

**KIGALI INDEPENDENT UNIVERSITY ULK**  
**SCHOOL OF LAW**

**DEPARTMENT OF LAW**

**P.O BOX 2280**

**Critical Analysis of The Applicability of The Law on  
Expropriation Under The Rwandan Legal Framework"**

A dissertation submitted in partial fulfilment of the  
academic requirements for award of the bachelor's  
degree in law

**Presented by:**

**IRADUKUNDA Regis**

**Roll Number: 202111653**

**Supervisor: NDIYAYE U Innocent**

**Kigali, September 2024**

## DECLARATION

I, **IRADUKUNDA Regis**, hereby declare that this dissertation, titled "Critical Analysis Of The Applicability Of The Law On Expropriation Under The Rwandan Legal Framework" is the result of my independent research and original work, conducted under the supervision of **Lecturer NDIYAYE U.Innocent** at Kigali Independent University(ULK). I confirm that this work has not been previously submitted, in whole or in part, for any degree or diploma at any other institution.

I also declare that all sources of information and literature used in this dissertation have been properly acknowledged and cited. Any work done by others has been explicitly referenced to the best of my knowledge and understanding.

Signature: \_\_\_\_\_

Date: /09/2024

IRADUKUNDA Regis

**APPROVAL**

This is to certify that the research presented in this dissertation, titled "Critical Analysis Of The Applicability Of The Law On Expropriation Under The Rwandan Legal Framework" submitted as partial fulfillment of the requirements for the Bachelor of Laws (LLB) degree at Kigali Independent University (ULK), has been conducted by **IRADUKUNDA Regis**.

Lecturer: **NDIYAYE U. Innocent**

Signature: .....

Date: ...../09/2024

## DEDICATION

This dissertation is dedicated to my beloved family, whose unwavering support, love, and encouragement have been the foundation of my academic journey.

To my parents, my brothers and sisters who have always believed in me and taught me the value of perseverance and hard work. Special thank to my uncle **Mgr. Oreste Incimatata** for his guidance and mentorship.

Lastly, to my friends and mentors, who have inspired me with their wisdom and guidance.

This work is a testament to your belief in me.

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## **LIST OF ACRONYMS AND ABBREVIATIONS**

**Art.-** Article

**CSO-**Civil Society Organizations

**EMC-**Expropriation and Monitoring Committee

**ESP.** -Especially

**LPAT-** Local Planning Appeal Tribunal

**GDP-**Gross Domestic Product

**MINALOC-** Ministry of Local Government

**IRPV** – The Institute of Real Property Valuers

**SDG-** Sustainable Development Goals

**Pg.-** Page

**REG-**Rwanda Energy Group

**UK-**United Kingdom

**USA-**United States of America

**ULK-**Universite Libre de Kigali

**USAID-** United States Agency for International Development

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## 1. General introduction

Rwanda's swift socio-economic development has necessitated substantial alterations to land use and proprietorship throughout the nation. This necessitates a review of the existing legal framework governing land tenure and disposition to ensure its adequacy in addressing these contemporary challenges.

Historically, Rwanda has contended with complex land-related issues, such as ambiguities in ownership, tenure, and access. These historical complexities continue to cast a long shadow on the current legal landscape, potentially hindering efficient and equitable land use practices critical for sustained development. The cataclysmic events of 1994, characterized by mass displacement and fatalities, further confounded land matters. The resultant disruptions to land occupancy and traditional ownership records necessitate a robust legal framework to adjudicate competing claims and ensure security of tenure. This is paramount to fostering an environment conducive to attracting investment and economic growth.

Rwanda's expropriation laws have gone through several iterations aimed at balancing development with land owner rights. The 2007 law established a framework for expropriation in the public interest, requiring fair compensation.<sup>1</sup> The 2013 Land Law potentially improved notification procedures, and the 2015 amendments aimed to clarify compensation and emphasize social impact assessments.<sup>2</sup>

### 1.1 Background of the study

In Rwandan law, expropriation laws boils the definition to permitting the government to acquire private property, a process termed expropriation, for initiatives deemed to serve the public good.<sup>3</sup> This public interest concept is expansive, encompassing infrastructure development like roadways to urban planning endeavors that stimulate economic growth. Notably, the legal framework lacks an exhaustive list of qualifying projects, potentially introducing some ambiguity.

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<sup>1</sup> Uwayezu, Ernest, and Walter T. De Vries. "Expropriation of real property in Kigali city: Scoping the patterns of spatial justice." *Land*, vol. 8, no. 2, Feb. 2019, p. 23. [www.mdpi.com](http://www.mdpi.com), <https://doi.org/10.3390/land8020023>.

<sup>2</sup> (Uwayezu & De Vries, 2019)

<sup>3</sup> Act of public interest: An act of government, local entities with legal personality or public institutions, aiming at the interest or wellbeing of the general public. Article 2 of Law n° 32/2015 of 11/06/2015 relating to expropriation in the public interest.

Local committees hold the authority to confirm a project's alignment with the public interest, but they are obligated to engage in consultations with the affected population residing on the targeted land.<sup>4</sup>

In light of this, the evaluation of socio-economic impacts brings to attention pressing concerns surrounding compensation practices. Insufficient and delayed compensation emerges as a significant issue affecting not only property owners but also government bodies and expropriating entities. These challenges not only impede the progress of development projects but also erode public trust in the expropriation process. Additionally, the research uncovers troubling disparities in the valuation of expropriated land, with variations attributable not only to land characteristics but also to the entity administering compensation. These disparities highlight the urgent need to fortify the independence of the valuation process and establish robust mechanisms for community engagement.

However, the acquisition of land, often owned by individuals or communities, has emerged as a recurrent necessity to facilitate these development projects.<sup>5</sup> In response to the evolving needs of the nation, the legal framework governing expropriation underwent significant modifications. Law N° 18/2007 was revised into Law N° 32/2015, establishing precise procedures for the government's appropriation of privately owned land deemed to be in the public interest.

This research probes the legal and social challenges of expropriation procedures in Rwanda. It focuses on two main areas: procedural rights and socio-economic impacts. By examining how communities participate in project decisions, the adequacy of landowner notifications, the fairness of property valuations, and the timeliness of compensation, the research aims to illuminate potential legal shortcomings and human rights violations.

## **1.2. Significance of the Study**

The significance of this study lies in its potential to contribute to the legal and socio-economic landscape of Rwanda by critically analyzing the applicability of expropriation laws. This research aims to highlight the existing challenges in the implementation of expropriation procedures and suggest mechanisms for improvement.

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<sup>4</sup> Article 7. *Ibid*

<sup>5</sup> Marks, Susan. "expropriation: Compensation and asset valuation." *The Cambridge Law Journal*, vol. 48, no. 2, 1989, pp. 170–73. Jstor, <http://www.jstor.org/stable/4507272>. Accessed 18 apr. 2024.

By doing so, it will help ensure that expropriation practices are fair, transparent, and aligned with both national development goals and international human rights standards.

### **1.2.1 Personal Interests**

My personal interest in this study stems from a deep commitment to justice and fairness within the legal system. As someone involved in the legal profession, I am driven by the desire to see laws that are not only well-crafted but also effectively implemented. The topic of expropriation resonates with me because it touches on fundamental rights, including property rights, and has significant implications for individuals and communities. By exploring this topic, I aim to contribute to a legal framework that upholds these rights while balancing the needs of national development.

### **1.2.2 Academic Interests**

From an academic perspective, this study represents an opportunity to delve into a critical area of law that is both complex and underexplored in the Rwandan context. The legal challenges associated with expropriation offer a rich field for scholarly inquiry, particularly in terms of analyzing how existing laws align with constitutional principles and international standards. This research will not only contribute to my academic growth but also to the broader academic discourse on land law and human rights in Rwanda.

### **1.2.3 Scientific Interest**

Scientifically, this study is significant as it employs a rigorous analytical approach to assess the effectiveness of expropriation laws and procedures. By applying legal theories, case studies, and comparative analysis, the research aims to produce findings that are both evidence-based and practically relevant. The study will contribute to the scientific understanding of how legal frameworks can be optimized to protect individual rights while supporting economic development. This, in turn, could serve as a model for other jurisdictions facing similar challenges.

### 1.3 Problem statement

Expropriation, as a mechanism for land acquisition in the public interest,<sup>6</sup> is integral to development efforts in Rwanda. However, the implementation of expropriation procedures under Rwandan law is marred by multifaceted challenges that intersect legal, social, economic, and environmental dimensions. While the legal framework provides a foundation, the practical execution of expropriation remains intricate, leading to issues that affect property owners, communities, and sustainable development goals.

These challenges demand a comprehensive exploration to ensure that the implementation of expropriation procedures aligns with the principles of equity, transparency, and respect for property rights<sup>7</sup> while fostering sustainable development in Rwanda. The majority of issues arise from valuation of properties to determine compensation often faces disparities, potentially leading to unjust outcomes for property owners. The challenge lies in establishing a compensation mechanism that accurately reflects both market value and intangible losses,<sup>8</sup> such as cultural ties to the land, thereby ensuring a fair balance between public interest and individual rights. Also, the bureaucratic processes involved in expropriation can lead to delays, causing disruptions in development projects and undermining public trust.<sup>9</sup>

Addressing administrative bottlenecks and streamlining procedures is imperative to enhance the efficiency and effectiveness of expropriation processes. Community displacement and livelihood impact as expropriation projects can lead to the displacement of communities, causing disruptions to their social fabric and livelihoods. Ensuring the well-being of affected communities and offering viable alternatives becomes a challenge that needs to be addressed through participatory approaches.

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<sup>6</sup> Aguiar, mark, et al. “expropriation dynamics.” *The american economic review*, vol. 99, no. 2, 2009, pp. 473–79. Jstor, <http://www.jstor.org/stable/25592443>.

<sup>7</sup>Article 34 of constitution of rwanda o.g n° special of 04/08/2023

<sup>8</sup> Goldie, I. F. E. “state responsibility and the expropriation of property.” *The international lawyer*, vol. 12, no. 1, 1978, pp. 63–82. Jstor, <http://www.jstor.org/stable/40705150>. Accessed 24 apr. 2024.

<sup>9</sup> Richard, manirakiza. “assessing the role, causes and impacts of delayed payment of compensation on expropriated people in rwanda.” *Braina journal*, vol. 1, no. 1, june 2019, pp. 1–5. [Brainajournal.com](http://Brainajournal.com)

A lack of awareness among property owners about their rights,<sup>10</sup> as well as inadequate community consultation, can contribute to misunderstandings, grievances, and conflicts.<sup>11</sup>

In addition to the aforementioned diverse challenges, disputes arising from expropriation proceedings present a significant obstacle to the implementation of land acquisition initiatives within Rwanda. Such disputes frequently emanate from discrepancies concerning property valuation, adequacy of compensation, and the overall procedural fairness of the expropriation process. Despite the provision of legal guidelines for dispute resolution within the prevailing legal framework, administrative inefficiencies and bureaucratic complexities often exacerbate tensions and protract resolution timelines.

Raising awareness and ensuring meaningful participation in expropriation decisions are pivotal to fostering a sense of ownership and buy-in from affected stakeholders. Some expropriation projects might have adverse environmental impacts, highlighting the need for stringent environmental impact assessments and measures to mitigate these effects. Balancing development objectives with ecological conservation presents a complex challenge that requires careful consideration.

### **1.3.1 Research questions**

- 1) To what extent is the law on expropriation implemented and applied in Rwanda?.
- 2) What are the mechanisms that can be instituted to ensure the effective application of the law on expropriation in Rwanda?

### **1.5 Research hypothesis**

- 1) Instituting well-defined procedural safeguards, enhanced public awareness, and transparent compensation mechanisms will significantly improve the effective application of the law on expropriation in Rwanda.

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<sup>10</sup> bima, muhammad. (2024). The importance of community legal awareness in land registration. Golden ratio of law and social policy review. 2. 41-48.

<sup>11</sup> enhancing awareness of landrights of persons with disabilities

In acholi-land a research report presented during the northern uganda land Platform (nulp) june 2017

- 2) The law on expropriation in Rwanda is not fully implemented or effectively applied, resulting in inconsistent practices, delays in compensation, and inadequate protection of property rights.

## **1.6 Objective of the study**

The present study aims to provide a critical analysis of the applicability of expropriation laws within the Rwandan legal framework. This analysis will be conducted through both general and specific objectives.

### **1.6.1 General Objective**

The general objective of this work is to examine the implementation of expropriation procedures in Rwanda within the context of existing legal frameworks. By doing so, it seeks to identify the challenges encountered in the application of these laws and assess their alignment with international human rights standards. Specifically, this study will explore the extent to which the expropriation process in Rwanda upholds human rights principles and safeguards.

### **1.6.2 Specific Objectives**

In pursuit of the broader aim, the research will undertake the following specific objectives:

1. To analyze the extent to which the law on expropriation is applied under the Rwandan legal framework. This objective focuses on evaluating the current implementation of expropriation laws in Rwanda.
2. To suggest mechanisms meant to improve the application of the law on expropriation in Rwanda. This objective aims to propose specific, actionable recommendations to enhance the expropriation process in Rwanda.

## **1.7 The scope of this study**

This study is delimited in time, space as well as domain.

### **1.5.1 scope in time**

This research study is limited to the period from 2015, which marks the publication of the Land Law as Private Law in Rwanda, up to 2024, as current expropriation law and also as the year of completion of this research. By focusing on this timeframe, the study aims to analyze the implementation and impact of land expropriation practices within Rwanda over the past decade, providing insights into the evolution of land laws and practices during this period.

### **1.5.2 scope in domain**

By centering the study on this specific legal instruments on expropriation, as part of property law under private law, is a crucial aspect of this legal framework. the research aims to examine the procedures, challenges, and outcomes of land expropriation practices within Rwanda, offering a detailed analysis of how the legal framework shapes the expropriation process and its implications for stakeholders.

### **1.5.3 scope in space**

This research study is based on the territory of Rwanda, focusing specifically on expropriation practices within the country's borders. By limiting the study to the geographic space of Rwanda, the research aims to provide a comprehensive understanding of the contextual factors influencing expropriation processes

## **1.6 Research methodology and techniques**

Research methods provide a structured approach to the study, ensuring the alignment of data collection and analysis with the research objectives. They enhance the rigor and validity of the study, offering clarity and consistency throughout the research process.

### **1.6.1 Research techniques**

Research techniques refer to the specific tools and processes used by the researcher to collect, process, and analyze data. These techniques are critical in establishing the relationship between known and unknown facts, and in ensuring the accuracy of the results obtained.

### **1.6.1.1 Documentary Techniques**

This research adopted a variety of techniques and methods from the beginning to the end. As anything to happen has to follow methods and techniques. The term, thus, refers to the methods, techniques, or tools deployed by the researcher for collecting and processing of data, establishing the relationship between the data and unknown facts, and evaluating the accuracy of the results obtained. The methodology adopted in this study is analytical and comparative on technique aspect is documentary.

### **1.6.2 Research methods**

The research methods adopted in this study are carefully chosen to address the complexities of expropriation law and its practice. By employing comparative, analytical, and historical methods, the study examines expropriation from multiple perspectives, providing a well-rounded analysis.

#### **1.6.2.1 Comparative Methods**

The comparative approach is employed when comparing the Rwandan practice of expropriation to other sovereign states. It becomes necessary to examine the course of action that other jurisdictions have taken in the face of the challenge of expropriation. Such practice becomes instructive even in the face of properly formulated rules regarding expropriation. Such practice is highly indicative of the status of human rights in the region and a strong pointer of the willingness and ability of states to respect them.

#### **1.6.2.2 Analytical Method**

The analytical approach is used to examine the policies and laws adopted to enhance the right to property vis-à-vis expropriation done in the name of public interest in Rwanda.

The analytical approach is also used to examine the various international laws which the selected countries have signed, ratified and domesticated into their laws. This will aid in the understanding of the prominence attached to the right to property and the commitment that these countries have in as far as respecting this right is concerned. In order to achieve this, the research will utilize primary and secondary sources of data.



As such, the study will be entirely library-based utilizing desktop literature for example journal articles, books, cases, journalist reports, treaties, laws, and government policies to mention but a few.

### **1.6.2.3 Historical Method**

The historical method will be used to trace the evolution of expropriation laws and practices in Rwanda. This method will provide a contextual understanding of current challenges and the socio-legal dynamics that have shaped the expropriation process over time. Analyzing historical data will highlight the changes and continuities in expropriation practices, offering insights into how past experiences can inform future reforms.

## **1.7 Structure of the study**

This research has different chapters to facilitate better structure for understanding and providing a picture of expropriation in Rwanda and drawing various practises from foreign countries. general introduction, this study comprises three additional chapters. Chapter one establishes the theoretical and conceptual framework, in this chapter we dive into concepts and theories that shapes expropriation and set the pace of clear picture of expropriation.

Chapter Two is titled Extent of Implementation and Application of Expropriation Law in Rwanda, This chapter critically evaluates the extent to which the law on expropriation is implemented and applied in Rwanda. It includes an assessment of the effectiveness of existing procedures, compliance with legal requirements, and the practical realities faced by affected property owners. Case studies and data analysis will be used to highlight the strengths and weaknesses of the current application of the law. Also, Chapter Three will be titled Mechanisms to Ensure Effective Application of Expropriation Law. This chapter explores the various mechanisms that can be instituted to ensure the effective application of the law on expropriation in Rwanda. It includes an analysis of best practices from other jurisdictions, strategies for public participation and consultation, and potential legal and administrative reforms.

This study will be finalized by recommendation and conclusions as last chapter of the study, this part will touch all above chapter by providing an overall view and also the recommendation which will suggest points for improvement by underscoring practical implementation of expropriation in Rwanda.

## CHAPTER I: THEORETICAL AND CONCEPTUAL FRAMEWORK

### Introduction

This chapter analyzes the definition of expropriation, the conditions to be followed in the expropriation process, compensation, and property valuation in different legal systems, as well as the impacts of expropriation on social and economic development. Expropriation assumes different names in various legal systems.

The expropriation of private property for public purposes, also known as compulsory purchase, eminent domain, resumption, or compulsory acquisition, can significantly affect affected parties and, depending on its nature and extent, may promote or hinder community welfare.

### 1.1 Definition of key concepts

Expropriation has been defined as the power of government to acquire private rights in land without the willing consent of its owner or occupant in order to benefit society.<sup>12</sup> States have a sovereign right to take property held by nationals or aliens through nationalization or expropriation for economic, political, social, or other reasons.

#### 1.1.1 Compensation

Most countries constitution have requirement for paying compensation when the government expropriate private assets for public purposes. In the United States (US), the US constitution requires “just compensation” for all takings of private property. The Philippine constitution similarly requires that, “payment of just compensation must be made.” Brazil’s constitution also contains a “just compensation” clause.<sup>13</sup> In Cambodia, the constitution mandates that the state make “fair and just compensation” for taking possession of land from any person as cited in<sup>14</sup>. Thus, national state should make payment in a currency that can be readily used, that it should reflect the full value of the expropriated property, perhaps incorporate an element for future lost profits, and that it must be handed over within reasonable time after the expropriation, otherwise interest should be paid.

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<sup>12</sup> lindsay, j. M. (2012). Compulsory acquisition of land and compensation in infrastructure projects. *Ppp insights*, 1(3), p256.

<sup>13</sup> sax, j. L. (2013). Takings and the police power. In *constitutional protection of private property and freedom of contract* (pp. 76-116). Routledge.

<sup>14</sup> adb (asian development bank). 2006. Hand book on resettlement. Asian development bank.

Developing countries have objected this formula, for it requires them to pay out substantial capital sums for every expropriation<sup>15</sup>. Based on constitutional requirements, many countries have developed standards for determining “just compensation”.

Most high and middle-income countries with well-functioning legal system have adopted “fair market value” of the expropriated asset as the standard for determining compensation for state expropriations. The fair market value is commonly defined “the amount that the land might be expected to realize if sold in the open market by a willing seller to willing buyer.” The underlying reason for adopting the fair market value standard is that the market is an objective gauge for assessing the value of the land.<sup>16</sup>

Some countries have developed variety of mechanisms to compensate landowners in excess of market value because of the involving nature of taking. Great Britain provides for special compensation when expropriation of agricultural land disturbs a farmer operation. Likewise, in Germany, when an expropriation divides agricultural land, the government must pay additional compensation based on the following: Increased time required for the farmers’ road travel and preparation of machinery, damage due to detours, increased boundaries on the land, and by worsened alignment of the land.<sup>17</sup>

What is missing in above definition is the “compensation” element. In some modern definitions of the terminology expropriation is the right of the nation or state, or of those to whom the power has been lawfully delegated, to condemn private property for public use, and to appropriate the ownership and possession of such property without the owner’s consent on paying the owner a due compensation to be ascertained according to law.<sup>18</sup>

### **1.1.2 Compulsory Acquisition**

Compulsory acquisition, also known as compulsory purchase, is a process used in countries like Australia, New Zealand, and the UK.<sup>19</sup> It involves the government or a public authority

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<sup>15</sup> usaid (united states agency for international development). 2005. *Land expropriation policy sustainable for timor-leste*, east timor

<sup>16</sup> adb (asian development bank). 2006. *Hand book on resettlement*. Asian development bank.

<sup>17</sup> christian (dr.). 1998. *Rural land law in germany* (unpublished manuscript on the file with rural development institute).

<sup>18</sup> ambaye, d. W. (2013). The history of expropriation in ethiopian law. *Mizan law review*, 7(2), 283-308.vnnc

<sup>19</sup> godlovitch, g. (2002). Compulsory land acquisition and compensation in new zealand. *Taking land: Compulsory purchase and regulation in asian-pacific countries*, 227-262.

acquiring private property without the owner's consent for public purposes, but with more detailed procedures and specific legal requirements to ensure public interest and appropriate compensation. This process often includes public consultations, a detailed justification for the necessity of the acquisition, and an appeals mechanism for affected property owners.<sup>20</sup> The aim is to balance the need for public development projects with the rights and interests of private property owners, ensuring transparency and fairness in the acquisition process.

### **1.1.3 Nationalization**

Nationalization refers to the transfer of privately-owned assets, industries, or businesses into public ownership.<sup>21</sup> This process is typically carried out by a government for public interest, economic planning, or ideological reasons. Nationalization often involves the acquisition of entire industries, such as energy, transportation, or telecommunications, and can lead to significant changes in the country's economic landscape. Governments may nationalize assets to control resources, provide public services, or achieve economic goals.<sup>22</sup> While compensation is generally provided, the process can be controversial, especially if the compensation is perceived as inadequate or if the nationalization is seen as politically motivated.<sup>23</sup>

### **1.1.4 Appropriation**

Appropriation involves the government taking possession and control of private property or assets for public use, public interest, or national security reasons.<sup>24</sup> Unlike eminent domain or compulsory acquisition, appropriation may not always involve a formal legal process or just compensation.<sup>25</sup> It is often used in situations where immediate control over property is necessary, such as during national emergencies or wartime.

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<sup>20</sup> *ibid*

<sup>21</sup> rosa, j. J. (1993). Nationalization, privatization, and the allocation of financial property rights. *Public choice*, 75(4), 317-337.

<sup>22</sup> whitfield, d. (2001). *Public services or corporate welfare: Rethinking the nation state in the global economy*. Pluto press.

<sup>23</sup> muller, m. H. (1981). Compensation for nationalization: A north-south dialogue. *Colum. J. Transnat'l l.*, 19, 35.

<sup>24</sup> bell, a., & parchomovsky, g. (2006). The uselessness of public use. *Colum. L. Rev.*, 106, 1412.

<sup>25</sup> epstein, r. A. (1985). *Takings: Private property and the power of eminent domain*. Harvard university press.

### 1.1.5 Requisition

Requisition refers to the temporary seizure of private property or assets by the government during emergencies, wartime, or situations of public necessity.<sup>26</sup> The property is typically returned to the owner after the exigency has passed. Requisition is often accompanied by compensation for the use of the property during the period of government control.<sup>27</sup> This process ensures that the government can rapidly mobilize resources in times of need while providing safeguards for property owners through temporary measures and compensation.

## 1.2 Generalities in Expropriation

In this section, we will explore generalities in expropriation, these are common concepts that shapes the process and foundation of expropriation.

### 1.2.1 Expropriation for Public Purposes

The notation of public purpose had given a stationary definition. The right to expropriate property is not absolute; international law places limitations on governments' discretionary powers in this regard. The 1962 United Nations (UNs) General Assembly Resolution on Permanent Sovereignty over Natural Resources stated that expropriation "shall be based on grounds or reasons of public utility, security, or the national interest which are recognized as overriding purely individual or private interests, both domestic and foreign."<sup>28</sup> This means that expropriation is prima facie lawful, provided that individual acts of expropriation meet the conditions established by international law.<sup>29</sup>

Mainly, expropriation is intended to facilitate achievement of public purposes. In certain cases, expropriations of privately owned land are intended to address "pressing security needs." In addition, certain abandoned properties should be expropriated for public uses. Other reasons also justify the need to expropriate land, such as when foreign nationals possess excessive land, landlords mistreat workers, etc.<sup>30</sup>

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<sup>26</sup> willcox, b. F., & landis, e. S. (1948). Government seizures in labor disputes. *Cornell lq*, 34, 155.

<sup>27</sup> rubin, g. R. (1994). Private property, government requisition and the constitution, 1914-27.

<sup>28</sup> (ga res. 1962: Paragraph 4)

<sup>29</sup> treeger christina. 2004. *Legal analysis of farmland expropriation in namibia: Konrad-adenauer-stiftung/namibia institute for democracy*, namibia, p56..

<sup>30</sup> usaid (united states agency for international development). 2005. *Land expropriation policy sustainable for timor-leste, east timor*, p323-325.

Kotey<sup>31</sup> argues that acquisition in the public interest could mean acquisition by government for public bodies and statutory corporations, but also for private companies and individuals for purposes which although they may contribute to public welfare, confer a direct benefit, including profit, on the user. Hotels, private houses, real estate development, banks, filling stations etc. fall into this category.<sup>32</sup>

### **1.2.2 Social justice theory**

Social justice theory is rooted in the fair and equitable distribution of resources, opportunities, and responsibilities across all members of society. This theory emphasizes the importance of equality, inclusivity, and cooperation to create a just and democratic society. It holds that disparities in wealth, power, and privilege should be minimized so that individuals can thrive regardless of their background or identity. In particular, social justice theory focuses on the need for systemic change to address the root causes of social inequalities, such as discrimination and economic disparity. This framework is crucial for understanding how societal structures and policies can perpetuate disadvantage and injustice, especially among marginalized communities.

In the context of expropriation, social justice theory advocates for policies that protect the rights of individuals and communities who are most vulnerable to losing their property or resources without fair compensation. It challenges the idea that economic development or public interest can justify the forced removal of individuals from their land or homes without adequate redress. Social justice theory calls for transparent, participatory processes in decision-making around expropriation, ensuring that affected communities have a voice and that their rights are respected. This approach seeks to balance individual rights with collective needs, emphasizing the importance of justice and equity in addressing issues of land and resource distribution.

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<sup>31</sup> kotey, n. A., 2002. *Compulsory acquisition of land in ghana*. Does the 1992 constitution open new vistas?

<sup>32</sup> antwi, a., larbi, w.o., and olomolaiye p., 2004. *Compulsory land acquisition in ghana: Policy and praxis, land use policy, vol.1 issue 2*, april, pp 115 – 127.

### 1.2.3 Legal positivism Theory

Legal positivism is a theory of law that asserts that the validity of a law is not related to its moral content but rather its sources and adherence to certain procedural norms.<sup>33</sup> It maintains that laws are rules created by human authorities and should be understood as such, without reference to moral or ethical considerations. Legal positivism emphasizes the importance of a clear separation between law and morality, arguing that laws are valid if they are enacted by legitimate authorities and follow established procedures, regardless of their moral implications.

In terms of expropriation, legal positivism suggests that the legitimacy of expropriation laws stems from their enactment by appropriate legislative bodies, following due process. This perspective focuses on the need for clear legal frameworks and procedures to govern expropriation, ensuring that such actions are consistent with existing legal norms and regulations.<sup>34</sup> Legal positivism would advocate for well-defined criteria and transparent processes for expropriation, with an emphasis on the rule of law and the authority of governmental bodies to make decisions regarding land and resource use. While this approach may not directly address the moral implications of expropriation, it underscores the importance of legal certainty and procedural justice in such matters.

### 1.2.4 Utilitarianism theory

Utilitarianism is a moral theory that suggests that the best action is the one that maximizes overall happiness or utility.<sup>35</sup> It is a consequentialist theory, meaning that the morality of an action is determined by its outcomes rather than its intrinsic nature or adherence to rules. Utilitarianism is often summarized by the phrase "the greatest good for the greatest number,"<sup>36</sup> emphasizing the importance of considering the overall benefits and harms of an action when making moral decisions.

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<sup>33</sup> kramer, m. H. (2003). *In defense of legal positivism: Law without trimmings*. Oxford university press, usa.

<sup>34</sup> ratner, s. R. (2008). Regulatory takings in institutional context: Beyond the fear of fragmented international law. *American journal of international law*, 102(3), 475-528.

<sup>35</sup> adams, r. M. (1976). Motive utilitarianism. *The journal of philosophy*, 73(14), 467-481.

<sup>36</sup> lewis, j. R. (2017). *Divine utilitarianism*. Liberty university.

When applied to expropriation, utilitarianism would evaluate the practice based on its consequences for the overall well-being of society. If expropriation leads to greater benefits for the majority—such as economic development, improved infrastructure, or increased public welfare—then it could be considered justifiable from a utilitarian perspective.

However, this theory also requires careful consideration of the harms caused to individuals or communities who are displaced or negatively affected by expropriation. Utilitarianism would call for measures to mitigate these harms and ensure that the benefits of expropriation are distributed as widely and equitably as possible.

### 1.2.6 Socioeconomic development Theory

Expropriation leads to economic growth which contributes to socio-economic development of expropriated citizens.<sup>37</sup> For instance, in order to attract foreign investment, many countries expropriate citizens and offer land to investors. These investors offer job opportunities and skills to citizens of their host countries.<sup>38</sup> As<sup>39</sup> affirms, in Senegal, international investors are only contracted when they agree to partner with a Senegalese company. This helps in transferring trainings and know-how skills to the citizens.

Citizens' capacity or lack of to manage or to invest compensation cash affects their level of socioeconomic development. Often, citizens who have not yet managed a lot of money are bound to make mistake when they are investing money in different projects.<sup>40</sup> Expropriation benefits to expropriated citizens should be translated in their affordability of healthcare services and of education.<sup>41</sup>

In most countries expropriated individuals are likely the one to obtain health facilities like hospitals near them. However, the citizens who survive with their hands; hence, when they are unable to work because of sickness or attending to their sick children, they are as well

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<sup>37</sup> hadley, r., frank, m., andrews, k., & daniel, c. (2016). *The implementation of rwanda's expropriation law and its outcomes on the population* (no. 1; 1).

<sup>38</sup> ocheje, p. D. (2007). In the public interest: Forced evictions, land rights and human development in africa. *J. Afr. L.*, 51, 173.

<sup>39</sup> wade, a. (2008). Time for the west to practice what it preaches. *Financial times*, 23.

<sup>40</sup> ikirezi, m., masengo, f., & knox, a. (2014). *Implementation of expropriation law in rwanda: Challenges and ways forward*. Usaid, p43.

<sup>41</sup> zambakari, c. (2017). Land grab and institutional legacy of colonialism: The case of sudan. *Consilience*, (18), 193-204.3



unable to feed their families, and to provide for them basic needs. Affordability of education on the other hand generates employment opportunities, which prompt the improvement of economic and social life.<sup>42</sup>

Access to land is primordial in fighting against hunger, poverty and for advancing economic development.<sup>43</sup> For instance, Sub-Saharan countries have the prevalence of households with food insecurity in the whole world<sup>44</sup> and one of the reasons is that landless citizens do not produce food and are unable to afford or to purchase food.<sup>45</sup> Hence, in expropriating citizens as a way to expand commercialized agriculture or any other activity in common interests, governments should balance economic development and livelihood or means to acquire basic needs of expropriated citizens.<sup>46</sup>

### 1.3 Process of expropriation

Globally, expropriation is carried out in four steps.<sup>47</sup> The first step is condemnation. Condemnation is the government seizure of private property or acquiring ownership of private property.<sup>48</sup> The constitutions of most countries allow their governments to do so. For example, the U.S. Constitution gives the right of eminent domain to government bodies at the federal, state, and municipal levels. It allows them to acquire the title of ownership of any property for public use after paying adequate compensation to the previous owners. Condemnation occurs in two most common situations where a government condemns a property are when its condition makes it unsafe for use or occupancy or when the government intends to take the property to convert it to some legitimate public use in a process known as eminent domain.

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<sup>42</sup> james, c., & dietz, j. (2011). *The process of economic development* (3rd ed.). Routledge.

<sup>43</sup> akinola, a. O., kaseeram, i., & jili, n. N. (eds.). (2020). *The new political economy of land reform in south africa*. Palgrave macmillan

<sup>44</sup> burchi, f., scarlato, m., & d'agostino, g. (2018). Addressing food insecurity in sub-saharan africa: The role of cash transfers. *Poverty & public policy*, 10(4), 564–589.

<sup>45</sup> coetzee, k. (2018). How food-secure are we really? *Farmer's weekly*, 180(39), 28.

<sup>46</sup> akinola, a. O., kaseeram, i., & jili, n. N. (eds.). (2020). *The new political economy of land reform in south africa*. Palgrave macmillan

<sup>47</sup> warde, p. (2012). Susan reynolds, before eminent domain: *Toward a history of expropriation of land for the common good*, p323-325.

<sup>48</sup> *ibid*

The second step of expropriation process is appraisal. Appraisal is valuing one's property using market value. Some legal system the appraisal should be conducted by a neutral third party. After appraisal there is offer or compensation and it is giving to previous owners of land what market value determines as adequate compensation.<sup>49</sup> The last step of expropriation process is negotiation or resolving any dissatisfaction which may have arisen during the previous steps of expropriation.<sup>50</sup>

In addition to the above steps, many countries especially European countries add 'publicity'. With publicity, countries in question inform concerned citizens the intention of expropriation and present how such project will benefit the country, its procedures and anticipated deadlines. When citizens consent, they request for compensation.

#### **1.4 Comparative in legal frameworks**

One of the primary challenges in expropriation law is defining what constitutes "public interest." In Rwanda, the term remains somewhat ambiguous, leading to potential misuse and arbitrary land acquisition.

##### **1.4.1 National legal framework**

National legal framework in this section will focus on territory of Rwanda and this country's legal perspective on expropriation.

###### **1.4.1.1 Constitution of the Republic of Rwanda**

The Constitution of the Republic of Rwanda sets the foundational principles for land rights and expropriation. It outlines the overarching legal framework that ensures the protection of private property while allowing for expropriation in the public interest.

Article 34 stipulates that "Every person has a right to private property, whether personal or owned in association with others." It further states that private property shall not be encroached upon except under the circumstances and following the procedures determined by law.

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<sup>49</sup> *Ibid*

<sup>50</sup> *Ibid*

Article 35 emphasizes that "Private property, whether owned by an individual or a collective, shall not be taken unless for public interest, in accordance with law, and subject to fair and prior compensation."<sup>51</sup>

These articles collectively underscore the necessity of fair and prior compensation, emphasizing that expropriation must be conducted in the public interest, adhering to the rule of law. This ensures that citizens' property rights are protected against arbitrary government actions, aligning with broader human rights principles enshrined in international covenants.

#### **1.4.1.2 Land Law 2021**

The Land Law of 2021 elaborates on the constitutional provisions, setting out detailed regulations regarding land ownership, use, and expropriation.

Article 3, This article reiterates the constitutional guarantee that land ownership is inviolable and that expropriation can only occur in the public interest with fair compensation. Article 4 mandates that any expropriation process must ensure prior valuation and compensation, emphasizing transparency and fairness. Article 5 Lists the specific activities considered to be of public interest, such as infrastructure projects, which may necessitate expropriation.<sup>52</sup>

The law ensures that expropriation is a last resort, with thorough procedures for determining public interest, valuing property, and providing compensation. It seeks to balance development needs with the rights of landowners, ensuring that expropriation is neither arbitrary nor unjust.

#### **1.4.1.3 Law Relating to Expropriation in the Public Interest**

This specific law focuses exclusively on the procedures and guidelines for expropriation in the public interest, providing a comprehensive legal framework to manage such processes.

In the beginning , article 1 defines the purpose of the law, which is to regulate procedures for expropriation in the public interest. Article 2 Provides definitions for key terms such as 'public interest', 'fair compensation', and 'expropriator'.

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<sup>51</sup> art. 34-35 constitution of rwanda o.g n° special of 04/08/2023

<sup>52</sup> art. 3-5 of land law 2021

In addition, Article 3 Confirms that only the government can order expropriation and that it must be for public interest and involve fair compensation. Also, article 4 Stipulates that any project requiring expropriation must budget for the valuation and compensation of affected properties. Article 5 finally Details a comprehensive list of activities deemed to be in the public interest, such as construction of roads, hospitals, schools, and other essential public infrastructure.<sup>53</sup>

This law however, it Outlines the detailed procedures for submitting expropriation requests, evaluating project relevance, and approving expropriation decisions, Focusing on the compensation process, ensuring that affected parties can contest valuations and receive fair compensation in a timely manner.

#### **1.4.2. European model of expropriation**

Comparatively, Article 14(3) of the German constitution provides that “expropriation shall only be permissible in the public interest.” The public interest requirements have been interpreted to mean that expropriation cannot be undertaken solely for the benefit of the state’s commercial interests or those of a private person. It is possible, however, for a private person to be benefited from an expropriation as long as the expropriation is undertaken in the execution of public necessity.

Expropriations for the purpose of land reform have also entered in to case law in Austria, the Council of Europe and the United States. Those decisions are summarized as follows: “Generally, the position is that a broad, general program of land reform can be in the public interest and that individual expropriations would be for a legitimate purpose if they form part of such a program, even though the intension is to give or transfer the expropriated land, in terms of that program, to a private person.”<sup>54</sup>

Generally, in order to achieve the goal of land expropriation for of public interest, But this may not rely on most developing countries. In line with this, <sup>55</sup> reported that the rural people in developing countries are often far away from many important decision-making processes.

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<sup>53</sup> art. 2-5 of law on expropriation in public interests

<sup>54</sup> treeger christina. 2004. *Legal analysis of farmland expropriation in namibia: Konrad-adenauer-stiftung/namibia institute for democracy*, namibia, p 42.

<sup>55</sup> fao (food and agriculture organization). 2007. *Good governance in land tenure*. Food and agriculture organization.

These people should be informed with appropriate information and included in decision making processes when there is possibility of impacts in their life. Public participation is simply a process of taking part in different spheres of societal life: political, economic, social, cultural and others.

Therefore, public participation is necessary to ensure that the compensation is just and the purposes of land expropriation are for public interest.

### **1.4.3 Expropriations Act in Ontario**

Similarly, the Constitution Act, 1867, and the Charter of Rights and Freedoms in Canada provide a foundation for property rights, although the specific processes and protections related to expropriation are outlined in provincial laws,<sup>56</sup> such as the Expropriations Act in Ontario. Both jurisdictions emphasize the need for fair compensation and due process, reflecting a common principle in protecting property rights.

The Rwandan Expropriation Law outlines several key principles and procedures. Public interest is a central tenet, dictating that expropriation must be justified by a legitimate public purpose, such as infrastructure development, urban planning, or environmental conservation. The law requires a thorough assessment and declaration of public interest before proceeding with expropriation. Additionally, the law mandates fair compensation for expropriated property, which includes market value assessment, disturbance damages, and compensation for any loss incurred by the property owner. Compensation must be paid prior to the expropriation, ensuring that property owners are not left at a disadvantage.

The valuation of property is conducted by certified valuers to determine the fair market value. If there is a dispute regarding the compensation amount, property owners have the right to appeal to competent courts, ensuring judicial oversight and fairness. In Ontario, the Expropriations Act outlines a detailed process for expropriation, including the definition, process, compensation, and dispute resolution mechanisms.<sup>57</sup> Property owners are entitled to a notice of application for approval to expropriate and may request a hearing of necessity to

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<sup>56</sup> mcwhinney, e. (1983). The canadian charter of rights and freedoms: The lessons of comparative jurisprudence. *Can. B. Rev.*, 61, 55.

<sup>57</sup> munro, m. A. (2005). Expropriating expropriation law: The implications of the metalelad decision on canadian expropriation law and environmental land-use regulation. *Asper rev. Int'l bus. & trade l.*, 5, 75.

challenge the expropriation's justification. This process ensures transparency and allows owners to contest the expropriation if it is not deemed necessary.<sup>58</sup>

### 3.1.4.2 Compensation in Ontario

Compensation in Ontario includes market value, disturbance damages, and damages for injurious affection.<sup>59</sup> The Act provides a structured approach to determining compensation, including offers, appraisals, and negotiations.<sup>60</sup> Property owners can seek legal recourse through the Local Planning Appeal Tribunal (LPAT) if they disagree with the compensation offered or the expropriation process.<sup>61</sup> This tribunal provides a specialized forum for resolving expropriation disputes, ensuring expertise and fairness.

The comparative analysis of expropriation laws in Rwanda and Ontario reveals a shared commitment to balancing public interest with individual property rights. Both jurisdictions provide robust legal frameworks that ensure fair compensation, transparency, and legal recourse for property owners. The specific processes and institutional mechanisms reflect each jurisdiction's legal traditions, developmental priorities, and governance structures, offering valuable insights into the diverse approaches to expropriation law.

## 1.5 Partial Conclusion

The chapter provides a comprehensive examination of expropriation, a process wherein the government acquires private property for public use, highlighting its various aspects and implications. Expropriation, known by different terms such as compulsory purchase, eminent domain, and nationalization, plays a significant role in socio-economic development and infrastructure expansion across the globe.

Different legal systems employ varied terminologies and processes for expropriation, yet the underlying principle remains the same: the government's power to take private property for the collective good, provided that compensation is just and legally determined.

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<sup>58</sup> o'connor macleod hanna llp | burlington, oakville, milton, halton lawyers.

<https://www.omh.ca/articles/expropriation-understanding-the-process-and-your-rights-as-a-property-owner.html>. Accessed 30 july 2024.

<sup>59</sup> morden, j. W. (1970). The compensation provisions in bill c-200-the expropriation act (canada). *Chitty's lj*, 18, 77.

<sup>60</sup> *ibidem*

<sup>61</sup> anderson, j. L., & bogart, d. B. (2024). *Property law: Practice, problems, and perspectives*. Aspen publishing.

The chapter also explores the various valuation methods used to determine fair compensation, including the market value approach, income capitalization, and replacement cost methods.

Overall, the chapter underscores the importance of balancing public and private interests in the expropriation process, advocating for transparency, fairness, and public participation to mitigate adverse impacts and ensure that the benefits of development are equitably distributed.

## **CHAPTER II: PROCEDURAL CHALLENGES ENCOUNTERED IN THE EXPROPRIATION PROCESS IN RWANDA**

### **Introduction**

This chapter delves into the procedural challenges encountered in the expropriation process in Rwanda. Expropriation, the compulsory acquisition of private property for public use, is a critical aspect of Rwanda's development strategy, facilitating infrastructure projects and urban expansion. However, this process is fraught with complexities and issues that impact both the government and affected property owners.

The objective of this chapter is to analyze the existing expropriation procedures, examining their implementation and the associated challenges. By doing so, it aims to provide a comprehensive understanding of the procedural intricacies and the implications for property rights, social justice, and economic development in Rwanda.

### **2.1 Challenges in steps of expropriation in Rwanda**

Rwanda is undergoing rapid development, often leading to the expropriation of private lands. The expropriation law provides procedures to protect the rights of property owners in the expropriation process. The implementation of that law, however, has caused concerns about potential human rights violations and about how expropriation is affecting the population both economically and socially.

Despite these issues, the government notifies most landowners being expropriated of the expropriation process through public meetings, and in fact, most expropriated households believe the projects causing expropriation are in the best interests of the community (public interest). It is required that fair compensation must be paid to the expropriated person before they are required to relocate.

#### **2.1.1 Ambiguous determination of public interest**

The process of determining the "public interest" nature of an expropriation project can be opaque and compromise the integrity of land use planning. The purpose can encompass anything from infrastructure (esp. roads) to master plans facilitating a variety of public works



supportive of long-range urban planning and priority economic development. Insofar as the law does not give an exhaustive list of activities deemed to be in the public interest.<sup>62</sup>

It is within the power of local committees of expropriation to determine/confirm the public interest nature of the proposed project. In reaching its decision, such committees are required to conduct a consultative meeting with the population living where the land is located to discuss the relevance of the expropriation project. However, the ministerial regulation establishing these committees has not yet been adopted, so that it is up to District Executive Committees to decide whether or how to conduct such consultations.<sup>63</sup>

While the government's efforts to notify landowners through public meetings and the general perception of public interest projects are positive aspects, there are critical concerns. The potential human rights violations and the socio-economic impact on affected populations indicate shortcomings in the implementation of expropriation laws.

Ensuring fair and timely compensation is essential, yet the passage implies that this is not always adequately addressed, leading to possible injustices. Effective enforcement and more robust safeguards are necessary to mitigate these issues and truly protect property owners' rights.

### **2.1.2 Problematic in determination of fair compensation**

Fair compensation can be paid in monetary form in the Rwandan currency or in any other form mutually agreed upon by the expropriator and the person to be expropriated.<sup>64</sup> It is a requirement that fair compensation must be paid to the expropriated person before they are required to relocate. This provision ensures that the affected party receives compensation for their property and any associated losses before being displaced from their land or premises.

Article 37 sets that any expropriator that retracts his/her project for expropriation in the public interest after the valuation of the property of the persons to be expropriated or fails to pay fair compensation within the period provided under Article 36<sup>65</sup> of this Law shall be

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<sup>62</sup> art. 5 of law n° 32/2015 of 11/06/2015 relating to expropriation in the public interest - hereinafter referred to as "expropriation law")

<sup>63</sup> *ibidem*

<sup>64</sup> art. 32 of law n° 32/2015

<sup>65</sup> *ibidem*

bound to pay compensation of five per cent (5%) of fair compensation that had to be paid to the person to be expropriated.

In the case of Jean de Dieu Shikama against the city of Kigali. Jean de Dieu Shikama, a resident of Kangondo has filled a solo case against the city of Kigali seeking Rwf2.7m for delays in paying compensation after evaluating his property at Rwf54.2m. The law requires that once a person's property is evaluated for expropriation, the person must be paid within three months, while delays come with a 5% fine adding to the total cost of the property at the time of valuation.

*"I am asking to regain my property rights. I want the court to order the City of Kigali to pay this compensation because of the delays which makes the project invalid,"* Shikama said.<sup>66</sup>

His plea comes with a separate compensation of Rwf5million and Rwf 1 million to respectively cover costs incurred in hiring a lawyer and preparation of the case, during the time when they were in court.

The city of Kigali will also face the other two Kangondo expropriation cases submitted to the same court by David Munyeshuri and Emmanuel Sayinkuye- who are also seeking compensation in cash. In the compensation procedure, the community was supposed to be shifted to a newly constructed housing estate in Busanza, Nyarugunga sector, Kicukiro district. While some beneficiaries agreed to the deal, others sought legal arbitration procedures on grounds that the estate homes were not equivalent to their former property in the slum areas in which some had tenant houses.

The case of Jean de Dieu Shikama against the City of Kigali exemplifies the practical challenges, where delays in compensation not only infringe on property rights but also impose additional legal and financial burdens on the affected individuals. Moreover, discrepancies between promised and actual compensation, as seen in the housing estate disagreements, underscore the need for stricter enforcement and more equitable practices to truly uphold the rights of those being expropriated.

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<sup>66</sup> jean de dieu shikama v city of kigali, 2020.

## **2.2 Noneffective procedure for application, assessment and approval of expropriation projects**

Law on expropriation in Rwanda provides for directions,<sup>67</sup> The application for expropriation in the public interest is a detailed process that mandates the inclusion of specific information to justify the expropriation. According to Article 10, the application must contain:

### **2.2.1 Flaws in application for expropriation**

The application for expropriation in the public interest must clearly define the nature of the project, including its type and scope. It should demonstrate that the project serves the public interest.<sup>68</sup> A detailed master plan of the land where the project will be executed must be included,<sup>69</sup> along with documentation confirming that the project will not have a detrimental effect on the environment. Additionally, the application must prove the availability of funds for fair compensation to affected property owners. An explanatory note should detail why the chosen land or location is suitable for the project. Minutes indicating that the concerned population was sensitized about the project's importance are required, along with a study outlining the consequences on the living conditions of the persons to be expropriated.

The master plan referred to in item 3° must particularly indicate:

The master plan for the expropriation application must include plans or maps indicating the demarcations of the land where activities will be carried out. It should detail the nature of the assets on that land and provide a list indicating the holders of rights registered on the land titles. Additionally, the plan should include a list of authorized beneficiaries of property incorporated on that land.<sup>70</sup>

However, despite these rigorous stipulations, challenges persist in the practical implementation. The necessity for detailed documentation, environmental considerations, and proof of funds for compensation is commendable, yet it often leads to bureaucratic delays and inefficiencies.

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<sup>67</sup> manirakiza, v., nzahabwanayo, s., muhire, i., & niyitanga, f. (2019). Legal land ownership in rwanda: Overview of the effectiveness of land reform. *Conjonctures de l'afrique centrale*, 435-458.

<sup>68</sup> art.10 of law n° 32/2015 of 11/06/2015 relating to expropriation in the public interest

<sup>69</sup> art. 10 (3)

<sup>70</sup> *ibidem*

The requirement for public sensitization and studies on the impact on affected populations is crucial but is frequently inadequately addressed, leading to dissatisfaction and disputes among those expropriated. Ensuring these procedures are not just followed on paper but effectively implemented remains a significant challenge.

### **2.2.2 Challenges in assessment and approval**

Law provides that any person affected by the decision on expropriation in the public interest has the right to request a review of the decision before the organ directly higher than the one that made the decision. This appeal must be made within thirty days from the publication of the decision, and the grounds for the appeal must be indicated in writing. The authority before which the appeal is made must decide on the appeal and inform the appellant in writing within thirty days of receiving the request for review, providing the grounds for their decision.<sup>71</sup>

Similarly, Article 19 allows the applicant for expropriation to apply for a review of the decision revoking the expropriation before the organ directly higher than the one that made the decision. The appeal must be made within fifteen days after the publication of the decision, and the grounds for the appeal must be provided in writing. The higher organ must decide on the application within thirty days of receiving it.

Article 20 grants any person affected by expropriation the right to apply for a review of the initial list of persons to be expropriated within fifteen days from its publication. The grounds for this application must be indicated in writing. The organ that made the list must decide on the application within seven working days of receiving it. Following the decision provided under Article 20, within seven working days, the District or City of Kigali Mayor or the relevant Minister must approve the list of persons to be expropriated. This approved list serves as the basis for drawing up an inventory of the property to be expropriated.<sup>72</sup>

Despite the set timelines, there may be bureaucratic inefficiencies leading to delays in decision-making, prolonging uncertainty for the affected individuals. Additionally, some affected individuals might lack awareness or resources to effectively file an appeal within the short timeframe.

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<sup>71</sup> art.11 law n° 32/2015 of 11/06/2015 relating to expropriation in the public interest

<sup>72</sup> art. 20

Also, The requirement for individuals to bear the cost of a counter-assessment can be financially burdensome, potentially discouraging people from contesting unfair valuations. The tight timeline for obtaining a counter-assessment report may also pose practical challenges, especially for those with limited access to qualified valuers.

### **2.3 Disruption in properties valued in expropriation**

Properties subject to valuation for the payment of fair compensation due to expropriation in the public interest include land, activities, compensation for disruption.

Land value of the land being expropriated is an important consideration in determining fair compensation. This includes the physical land itself and any improvements made to it, such as buildings, structures, or landscaping.

Activities on the land compensation may also be provided for activities carried out on the land that contribute to its efficient management or rational use. This can include agricultural, industrial, commercial, or other productive activities that enhance the value of the land.

Compensation for disruption in addition to the value of the land and activities, fair compensation may be awarded to account for the disruption caused by the expropriation.<sup>73</sup> This can include financial losses, relocation expenses, loss of business or livelihood, and any other negative impacts resulting from the expropriation.<sup>74</sup>

The valuation process aims to assess the value of the expropriated property and provide fair compensation to the affected parties, taking into account the land, activities on the land, and the disruption caused by the expropriation.<sup>75</sup>

#### **2.3.1 Valuation and counter valuation of land and property**

The valuation of land and property incorporated thereon must be conducted by valuers certified by the Institute of Real Property Valuers in Rwanda.<sup>76</sup> It must be conducted in the presence of the owner of the land and property incorporated thereon, or his or her lawful representatives, as well as in the presence of representatives of local administrative entities.

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<sup>73</sup> knetsch, j. L., & borcharding, t. E. (1979). Expropriation of private property and the basis for compensation. *U. Toronto lj*, 29, 237.

<sup>74</sup> *ibidem*

<sup>75</sup> art. 27 of law n° 32/2015 of 11/06/2015 relating to expropriation in the public interest

<sup>76</sup> *ibidem*

The valuation must be completed within a period of 30 days. Where necessary, this period can be extended up to a maximum of 15 additional days, upon request by the government applicant for the expropriation, after approval by the designated organ. Within 15 days after the submission of the valuation report, the expropriator shall decide on the report prepared by valuers and publish it for information of the concerned persons.

Any person contesting the assessed value, may, at his/her own expense, engage the services of a different valuer or valuation firm recognized by the Institute of Real Property Valuers in Rwanda to carry out a counter-assessment.<sup>77</sup> The counter-assessment and accompanying report must be generated within ten (10) days from the application for counter valuation.

## **2.4 The complaint process in practice**

The practical application of the expropriation law involves various procedures and stakeholders at different levels.<sup>78</sup> Although the law prescribes certain activities to occur according to specific time frames, deviations can occur in practice, leading to objections by citizens. This section explores the complaint process at both the district and court levels, detailing how expropriation-related complaints arise and are dealt with in practice.

### **2.4.1 District level process<sup>79</sup>**

Although the law as set forth above prescribes certain activities to occur according to various time frames, in practice deviations may occur or decisions may be taken that are objected to by citizens.<sup>80</sup> According to research conducted in four districts both the surveys and interviews conducted with those who had pursued complaints in the past several years, as well as with public officials at the district level surfaced considerable detail about how various expropriation complaints may arise, and how they are dealt with in practice to initiate any complaint related to land expropriation, most citizens are directed to go to the so-called

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<sup>77</sup> roberts, t. D. (1997). Practitioner's guide to valuation and assessment appeals of state and local assessed property. *Land & water l. Rev.*, 32, 173.

<sup>78</sup> norton, p. M. (1991). A law of the future or a law of the past? Modern tribunals and the international law of expropriation. *American journal of international law*, 85(3), 474-505.

<sup>79</sup> art. 7 & 8 of law n° 32/2015 of 11/06/2015 relating to expropriation in the public interest

<sup>80</sup> kadish, m. R., & kadish, s. H. (2012). *Discretion to disobey: A study of lawful departures from legal rules*. Quid pro books.

One Stop Shop Center in the District, which is responsible for handling land and other commercial matters.<sup>81</sup>

#### **2.4.1.1 Initiation of Complaints**

Some citizens may instead choose to go to the mayor's office or lower-level authorities such as village leaders (Umudugudu), or to cell (Akagari) and/or sector (Umurenge) leaders. Often this is done sequentially, starting with a lower authority and ending up with district authorities where the decisions are taken as a legal matter and where appropriate expertise resides.<sup>82</sup>

#### **2.4.1.2 Escalation and Resolution**

Citizens who are not satisfied with key decisions regarding the decision to expropriate, inclusion of property on the expropriation list, and valuation/compensation amounts are directed to lawyers and/or private professional land valuers, where they can seek additional assistance.<sup>83</sup> Notably, however, these workers are not professionally trained in mediation, which might otherwise afford some opportunities for resolution of problems without recourse to other individuals at the district level, or to institutions like the courts or the Ombudsman's office.

In case that involved multiple appellants, all residents of Kangondo I, Kangondo II, and Kibiraro neighborhoods in Kigali, Rwanda. These appellants challenged the expropriation of their properties by the City of Kigali. The subject matter of the dispute revolves around the compensation offered by the City of Kigali for the expropriation of these properties. Specifically, the appellants contested the city's decision to provide alternative housing as compensation, arguing instead for monetary compensation that they believed would better reflect the value of their properties. The case was first heard in the Nyarugenge Intermediate

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<sup>81</sup> the ones directly responsible are those in the directorate of the one stop centers, which includes the director, the lawyer of the center (land lawyer) and the land valuer. As discussed briefly below, certain other officials may get involved in certain aspects of the process, such as the mayor, one or both vicemayors (especially the vice-mayor responsible for economic and social affairs), the district legal advisor, and the executive secretary of the district. Those in charge of security may also be involved in the process

<sup>82</sup> art. 25 law n° 32/2015 of 11/06/2015 relating to expropriation in the public interest

<sup>83</sup> art. 33 of law n° 32/2015 of 11/06/2015 relating to expropriation in the public interest

Court and was later escalated to the High Court of Kigali due to dissatisfaction with the initial ruling.<sup>84</sup>

Expropriation cases often escalate due to disagreements over the fairness and adequacy of the compensation offered. In this case, the escalation began when the appellants rejected the alternative housing proposed by the City of Kigali. They argued that the compensation did not align with the true value of their properties and failed to meet their specific needs. The dispute led to a legal battle where the appellants sought judicial intervention to secure what they deemed to be just compensation. This type of escalation is common in expropriation cases, as property owners often feel that the compensation offered by the government or other expropriating entities does not adequately address their losses.

#### **2.4.1.4 Role of the Mayor**

Complaints can, and often are, also entertained by Mayors, who may meet citizens during the office hours they regularly keep for citizen interactions. Although a mayor is not specifically legally empowered to render decisions, he or she can provide possible solutions or guidance to complainants. In cases involving land valuation disputes, a mayor may suggest that a citizen asks for a counter valuation or where a valuation might seem low, request the district land valuer to make another attempt to value the property, possibly taking other factors about the property into consideration.

Most complaints do in fact arise when complainants are dissatisfied with their property valuation. In these cases, One Stop Center workers usually encourage citizens to seek a private professional valuer, in order to make a counter valuation.

However, as the above example indicates, sometimes a second valuation may be conducted by the district on its own initiative, particularly if someone points out the extent to which potentially significant information was not considered the first time. In cases where a counter-valuation is made, the private valuer and the district valuer compare their respective valuations and deliberate in order to try to find common ground.

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<sup>84</sup> multiple appellants v. City of kigali, case n°-rada 00064, 00065, 00070, 00071, 00072, 00073/2022/hc/kig rada 00008, 00009, 00010/2023/hc/kig.



### 2.4.2 Court-Level Process

If agreement is not possible, the citizen can appeal the district valuation to court. Other types of complaints may concern the decision to expropriate land in the first place (which may be appealed directly to court) or the inclusion of specific properties in the proposed project (which can be appealed to the district government).<sup>85</sup>

These complaints may in turn be predicated on the government's failure to hold consultations with affected property owners and the community about whether the proposed seizure of land truly is in the public interest or could be done in a less intrusive or expansive manner at the contemplated site. Some interviews conducted in the districts seemed to suggest that if proper consultations were held, many expropriation-related complaints or citizen frustration could be avoided; in that case, the process might be better understood, citizen concerns could be received early in the process, and certain.

In the case of *RWASA Sylvie vs. Rwanda Energy Group Limited*, the plaintiff, RWASA Sylvie, filed a lawsuit against REG after part of her land was expropriated for the installation of high-voltage power lines. The dispute centered on the compensation amount, with Sylvie arguing that the compensation offered by REG was significantly lower than the value she assessed.<sup>86</sup> After failed negotiations, the court intervened and appointed experts to determine the fair value of the land and the damages. The court ultimately ruled in favor of Sylvie, awarding her compensation based on the expert's valuation, which was higher than REG's offer but lower than her initial demand.<sup>87</sup>

In cases of expropriation, like the one described above, the process typically involves several steps. First, the expropriating authority must establish that the expropriation is for a public purpose, such as infrastructure development. Next, the affected property owner and the expropriating authority engage in negotiations to agree on fair compensation. If negotiations fail, as they did in Sylvie's case, the matter is brought before a court.<sup>88</sup> The court may then appoint experts to independently assess the value of the expropriated property, and this expert valuation often becomes the basis for the final compensation awarded by the court.

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<sup>85</sup> art. 34

<sup>86</sup> *rwasa sylvie vs. Rwanda energy group limited/rad 00028/2022/tgi/nyge*

<sup>87</sup> *rwasa sylvie vs. Rwanda energy group limited*, pg.4

<sup>88</sup> pg. 5

### **2.4.3 Case of expropriation on Injustice**

On 12 may 2009, a complaint was made by Mahirane Celestin regarding injustice occasioned through expropriation. Celestin who was a resident of Kivugangoma village in Rwikubo cell, eastern province alleged that authorities had taken possession of his land and destroyed the house that was built thereupon without compensation or providing an alternative property. This was despite the fact that he had been rightfully allocated the plot by the authorities who had issued him with ownership documents. This enraged the complainant because he was still paying taxes for the property which was no longer in his possession but that of the authorities.<sup>89</sup>

Acting on this allegation, the commission investigated and established that the authorities had indeed seized the complainant's land and destroyed the house which he had built. What was interesting was that there were other houses that were built similarly to the complainant's house but only his had since been destroyed. An advisory council that had sat on 22 may 2008 had resolved to return the property to the complaint together with ten iron sheets. This was despite the fact that original house had been roofed with thirteen iron sheets.

### **2.5 Challenges of implementation of expropriation procedures in Rwandan law**

The implementation of expropriation procedures in Rwanda faces several challenges that stem from issues related to planning, coordination, public interest determination, notice, and public participation.<sup>90</sup> These challenges hinder the effective execution of expropriation projects and contribute to dissatisfaction among affected individuals and communities.<sup>91</sup> This section explores the primary challenges associated with the expropriation procedures, emphasizing the need for improved planning, transparent public interest determinations, and effective communication with the public.

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<sup>89</sup> dusabirane, y. (2014). *The challenges of expropriation and the right to property: A case of rwanda's urbanization policy* (doctoral dissertation, university of pretoria).

<sup>90</sup> richard, m. Complaints during expropriations in rwanda: The role played by the valuation methods and compensation determination.

<sup>91</sup> ndjovu, c. (2016). Understanding causes of dissatisfactions among compensated landowners in expropriation programs in tanzania. *International journal of scientific and technology research*, 5(1), 1-7.

## 2.5.1 Expropriation procedures and its challenges

Expropriation procedures in Rwanda are designed to facilitate the acquisition of land for public use while ensuring fair compensation for affected individuals.<sup>92</sup> However, the process is fraught with challenges that compromise its effectiveness and fairness. This subsection delves into the specific challenges related to the planning and coordination of expropriation projects, the determination of public interest, and the notification and participation of the public in the expropriation process.

### 2.5.1.1 Planning and coordination

Concerns over planning and coordination of development efforts, including expropriation, were raised by many respondents.<sup>93</sup> Delays in paying compensation were attributed by some government respondents to poor planning and lack of consideration of the budgetary implications of expropriation projects.

While the Expropriation Law does not directly address the issue of planning and coordination, some government respondents cited a letter from the Prime Minister addressed to all relevant government agencies giving advice on this issue, including the requirement that agencies allocate sufficient funds for compensation before carrying out expropriations.

Some CSO respondents raised concerns that local populations were not properly sensitized to the expropriation process, causing unnecessary anxiety and economic and emotional harm.<sup>94</sup> Expropriating entities pointed to the obligation of local authorities to sensitize populations to expropriation, and to facilitate the payment of compensation. Some respondents called for the creation of a national coordinating body over expropriation, and MINALOC reported that it recently dedicated a unit to respond to expropriation issues.

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<sup>92</sup> goodfellow, t. (2014). Rwanda's political settlement and the urban transition: Expropriation, construction and taxation in kigali. *Journal of eastern african studies*, 8(2), 311-329.

<sup>93</sup> aschale, e. A., & asres, h. B. (2024). Valuation, compensation and rehabilitation for expropriation and its impact on the expropriated households in ethiopia: Evidence from debre markos city. *Property management*, 42(3), 363-387.

<sup>94</sup> rose, h., mugisha, f., kananga, a., & clay, d. (2016). The implementation of rwanda's expropriation law and its outcomes on the population.

In applications for expropriation, most expropriating agencies reported completing feasibility studies that included environmental impact assessments and budget projections.<sup>95</sup> Social implications of the expropriation projects were included in some of these studies, but not universally.<sup>96</sup> Overall, the contents of these reports do not appear to be standardized or mandated by law. Respondents also cited the Master Plans as intended to promote good land use planning, reduce successive expropriations, and facilitate development of the country.<sup>97</sup>

The City of Kigali reported making concerted efforts to counsel expropriated individuals through the process of expropriation and compensation in order to help them plan to spend their compensation funds wisely and acquire appropriate replacement land,<sup>98</sup> even encouraging group resettlement where feasible. Although the option of facilitated resettlement through compensation in the form of replacement land is provided for in the law, it is rarely used by expropriating entities and almost never preferred by expropriated households.<sup>99</sup> Institutional roles also appear to be ambiguous both to agencies involved in expropriation and expropriated individuals.<sup>100</sup>

### **2.5.1.2 Master Plans and Public interest**

International best practices establish that expropriations be limited to a legitimate public purpose, but does grant States broad discretion to determine whether a project is in the public interest.<sup>101</sup> The 2015 Expropriation Law generally follows these international standards by including a list of “public interest” reasons for expropriation.

However, the vagueness in implementation of Master Plans, and the catch-all provision in the public interest article mean that it is practically impossible to challenge a public interest determination.

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<sup>95</sup> nikièma, s. H. (2013). *Compensation for expropriation*. Winnipeg: International institute for sustainable development.

<sup>96</sup> azuela, a., & herrera-martín, c. (2009). Taking land around the world: International trends in expropriation for urban and infrastructure projects. In *urban land markets: Improving land management for successful urbanization* (pp. 337-362). Dordrecht: Springer netherlands.

<sup>97</sup> adam, a. A. (2013). *Urban management masters programme* (doctoral dissertation, ethiopian civil service university).

<sup>98</sup> goodfellow, t. (2015). Taxing the urban boom: Property taxation and land leasing in kigali and addis ababa.

<sup>99</sup> *ibidem*

<sup>100</sup> rose, h., mugisha, f., kananga, a., & clay, d. (2016). *The implementation of rwanda's expropriation law and its outcomes on the population*. Legal aid forum, rwanda.

<sup>101</sup> (United Nations General Assembly, 1973; Public International Law & Policy Group, 2013)

The issue of whether expropriation for private investment purposes is actually a “public” benefit was frequently raised. Some reports indicated that authorities expropriated people where a project was designed to advance private/investor interests.<sup>102</sup>

In case regarding Expropriation of 336 households from Ubumwe cell in Kiyovu Sector,<sup>103</sup> 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.<sup>104</sup> 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.<sup>105</sup>

Lilian Mupende of the Kigali City One-Stop Center and a representative of RSSB maintain that this considerable discrepancy in pricing emerged partly because systematic criteria for land valuation were lacking.<sup>106</sup>

Because of perceptions of abuse of the public interest determination in expropriations, CSOs support a revision of the “acts of public interest” in order to exclude private interests linked with investment. The amended expropriation law does not address these concerns.<sup>107</sup>

#### **2.5.1.4 Invalidity of Notice and Public Participation**

Notification is a critical stage in the expropriation process, and the procedure set forth in the law guarantees that the population shall be informed about the process of expropriation.

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<sup>102</sup> rwanda, a. C. O. R. D. (2014). Résultats de l’étude de base sur les conflits agricoles et foncier et l’incidence des réformes foncières sur ces conflits dans les districts de musanze, bugesera, kamonyi et ngororero.

<sup>103</sup> uwera, d., & mihigo, d. The concept of compensation for expropriated real properties and livelihood restoration of the affected persons. A case study analysis of batsinda resettlement in kigali, rwanda.

<sup>104</sup> 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 june 22, 2023, from <http://dx.doi.org/10.1080/17531055.2014.891714>

<sup>105</sup> it was highlighted in *report of the implementation of rwanda’s expropriation law and its outcomes on the population* where they interviewed rssb representative on the valuation of land of the expropriated families in kiyovu.

<sup>106</sup> interview highlighted in *report of the implementation of rwanda’s expropriation law and its outcomes on the population* where they interviewed rssb representative on issue of expropriated individuals in kiyovu and lilian mupende, director of kigali city one-stop-centre, march 2014

<sup>107</sup> rose, h., mugisha, f., kananga, a., & clay, d. (2016). *The implementation of rwanda’s expropriation law and its outcomes on the population*. Legal aid forum, rwanda.

However, it also provides for the population to give their views about the project through a consultative meeting. The law also requires the Land Committee to render a final decision on the application after that meeting, suggesting that the views expressed at the meeting should be incorporated into that final decision.

In practice, officials reported that District authorities convened a meeting to inform the population about an expropriation before it was initiated. 66.5% of expropriated individuals reported being notified about expropriation through public meetings. While personal, written notification is most likely to comply with international standards, the practice of public notification is probably sufficient within the context of citizen involvement and the decentralized administrative structure in Rwanda to meet the aims of these standards.<sup>108</sup>

Although public notification is a valid form of notification under the law, almost one-third of expropriated households reported not being notified at all, contrary to the legal requirement of notification. Over 60% of households expropriated for water and electricity projects report that they were not notified about the expropriation project affecting their lands, and about 27-29% of individuals expropriated for roads and dam projects reported not being notified as well.

As the percentage of land expropriated goes up, the likelihood of receiving some form of notification rises dramatically. This correlation between lack of notice and smaller percentage of land lost may in some cases reflect an interpretation of the 2008 Ministerial Order on land lease that purports to exempt small takings of less than 5% of a parcel from compensation.

According to the Office of the Ombudsman, enhanced public participation is the single most important improvement that needs to be made to the expropriation process. Survey data also reveal that over 70% of expropriated individuals who were involved in the valuation process on their property actually support the final value given to their property, whereas for those who report being present but ignored during the valuation, their satisfaction level with the value is only 13.4%.<sup>109</sup>

## **2.6 Procedural challenges in Valuation and Compensation**

Valuation and compensation processes in the context of expropriation are critical to ensuring fairness and transparency for affected property owners. However, these processes often face

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<sup>108</sup> unctad 2012

<sup>109</sup> rose, h., mugisha, f., kananga, a., & clay, d. (2016). *The implementation of rwanda's expropriation law and its outcomes on the population*. Legal aid forum, rwanda.

several procedural challenges that can undermine their effectiveness. This section delves into the intricacies and obstacles inherent in the valuation and compensation procedures as carried out by various entities.

### **2.6.1 Valuation process and procedures**

Any institution carrying expropriation is obligated by the law to allocate funds for property valuation and compensation. Compensable properties are land and activities carried out on the land, including the growing of crops or trees, residences or other buildings, and any other activities aimed at the efficient use of the land, such as commercial business operations. The value of these properties is calculated considering size, nature, location, and prevailing market prices.

To determine market price, District officials and independent valuers calculate the price to be paid by making an average of comparable sales. From around 2009, District authorities report that they handled the process of valuing expropriated property with reference land prices set by Ministerial Orders.<sup>110</sup>

In the case of NGABONZIZA Albert, represented by Me Christophe KAGAMBA, filed a lawsuit against the City of Kigali, represented by Me MUKARUSANGA Florence.<sup>111</sup>The dispute arose from a project initiated by the City of Kigali to construct a vocational training center (TVET) in the Kigali sector, which required expropriation of NGABONZIZA's property. NGABONZIZA contested the compensation offered, arguing that it was insufficient. Efforts to reach an agreement failed, leading to legal action.

### **2.6.2 Determining Market Price**

Many government respondents from expropriating and coordinating entities reported that the influence of reference land prices was diminishing. Although the Ministerial Orders setting these reference prices had not officially been repealed, most expropriating entities relied on professional valuers from the Institute of Real Property Valuers of Rwanda (IRPV) to value expropriated property.

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<sup>110</sup>Ministerial official gazette of republic of rwanda, 2009; republic of rwanda, 2010

<sup>111</sup>Ngabonziza albert v. City of kigali /rad 00181/2021/tgi/nyge

The biggest challenge reported by the interviewees was that of poor professionalism among property valuers stems from the fact that valuers lack technical credentials necessary to conduct a proper valuation.<sup>112</sup> 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.<sup>113</sup>

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.<sup>114</sup>

### **2.6.3 Issues of Valuation and Corruption**

Also, corruption and embezzlement cases further plague valuation exercises.

In Mageragere Sector where Kigali City's main prison was being relocated, property valuers and local officials were accused of colluding to reduce the valuation of properties targeted for expropriation.<sup>115</sup>

The practice of using independent valuers has been incorporated into the amended version of the expropriation law. When expropriated households were asked how they were notified about the valuation process, 59.4% of respondents report being notified verbally, either

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<sup>112</sup> interview highlighted in *report of the implementation of rwanda's expropriation law and its outcomes on the population* where they interviewed informants on poor professionalism among property valuers.

<sup>113</sup> interview highlighted in *report of the implementation of rwanda's expropriation law and its outcomes on the population* where they interviewed 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.

<sup>114</sup> igihe (2013): *Family appeals for help as their house is bulldozed*. Retrieved on june 15, 2023, from <http://en.igihe.com/news/family-appeals-for-help-as-their-house-is.html>

<sup>115</sup> rose, h., mugisha, f., kananga, a., & clay, d. (2016). *The implementation of rwanda's expropriation law and its outcomes on the population*. Legal aid forum, rwanda, p65-68.



personally or through a public meeting, 9% are notified in writing, and only 3.3% of respondents are not yet being notified.

However, 28.3% of respondents report never being officially notified about the valuation process to take place on their lands, and only realized valuation was underway only when they noticed valuation officials on their properties. Verbal/meeting notification was most common for airport and stadium projects, road projects had the highest incidence of written notification, and over 60% of households expropriated for water and electricity projects report not being notified of the process of valuation until officials came to their properties without prior notice.

#### **2.6.4 Notification of Valuation Process**

While many government entities do recognize some problems with the valuation process as it has been carried out under the 2015 law, many pointed to the creation of the IRPV as the main solution to valuation-related complaints. Despite the pending shift to using IRPV valuers, CSOs and expropriated individuals did not express optimism that the valuation process would improve with this change.<sup>116</sup>

Some Bugesera residents reported negative experiences with valuations performed by independent valuers, including contradictions in prices used by valuers from the same company. Furthermore, IRPV cited pressure exerted on independent valuers from some expropriating entities which seems to have led some valuers to match the prices with the wishes of the expropriating entity instead of basing the values on the actual market.<sup>117</sup>

The process of engaging independent valuers to assess property values is still a relatively new and ad hoc procedure in Rwanda, and the laws on the IRPV and the reference land prices are pending harmonization with the new version of the expropriation law.

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<sup>116</sup> interview highlighted in *report of the implementation of rwanda's expropriation law and its outcomes on the population* where they interviewed expropriated individuals did not express optimism that the valuation process of irpv under mininfra.

<sup>117</sup> interview highlighted in *report of the implementation of rwanda's expropriation law and its outcomes on the population* where they conduct interview with authorities in mininfra, minirena, representative of rssb, rtda, irpv, acord, ccoaib and irdp.

## 2.7 Compensation and time limit challenges

Compensation must be paid within 120 days of the approval of the valuation. If compensation is not paid within 120 days, the expropriation may be invalidated. District officials report that expropriated individuals are typically not aware of their right to void the expropriation upon the end of the 120-day period, and officials would not take the initiative to invalidate the expropriation on these grounds.<sup>118</sup>

### 2.7.1 Delays in 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 36 of the 2015 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 120 days and harvest the crops still on his/her land.<sup>119</sup>

In case of *NGABONZIZA v. City of Kigali*, appellant sought additional compensation for the delay in receiving payment, arguing that he was not compensated within the legally prescribed period.<sup>120</sup> Delays in compensation are a significant procedural challenge, often resulting from prolonged negotiations, legal disputes, or bureaucratic inefficiencies. These delays can lead to financial losses for the property owner and may require the expropriating authority to pay additional interest or penalties.

Also, In the case of *CHO v. Ontario (Ministry of Transportation)*, compensation issues were central to the proceedings. The claimants argued that they were entitled to \$458,000 based on the initial offer made by the Ministry of Transportation (MTO) under Section 25(1)(a) of the Expropriations Act. The claimants accepted this offer in writing, believing it to be binding and enforceable.

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<sup>118</sup>Art.36 of law n° 32/2015 of 11/06/2015 relating to expropriation in rwanda

<sup>119</sup> expropriation law official gazette of 31.08.2015 article 36

<sup>120</sup> ngabonziza v. City of kigali

However, the MTO later attempted to withdraw the initial offer and proposed a significantly lower amount. The tribunal ruled in favor of the claimants, determining that the MTO could not rescind the initial offer and that the compensation amount of \$458,000 remained valid and enforceable. This decision highlights the importance of initial compensation offers and the legal ramifications when an expropriating authority attempts to alter such offers post-acceptance.<sup>121</sup>

### **2.7.1.1 Delay in Kacyiru Residents Case**

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.<sup>122</sup> 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.<sup>123</sup> These cases have been similar to the ones faced by residents of Gahanga Sector in Kicukiro District and Rilima Sector in Bugesera District where the state-of-the art stadium and national airport are to be built, respectively.<sup>124</sup>

Newspaper articles reported 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

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<sup>121</sup> *cho v ontario (transportation)*, 2022 canlii 85613 (on lt), <<https://canlii.ca/t/js0hr>>, retrieved on 2024-07-31

<sup>122</sup> *rwanda today (2013): Kigali residents in the cold as city hall dithers on cash*. Retrieved on june 17, 2023, from <http://www.theeastafrican.co.ke/rwanda/news/kigali-residents-in-the-cold-as-city-hall-dithers-on-cash/-/1433218/2047482/-/item/1/-/14kq0kk/-/index.html>.

<sup>123</sup> *idem*

<sup>124</sup> *rwanda today (2014): Compensate the displaced quickly, now mps urge government*. Retrieved on june 20, 2023, from <http://www.theeastafrican.co.ke/rwanda/news/compensate-the-displaced-quickly/-/1433218/2261090/-/item/2/-/29f9qdz/-/index.html>

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.<sup>125</sup>

A sector official from Bugesera District we interviewed noted that delayed compensation occurs when disputes over land ownership have to be resolved.<sup>126</sup> 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 Ombudsman<sup>127</sup> and the Ministry of Local Government,<sup>128</sup> 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.

### 2.7.2 Other issues surrounding compensation

Capacity to manage and wisely invest cash compensation presents another challenge for those who are expropriated. According to article 35 of the 2015 Expropriation Law, just compensation may be monetary or in any other form mutually agreed upon by the expropriator and the person to be expropriated.<sup>129</sup>

While the law allows for compensation in various forms, the predominance of monetary compensation has led to significant challenges. Many recipients, unaccustomed to handling large sums of money, struggle with financial mismanagement, resulting in squandered funds and, in some cases, homelessness. The example of the Kimicanga resident underscores the vulnerability of expropriated individuals, emphasizing the need for better financial education

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<sup>125</sup> igihe (2013): *Kamonyi: Imyaka irindwi ishize bategereje ingurane ariko barahebye*. Retrieved on June 3, 2023, from [http://www.igihe.com/amakuru/u-rwanda/article/kamonyi-imyaka-irindwi-ishize?Page=article\\_mobile](http://www.igihe.com/amakuru/u-rwanda/article/kamonyi-imyaka-irindwi-ishize?Page=article_mobile)

<sup>126</sup> interview highlighted in *report of the implementation of Rwanda's expropriation law and its outcomes on the population* where they interviewed Gashora sector official on issue of delay of compensation in Bugesera district, March 2014

<sup>127</sup> *office of the ombudsman (2011): Annual report 2010/11*, p.29. Retrieved on August, 2023, from [http://www.ombudsman.gov.rw/img/pdf/annual\\_report\\_2010-2011](http://www.ombudsman.gov.rw/img/pdf/annual_report_2010-2011)

<sup>128</sup> Rwanda Today (2014): *Compensate the displaced quickly, now MPs urge government*. Retrieved on June 20, 2023, from <http://www.theeastafrican.co.ke/rwanda/news/compensate-the-displaced-quickly/-/1433218/2261090/-/item/2/-/29f9qdz/-/index.html>

<sup>129</sup> expropriation law official gazette of 31.08.2015 article 35

and support systems to ensure that compensation leads to sustainable resettlement and economic stability.

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.<sup>130</sup> 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.<sup>131</sup>

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.<sup>132</sup> 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.<sup>133</sup> 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.<sup>134</sup>

While relocation has positively impacted the livelihoods of many former residents of Kiyovu, Kimicanga, and Muhima suburbs, the process is not without significant difficulties. The subsidized housing provided in places like Batsinda has been beneficial, but finding suitable relocation sites remains a major hurdle for the City of Kigali. The high costs associated with relocation make it an impractical option for the government to employ universally. This highlights the need for a balanced approach that combines relocation with adequate financial support and planning to ensure sustainable outcomes for all affected individuals.

## 2.8 Partial Conclusion

This chapter has critically analyzed the applicability of the law on expropriation under the Rwandan legal framework, exploring various procedural and implementation challenges.

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<sup>130</sup> rwanda today (2013): *Slums to skyscrapers: Where do the expropriated people go?* Retrieved on june 17, 2023, from <http://www.theeastafrican.co.ke/rwanda/news/where-do-the-expropriated-people-go/-/1433218/1702274/-/item/1/-/dk93ipz/-/index.html>

<sup>131</sup> *idem*

<sup>132</sup> the new times (2013): *Former city-slum-dwellers now have reason to cheer.* Retrieved on may 24, 2023, from <http://www.newtimes.co.rw/news/index.php?A=13251&i=15243>

<sup>133</sup> *ibidem*

<sup>134</sup> *ibidem*

Expropriation, the compulsory acquisition of private property for public use, plays a pivotal role in Rwanda's development strategy, enabling significant infrastructure projects and urban expansion. However, this process has revealed several complexities and issues that impact both the government and the affected property owners.

Key findings highlight the procedural challenges in determining public interest, fair compensation, and the effective coordination of expropriation projects. The determination of public interest often lacks transparency, leading to potential misuse and disputes. Additionally, the process of providing fair compensation is fraught with delays and inconsistencies, often leaving affected individuals and families in precarious situations.

## **CHAPTER III: REMEDIAL MECHANISMS TO ENSURE EFFECTIVE APPLICATION OF EXPROPRIATION LAW**

### **Introduction**

The effective application of expropriation law is critical for ensuring that public interests are met while protecting the rights of affected property owners. This chapter examines the various mechanisms that support the implementation of expropriation law in Rwanda. It explores the legal framework, institutional roles, procedural steps, monitoring, and enforcement mechanisms, and addresses the challenges faced in practice. The chapter concludes with recommendations for enhancing the effectiveness of these mechanisms.

### **3.1 Legal and Policy Mechanisms**

The legal framework and policy measures for ensuring the effective application of expropriation law in Rwanda can be thoroughly examined by exploring various aspects from the constitutional framework to other related laws.<sup>135</sup> This analysis will provide a comprehensive understanding of the institutional mechanisms and the legal intricacies involved in expropriation within the Rwandan jurisdiction.

Rwanda's Law Relating to Expropriation in the Public Interest aims to balance the government's authority to acquire land for public projects with the protection of private property interests.<sup>136</sup> This law, derived from the 2007 Expropriation Law and adapted to the new hierarchy introduced by the 2013 Land Law, strengthens procedures for notifying landowners and proposes critical revisions to ensure a fair process. The following sections elaborate on the constitutional framework, the provisions of the expropriation law, and related legal instruments that ensure effective application of the expropriation law.

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<sup>135</sup> mudaheeranwa, a. (2019). *Comparative analysis of investment protection measures in bilateral investment treaties signed by rwanda* (doctoral dissertation, university of rwanda).

<sup>136</sup> tagliarino nk. The status of national legal frameworks for valuing compensation for expropriated land: An analysis of whether national laws in 50 countries/regions across asia, africa, and latin america comply with international standards on compensation valuation. *Land*. 2017; 6(2):37.

### 3.1.1 Considerations on Constitution reforms

Article 34 of the Rwandan Constitution establishes the right to property and stipulates that no one can be deprived of their property except for public interest and with fair and prior compensation.<sup>137</sup> This constitutional guarantee forms the bedrock of the expropriation process, ensuring that property rights are safeguarded even when the state exercises its power to expropriate land for public use. The Constitution provides a clear mandate that expropriation should serve a public purpose, and any deprivation of property must be accompanied by just compensation.<sup>138</sup> This principle is crucial in maintaining the balance between public needs and individual rights.

The Law Relating to Expropriation in the Public Interest, as reviewed in 2015, outlines the procedures for expropriation and the rights of landowners. The law is structured to provide clarity on the processes and to enhance transparency and efficiency. Key provisions include the identification of property rights,<sup>139</sup> the obligation to hold community meetings, and the requirement for environmental and social impact assessments. These measures ensure that the expropriation process is conducted transparently and that the interests of affected landowners are considered.

### 3.1.2 Enhanced Policies mechanisms

The Law retains and improves upon the 2015 Expropriation Law by eliminating conflicts of interest in decision-making and increasing notice requirements. It also addresses the valuation of property and the payment of compensation. One of the notable improvements is the requirement for the government to provide a social impact assessment and to consider external input through community meetings. These provisions enhance public participation and ensure that expropriation decisions are well-informed and consider the social implications.

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<sup>137</sup> art. 34 rwanda constitution 2023

<sup>138</sup> sluysmans, j., verbist, s., & de graaff, r. (2014). Compensation for expropriation: How compensation reflects a vision on property. *European property law journal*, 3(1), 3-33.

<sup>139</sup> art.34 rwanda constitution of 2023



The Law also provides mechanisms for landowners to challenge expropriation decisions. This includes the right to seek review based on social impact assessments and environmental impact statements.

Amending the expropriation law to include specific provisions for the support and integration of financial literacy programs and investment support mechanisms is essential. Strengthening the legal framework will ensure that expropriated individuals receive fair and adequate compensation promptly, with penalties for non-compliance by expropriators. Additionally, developing and implementing policies that prioritize sustainable relocation options, such as the development of affordable housing projects and infrastructure in designated relocation areas, is crucial. Collaboration with international development organizations to secure funding and technical assistance for effectively implementing these policies is necessary to achieve successful and equitable outcomes for those affected by expropriation.

### **3.1.2.1 Respect of Fair Compensation**

The doctrine of fair compensation is a cornerstone of the expropriation process. It requires that property owners receive compensation that reflects the market value of their expropriated property, including any improvements made. This doctrine is crucial for mitigating the financial impact of expropriation on property owners and ensuring that they are not unduly disadvantaged. The Rwandan Draft Law Relating to Expropriation in the Public Interest incorporates this doctrine by outlining detailed procedures for property valuation and compensation, ensuring transparency and fairness.

To enhance the implementation of fair compensation, several mechanisms can be suggested. First, establish an independent valuation body composed of certified real estate appraisers and financial experts to assess the value of properties objectively and without bias.<sup>140</sup> This body should adhere to international valuation standards to ensure consistency and accuracy. Second, implement a grievance redressal mechanism where property owners can appeal against the valuation if they believe it does not reflect the true market value of their property.<sup>141</sup> This process should be swift and transparent, providing clear guidelines on how

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<sup>140</sup> wang, k., & wolverton, m. L. (eds.). (2002). *Real estate valuation theory* (vol. 8). Springer science & business media.

<sup>141</sup> miller, r. E., & sarat, a. (1981). Grievances, claims, and disputes: Assessing the adversary culture. *Law & society review*, 15(3-4), 525-566.

appeals are handled and resolved. Third, ensure timely disbursement of compensation to prevent undue financial hardship on the expropriated individuals.<sup>142</sup> This can be achieved by setting strict timelines for payment and incorporating penalties for delays.

### **3.1.2.2 Redefined Principle of Public Interest**

The principle ensures that expropriation is not used arbitrarily or for private gain but is aligned with broader societal goals.<sup>143</sup> In the Rwandan context, this principle is embedded in the legal framework to ensure that expropriation decisions are made transparently and with a clear public benefit in mind.

To address issues related to the principle of public interest in expropriation, it is recommended to implement a robust mechanism that includes several key components. Establish an independent Public Interest Review Board composed of legal experts, economists, urban planners, and representatives from civil society to review and assess the public interest claims of proposed expropriation projects, ensuring that they genuinely serve the public good and are not driven by private or arbitrary interests.

Public hearings and feedback sessions should be conducted to gather diverse perspectives and ensure that the project is indeed in the public interest. Require comprehensive environmental, social, and economic impact assessments for proposed expropriation projects, with findings made publicly available to enhance transparency and accountability. Develop clear and objective criteria for defining what constitutes public interest, based on measurable outcomes like improvements in public infrastructure and enhanced access to essential services.

## **3.2 Institutional Mechanisms**

Understanding the roles of various institutions in this process is essential for ensuring that expropriation is conducted fairly, transparently, and efficiently.<sup>144</sup> This analysis delves into the institutional mechanisms in place to facilitate expropriation within Rwanda's current legal framework, focusing on the roles and responsibilities of the Ministry of Infrastructure, the

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<sup>142</sup> nikièma, s. H. (2013). *Compensation for expropriation*. Winnipeg: International institute for sustainable development.

<sup>143</sup> praduroux, s. (2019). Property and expropriation: Two concepts revisited in the light of the case law of the european court of human rights and the european court of justice. *European property law journal*, 8(2), 172-191.

<sup>144</sup> fietta, s. (2006). Expropriation and the fair and equitable standard: The developing role of investors expectations in international investment arbitration. *J. Int'l arb.*, 23, 375.

Rwanda Land Authority, and Local Government Authorities. Furthermore, it explores potential mechanisms that can be deployed to enhance the expropriation process, ensuring that it aligns with national development goals while safeguarding the rights of affected individuals and communities.<sup>145</sup>

### **3.2.1 Role of the Ministry of Infrastructure**

The Ministry of Infrastructure (MININFRA) in Rwanda plays a pivotal role in the development and supervision of policies related to infrastructure, including transport, energy, water and sanitation, and urban planning and housing development.<sup>146</sup> The Ministry's involvement ensures that land needed for infrastructure development is identified, acquired, and utilized efficiently, adhering to legal and regulatory frameworks that govern expropriation.

#### **3.2.1.1 Strengthening Stakeholder Engagement**

MININFRA should enhance its engagement with affected communities through regular consultations and feedback mechanisms. By actively involving local populations in planning stages, the Ministry can better understand and address their concerns.<sup>147</sup> Establishing clear channels for communication and feedback would ensure that issues related to expropriation and compensation are identified and resolved promptly.

#### **3.2.1.2 Improving Transparency and Accountability**

To build trust and prevent disputes, MININFRA should ensure transparency in the expropriation process. This includes providing clear and accessible information about the expropriation procedures, compensation policies, and timelines.<sup>148</sup> Implementing a robust

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<sup>145</sup> nikuze, a., sliuzas, r., & flacke, j. (2020). From closed to claimed spaces for participation: Contestation in urban redevelopment induced-displacements and resettlement in kigali, rwanda. *Land*, 9(7), 212.

<sup>146</sup> impact, s., & roads, m. W. O. I. F. (2020). Republic of rwanda.

<sup>147</sup> burby, r. J. (2003). Making plans that matter: Citizen involvement and government action. *Journal of the american planning association*, 69(1), 33-49.

<sup>148</sup> kusters, k., buck, l., de graaf, m., minang, p., van oosten, c., & zagt, r. (2018). Participatory planning, monitoring and evaluation of multi-stakeholder platforms in integrated landscape initiatives. *Environmental management*, 62(1), 170-181.

monitoring and evaluation system would help track progress, address grievances, and ensure that all stakeholders are held accountable for their roles in the process.

### **3.2.1.3. Enhancing Compensation Processes**

The Ministry should work on refining compensation processes by collaborating closely with valuers to ensure fair and accurate assessments of land and property. Developing standardized guidelines for compensation that are consistent and transparent can reduce disputes and delays. Additionally, MININFRA could explore alternative compensation mechanisms, such as land-for-land swaps or relocation assistance, to address the needs of affected individuals more effectively.

## **3.2.2 Responsibilities of the Rwanda Land Authority**

The Rwanda Land Authority is responsible for land administration and management. RLA's key functions include land registration, land use planning, and ensuring compliance with land-related regulations. To enhance the effectiveness and fairness of the expropriation process, the Rwanda Land Authority (RLA) could consider implementing the following strategies:

### **3.2.2.1 Streamlining Land Valuation and Compensation**

RLA should focus on refining the land valuation process to ensure accuracy and fairness. This involves adopting standardized valuation methodologies and engaging qualified and independent valuers to assess properties. Establishing a transparent and consistent compensation framework, with clear guidelines and procedures, will help to address disputes and ensure that affected individuals receive fair compensation promptly.

### **3.2.2.2 Enhancing Land Records Management**

Maintaining accurate and up-to-date land records is critical for the smooth execution of expropriation. RLA should invest in modernizing its land records management systems, incorporating digital tools and Geographic Information Systems (GIS) to improve data accuracy and accessibility. This modernization will facilitate better tracking of land ownership and transactions, reduce errors, and support efficient land administration.

### **3.2.2.3 Strengthening Dispute Resolution Mechanisms**

To effectively manage land disputes arising from expropriation, RLA should establish or enhance dispute resolution mechanisms. This could involve setting up dedicated arbitration panels or mediation services that provide timely and fair resolutions.<sup>149</sup> Training staff and local authorities in conflict resolution techniques and ensuring that there are clear procedures for lodging and addressing complaints will contribute to a more equitable expropriation process.

### **3.2.3 Functions of Local Government Authorities**

Local Government Authorities in Rwanda are integral to the implementation of land policies and expropriation processes at the grassroots level. These authorities, under the supervision of the Ministry of Local Government (MINALOC), ensure the coordination of good governance and territorial administration programs. They play a key role in community engagement, informing and consulting with affected landowners, and facilitating the relocation and resettlement of displaced persons.<sup>150</sup>

To improve the management of expropriation processes, the Ministry of Local Government (MINALOC) in Rwanda could consider the following strategies:

#### **3.2.3.1 Strengthening Community Engagement**

Local Government Authorities should prioritize community engagement to ensure that the needs and concerns of affected landowners are addressed. This involves conducting regular consultations and providing clear information about expropriation processes, compensation policies, and timelines. Engaging with communities early in the planning process can help mitigate resistance and build support for development projects.

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<sup>149</sup> smith, s., & martinez, j. (2009). An analytic framework for dispute systems design. *Harv. Negot. L. Rev.*, 14, 123.

<sup>150</sup> smyth, e., & vanclay, f. (2017). Land acquisition, resettlement and livelihoods. In *methods of environmental and social impact assessment* (pp. 546-576). Routledge.

### **3.2.3.2 Expanding Support for Displaced Persons**

MINALOC should develop and implement comprehensive support programs for individuals and families displaced by expropriation. This includes facilitating relocation and resettlement efforts, providing access to housing and livelihood support,<sup>151</sup> and ensuring that displaced persons receive adequate assistance to minimize the impact of relocation on their lives.

### **3.2.3.3 Implementing Monitoring and Evaluation Mechanisms**

To improve the management of expropriation processes, MINALOC should establish robust monitoring and evaluation mechanisms. This involves regularly assessing the effectiveness of expropriation procedures, tracking the resolution of expropriation arrears, and identifying areas for improvement. Developing a feedback loop that allows for continuous improvement based on monitoring results can enhance the overall efficiency and fairness of the expropriation process.

## **3.2.4 Human rights commission**

The human rights commission is a constitutionally established institution that is charged with the mandate of protecting and promoting human rights.<sup>152</sup> The commission carries out its mandate through cooperation with other agencies and departments whose mandates are relevant to the subject of human rights.<sup>153</sup>

### **3.2.4.1 Monitoring and Reporting on Expropriation Practices**

The HRC should actively monitor expropriation processes to ensure that they comply with human rights standards. This involves investigating allegations of rights violations, such as inadequate compensation, forced displacement, or violations of due process. By conducting thorough assessments and producing detailed reports, the HRC can provide valuable insights and recommendations to improve expropriation practices and safeguard the rights of affected individuals.

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<sup>151</sup> nikuze, a., sliuzas, r., flacke, j., & van maarseveen, m. (2019). Livelihood impacts of displacement and resettlement on informal households—a case study from kigali, rwanda. *Habitat international*, 86, 38-47.

<sup>152</sup> art 177 of constitution of republic of rwanda.

<sup>153</sup> thipanyane, t. (2015). Strengthening constitutional democracy: Progress and challenges of the south african human rights commission and public protector. *Nyl sch. L. Rev.*, 60, 125.

### 3.2.4.2 Strengthening Collaboration with Relevant Agencies

To enhance its effectiveness, the HRC should strengthen collaboration with agencies involved in expropriation, such as MININFRA, RLA, and local government authorities. By working closely with these entities, the HRC can ensure that human rights considerations are integrated into expropriation policies and procedures. Joint efforts can help address issues proactively and promote a more human rights-oriented approach to land acquisition.<sup>154</sup>

### 3.2.4.3 Advocacy and Public Awareness

The HRC should engage in advocacy and public awareness campaigns to educate citizens about their rights related to expropriation. This includes informing affected individuals about their rights to fair compensation, legal recourse, and the process for lodging complaints.<sup>155</sup> Raising awareness about human rights protections in the context of expropriation can empower individuals to advocate for their rights and hold authorities accountable.

### 3.2.4.4 Providing Legal Assistance and Support

To support individuals affected by expropriation, the HRC could provide legal assistance and support. This may involve offering guidance on how to navigate the expropriation process, assisting with filing complaints, and facilitating access to legal representation. Ensuring that affected individuals have the necessary resources and support can help them secure fair treatment and compensation.<sup>156</sup>

## 3.3 Procedural Mechanisms

The procedural mechanisms governing expropriation in Rwanda, though ostensibly designed to ensure transparency, fairness, and efficiency, reveal several critical shortcomings upon

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<sup>154</sup> borras, s. M., seufert, p., backes, s., fyfe, d., herre, r., michele, l., & mills, e. (2016). Land grabbing and human rights: The involvement of european corporate and financial entities in land grabbing outside the european union. *Policy department*. <https://doi.org/10.13140/rg.2.13719.16800>.

<sup>155</sup> o'brien, k. J., & li, l. (1995). The politics of lodging complaints in rural china. *The china quarterly*, 143, 756-783.

<sup>156</sup> blaszke, m., nowak, m. J., ciołek, d., oleńczuk-paszal, a., śpiewak-szyjka, m., bukowska, j. D., ... & medina, s. P. (2024). The role of the courts in resolving conflicts over property expropriation: The case of poland. *Dispersed the planning review*, 60(1), 37-52.

closer examination. These mechanisms, while integral to facilitating public development projects, often fall short of truly upholding the rights of property owners.

The theoretical balance between pre-expropriation procedures and robust valuation and compensation processes frequently skews towards bureaucratic inefficiency and inadequate public participation. By dissecting these components, we expose the gaps between the legal framework's intentions and its practical implementation, highlighting areas that demand urgent reform to meet the standards of fairness, justice, and transparency.

### **3.3.1 Effective Public Participation**

Public participation is a critical component of the pre-expropriation procedures. During the consultative meeting, stakeholders are given the opportunity to express their concerns and interests.<sup>157</sup> The Stakeholder Engagement Plan, formulated during this meeting, is an essential document that outlines the engagement process and strategies to address stakeholder concerns. The findings and decisions of the responsible committee are then submitted to the district council or Kigali City Council within 15 days of the consultations.<sup>158</sup>

Public participation is a crucial mechanism in the expropriation process, as it ensures that the voices of affected communities are heard and considered.<sup>159</sup> Through public consultations and stakeholder engagement meetings, community members can express their concerns, provide feedback, and influence the decision-making process. This participatory approach helps build consensus and mitigate opposition to expropriation projects.

Stakeholder engagement plans are developed during these consultations to address the interests of various stakeholders and mitigate potential negative impacts. These plans outline the strategies for engaging with affected communities, ensuring that their concerns are addressed and that they are kept informed throughout the process. By involving the public in the expropriation process, authorities can enhance transparency, build trust, and ensure that

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<sup>157</sup> braude, n. L. (2017). A "Uniform procedure" For all expropriations? Customary property rights and the 2015 expropriation bill. *Stellenbosch law review*, 28(1), 68-96.

<sup>158</sup> onesphore, n. (2016). Community participation and sustainability of projects in gasabo district, kigali rwanda.

<sup>159</sup> purcell, m. (2014). Public participation in new local governance spaces: The case for community development in local strategic partnerships. In *the european conference on politics, economics and law 2014: Official conference proceedings* (pp. 143-159). Iafor.



the process is conducted in a manner that respects the rights and interests of all parties involved.

### **3.4 Strengthened Dispute resolution mechanisms**

The mechanisms for resolving disputes and implementing expropriation policies are critical for protecting the rights of affected individuals while facilitating necessary public projects.<sup>160</sup>

To ensure effective expropriation while protecting the rights of affected individuals, the implementation of robust dispute resolution mechanisms is essential. Here are several suggestions for enhancing these mechanisms:

#### **3.4.1 Establishing Clear and Accessible Complaints Procedures**

Dispute resolution mechanisms should begin with clear, well-defined procedures for lodging complaints. Establishing a comprehensive and accessible complaints system ensures that affected property owners understand how to file grievances,<sup>161</sup> what information is required, and the expected timeline for resolution. This system should include a dedicated portal or office where complaints can be submitted, tracked, and managed efficiently.<sup>162</sup> Providing multilingual support and assistance for individuals unfamiliar with the process can further improve accessibility.

#### **3.4.2 Enhancing Transparency and Communication**

Transparency is crucial for maintaining trust in the dispute resolution process. Institutions handling expropriation disputes should ensure that all decisions, including valuations and compensation offers, are documented in writing and communicated clearly to affected individuals. Providing detailed explanations for valuation outcomes and decision-making processes can help mitigate misunderstandings and disputes. Regular updates on the status of complaints and the resolution process should also be shared with complainants to keep them informed and engaged.

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<sup>160</sup> dani, m., & akhtar-khavari, a. (2016). The uncertainty of legal doctrine in indirect expropriation cases and the legitimacy problems of investment arbitration. *Widener l. Rev.*, 22, 1.

<sup>161</sup> wehrmann, b. (2008). *Land conflicts: A practical guide to dealing with land disputes*. Eschborn: Gtz.

<sup>162</sup> velicogna, m. (2007). Justice systems and ict what can be learned from europe?. *Utrecht law review*, 129-147.

### **3.4.2 Improving Timeliness and Efficiency**

To address issues of delays in dispute resolution, it is important to establish clear timeline and deadlines for handling complaints. Institutions should implement streamlined procedures and allocate adequate resources to ensure that disputes are resolved promptly. Setting up dedicated teams or units within the One Stop Center or other relevant institutions can help manage caseloads more effectively and reduce processing times.

### **3.4.4. Providing Independent Review and Mediation**

Introducing independent review mechanisms or mediation services can offer an additional layer of fairness in the dispute resolution process.<sup>163</sup> Independent reviewers or mediators, not directly involved in the expropriation process, can provide unbiased assessments of complaints and facilitate fair resolutions. Mediation can also offer a less adversarial approach to resolving disputes, allowing parties to negotiate mutually acceptable solutions with the help of a neutral third party.<sup>164</sup>

## **3.5 Partial Conclusion**

In addressing the expropriation challenges identified in Chapter Two, Chapter Three has proposed several mechanisms aimed at improving the process and ensuring fair treatment for all stakeholders. The essence of these mechanisms is to foster transparency, accountability, and justice in expropriation procedures, thereby mitigating the adverse impacts on affected property owners and enhancing public trust in the system.

One of the primary mechanisms suggested is the establishment of clear and comprehensive guidelines for determining "public interest." This involves creating a well-defined list of activities deemed to be in the public interest and ensuring that local committees of expropriation conduct thorough consultative meetings with the affected populations. Such measures will help in achieving a more transparent and participatory decision-making process, thus reducing disputes and enhancing community acceptance.

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<sup>163</sup> lodder, a. R., & zelznikow, j. (2005). Developing an online dispute resolution environment: Dialogue tools and negotiation support systems in a three-step model. *Harv. Negot. L. Rev.*, 10, 287.

<sup>164</sup> shamir, y. (2016). Alternative dispute resolution approaches and their application.

In summary, the mechanisms suggested in Chapter Three aim to address the multifaceted challenges of expropriation in Rwanda by promoting fairness, transparency, and accountability. By implementing these measures, it is anticipated that the expropriation process will be significantly improved, balancing the needs of public development with the rights and well-being of property owners.

## **RECOMMENDATION AND GENERAL CONCLUSION**

In light of the findings from this study, the following recommendations are presented as practical and actionable solutions to address these challenges. These recommendations aim to enhance the fairness, transparency, and efficiency of expropriation practices in Rwanda, ensuring that the rights of property owners are protected while also advancing public development objectives.

The general conclusion summarizes the key insights drawn from the study, highlighting the importance of balancing public and private interests in the expropriation process.

### **1. Recommendations**

Recommendations are crucial components of any analytical study, offering actionable solutions to address identified challenges. In the context of the dissertation titled "Critical Analysis of the Applicability of the Law on Expropriation Under the Rwandan Legal Framework," recommendations are designed to improve the existing legal and procedural frameworks, ensuring that expropriation processes are conducted fairly, transparently, and efficiently. These suggestions are derived from a thorough examination of the current expropriation practices, their impact on affected populations, and the gaps within the legal framework.

#### **1. 1. Enhancing Dispute Resolution Mechanisms**

To effectively manage land disputes arising from expropriation, the Rwandan Land Authority (RLA) should establish or enhance dispute resolution mechanisms. This could involve setting up dedicated arbitration panels or mediation services that provide timely and fair resolutions. Training staff and local authorities in conflict resolution techniques and ensuring clear procedures for lodging and addressing complaints will contribute to a more equitable expropriation process. Additionally, providing independent review mechanisms or mediation services can offer an additional layer of fairness in the dispute resolution process. Independent reviewers or mediators not directly involved in the expropriation process can provide unbiased assessments of complaints and facilitate fair resolutions.

## **1.2. Strengthening Community Engagement**

Local Government Authorities should prioritize community engagement to ensure that the needs and concerns of affected landowners are addressed. This involves conducting regular consultations and providing clear information about expropriation processes, compensation policies, and timelines. Engaging with communities early in the planning process can help mitigate resistance and build support for development projects. Stakeholder engagement plans should be developed during these consultations to address the interests of various stakeholders and mitigate potential negative impacts.

## **1.3. Expanding Support for Displaced Persons**

The Ministry of Local Government (MINALOC) should develop and implement comprehensive support programs for individuals and families displaced by expropriation. This includes facilitating relocation and resettlement efforts, providing access to housing and livelihood support, and ensuring that displaced persons receive adequate assistance to minimize the impact of relocation on their lives. By involving the public in the expropriation process, authorities can enhance transparency, build trust, and ensure that the process is conducted in a manner that respects the rights and interests of all parties involved.

## **1.4. Implementing Monitoring and Evaluation Mechanisms**

To improve the management of expropriation processes, MINALOC should establish robust monitoring and evaluation mechanisms. This involves regularly assessing the effectiveness of expropriation procedures, tracking the resolution of expropriation arrears, and identifying areas for improvement. Developing a feedback loop that allows for continuous improvement based on monitoring results can enhance the overall efficiency and fairness of the expropriation process.

## **1.5. Strengthening Collaboration with Relevant Agencies**

The Human Rights Commission (HRC) should strengthen collaboration with agencies involved in expropriation, such as MININFRA, RLA, and local government authorities. By working closely with these entities, the HRC can ensure that human rights considerations are integrated into expropriation policies and procedures. Joint efforts can help address issues proactively and promote a more human rights-oriented approach to land acquisition.

## **1.6. Advocacy and Public Awareness**

The HRC should engage in advocacy and public awareness campaigns to educate citizens about their rights related to expropriation. This includes informing affected individuals about their rights to fair compensation, legal recourse, and the process for lodging complaints. Raising awareness about human rights protections in the context of expropriation can empower individuals to advocate for their rights and hold authorities accountable.

## **2. General Conclusion**

The study "Critical Analysis of the Applicability of the Law on Expropriation Under the Rwandan Legal Framework" provides a comprehensive examination of the legal, procedural, and practical aspects of expropriation in Rwanda. The process of expropriation, or the compulsory acquisition of private property for public use, is pivotal to Rwanda's development strategy, facilitating infrastructure projects and urban expansion. However, this process is fraught with complexities and issues that impact both the government and affected property owners.

The study underscores the importance of balancing public and private interests in the expropriation process. The legal framework must ensure transparency, fairness, and public participation to mitigate adverse impacts and ensure that the benefits of development are equitably distributed. This involves creating clear and comprehensive guidelines for determining "public interest," conducting thorough consultative meetings with affected populations, and ensuring fair compensation.

In examining the procedural challenges encountered in the expropriation process in Rwanda, the dissertation identifies several critical issues. These include the opacity in determining the "public interest" nature of expropriation projects, inadequate public participation, and bureaucratic inefficiency. The lack of a clear ministerial regulation establishing local committees of expropriation further complicates the process, leading to potential human rights violations and socio-economic impacts on affected populations. The dissertation proposes several mechanisms to address these challenges and improve the expropriation process. These include enhancing dispute resolution mechanisms, strengthening community engagement, expanding support for displaced persons, implementing robust monitoring and evaluation mechanisms, and strengthening collaboration with relevant agencies.

By implementing these measures, it is anticipated that the expropriation process in Rwanda will be significantly improved, balancing the needs of public development with the rights and well-being of property owners.

One of the primary mechanisms suggested is the establishment of clear and comprehensive guidelines for determining "public interest." This involves creating a well-defined list of activities deemed to be in the public interest and ensuring that local committees of expropriation conduct thorough consultative meetings with affected populations. Such measures will help achieve a more transparent and participatory decision-making process, reducing disputes and enhancing community acceptance.

Fair compensation is another critical area that requires attention. The mechanisms proposed include ensuring timely payment of compensation, incorporating both monetary and non-monetary forms, and setting up a robust framework for counter-valuation. These steps are designed to protect the rights of property owners, providing them with adequate resources to relocate or reestablish their livelihoods without undue hardship.

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