://www.ombudsman.gov.rw/IMG/pdf/annual_report_2010-2011

⁸⁰ Rwanda Today (2014): Compensate the displaced quickly, now MPs urge government. Retrieved on June 20, 2014, from <http://www.theeastafrikan.co.ke/Rwanda/News/Compensate-the-displaced-quickly/-/1433218/2261090/-/item/2/-/29f9qdz/-/index.html>

⁸¹ Law No. 18/2007 of 19/04/2007 relating to Expropriation in the Public Interest, Article 23

⁸² Interviews Key Informants on the implementation of Expropriation Law 2007, March 2014 – April 2014

for some families. Couples have struggled to agree on how to allocate funds and misuse of funds is reportedly common.⁸³ One former resident of Kimicanga suburb in Kacyiru Sector who was interviewed by Rwanda Today narrated how some of his former neighbors ended up homeless after misusing the received cash compensation, and that he himself has struggled to make ends meet after the invested his Rwf 10 million compensation in businesses that failed. He commented, “If you get an ordinary man who has never handled Rwf 1 million and you give him Rwf 10 million, he is bound to make mistakes.”⁸⁴ The high cost of living in Kigali City also means that funds received tend to be rapidly depleted if wise investment choices are not made.⁸⁵

Relocation can often be a preferred option for those expropriated. Former occupants of Kiyovu, Kimicanga and Muhima suburbs of Kigali who relocated in Batsinda village, for example, report that relocation has had a positive impact on their livelihoods.⁸⁶ Moreover, houses and basic infrastructure established in Batsinda by RSSB in collaboration with Kigali City Council were offered to the occupants at a subsidized cost.⁸⁷ Some families living in high risk zones and marshlands in Kigali City were relocated to Jabana, Gisozi, Bumbogo, Gatsata and Nduba, and Ndera sectors in Gasabo and Nyarugenge Districts.⁸⁸ Yet, relocating the expropriated presents significant challenges. One key informant claimed that relocation is highly expensive, and this would not be an option the government could choose all the time.⁸⁹ Lilian Mupende, Director of Kigali City One-Stop Centre, noted that it has been challenging for the City of Kigali to find relocation sites for the expropriated.⁹⁰

Relocation has also dealt consequences to livelihoods and social stability.⁹¹ Expropriations in high risk zones of Nyabinoni Sector, Muhanga District⁹² relocated household to village settlements far away from their farming activities, creating hardship. Families relocated from the districts of Bugesera, Muhanga, Nyabihu, Musanze, Karongi and Gasabo have complained that their socio-economic, cultural and spiritual attachments to their former land have been destroyed from expropriation.⁹³ In response to the outcries, the Prime Minister issued a letter⁹⁴ to all Cabinet members urging them to strictly comply with the 2013 Land Law and the 2007 Expropriation Law,⁹⁵ prompting increased efforts by the Ministry of Local Government and Rwanda Housing Authority to look at the needs of households targeted for expropriation.

⁸³ Interviews with Key Informants on the implementation of Expropriation Law 2007, March 2014 – April 2014

⁸⁴ RWANDA Today (2013): Slums to skyscrapers: Where do the expropriated people go? Retrieved on June 17, 2014, from <http://www.theeastafrican.co.ke/Rwanda/News/Where-do-the-expropriated-people-go/-/1433218/1702274/-/item/1/-/dk93ipz/-/index.html>

⁸⁵ Interview with Lilian Mupende, Director of Kigali City One-Stop Centre, April 2014

⁸⁶ RWANDA Today (2013): Slums to skyscrapers: Where do the expropriated people go? Retrieved on June 17, 2014, from <http://www.theeastafrican.co.ke/Rwanda/News/Where-do-the-expropriated-people-go/-/1433218/1702274/-/item/1/-/dk93ipz/-/index.html>

⁸⁷ Idem

⁸⁸ The New Times (2013): Former city-slum-dwellers now have reason to cheer. Retrieved on May 24, 2014, from <http://www.newtimes.co.rw/news/index.php?a=13251&i=15243>

⁸⁹ Interviews with Key Informants on the implementation of Expropriation Law 2007, March 2014 – April 2014

⁹⁰ The New Times (2013): Former City-slum-Dwellers now have reason to cheer. Retrieved on June 19, 2014, from <http://www.newtimes.co.rw/news/index.php?a=13251&i=15243>

⁹¹ Interviews with Key Informants on the Implementation of Expropriation Law, March 2014 – April 2014

⁹² High risk zones include households in steep slopes, swamp areas, or other adjacent land which can be affected by the nearest risky zones had to be resettle, Source:

⁹³ The New Times (2013): Govt postpones high risk zones evictions. Retrieved on June 13, 2014, from <http://www.newtimes.co.rw/news/index.php?a=66830&i=15356>

⁹⁴ Republic of Rwanda (2014): Kubahiriza amategeko agenga kwimura abantu ku mpamvu z'inyungu rusange

⁹⁵ The New Times (2013): Former City-slum-Dwellers now have reason to cheer. Retrieved on June 19, 2014, from <http://www.newtimes.co.rw/news/index.php?a=13251&i=15243>

Incidents of corruption have also plagued payment of compensation, such as in Muhanga and Ngororero districts where the Nyabarongo Hydropower Project is being built. An inventory of corruption cases conducted in these districts in 2009 and 2010 revealed that local officials were: compensating people who were not entitled to compensation, compensating people more than one time for a single property, paying rightful property owners less than they were owed, and evicting people without compensation.⁹⁶ Once the problem came to light, MININFRA had to answer to the Parliament's Public Accounts Committee to explain how payment of Rwf 73 million was made to persons who never appeared on the list. Consequently, compensation was delayed while investigations were underway.⁹⁷ According to the Executive Secretary of Mushishiro Sector, Muhanga District, those accused of corruption were under arrest and investigation.⁹⁸ Other corruption cases were uncovered in Gasabo District where many expropriation exercises have taken place to implement the Kigali City Master Plan. These irregularities were notably reported in Kinyinya Sector, Rugando village where the construction of the mega Convention Center is underway and Bumbogo Sector where the Free Trade Zone is to be built⁹⁹.

A final issue reported on compensation relates to the absence of a clear provision in the law addressing expropriation of part of a property. When expropriation takes a portion of the land, the compensation is only given for the portion taken and does not consider that the remaining portion may no longer be suitable for the actual or intended uses by the owner. Our informants mentioned the fact that the expropriation law does not provide for compensation of partial rights lost, even if the cost of losing such rights can be significant, i.e. one is no longer able to farm on a piece of land that had been primarily used for farming to support a family. This has occurred in areas where main roads were constructed.¹⁰⁰

4.4. Institutional Planning and Coordination

While interviewing public institutions over the implementation of expropriation, challenges over public institutional collaboration and coordination surfaced. The Head of the Rural Settlement Task Force at the Ministry of Local Government highlighted that poor planning and coordination among institutions involved in expropriation handicaps compliance with the proper procedures.¹⁰¹ In Nyamagabe District where the Nyamagabe Tea Factory is to be built, the Energy Water and Sanitation Authority (EWSA) and the Rwanda Transport Development Agency (RTDA) were not consulted beforehand, delaying implementation of expropriations.¹⁰² Poor planning was cited by all district officials we interviewed,¹⁰³ often because districts rush expropriation processes in order to advance investment or achieve performance targets (*Imihigo*). Budgets end up being a poor reflection of the actual costs of expropriation, hampering payment of fair and timely compensation to the expropriated.

4.5. Governance

⁹⁶ Office of the Ombudsman (2011): Annual Report 2010/11, p.29. Retrieved on August, 2013, from http://www.ombudsman.gov.rw/IMG/pdf/annual_report_2010-2011

⁹⁷ The New Times (2012): Infrastructure Ministry faulted over Nyabarongo expropriation. Retrieved on May 3, 2013, from <http://www.newtimes.co.rw/news/index.php?i=14854&a=48571>

⁹⁸ Interview with Secretary Executive of Mushishiro sector, Muhanga district, April 2014

⁹⁹ The New Times (2008): 32 Local Officials implicated in expropriation scam. Retrieved on May 23, 2013, from <http://www.newtimes.co.rw/news/index.php?a=10308&i=13698>

¹⁰⁰ Interviews with Musanze and Nyabihu Districts on the Implementation of Expropriation Law, April 2014

¹⁰¹ Interview with Kampayana Augustin, Head of Rural Resettlement Task Force in MINALOC, April 2014

¹⁰² Though EWSA and RTDA were expected to put infrastructures just after the expropriation, they were not consulted. As a result, the expropriator was not in hurry for paying the compensation because the implementation of the project had to wait those infrastructures.

¹⁰³ Interviews with District Land Officers on the Implementation of Expropriation Law, April 2014

With the passage of the 2013 Land Law, commissions charged with evaluating and approving expropriation decisions were repealed. Several key informants we spoke with registered concerns over the vacuum left by the dissolution of the commissions which had functioned at the district, City of Kigali and national levels.¹⁰⁴¹⁰⁵ Comprised of individuals from the public sector, private sector and farmers associations, the land commissions¹⁰⁶ were seen to be more concerned with the impacts on those to be expropriated. Following passage of the 2013 Land Law, however, decisions regarding expropriation were taken solely by the expropriating authority.¹⁰⁷ For example, if the expropriating authority is the district, then the District Council makes the decision on expropriation, potentially leading to conflicts of interest.

Another governance issue raised by informants concerns the absence of a central organ in charge of overseeing the process of expropriation and compensation. Instead, processes are initiated and supervised by several institutions.

4.6. Public Participation

Another critique of the expropriation process is its lack of public consultation and participation. Article 12 of the 2007 Expropriation Law requires district authorities to convene a consultative meeting with the population prior to expropriation. Yet our informants told us that people often claim that they are not well informed about the expropriation process and that many consultative meetings are not well organized to provide sufficient information and elicit effective participation by the population. While citizens have an opportunity to express their opinions, they claim to have little influence over the expropriation decision. According to the interviewees, communities only participate by being consulted or by answering questions about their properties. This process does not concede any share in decision making, and district officials are under no obligation to consider people's views or adopt their recommendations.¹⁰⁸

5. RECOMMENDATIONS

Given its economic and social consequences to the affected land owners and the community at large, expropriation of land is a very sensitive topic. This research brief has drawn together many of the experiences surrounding expropriation in Rwanda which highlight gaps in the ability of Rwanda's current legal framework to adequately regulate the expropriation processes. These gaps relate to the definition of public interest and the ability to exploit the term for private gain, contradictory legislation governing valuation of land for purposes of compensation, weak or improper valuation practices, delayed compensation, acts of corruption, as well as concerns over governance and coordination. The following are recommendations to the Rwandan Government and all stakeholders involved in land expropriation.

- 1. Strengthen and narrow the definition of “public interest” in the law.** Whereas the 2007 Expropriation Law provides for public interest as a justification for expropriation, the term is not well defined. Rather, the law gives a list of acts which may be considered in the public interest, a list which allows for projects that serve private interests or promise to only benefit a small number of affluent individuals to benefit to qualify as acts of public interest. The definition could

¹⁰⁴ Law No. 18/2007 of 19/04/2007 relating to Expropriation in the Public Interest, Article 10 through 12

¹⁰⁵ According to the Deputy Director of Lands and Mapping at the RNRA, there was a letter sent to all districts asking that Commissions remain in place until a Ministerial order setting up the committees and new expropriation law are in place.

¹⁰⁶ See Presidential Order no 54/01 of 12th October 2006 determining structure, responsibilities, functioning and composition of land commissions.

¹⁰⁷ Interviews with District Land Officers on the Implementation of Expropriation Law, April 2014

¹⁰⁸ Interview with District Land Officers on the Implementation of Expropriation Law, April 2014

be improved by narrowing the definition of public interest to focus on acts which serve a public purpose (such as installation of infrastructure and public services, including national security), and acts carried out to protect public welfare, health and safety. This would exclude acts executed solely to promote implementation of master plans that do not have a public purpose. Moreover, evaluation of whether projects fall within the scope of “public interest” and warrant expropriation might be better vested in an independent body that includes representation of civil society.

2. **Establish organs to approve and supervise expropriation for public interest.** With the gap left by the repeal of the land commissions, there is a need for a designated government organ to supervise the different projects of expropriation and insure compliance with the law and smooth coordination. It is recommended that a separate approval authority also be established that would be able to evaluate the merits of an application for expropriation, including its potential impact on the livelihoods of those to be expropriated, and render an independent decision.
3. **Include requirements for environmental and social impact assessments.** Expropriations are often undertaken without adequate appreciation of their potential environmental and social consequences in the short, medium and long term. To avoid the government and Rwandan society from having to shoulder the burden of these consequences in the aftermath of expropriation, rigorous environmental and social impact assessments should be carried out to inform the decision on whether or not to implement projects that require expropriation to ensure that that expected long-term public benefits clearly outweigh the social and economic costs born, especially by those being expropriated.
4. **Provide for adequate due process.** When initiating expropriation, there is a need to observe the rules of due process. Communities that are potential targets of expropriation should be entitled to adequate notice of the intent to expropriate and informed of the grounds for expropriation in the public interest, and be granted the right to contest the expropriation through the normal judicial system before an impartial judge. Likewise, property owners should have rights to contest the valuations of their property or seek remedial action when payment of compensation is delayed. Where affected persons lack the financial means to pursue their claims, the government should avail them independent legal assistance.
5. **Elaborate regulations governing the consultation and expropriation process.** The expropriation law should be buttressed by implementing regulations that clearly spell out expropriation procedures, including information that affected communities should be entitled to receive prior to expropriation so as to understand the project, its purpose and implications, expropriation plans, and their rights and obligations. Regulations should likewise outline the protocols framing the consultation process to ensure steps are well established and authorities are held accountable for implementing them. Moreover, consultations should go beyond perfunctory meetings and enable communities to participate effectively and meaningfully in shaping expropriation decisions.
6. **Define “market value” and criteria to establish it.** The law would benefit from a clear definition of market value that is based on what a given property would be able to sell for on the open market through a willing buyer-willing seller transaction. Clear criteria should guide the process for establishing market value drawing on best practices in the valuation profession, which include reference to sale prices for similar properties in proximate locations. This could be addressed through reform to valuation legislation, rather than necessarily needing to be spelled out in the expropriation law. Just compensation should also be redefined to ensure that it is

determined by valuation carried out at the time of the expropriation decision reflecting the market value of the property.

- 7. Abrogate legislation that contradicts valuation of property on criteria other than on the basis of market prices.** Secondary legislation establishing reference prices for valuing property should be repealed to avoid confusion and contradiction with principles of market valuation enshrined in law to determine just compensation for expropriated property.
- 8. Limit the practice of valuation to qualified independent valuers.** To avoid potential conflicts of interest and collusion between officials and investors, only independent valuers certified by the Institute of Real Property Valuers should be qualified to conduct valuations of property for purposes of determining just compensation. Selection should also be done to ensure that the valuer does not have any conflicts of interest that could impede his or her ability to conduct an objective valuation applying state-of-the-art, best practice principles of their profession.
- 9. Strengthen the valuation profession in Rwanda.** Investments in providing a rigorous education to valuers (including continuing education opportunities) and providing incentives to attract students to the valuation profession would both raise the quality of valuations done and the pool of qualified valuers. Likewise, certification standards by IRPV may warrant review to ensure valuers possess the necessary qualifications to conduct fair and accurate valuations while a review of certification of processes and documents used may be warranted to ensure the authenticity of valuers.
- 10. Include consideration of livelihood impacts in determining compensation.** The “costs” born by expropriated families often go far beyond the market values of their properties and include costs associated with livelihood and social disruptions associate with having to find a new home away from one’s employment, community, schools, and possibly family. Determinations of just compensation should factor in the projected losses born by families who are targets for expropriation. Where possible, these losses should be minimized by endeavoring to relocate people close to their original homes and providing additional monetary compensation to offset non-tangible losses. Where monetary compensation alone is used rather than relocation, the government should offer counseling and education to assist recipients make sound decisions for investing compensation and recovering their asset base.
- 11. Compensate for losses incurred when expropriation projects are abandoned.** Compensation should be provided for losses incurred when families are notified of the intent to expropriate and prevented from carrying out activities on their land while awaiting expropriation, but then the expropriation projects are ultimately abandoned.
- 12. Compensate for partial takings.** Partial takings arise when some of a landowner’s rights to their property are extinguished while other rights are left intact. The result can often deprive the owner from deriving the benefits from the land that he or she was once able to, such as cultivating crops or residing on the land. In other cases, partial takings may involve dispossession of part of one’s land, but not the entirety, such as when roads are widened and the government expropriates a portion of private parcels. Given that such partial takings can impose considerable costs on the landowner, even while she or he may not be deprived of official ownership of the land, such takings should also be eligible for compensation to reflect the negative impacts imposed on the owner.

13. Create special provisions for investments driven by implementation of master plans. This brief has already recommended excluding from expropriation projects implemented solely for purposes of executing the master plan that do not serve a public purpose. Instead, investors in these projects should be required to negotiate directly with the concerned property owners. However, those who are less educated and poor may lack sound information on the value of their properties and also not be in a position to negotiate on a level playing field with savvy and affluent investors. For this reasons, the government should consider instituting measures that protect community interests and ensure they receive a fair deal. Incentives to negotiate attractive sale prices for residents could include allowing the government to collect a small percentage of the final sale price.