



UNIVERSITY OF RWANDA

COLLEGE OF ARTS AND SOCIAL SCIENCES

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**DEVELOPMENT MASTER PLANS IMPLEMENTATION AND THE RIGHT TO
PRIVATE OWNERSHIP OF LAND IN RWANDA.**

BY

TWAGIRAYEZU Eguide

Student ID N° 218015615

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Supervisor Dr. René SEBAGABO MUNYAMAHORO

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DECLARATION

I, TWAGIRAYEZU Egide, hereby declare that to the best of my knowledge the work presented in this dissertation entitled “DEVELOPMENT MASTER PLANS IMPLEMENTATION AND THE RIGHT TO PRIVATE OWNERSHIP OF LAND IN RWANDA.” is original and that it has not been previously submitted elsewhere for any academic qualification. However, where other peoples work has been used, it has been quoted.

Date:

Signature:.....

APPROVAL

I hereby certify that I have supervised and hereby recommend for the acceptance the dissertation entitled “DEVELOPMENT MASTER PLANS IMPLEMENTATION AND THE RIGHT TO PRIVATE OWNERSHIP OF LAND IN RWANDA”, at the University of Rwanda. This project has been submitted with my authority as the university supervisor.

Supervisor name: Dr. René SEBAGABO MUNYAMAHORO

DEDICATION

This work is dedicated to my dear wife, Espérance, to my beloved children, Jesca, Joan and Edgar for their patience and support.

Blessings!

ACKNOWLEDGMENTS

Above all, I'm grateful to Almighty God for strengthen me and his grace to see this project to completion. This paper is the result of different people who have combined their efforts for the success of this work. Many thanks goes to people who have helped, directly or indirectly, towards the completion of this work.

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TWAGIRAYEZU Eguide

LIST OF ANCRONMYS AND ABBREVIATIONS

Art:	Article
Arts:	Articles
CIP:	Crop Intensification Program
CoK:	City of Kigali
CWM:	Community-based Wildlife Management
e.g.:	For example
ESMF:	Environmental and Social Management Framework
GoR:	Government of Rwanda
Http:	Hypertext Transfer Protocol
Ibidem/ibid:	Same author same page
LRL:	Land Readjustment Law
LTR:	Land Tenure Regularization
LUC:	Land Use Consolidation
NLUDMP:	National Land Use and Development Master Plan
O.G:	Official Gazette
Para:	Paragraph
PMO:	Prime Minister's Order
PPPs:	Public Private Partnerships
REMA:	Rwanda Environment Management Authority
RGB:	Rwanda Governance Board

RLMUA:	Rwanda Land Management and Use Authority
RoR:	Republic of Rwanda
RPF:	Resettlement Policy Framework
RUDP:	Rwanda Urban Development Project
SEZ:	Special Economic Zone
SLR:	Systematic Land Registration
Supra:	Above
UK:	United Kingdom
UN:	United Nations
UPC:	Urban Planning Code
USAID:	United States Agency for International Development
Vol:	Volume
WBIA:	Wetland Biodiversity Indicator Assessment
WEFASAM:	Wetland Ecosystem Functions, Assets and Services Assessment and Management
WWW:	World Wide Web

ABSTRACT

Despite the positive impact of master plan development of cities on lives of inhabitants, the planning and development of master plans attracted also a number of challenges in land administration and information systems but more especially on the encroachment of right to private ownership of land. Master plans have been sought as a mechanism of efficiently use the national land for the current population and considering the future generations.

This study focused on the land reserved for human habitation and it analysed key issues that arise in planning and enforcement processes of master plans in City of Kigali and secondary cities. The study also recognize that the development master plans came in the country which is already inhabited and recently most of the land parcels have been surveyed and allocated to their respective owners hence forth and land titles issued for the sake of more land rights protection and long term related investment promotion.

In the light of the above, master plans sometimes interfere with the existing structures and therefore requires for total demolition or refurbishment in line with the master plans provisions. In addition to this, restricted measures have been put in place by the Government of Rwanda to enhance urban settlement and so requires new development of housing to happen on a small scale compared to the land size one have been holding on his land title. Seeking and getting service on the land has been a challenge and this pushed population to enter into unconventional methods of developing their own neighborhoods by using their own detailed physical plans which by virtue of the law was supposed to be a government stake. As a new development, it came with challenges which this study tried to highlight gaps in policy making and recommendations provided thereafter.

This study is dived into two chapters. Chapter One if focusing on land rights and implementation of master plan which illustrates how master plans are planned and enforced. It discusses the roles and responsibilities of both the Government and land owners. It also tackles on some sectoral laws that contradicts with master plans legislations with live examples and court's positions reported cases. The second chapter assesses the mechanisms under which implementation of master plans should balance with the rights of individuals. Partnerships and learning from different similar policies are the main content of this chapter followed by research findings and concrete recommendations.

Key words: *Kigali Master plan implementation, Right to land, Physical plan.*

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GENERAL INTRODUCTION

1. Contextual background

In Rwanda, the urbanization is very recent and it is described by population growth and by migration from rural to urban areas.¹ Through its different national policies, Rwanda has devised to concentrate on the selected areas and formed them as cities whereby Kigali City is the Capital city seconded by satellite cities and secondary cities.² All these are planned to decongest the overcrowd of Kigali city as historically the city which attracted many people from rural areas to look for a better living.

Rwanda has successfully surveyed and registered most of parts of lands to their owners. This was made possible after the introduction of Land Tenure Regularization (LTR) that had been carried out, process that included public consultations and the development of the legal, institutional as well as policy frameworks development and then followed by Systematic Land Registration (SLR) countrywide.³

The systematic land registration process was used to demarcate and register land parcels all over the country, and issued land titles since 2009 up to 2013.⁴ The land tenure regularization program was also introduced to shade light on the rights of the landowners and occupants, and to convert those rights into a legally recognized form that would allow rightful owners to perform transactions over their land including giving them as collateral to access banks loans.⁵

Given the fact that registration of land is a recent phenomenon and the growing of cities is said to be recent as well, this attracts a number of urbanization issues⁶ like land-use disorder and uncontrolled urban sprawl, poor urban governance and institutional coordination, informal settlements, weak urban economy, increasing environmental deterioration, inadequate urban services, urban poverty, lack of integrated resource planning across sectors, weak rural-urban linkages, limited data and information on urban areas, inadequate urban investment and financing and a host of other challenges associated with capacities at all levels of government.

¹ Ministry of Infrastructure “National Urbanization Policy” (2015), p.11. Accessed at <https://bpmis.gov.rw/> [05/02/2022]

² Rwanda Land Management and Use Authority “The National Land Use and Development Master Plan 2020-2050” (July 2020) p.28. Accessed at www.rlma.gov.rw [05/02/2022]

³ Ngoga TH “A quick, Cost-effective Approach to Land Tenure Regularization: The case of Rwanda” *International Growth Centre* (2019) p.7.

⁴ Ibidem.

⁵ Geoffrey P et all, *Urban Land Tenure and Property Rights in Developing Countries: A Review of The Literature* (1996), p.21

⁶ National Urbanization Policy, *supra* note 1, p.7.

Issues of urbanization are not only in Rwanda. Across the World, nowadays, cities are under tremendous pressure to keep pace with rapid urbanization, poverty and inequality, pollution and climate change and other global economic forces.⁷ To this end, cities are expanding in endless peripheries, residential densities are reducing dramatically, and public spaces are diminishing.⁸ This is a direct consequence of the poor implementation and enforcement of evidence-based urban planning and design.⁹ Urban laws and regulations are weakly linked to sustainable urbanization and housing solutions are largely unaffordable, located in urban neighboring areas, increasing the costs of urbanization and aggravating socio-economic inequalities. Cities face challenges in generating revenues and mobilizing financial resources to properly plan and maintain the envisaged development.¹⁰

Rwanda in a race to overcome the urbanization challenges, has developed different policies and strategies that aims to align its development and global development agenda. In doing so, its policies overlay with other existing laws that grants land rights to the citizens. For the purpose of this research, the development of cities will be implemented on the lands that are already acquired by the individuals through registration.¹¹ These plots of lands have been all surveyed and registered to their owners in a sporadic land registration process since 2010.¹² Since then master plans and implementing policies have evolved portraying guidelines on how to use the land and other provisions limits the rights of landowners in different forms and couldn't be considered as beneficial to the intended users. It is worthy to note that the implementation of master plans imposes some restrictions to the land owners but those restrictions shouldn't be a barrier to enjoy the rights granted again by the law, when it does, there should be a compensation mechanism to the victimized party.¹³

In July 2020, The Republic of Rwanda adopted the national land use and development master plan. This came later after publication of the Revised National Land policy that provides general guidance to the use of land in Rwanda.¹⁴ It is an integrative national special plan that aims to provide policy guidance in land administration matters pertaining to improve socio-economic growth of Rwandese. The plan came to enhance the existing plan of 2011 which had an aim of efficient use of the resources and facilitate development in the country from then up 2020. The plan is expected to guide the future of the country's urbanization and it will be in use for almost 30 years.

⁷ UN HABITAT "Fundamentals of Planned Urbanization Training Companion" (2017) p.5.

⁸ UN HABITAT, *supra note*, p.5.

⁹ Idem

¹⁰ Astrid RN and Patricia J, The Importance of Property Rights for Successful Urbanization in Developing Countries" *International Growth Centre* (2017), p.5.

¹¹ Matthew FP, "Land, Power and Peace: Land tenure systems and the formalization agenda in Rwanda" (2010), p.10

¹² Art 4, Ministerial Order n°. 002/2008 of 1/04/2008 Determining Modalities of Land Registration (OG. RR N° 15 bis of 01/8/2008).

¹³ Art 5, Law n° 32/2015 of 11/06/2015 Relating to Expropriation in the Public Interest (OG. n° 35 of 31/08/2015).

¹⁴ Ministry of Environment "National Land Policy" (June 2020) p.2. Accessed at www.rlma.gov.rw [05/02/2022]

The approved plan (NLUDMP) stipulates that the migration of people who move from rural to urban areas is currently the big threat to urbanization modality in Rwanda.¹⁵ Migration of people reinforces urban centers but, at the same time, deteriorates and weakens rural settlements by lack of investments and employment opportunities.¹⁶ The vast movement of people coming in towns challenges the urban planning by putting disproportional pressure on housing and services and by increasing informal residence and slums. Kigali is already congested and struggles to eliminate informal housing/settlement.¹⁷ Reports revealed that there are impoverished, densely populated areas, where four to eight people live on tiny plots with limited connection to electricity and where sanitation services are not accessible.¹⁸

By eliminating unplanned housing/settlement, government must follow the law otherwise, the process will be declared illegal. This is affirmed by the Human Rights protocols and conventions where by, governments are required to ‘*make cities and human settlements inclusive, safe, resilient and sustainable*’.¹⁹ States further are required by international protocols to leave no-one behind in the struggle of development towards “a world of universal respect for equality and non-discrimination”, including gender equality, and reaffirm the responsibilities of all states to “*respect, protect and promote human rights, without discrimination or distinction of any kind*”.²⁰

Despite the above and so many wonderful declarations, in many places of the world today, trend towards rapid urbanization has gone hand in hand with the creation of more slums, more people in inadequate living conditions and lacking secure tenure of their housing and land, inequalities and discrimination remains.²¹

Urbanization processes most of the times focused on economic growth, on markets, new roads and on private investment.²² In fact this the dream of every organized state but at the same time relatively little attention has been paid to individual’s right to land, or to environmental and social sustainability, and virtually none to civil, economic, political, cultural and social rights.²³ As an outcome, this pushes millions of people to live in unacceptable living conditions in urban centers wherein poverty, forced evictions and displacement, violence and sometimes insecurity due to the change of living style.²⁴ This is mainly caused by inadequate regulation,

¹⁵ NLUDMP, supra note 2, p.28

¹⁶ Idem

¹⁷ Idem.

¹⁸ Idem.

¹⁹ UN GA Resolution (A/RES/70/1) Transforming our world: The 2030 Agenda for Sustainable Development, Development Goal n°11, (25 September 2015), para 14.

²⁰ Idem

²¹ Sonja D and Mert CY “The Impacts of Urbanization Processes on Human Rights” *Scientific Research Publishing* (2021), p.356.

²² Idem p.356.

²³ Alain D and Harris S, *The Formalization of Urban Land Tenure in Developing Countries* (2009), p.106.

²⁴ Idem.

poor governance, lack of inclusive urban planning, and considering housing, water, education, justice or land as mere commodities, amongst other factors, have aggravated this situation.²⁵

Under this research, we discussed the abuse on land rights in Rwanda in a nutshell of rapid urbanization and reflection be focused on the right to development whereby a comparative analysis will be used to ascertain whether urbanization in Rwanda follows the prerogatives of the right to land. A particular attention will be put on the land readjustment process or physical plans for lands reserved for settlement in Kigali City and secondary cities that is underway in different parts of the country and rights to land registered as high-risk zones and those in wetlands.

2. Problem statement

Right to private ownership of land is a constitutional right that is fundamental to the socio-economic development of citizens.²⁶ The law N° 27/2021 of 10/06/2021 Governing Land stipulates that any form of discrimination in relation to access to land and enjoyment of real rights to land is prohibited.²⁷ The Law further stipulates that a holder of land rights enjoys full rights in exploiting his or her land in accordance with legal provisions. The State grants citizens the right to free ownership of land and protects the land rights holder from being dispossessed of the land whether totally or partially, except in case of expropriation in the public interest in accordance with relevant laws.²⁸

This law is seconded by the ministerial order No. 002/2008 of 1/04/2008 determining modalities of land registration, and they are all complemented and interferes with different sectoral laws such as The law n°20/2011 of 21/06/2011 governing human habitation in Rwanda, the law n°10/2012 of 02/05/2012 governing urban planning and building in Rwanda, the ministerial order N° 03/CAB.M/019 of 15/04/2019 determining urban planning and building regulations, the law n°48/2018 of 13/08/2018 on environment, the Law n° 75/2018 of 07/09/2018 determining the sources of revenue and property of decentralized entities to mention but a few.

Land is an important economic drive factor in Rwanda and is at the backbone of human development just like many people in the world who depends on land for their daily livelihoods.²⁹ In Rwanda as mentioned previously all plots are registered and the benefits of land registration are impressive. These includes surety of ownership, reduction in land disputes, stimulation of the land market, security for credit in banks, facilitation of land reform

²⁵ Idem 18, p.356.

²⁶ Art 35, The Constitution of The Republic of Rwanda of 2003 Revised in 2015. (*OG* n° Special of 24/12/2015).

²⁷ Art 5, law n° 27/2021 of 10/06/2021 Governing Land (*OG* n° Special of 10/06/2021).

²⁸ Art 41, law n° 27/2021 of 10/06/2021, *supra* note 21.

²⁹ Ngoga Th, “*Rwanda Land Tenure Reform*” (CAB International, 2018) p.2

and management, improvements in physical planning and supporting environmental management.³⁰ Bearing in mind this importance, the problematic of this research has been triggered by the implementation of physical plans.

Above regulations and steps of the master plans in line with improvement of residential areas, require basic principles to satisfy the needs of an improved residential areas and efficient use land in development planning such as basic infrastructure and access to roads, utilities and proper means of environment conservation.

Physical plan or land readjustment have been sought as a land management solution, as a tool used to pool all land parcels in a particular area together and plan them as a single unit.³¹ This tool works to provide access to land for public use whenever required by giving a proportion of the value in return, whether in financial form or in kind.³²

Landowners through their committees and hired independent consultant with expertise in land surveying they convene and agree on terms that will enable them to do the project.³³ The approach is conventional and it doesn't matter the number and percentage of landowners who agrees to be part of the project, once the project proposal is approved by the competent organs, it starts to be implemented. Issues of violation of right to land starts to be claimed by citizens who were not aware and finds their parcel/s surveyed and encroached by beacons and sometimes new roads traced in the plots without consent of land owner and this raise an issue of active participation of all concerned land owners throughout land readjustment plan execution.³⁴

This compels therefore to examine the issue of knowing to which extent the governance and community engagement should be, how will the project be financed? what is the overall goal of the project *vis à vis* the land readjustment targets? Who should be liable in case one's land rights are violated? Is there any compensation mechanism that is provided by law under this process? Should land owners pay taxes during the implementation of land readjustment phase?

If not followed these initiatives, otherwise the master plans implementation is likely to last for long. According to the government plan, master plans zones will be implemented in phases depending on when government gets financial means to perform basic infrastructure that will enable the development of that particular region/zone. On the Government side, the public investment plan is designed for a relatively period of time and is

³⁰ RLMUA, *the benefits of land registration in Rwanda* accessed at www.rlma.gov.rw, [10 February 2022].

³¹ UN Habitat, *Global Experiences in Land Readjustment, Urban Legal case studies: Volume 7* (2018), p.2

³² *Idem*

³³ RLMUA, "A practical guide for conducting participatory Land readjustment in Rwanda" (October 2021), 1st Ed, p.4 accessed at www.rlma.gov.rw, [10 February 2022].

³⁴ RLMUA, *supra note 28*, p.4.

accompanied by annual action plan to be implemented in phases for urban development.³⁵ In addition to this, the tax laws penalize every landowner who doesn't use the land in line with the provisions of the land title mainly land use and other land regulations that are put in place from time to time.³⁶ This puts the land owner in a position to wait for long time to enjoy his/her right entitled by the land title the process which pushes community to be proactive and seek for an alternative solution in a bid to address those challenges.

This research analyzed the legal aspects of Land rights, property taxes and compliance in the surveyed lands during the whole process, and this will be coupled with assessment of case laws that are directly linked with the matter³⁷ challenges and recommendations.

Furthermore, it also happens that master plan changes the land category from one category to another, or even changes land use,³⁸ this raise a direct effect to the land owner since s/he can't be permitted to develop his/her land in accordance with the rights granted by the land title but s/he has to shift his/her mind and develop another project aligned with the provisions of master plan.³⁹ It is evident that most land owners fail to comply with the new development plans, and they are required to wait for any potential investor whose socio-economic project falls under the same docket and they will proceed for another hustle of disputes to know whether they will be part of the projects or if their lands will be taken and fairly compensated.

The Rwandan law on environment on the other hand, provides that: *“The State undertakes actions to prevent the adverse effects of climate change, by means of taking into account climate change to the extent feasible, in its relevant social, economic and environmental policies and actions with a view to minimize adverse effects on the economy, on public health and on the quality of the environment”*.⁴⁰ In this regard, the government recently has again initiated a process to evict households that was living in the boundaries of the marshlands and high risk zones to combat against flooding and landslide that might occur and affect their lives.⁴¹ Some of these households had their land titles that describes the area as residential and they have been mobilized to relocate at

³⁵ Art 6, Ministerial Order N°03/Cab.M/019 of 15/04/2019 Determining Urban Planning and Building Regulations, (*OG no.Special of 16/04/2019*).

³⁶ Art 3, Law n° 75/2018 of 07/09/2018 Determining The Sources of Revenue and Property of Decentralized Entities, (*OG n° 44 of 29/10/2018*).

³⁷ *BIZIMANA Jacques Vs City of Kigali*, RADA 00011/2019/HC/KIG of (12/03/2019) and *KAREMERA Denys Vs City of Kigali*, RADA 00040/2020/HC/KIG (30/03/2021).

³⁸ Art 2, Ministerial Order n° 005/MOE/22 of 15/02/2022 Determining Modalities of Change of Land Use (*OG n° Special of 22/02/2022*).

³⁹ Somik VL, *Urban Land Markets: Improving Land Management for Successful Urbanization* (2009), p.48

⁴⁰ Art 38, Law n° 48/2018 of 13/08/2018 on Environment (*OG n°. Special of 21/09/2018*).

⁴¹ Nizeyimana A “Striving for restoration of wetlands functions and values in the City of Kigali” *International Journal of Environmental & Agriculture Research* (2021), p.26.

their own cost and others moved to the built up modern shelters.⁴² Some has easily accepted but others denied and rushed to the courts to claim their rights over lands to be restored.⁴³

This raises therefore, an issue of concern on the fair compensation which should be determined and in which context this must be channeled whether it is a matter of public interest or a social protection concern.⁴⁴

Given these issues above highlighted, this research has stressed on the following research questions:

- *What are the impacts of Master plans implementation on the rights of landowners?*
- *To what extent community engagement in planning and implementation of master plans should be?*
- *What is the legal stand of relocation of landowners from protected zones such as wetlands and high-risk zones?*
- *Which available remedies to the landowners whose rights have been encroached?*

3. Objectives of the study

In general, the objective of this study is to assess the right to ownership of land under the margins of master plans implementation in Rwanda. Specifically, this study analyses whether land rights are protected during the implementation of development master plans, it further explores if the activities of public interest defined by law is comprehensive and subsequent compensation models.

4. Research methodology

To achieve the objectives of this study, different techniques and methods have been used. The documentary technique have been used for collecting data from different written documents relevant to the topic including law texts, books, journal articles, annual reports, international instruments, thesis and dissertations and other published documents. The analytic and comparative methods have been used to analyze and compare different elements of data collected. The synthetic method finally helped to rearrange the collected data in a logical flow and drawing the recommendations thereof.

⁴² *NDIMUKAGA Pascal et al Vs City of Kigali*. CMB RAD 00188/2018/TGI/NYGE and CMB RAD 00133/2020/TGI/NYGE, Nyarugenge (01/09/2020).

⁴³ Ntabareshya JDD, available at <https://mobile.igihe.com/ubutabera-2047/article/abaturatione-ba-kangondo-bibukije-umujiyi-wa-kigali-ko-bari-kwimurwa-ku-bw-inyungu> [11/02/2022].

⁴⁴ Art 5, Law N° 32/2015 OF 11/06/2015 Relating to Expropriation in the Public Interest, (OG n° 35 of 31/08/2015).

5. Scope of the study

As required for every scientific study, this study has a framework. In fact, it was conducted and carried out within a fixed time (which is the time of releasing this study), space and domain. In domain space, the study is only focusing on urban areas of Rwanda, in domain, it has been limited in property rights law. It should also be noted that this study was driven by Human Rights insights but with specific orientation to property rights as part of socio-economic rights. This have been analyzed in a comparative mode to enable reaching concrete recommendations.

6. Structure of the study/Research outline

Beside the general introduction and the general conclusion, this study is subdivided into Two chapters. The first chapter discusses land rights and implementation of master plans. It focuses on the land readjustment as a tool for urbanization compared to private investment and expropriation for public interest. It also analyses other sectoral laws that interlinked with land law and urbanization laws to mention but a few. The second chapter analyses the mechanisms that balances master plans implementation and respect of rights of individuals. This is followed by general conclusion and recommendations.

CHAPTER 1: LAND RIGHTS AND IMPLEMENTATION OF MASTER PLAN

Land rights are a sub set of property rights. According to World Bank, property rights are defined as social conventions backed by the power of the state or the community (at various levels) that allow individuals or groups to lay “a claim to a benefit or income stream that the state will agree to protect through the assignment of duty to others who may covet, or somehow interfere with, the benefit stream”.⁴⁵ Governments play an important role by determining how property rights are defined, how are they granted and entitled to individuals, how they can be enforced, and how they evolve from time to time in line with changing economic conditions.⁴⁶

This, therefore paves a benchmark for the level of tenure security enjoyed by individual landowners and their ability and willingness to transact over such rights with others.⁴⁷ This means that property rights are a social paradigm that has been discussed over the years. Property is not merely the assets themselves, but consensus between people about how these assets should be held, used, and exchanged.

In the same line of thinking, establishing a system of property rights to land has presented tremendous benefits that extend beyond the individual landowner. These benefits are in concomitant with the existing legal practices which provides that one person’s enjoyment will not reduce others’ ability to benefit from the system.⁴⁸

However, it has been noticed that enjoyment of rights sometimes has legal limitations which is the case under examination of this study. How the benefits are distributed is associated with providing information about the assignment of property rights to land, as well as the enforcement of such rights, provides to our own view a strong reason for government involvement in the process.

Despite the fact that the Government protects property to land owned by persons, the individual’s rights are never unrestricted, but this limitation must be provided by the law for the sake of the broader concept of public interest. The law establishes procedures through which the limitations of exercising land rights can be allowed. This implies that the government have the ability to expropriate land with fair compensation and following a well-defined judicial process, for public purposes. Also individuals can put together their plots of lands and establish their own bylaws which gives them ability to exercise their rights as granted by the state.

This chapter discusses the interface between implementation of master plans and how the process respects or restricts the rights of individuals over the land rights. Discussion turns around the prerogatives of property rights to land which are derived from land title, in virtue of property rights according to different legal scholars

⁴⁵ Klaus D, Land Policies for Growth and Poverty Reduction, *World Bank and Oxford University Press* (2003), p.22

⁴⁶ Idem

⁴⁷ Idem

⁴⁸ Klaus D, *supra note 46*, p.23.

which is the right to possess, to control, to derive income, the right of exclusion and the right of disposition.⁴⁹ All these have been analyzed in comparison and contrast to the existing land policies and laws. For this purpose, national strategic documents towards implementation of master plans have been reviewed in a bid to broaden the understanding of individual rights in the whole urban land planning and implementation.

On one hand, the Government aim is to have better cities with a well-organized neighborhood, but achieving the provision of serviced land to the citizen at large scale is tricky and challenging in terms of policy guidance and in terms of finance.⁵⁰ On the other hand, failure to provide serviced land for exploitation by the citizens generally leads to many inadequacies and social disruptions which uplifts the financial and political costs of improving land planning and service delivery.⁵¹ Slums have been developed and non-organized inhabitants. Urban local authorities need therefore innovative tools in their plans and performances to narrow down these social and economic costs associated with the acquisition and servicing of land for urban development.

Land Readjustment approach have been thought among as a tool that can help to promote sustainable urban development. Other tools commonly known are the voluntary purchase and compulsory acquisition (expropriation) which are generally known as urban legal tools that can be used for assembling land for development. This Chapter aims to discuss issues in land readjustment process as an alternative tool for urban land planning and development in Rwanda as a new phenomenon, its legal framework back up, opportunities and challenges. It also analyses other cross cutting sectoral laws that are directly linked with the implementation of master plan in Rwanda, individuals' lands rights' being the joint of every section under study.

1.1 Literature review

This section discusses the theory of urbanization which is tied with urban planning policies. It discusses also which adequate tools should be used to balance land rights and ensure urbanization projects implementation in a smooth and friendly manner that do not jeopardize rights of land owners. Due to the fact that urban planning is a continuous process in face of implementation, land is the main contributing factor to the success of the improved urbanization policies. In a society where land registration has been formalized like Rwanda, all land owners have their title deeds, it requires a maximum attention to use their plots of lands so that the process

⁴⁹Denise R. and Johnson, Reflections on The Bundle of Rights, *Vermont Law Review* [Vol. 32:247] accessed at <https://lawreview.vermontlaw.edu/wp-content/uploads/2012/02/johnson2.pdf> [10/03/2022]

⁵⁰ Catherine F, Vitkovic and Mihaly K, Better Cities, Better World. A Handbook on Local Governments Self-Assessments, World Bank Group (2019), p.2.

⁵¹ Idem

respects the rights of land owners. Different authors have argued on the process of replotting lands envisioning to improve the urban planning and rights to settlement.

Despite the approval of several Physical plans in Rwanda with the aim of guiding and managing urban development in a planned manner, according to Daniel Kibet Koech, still town plans have not yet matured to be put on the ground effectively to guide urban development.⁵² The author recommends that physical planning as an important tool to guide urban development should be utilized and all stakeholders should be involved in land planning process to ensure that the plans produced represent their interest.

Right to land during physical planning process attracts the authors to link it with right to housing. According to Fernanda Paula Oliveira, achieving decent or adequate housing, involves the carrying out of a complex set of actions:⁵³ *Firstly, the right to decent housing implies security of ownership, namely, the right to live in a place without fear of being displaced, or of suffering unjustified or unexpected threats, which depends on the legal system or culture of each country, region, city or people.*⁵⁴ And secondly, It also involves the existence of an adequate space and location to live, which should be served by the necessary infrastructures (such as roads, water, basic sanitation, gas and electricity), equipment (e.g., schools, kindergartens, health, sports and leisure areas) and by urban services (e.g., public transport, cleaning, refuse collection, communications). In this context, a home is decent if its neighboring is also appropriate.⁵⁵

Another pool of researchers from University of Rwanda, has commented that having sustainable cities depends on a considerable extent on the population being healthy and have relevant learning opportunities and the overall quality of the environment.⁵⁶ At the same time, having access to quality education and healthcare depends on the sustainable development of the cities and the neighborhoods within them.⁵⁷

Despite all these, however, urban plans did not always match with the rapid population growth that has sporadically impeded their implementation.⁵⁸ This is because, in many cases, settlement preceded any possible establishment of infrastructure and road planning.⁵⁹ This is in line with The NLUDMP which recommends that all other relevant laws and regulations must be reviewed including those that gives mandate to institutions and organs to plan and manage land use.⁶⁰ The plan also recommends that consolidation principles in land use

⁵² Daniel KK, *Physical Planning and Urban Development in Rwanda a Case Study of Muhima Sector Kigali* (2011). Accessed at <http://repository.mku.ac.rw/> on 23rd March 2022.

⁵³ Fernanda PO “Relationship between the Right to Adequate Housing and Urban Policies (Particularly Planning and Land-Use Planning Policies) in Portugal” *Scientific Research Publishing* (2020), p.21.

⁵⁴ Idem

⁵⁵ Idem

⁵⁶ University of Rwanda, *Rwanda: National Urban Policies and City Profiles for Kigali and Huye* (2018), p.64.

⁵⁷ Idem

⁵⁸ idem

⁵⁹ Univesity of Rwanda, *supra note 56*, p.64

⁶⁰ NLUDMP, *supra note 2*, p.135.

planning which are applied towards agricultural sector alone, should be extended to the context of urban and Rural settlement planning as well.

According to Thierry Hoza NGOGA, in his book reiterating on the problems in land governance and administration, he recommended to improve to improve land governance.⁶¹ Human Rights Lawyers at their end pleads that the undoubtable indication of good urbanization strategy, can be achieved if the entire process puts at the forefront the human rights of inhabitants.⁶²

By navigating through the existing literature, it is evident that most of the authors are cautious about protection of rights to land when planning for urbanization. They have praised the ongoing processes in Rwanda, but since the implementation of master plans is a new development following the adoption of revised national land policies and plans, this area needs more improvement and review of procedures as confirmed by the duty bearers in institutions in charge. This research therefore will contribute to raise a flag on the inconsistencies, gaps and land rights abuse that occurs during the land replotting and preparations of sites for settlement.

1.2 Land readjustment for urban planning and development

Urbanization, is a physical and functional increase of human population into particular areas, leading to structural changes in land use, usually from one use to another.⁶³ Land readjustment is done when the population has acquired land with big and in improper shapes which by virtue of the planning and development code can't match with the standards thought of. It is therefore done systematically and it involves a big number of landowners given the solutions that are envisaged. However, urbanization presents the effects which includes changes in density, environment and infrastructure and, essentially, include a dramatic increase in transaction costs.⁶⁴ It also encompasses different kinds of people movement, including migration from their homes of origin and may be upon the method being used by the developers they might come back after the project completion, this is always shaped by information spread from top leadership and exchange of information about possible social and economic opportunities that the development intends to bring in the community.⁶⁵

⁶¹ Ngoga TH, supra note 3, p.2

⁶² UN Human Rights office of the high commissioner, *Human Rights and Urbanization*, accessed at <https://www.ohchr.org/> [20th April 2022].

⁶³ Batara S et al , '*Land Use Change, Spatial Interaction, and Sustainable Development in the Metropolitan Urban Areas, South Sulawesi Province, Indonesia*' (2020), p.7.

⁶⁴ World Bank, "Urbanization and the Evolution of Rwanda ' s Urban Landscape" accessed at <https://openknowledge.worldbank.org> [11/03/2022].

⁶⁵ UNO, "World Urbanization Prospects, vol. 12 (2018)" <https://population.un.org/wup/Publications/Files/WUP2018-Report.pdf> [09/03/2022].

The aim of urban land readjustment is to produce new lands for building and to reorganize urban areas. Land readjustment is therefore performed either voluntarily or on a compulsory basis.⁶⁶ The management of the project in most countries is performed by implementation agencies.⁶⁷ This refers to the administrative organization of the public sector from top bottom like provinces, districts and sector levels in the case of Rwanda. The private sector can drive such projects as well depending on the framework agreement between the state and the company so (cooperatives of landowners, a land readjustment committees or companies established by landowners, and etc...).⁶⁸ In addition, so many consultative meetings must be organized between landowners and local administration during the project implementation, site committees also play a key role by coordinating the dialogue with engineers, contractors and other service providers for the planning and execution of site servicing works.⁶⁹

Land readjustment in Rwanda or physical planning has started immediately after Kigali city master of 2013 where most of land users were pushed to make their plots of land accessible by roads and other basic infrastructure to enable them being granted the building permits. It has been done by a group of people who had pulled together their land and requested back up of the local leadership to push their projects and see them approved to the level of agreement and hence be given building permits. It has been done so differently in different sectors of the city and it is still being done according to the community understanding and by their own bylaws.

1.3 Understanding Land readjustment from Global experiences

Under this chapter, we intend to explore how the land readjustment has been done in other countries in a bid to learn best option that can influence or shade light to our own practices at the end. It has come to our attention that for all big cities, they went through the detailed physical plans in both a green area or even in the area that was built in a disorganized manner. We therefore chose 3 countries that undergone land readjustment on the basis of geographic locations and how their capital cities are perceived at the international scene. Those countries are Japan in Asia, German in Europe and Ethiopia in Africa.

⁶⁶ K. Viitanen, The Finnish Urban Land Readjustment Procedure in an International Context - What Can Be Learned Commonly. In *Tools for Land Management and Development: Land Readjustment*, Lincoln Institute of Land Policy, Cambridge, Massachusetts, USA, (2002), p.24.

⁶⁷Idem

⁶⁸Van der Krabben, E., P. Tiwari, and J. Shukla. "Land Use Management Strategies for Equitable Infrastructure and Urban Development: Overview of Strategies and Tools" *ADB Working Paper 1191*. Tokyo: Asian Development Bank Institute, (2020), p.8 Available at: <https://www.adb.org/publications/land-use-management-strategies-equitable-infrastructureurban-development> [12/2/2022].

⁶⁹ Susana RR, 'Participatory Integral Upgrading the Importance of Participatory Practices', (2017), p.12.

Physical planning encompasses deliberate determination of spatial patterns with an aim of achieving the most optimum level of land utilization in a sustainable manner.⁷⁰

There is no common definition of Land readjustment that can fit in all circumstances. For instance in Turkey, it has been defined as a method whereby the ownership of scattered and irregular plots of agricultural land is pooled together, roads and main infrastructure are built, and the land is then subdivided into urban plots.⁷¹ Each landowner must contribute a portion of their previous land holding (commonly about of the total land to be developed) to provide space for roads, parks and other public space, and for reserve land. The reserve land is sold at the end of the project to pay the costs of planning, administration and construction.⁷²

The motivation of the method for landowners is basically on the fact that substantial increases in the value of land may be achieved after the is done, so that the value of the individual land holdings can be greatly increased, even though the remaining area is smaller which is generally the case.⁷³ The attraction for planning authorities is that projects provide land for public facilities, and build much needed urban infrastructure.⁷⁴

In Japan and German, Land Readjustment was used primarily for agricultural land consolidation and irrigation improvement projects, although it was later put to use for suburban expansion projects as well.⁷⁵ In the early stages only, individuals were legally authorized to start projects.⁷⁶ However, after the Great Kanto Earthquake of 1923 a modified form of Land Readjustment was used to rebuild large areas of downtown of Tokyo and Yokohama.⁷⁷ A special government agency was set up to carry out these works. During the 1930s LR was widely used by the central government to establish military facilities.⁷⁸ Again, in the aftermath of World War Two Land Readjustment projects were extensively used in the post-war for urban reconstruction projects.⁷⁹

⁷⁰ Office of The Auditor General The Republic of Uganda, 'Implementation of Physical Development Plans in Municipalities', (2017), p.14.

⁷¹ S Sence Turk and Celil Turk, 'The Use of Land Readjustment as a Land Development Method in Turkey' (2002), P.5.

⁷² Andri Supriatna, 'The Feasibility Study of Land Readjustment for Kampung Upgrading in Jakarta' (Faculty of Geo-Information Science and Earth Observation , 2011) P.15.

⁷³ Abhijit V Banerjee, '*Prospects and Strategies for Land Reform The Case for More Equitable Land Distribution Scale Effects in Agriculture*'(2003) P.12.

⁷⁴ Giovana B, '*Asia Development Bank's Report India : Promoting Inclusive Urban Development in Indian Cities Urban Planning and Land Management for Promoting Inclusive Cities*',(2018) P.178.

⁷⁵ Y. Ishida, A short history of Japanese land readjustment 1870-1980, *Comprehensive Urban Studies*, (1986). No. 28, pp. 45-88.

⁷⁶ Hayashi, "Land Readjustment in Nagoya." In *Land Readjustment: A Different Approach to Financing Urbanization*, edited by W. A. Doebele, 107-125.

⁷⁷ Idem

⁷⁸ Ishida, Y. (1987). *The last 100 years of Japanese urban planning (Nihon Kindai Toshikeikaku no Hyakunen)*. Tokyo: Jichitai Kenkyusha (in Japanese). Pg; 57.

⁷⁹ André Sorensen, '*Land Readjustment, Urban Planning and Urban Sprawl in the Tokyo Metropolitan Area*' (1999) P.23.

In Japan, land readjustment has been used to change the shape and condition of plots of land, and to install or improve public facilities in a city planning area to provide better public facilities and to increase the usage of each plot.⁸⁰ In addition, latter on Japan enacted a standalone law dealing with land readjustment in 1954.⁸¹ According to this law, land readjustment means to alter the shape and land conditions of lots and install or improve public facilities in a city planning area in order to provide better public facilities and increase the usage of each lot. In its article 3, the Japan Land readjustment Law states that: *“the implementation agencies for land readjustment projects are divided into six categories: individuals; associations of landowners and leaseholders; land readjustment stock companies established by landowners; prefectural or municipal governments; the Ministry of Land, Infrastructure, Transport and Tourism; and the Urban Renaissance Agency (a central government agency) and the Corporations for Housing and Urban Development (prefectural or municipal government agencies)”*.⁸²

Furthermore, for the cases whereby land readjustment projects is to be done by the private sector, it is necessary to obtain consent of at least 2/3 of all of the land owners and leaseholders respectively and in the project area, in this case, the total of the areas of plots and parcels of those who agree to the project shall amount at least two thirds of the sum of the total areas of plots in the land readjustment project.⁸³

This condition should be weighed against current practice in Rwanda whereby a site to be serviced require more than 70% of landowners to be implemented. In cases that the land readjustment project is carried out by the public sector, such requirement is not necessary because the project shall be implemented according to the city master plan.

The Misato Chuo project was one of the projects of land readjustment which was implemented in Japan.⁸⁴ This project was implemented in one of the locations, along with 20 others, where land readjustment was conducted to secure land for a new public transportation line. This project was chosen as the strategy to be used to coordinate the railway construction with land development, and to solve problems with land acquisition and limited public finances.⁸⁵

⁸⁰ Art 2, Land Readjustment Law (LRL) N° 119, regulating land readjustment implementation of June 13, 2014.

⁸¹ Felipe F De Souza, Land Readjustment: Concepts and Practice in Japan, accessed at <https://www.jica.go.jp/jica-ri/publication/booksandreports> on [15th March 2022].

⁸² Art 3, Land Readjustment Law, supra note 67.

⁸³ Art 18 and 51.6, Land Readjustment Law, supra note 67.

⁸⁴Rachana Sah and KE Seetha Ram “Land readjustment in Japan: Beyond the myth of Japanese consensus and harmony” available at <https://www.asiapathways-adbi.org/2019/11/land-readjustment-in-japan-beyond-the-myth-of-japanese-consensus-and-harmony/> [19/3/2022].

⁸⁵ Ke Wang and others, ‘A Priority in Land Supply for Sustainable Transportation of Chinese Cities: An Empirical Study from Perception, Discrimination, Linkage to Decision’ (2022), P.11.

After the establishment of an agency entrusted to follow up land readjustment in Japan, this therefore started to appoint council members and they established rules and procedures to follow. The agency is the one in charge of planning and enforcement of master plans nationwide. This is seen as a best practice compared to the current practice in Rwanda whereby land services including master plans development is scattered in different Government offices which gives rise to improper communication and information sharing.

It is worthy important to note that even if in Japan they enacted a law to deal with land readjustment projects, they faced the holdout problem. This is defined as the problem of assembling land where an agent, for example, a land developer, must negotiate with several rights holders and must provide their consent to proceed with the project. Failure to achieve a consensus, the project can't move. It is against this background that attracted the Government to use its discretionary powers and applied its eminent domain or expropriation for some cases in order to facilitate the private developers continue project implementation.

Addis Ababa, the capital city of Ethiopia is a very big city that headquarters several international organisations like African Union, many embassies and other development agencies. As many African cities, it also has informal settlements. In this research we analyzed *Lidata case* study to illustrate how informal settlements emerged during the development of Addis Ababa, the settlement is located in the center of Addis Ababa.⁸⁶ Laws of Ethiopia agrees for the Government to takeover any land and citizens who are adversely affected by the acts of the Government to be fairly compensated either in cash or in any other form.

From the project initiation stage, local administration level was involved assigned to account the land which will form the project, verification of documents and local needs assessment.

Community engagements was key to success of the project. Local leaders used their time and separated population in focused group discussions several times until they reach to a common consensus without government forces.⁸⁷ They finally agreed to enter into an MoU which guided the developments of new proposed plans and through the same agreements citizens represented by the steering committee agreed to demolish their existing buildings free of charge.

⁸⁶ UN Habitat, *Global Experiences in Land Readjustment, Urban Legal Case Studies: Vol. 7 (2018)*, p.46

⁸⁷ *Idem*.

This success and above is lighting the process that can Rwanda take advantage of reducing unnecessary queries and contentions over lands during the implementation of master plans. It also requires skilled human capital to drive the projects and work in transparency because of big number of stakeholders involved.

1.4 Mandatory detailed Physical Plans for Local Planning Areas

In Rwanda, physical planning is a prerequisite for acquisition of construction permit. This is supported by the existing legal tools whereby according to the Ministerial Order N° 02/CAB.M/019 of 15/04/2019 determining categorization of buildings and procedures for applying for and granting building permits. In its article 5 talks about classifications of residential houses. Most popular houses in Rwanda falls in Category 2. It stipulates that category two comprises of administrative, residential and commercial buildings except for industrial buildings, hazardous buildings, and health facilities. Buildings in category 2 are characterized by the following:⁸⁸

- 1° having total floor area not exceeding two hundred (200) square meters;
- 2° being non-storeyed and basement free structure;
- 3° accommodating not more than fifteen (15) people.

This is affirmed by the Rwanda Urban Planning Code which sets a Standard residential plot area for residential buildings with a height of G and G+1 at 300 m² and 500 m² respectively.⁸⁹ This is typically contrary to the size and shapes of the plots numbered and recorded during land registration process whereby most of the plots were above 600smq, this means simply that whoever want to build his/her plot will need to resize it for being allowed a building permit.

After categorization, the Ministerial order focuses much on the procedures and requirements for application of the building permit. This is therefore detailed in the Ministerial order determining urban planning and building regulations and the Rwanda building code. The Ministerial order determining urban planning and building regulations, for instance establishes key requirements for development of human habitation. It is drawn in

⁸⁸Art 5, Ministerial Order N° 02/CAB.M/019 of 15/04/2019 determining categorization of buildings and procedures for applying for and granting building permits (OG n°. Special of 16/04/2019).

⁸⁹ Rwanda Urban Planning Code, (OG no. Special of 16/04/2019), p.114.

article 4 which recommends that urban planning regulations must provide basic public infrastructures, which enables new developments to happen without compromising the set urban objectives and zoning principles.⁹⁰

In a bid to foster these above requirements, the Urban Planning Code (UPC) was introduced as an instrument that regulates the principles for the sustainable development and management of land use for human settlement.⁹¹ This UPC is binding for all categories of land within urban areas for any development and investment project, public institutional, tourist, public spaces, urban renewal and infrastructure servicing.

The UPC aims to provide a basis for forward planning, development management and plan implementation with the following overall objectives:⁹²

- Elaborating sustainable physical plans;
- Improved living standards in human settlements;
- Sustainable development of land for human settlement while allocating valuable land resources and location guidelines for urban land uses and facilities;
- Development of housing, socio-economic facilities, and technical infrastructure according to the needs of the people and applying basic standards to site requirements of development; and the
- Planning of utilities, facilities and services accordingly, with principles for urban land uses and adequacy of facilities to serve a human settlement.

It is also provided that when developing Land Subdivision, Plot Restructuring or Re-plotting; plots shall be created in the most efficient way of using land and infrastructure, the shorter plot width shall face the road, the newly planned plots shall be rectangular, or as close as possible to rectangular in shape, depending on the prevailing geographic conditions, a plot shall be directly accessible, the minimum neighborhood servicing requirements shall be respected and measures be taken to integrate public open space, facilities, infrastructure and utilities and a new building should be located within a properly sub-divided and adequately serviced area.⁹³

In the light of the above, it is to recall that only Kigali city had a master plan development that was guiding urban development after land tenure regularization process completed in 2013 among other secondary cities.⁹⁴ Thereafter, human habitation started to develop and this manifested challenges that led to the adoption of an improved version of the plan. The 2020- 2050 national land use master plan also recommends the development

⁹⁰ Art 4, Ministerial Order N°03/Cab.M/019 of 15/04/2019 Determining Urban Planning and Building Regulations, (OG no. Special of 16/04/2019).

⁹¹ Ministry of infrastructure, *'Urbanisation and Rural Settlement Sector Strategic Plan for National Strategy for Transformation 2018-2024'*, p.67.

⁹² Ministerial Order, N° 04/Cab.M/015 of 18/05/2015 determining urban planning and building regulations in Rwanda, (OG n° 20 bis of 18/05/2015).

⁹³ Ibid.

⁹⁴ City of Kigali, *'City Development Plan (2013-2018)'*, p.35.

of master plans in secondary cities, a situation which was not reflected in the previous plans.⁹⁵ Hence this puts Kigali to showcase best practices and challenges encountered to enable feasibility of projects in other secondary cities.

In addition to the above, neither the Ministerial Order N°03/Cab.M/019 of 15/04/2019 determining urban planning and building regulations and its implementing UPC developed in 2019 nor the practical guide for conducting land readjustment in Rwanda is addressing the issues of land rights of landowners who had registered their plots in a bigger size and in disharmony pattern which is to be discussed in the following sections.

Furthermore, this strategic guidance, which came up latter after approval of Kigali master plan in 2020 meets landowners halfway attempting to replot their lands in their own common sense and in absence of specific law that regulates the land readjustment, this has brought a number of challenges that started to be noted from the community as this was confirmed by LRMUA in their assessment study which identified some constraints that need further policy guidance for improvement.⁹⁶ Such challenges are related to: governance and community engagement; land administration and management; financing and supply of basic infrastructure and legal aspects.

The policy paper therefore has drawn a line through which the existing projects should adhere too and gives a new route to be followed by the new projects developments. Below sections are discussing the process through which physical plans are being conducted and where possible comparison is to be made from other jurisdiction for a better understanding and towards the concrete conclusion.

1.4.1 Project initiation

The land readjustment project may be initiated by either landowners or the City of Kigali or District. However, a private investor who may be interested in a participatory land readjustment project can also initiate it through and under conditions prescribed in consent with the City of Kigali or District.

In many countries, either a public or private entity can undertake a land readjustment project. A project commences when a group of landowners initiates the idea of readjusting land in a neighborhood and forms an agency or a cooperative.⁹⁷ In Rwandan context, we form committees elected from general population of the area where development is intended to take place. The committee members may include local residents, government officials, and outside developers. However, this whole process takes a lot of time due to the lack

⁹⁵ Government of Rwanda and Green Growth Planning & Implementation, 'Republic of Rwanda National Roadmap for Green Secondary City Development', (2015), p.47.

⁹⁶ LRMUA, *supra note 2*, p.1

⁹⁷ International Finance Corporation, 'Handbook for Preparing a Resettlement Action Plan'(2002), p.11.

of effective established mechanisms and policies. It lacks also trained and skilled personnel in urban planning which makes the projects delays in back and forth from the design at early stage.

This committee proposes to the city or district authorities a proposed readjustment plan that includes new boundaries and proposed use of the assembled land. The committee also invites key local leaders and interested developers to discuss the feasibility of the proposal. If the plan seems to be technically and financially feasible, the group presents the project to the affected property owners to solicit their support by giving back their land titles to be submitted to the local leadership. It is the responsibility of the Kigali city or that of the district to prepare the development plan of the city of Kigali and ensure its implementation⁹⁸

It is also in the mandate of the counselors for taking decisions, putting in place strategies and issue instructions on the establishments of master plans for land management and urban planning, local development plan, specific land development plan and the land subdivision plans of the city of Kigali in accordance with relevant laws.⁹⁹ The role of the local government is only limited to the approval of the designs and once this is approved, the hustle goes to the local committees without legal personality to handle all projects inefficiencies and redistribute the new plots as it is described in the following paragraph.

In most cases, the land replotting projects have been initiated by the landowners themselves due to the urgency and need of exploiting their lands. The motivation behind when the government initiate land readjustment project is to update land uses or to obtain land for constructing local infrastructure. It does so when there is a need for zone change or in the area with no master plan or where the existing plan is outdated, and sometimes when the current development will not be in accordance with the law. After getting necessary approvals by relevant competent authorities, then the project is ready to kick off.

1.4.2 Land transfer agreement and community participation

Under normal circumstances, there are various ways recognized by the law through which a plot of land or its piece can be acquired. Any person can acquire land through inheritance, succession, purchase, donation, exchange, land sharing or legal grant by competent authorities.¹⁰⁰ Due to the lack of specific law guiding the land readjustment process, the LRMUA Practical guide provides an avenue on how this shall be done, though not comprehensive but at least we have a practical guide which can serve as a legal rule to follow.¹⁰¹

⁹⁸ Art 7, Law N° 22/2019 of 29/07/2019 Governing the City of Kigali, (OG no. Special of 31/ 07/ 2019).

⁹⁹ Art 9, Law N° 22/2019 of 29/07/2019, *supra note* 96.

¹⁰⁰ Art 9, Law N° 27/2021 of 10/06/2021, *supra note* 21.

¹⁰¹ LRMUA, 'A practical guide of conducting Participatory Land Readjustment in Rwanda', (2021), P.7.

Unlike the usual land rights transactions, the transfer of agreement may be consensual or not consensual. By being consensual, community support development after establishing a core group for promoting instigated property exchanges and obtaining government approval, the agency or the committee proclaims the targeted area as a land readjustment district and organizes public hearings to enlist the participation of affected property owners.¹⁰² The organizing committee presents a plan that is detailed enough to show good-faith efforts to redevelop the neighborhood.¹⁰³ All landowners or leaseholders who hold leasing contracts are invited to join the project by contributing their property rights (freeholds or leaseholds) to the agency as investment capital. Because returns on investment are in the form of a piece of serviced land or other property rights at the end of project, a preliminary measure of a land exchange ratio is needed to show how the interest of participating owners may be affected. This is based on preliminary ideas about how the area will be redeveloped, the cost of construction, and available government subsidies (if any). By estimating the before-and-after values of land involved in instigated property exchanges, owners can calculate how much land they need to contribute to the project to become participating members.¹⁰⁴

In most cases, the guiding principle is to keep the net worth of owners' equity unchanged. This can be done by returning to owners a plot of serviced land that is smaller but has a higher value than the land put into the project. Because an assessment of future land value can never be exact, one allocation method is to ensure that the proportionate value of each owner's landholding relative to the total value of all lots is the same before and after the project. Public hearings facilitate negotiations. Because leasehold rights (the right to use and develop land) are elements of the bundle of property rights, I consider leaseholders as owners of certain land rights for the period specified in the lease.¹⁰⁵

There is a time road can take over the full or partially the plot of a landowner who by the time of initiation of the project was not present. At his/her return or by the time s/he becomes aware, s/he is not convinced by the explanations given by the committee members and even those of local leaders. Another frequent problem at this stage is that community members are not always at the same level of understanding. This simply puts a project at risk since it is a pre-requisite to start the project while all landowners are aware and have agreed to transfer their plots of land for public use without expecting return from government or the Committee.

The negotiation process can be lengthy and contentious. In a bid to unlock this, there is a need for an institutional arrangement which can lead to collective bargaining which is dominant mode in land readjustment. In the land

¹⁰² Yu-Hung Hong and Barrie Needham, *Analyzing Land Readjustment*, Lincoln institute of land policy, Cambridge Massachusetts (2007), p.16

¹⁰³ Idem

¹⁰⁴ Idem

¹⁰⁵ Idem

readjustment scheme, negotiation costs are mostly borne by property owners who spend time attending public hearings and working out the procedural and contractual solutions for disagreements.

In Rwandan Context, most mobilization campaigns are called in village meetings commonly known as *Inteko z'abaturatione* or through community civic participation (*Umuganda*) and that's where by presumption the project awareness to all land owners have been made. Though relatively not attended by good number of citizens or if even attended, landowners living in other area of the country will never attend given the time of its occurrence and most the times there is no proper communication channel that is established apart from a word of mouth or through telephone calls for one on one who knows each other. This exposes therefore the project lasting for years and very time consuming and costing.¹⁰⁶

To determine whether these costs are higher or lower than the costs of conventional methods depend on a number of factors: (1) how organized the owners are; (2) how well they communicate each other; and (3) how homogenous their interests are.¹⁰⁷ All these factors are affected by the number of owners involved.¹⁰⁸ A large group of property owners whose members have high discount rates, little trust, and no capacity to communicate with one another and enforce mutual agreements will likely face high negotiation costs.¹⁰⁹ In fact, under such conditions, the probability for owners to engage in collective action for instigated property exchanges is low.¹¹⁰

Those in power most of the time leaves no room for the community to actively participate in land transfer agreement and the communities are left with no option that agreeing what is being proposed for. Therefore, to address this issue a legal instrument should be enacted and it will grant right to engage communities in all planning process and budgeting of land transfer agreement.¹¹¹ People's interest can rarely meet because it is found that some might be interested while others are not especially when it comes to the issue of land planning and budgeting of transfer agreement due to some persons who are not getting what they really expected to have from such land transfer agreement, therefore to address this issue there is need of the establishing the binding legal instrument on land transfer agreement.

Over and above, the big concern is the problem of people who are in the project area and either were not contacted or who were contacted and remains with negative perception about the projects in pipeline. These makes hard to move forward and they form a bloc of holdouts. Countries have been dealing with holdouts issue differently by trying to set a standard in terms of percentage. The rule being like when majority of citizens have

¹⁰⁶ RGB, 'Rwanda Governance Review Good Governance and Decentralization in Rwanda' VI Rwanda Governance Review, (2018), P.13.

¹⁰⁷ Yu-Hung Hong and Barrie Needham, *supra note 100*, p.17

¹⁰⁸ Idem

¹⁰⁹ Idem

¹¹⁰ Idem

¹¹¹ AN. Songorwa, Community-based wildlife management (CWM) in Tanzania: Are the communities interested. *World Dev*, 27(12): (1999), pages 2061–2079.

come to a common consensus other will be forced to be part of the project but this does not go with legal thinking and principles of inviolability of someone's property.

In the view of the above contrary to the jurisdiction of concern, even if a number of landowners can hold out their right not to transfer the land but they can at least be notified. Reason being all lands are now registered and through land registry we can know the contacts of the owner and be notified. In the practical guide, there is no mention of number of landowners who must sign on the project form for its validity, it rather spots that at least of the site landowners must constitute the electoral college of the organizing committee. This gives the power to the big number of holdouts to refrain from not participating in the project implementation.

1.4.3 Land Resub division and servicing

The project once is clear enough to the concerned land owners all plots are now pulled together. There is no more individual or personal land because all lands are assembled for a common goal. Hired land engineers propose new roads, where will the community elect classes, markets and eventually they make new plots with limited areas than before but these plots increased in value due to the proposed basic infrastructure.

The engineers submit all along with the committees the plans to the district one stop center in charge of land administration and governance for review and comments before approvals. Once approved, the new plots are then demarcated and beacons fixed followed by issuing new cadastral plans for the new acquirers.

This process in Kigali, has been too implemented differently due to lack of a harmonized legal tool to guide the implementation. At this stage however, issues of land titles mortgaged in the banks as collateral for loans have been reported and hampered the process.

Another issue that is under development is to know the lengthy of responsibilities of engineers who have been hired with an endorsement of the city or district but at some points, their maps projections found to be not genuine and opposing the interests of land owners. Either the guide or the legal instrument that can be enacted should be responding to the issue of segregation of duties and put knowledgeable people at fore front of liability in order to minimize the risk underestimating the rights of landowners.

Most of the land readjustment projects are limited to the roads nothing else than utilities such as water and electricity making roads better by building roads sideways for flooding control or some rain water reservoirs and sewage systems. They all again being implemented in the green area and no physical plan project has been carried out in the buildup area so far.

1.4.4 Land Reallocation/redistribution

There is no common understanding of how the land serviced and replotted can be redistributed amongst the owners as of today. It is obvious that people will insist to remain close with their old plots of lands but sometimes experience has shown that it is hard and almost impossible. Because of new roads people must move up and down left and right. It is against this that the land office custodian recommended the community to have their own bylaws governing how they will be distributing by consensus their new plots.

It happens that some individuals found themselves their plots have been taken totally or partially by the roads and or green spaces, and therefore these people are entitled to receive less land surface than what they are entitled to. The committee by virtue of their bylaws will compensate them with cash or similar square meters of land lost after taking out the roads area. But given the fact that the sites are applying their own bylaws differently, there are some committees which had set standards that owners who receive more land will buy the extra areas from their neighbors. After all is well and community members are in agreement of their new square meters, the hired company of engineers must provide new cadastral plan of which the land registry will base on to issue new land titles to returning property owners. On the receipt of the equivalent land, owners are now allowed to perform all land transactions as by the law, either sale, mortgage or bequest.

1.4.5 Land rights issues and means of redress

Through their bylaws, committees must indicate how they will solve problems of claimants after land servicing. It is a must prerequisite to all sites being developed prior approval of the project. However, the group of people who were not contacted or who resisted to the projects proposal will find themselves forced to be part of the project and their lands have been taken. The legal rule is that no single piece of land can be taken from the owner who holds the land title without his/her consent.

The land owners may resist and put the lands in *statusquo* and declare to the local leaders that no one is allowed to do anything on his/her land. This delays the process since land owners are therefore limited in use and enjoyment of their rights to land.

In order to minimize the risk of claimants, The Rwanda land use and management authority has ordered that the land redistribution method to be applied is by land size. Two approaches of land reallocation methods shall apply: (1) Land reallocation method preserving spatial location of initial parcel as most preferred (2) Land reallocation method disregarding spatial location of initial parcel. Each landowner shall deliberately sign an agreement allowing contribution of certain fixed percentage determined by the study report for public facilities and site reserve land. Calculation of land contribution will be based on the real plot size as per the survey report. For equity purposes, any landowner whose contribution as input land is below the minimum building unit plot

of output land redistributed, he/she will be required to pay the difference of assigned plot value before acquisition. Otherwise, the site committee would pay the value of input land.¹¹²

After extracting land contribution and creation of new plots, an owner of a substandard output land area can apply for a standard plot, upon a payment of a monetary value for the missing land area. He/she can also sell or exchange his/her substandard land area to the project in respect to the approved re-plotting plan. For a landowner to whom no portion of land area surrendered for public user area; he/she shall pay a monetary value for land contribution, calculated on his /her initial land parcel. However, for previously permitted construction projects, the site committee shall determine contribution of respective land owners to the site development.

It is from the above practices that contention raises and misunderstandings. Due to the limited knowledge and time allocated by some committee members also leads to unfair treatment of landowners and some might think their lands have been taken over illegally. Just to recall in the above-described process, the role of local government is not defined and the key player at this level is the committee members.

Some committees apply the rule of the third, or the committees refunds the losing owner in cash, or the interested buyer with a relatively big surface of square meters among the key owners can buy for others by reference to the open market value prices set by the Committee of the project area. But all this to some extent never fills the desire of the landowner whose rights are violated and they prefer filling their claims to the courts of laws.

1.4.6 Court's Ruling

The rights of individuals over the land are protected by laws as described in the preceding chapter stipulates that a holder of land rights enjoys full rights in exploiting his or her land in accordance with legal provisions. The State grants right to free ownership of land and protects the land rights holder from being dispossessed of the land whether totally or partially, except in case of provided by the relevant laws.¹¹³

Given the fact that there is no specific law governing implementation of Local development physical plans, some of land owners whose rights have been violated sued the City of Kigali and the courts reviewed the actions taken to redress the rights of land holders.

In *BIZIMANA Jacques case* RADA 00011/2019/HC/KIG the case which started in Intermediate Court with RD 00208/2018/TGI/NYGE, the claimant had applied for restitution for his land rights which was infringed by the acts of Physical plans without his knowledge, consent and no compensation. The team (Kicukiro district and

¹¹² Lionel Cliffe, *Agricultural Land Redistribution: Toward Greater Consensus*, vol 38 (2011), p.18.

¹¹³ Art 41, Law N° 27/2021 of 10/06/2021, *supra* note 21.

Physical Plan committee) traced roads in his parcel UPI: 1/03/01/1981, the whole land was taken by the roads, and the small land which remained was dedicated to the garden according to the master plan zoning codes.

Another claimant *KAREMERA Denys in RADA 00040/2020/HC/KIG*, sued Kigali City claiming fair compensation of his part of land that was taken by roads during implementation of Kibande Site, Masaka Sector. The claimant bought a residential parcel registered on UPI:1/03/08/03/2550 but he surprisingly found it wrecked by roads and he couldn't raise a building thereof. Through land administration channels, he claimed to be given back his plot in order to enable him serve the purpose he bought it for, but in vain. The court after in-depth analysis confirmed that the process never complied with governing laws and consequently awarded **Rwf 3.962.700** for his part of plot to be paid by Kicukiro District/City of Kigali.

From the above court rulings and considering the provisions of the practical guide for conducting participatory land readjustment, same mistakes will occur due to the fact that local developed bylaws does not have a binding force of.¹¹⁴ Clause 13 of the guide stipulates that: *Each site shall have its own by-laws to be established by land owners under the lead of the Site committee, and then approved by the City of Kigali or District Land Readjustment technical team.* This triggers then to establish tort liabilities of the key stakeholders in the project design and implementation namely the Committee members, the engineer and the District/City of Kigali since the delays and breaches turns to the account of the victim and no clear pathways drawn to address these operational challenges apart from waiting last resort to the courts of law.

1.5 Master plan implementation and sectoral laws

Master plans implementation coincides with other different laws based on fact that land is a cross cutting property that is regulated for different purposes in the interest of the landowner. Different laws which prove such controversy are discussed below.

1.5.1 Land Readjustment and Property Taxation

It is an obligation of every land owner to pay taxes and fees in accordance with relevant laws.¹¹⁵ In Rwanda there are different taxes and fees collected from the land depending on its use and immovable properties incorporated to it. Even though real property tax and lease fees are seen as new development after the land tenure regularization, history reveals that they are not really recent concepts. Since the pre-colonial period,

¹¹⁴ LRMUA, *supra note* 28, p.6.

¹¹⁵ Art 48, Law N° 27/2021 of 10/06/2021, *supra note* 21.

indigenous institutions had authority over land use and management.¹¹⁶ They were responsible for allocating land to their subjects according to their respective use.¹¹⁷

In 2014, through the research conducted by USAID, it was revealed that there were many problems reported about the administration system for land taxes and fees. The LTR enabled the Rwanda natural resources authority, to gather data of all land parcels and created land records, including a reliable cadastre with comprehensive land information to identify and assess properties. Through the registration system, each plot's size is now recorded together with information on the plot's owner and use. Such information can be used by local authorities to maximize property revenue collection.¹¹⁸

Challenges to the collection of land lease fees, district land officers pointed to problems in assessing land lease fees. They see the fee rate structure as complex given that rates vary on the basis of different types of land use and size of the land. As a result, citizens residing in neighboring locations are sometimes subject to different rates because someone's land has been assigned a residential land use. Furthermore, the level of taxes is tied to the land's physical location which sometimes does not correspond to its market value.¹¹⁹

Among other problems mentioned, is the fact that land registration data written on land lease contracts created some other problems. All land registered as being used for agriculture and less than 2 hectares were exempted from paying lease fee. Officials claimed that many plots located in urban areas were mistakenly assigned agriculture use with their land certificate indicating exemption from land lease fees.¹²⁰

Above and more challenges had been considered during the revision of National Land policy and the current Land Law. The National land use policy recognize the above challenges¹²¹ but has omitted to tackle on the residential lands in urban areas. This is the matter of concern when it comes to collection of lease fees. In a bid to harness the policy guidance and the land development, the Law n°75/2018 of 07/08/2018 determining the sources of revenue and property of decentralized entities was introduced and repealed the Law n° 59/2011 of 31/12/2011 establishing the sources of revenue and property of decentralized entities and governing their management.

Under this new Law, only land which reserved for construction of houses in rural areas but where no basic infrastructure has been erected is exempted from immovable property tax.¹²² The same Law defines basic

¹¹⁶ F. Masengo, TH Ngoga, and E Ingabire, Land Tenure Reform and Local Government Revenues in Rwanda. LAND Project Policy Research Brief No.3, Kigali, Rwanda: USAID LAND Project. (2014), p.10.

¹¹⁷ Idem

¹¹⁸ Idem

¹¹⁹ Elvis MB, James D. and Kayiraba A, *The Impact of Land Lease Fee on Landowners: Rwanda Case Study*, Landnet project (2012), p.9

¹²⁰ Idem

¹²¹ National Land Policy, p.28.

¹²² Art 12, Law n°75/2018 of 07/08/2018 supra note 31.

infrastructure as: “Activities that are made available to the population by the government for the purposes of boosting their social development, including roads, schools, health facilities, water, electricity, etc.”¹²³ This raises the question now to know the position of non-serviced land in urban areas which requires mandatory detailed implementation physical plans and land readjustment for the citizens to get authorizations to use and enjoy their lands as discussed in the previous sections. By legal assumption, all urban plots are viewed by tax administration as developed land and therefore must be taxable annually. Practically, RRA and LRMUA databases are linked. From the time you have a land title, your UPI is immediately linked with the tax calculator and you become a *de facto* taxpayer.¹²⁴

In addition to this, the law also provides for penalties in case one doesn't exploit his land. The Non exploitation theory is not discriminative either the owner desisted to use his land willingly because maybe he/she has other means of living or s/he has a shelter, or the owner was denied by the competent authority to perform his/her developments. In line with land readjustment and with intention to use efficiently the land which is the aim of various policies and legal instruments related to land, the law determining the Sources of revenue and property of decentralized entities in its article 19 stipulates that: “The tax rate determined by the District Council per square meter of land in accordance with the provisions of Article 18 of this Law is increased by fifty percent (50%) applicable to land in excess to standard size of plot of land meant for construction of buildings but this does not apply to the plot of land acquired before the commencement of this Law”. Despite the fact that this article was declared unconstitutional and then rendered invalid as it will be explained in the following paragraph, this was introduced as a coercing tool to the land owners in urban areas who have not yet developed their lands in a stand format and shape to go through land readjustment. This communicates literally that any buyer or any person owning a land through the legal ways of land acquisition of the land after 2018 as it was registered during systematic land registration and by default that land has excess square meters to the approved standards was to be liable to this penalty.

Putting aside the theory the basic infrastructure for the land to be developed falls in the responsibility of the Government, the latter should not run after collection of annual fees without taking care of the land owners and guide them for adjusting their plots as per required standards and explain extensively about their duties and help in forming the local organizations and ensure the government support towards this achievement. Land and property taxes can a self-sustaining return on investment once properly managed.¹²⁵ This should be therefore the aim of the GoR to champion the development of all undeveloped land since keeping them unused puts the

¹²³ Law n°75/2018 of 07/08/2018, *supra note 31*.

¹²⁴ Article 6 of The Law n°75/2018 of 07/08/2018 defines the taxpayer as follows: *The immovable property tax is assessed and paid by the owner, the usufructuary or any other person considered to be the owner.*

¹²⁵ P Collier et al, Land and Property Taxes: *Exploiting Untapped Municipal Revenues, International Growth Centre cities that Work Policy Brief* (2018), p.4

landowner at a double loss of: One not enjoying his land for what it was meant for, and two, bearing the heavy burden of a tax of the property which s/he is not exploiting.

The spirit of this law is aligned with what economists and urban planners discuss as Taxing Vacant Urban Land and Urban Planning. They argue that capturing land values has the potential to raise local government revenue sufficiently to support the growth of cities.¹²⁶ Capturing in this context means recording all data from the ground and make sure that tax rates are applied to the right lands. Reasons being advanced as of why vacant land should be taxed is that land may be held as a form of speculation due to anticipated future investments by the city that could lead to further appreciations in its value.¹²⁷ However, it is important to note, that this is not the only reason land remains vacant in the city. From an urban planner's perspective, Various theories have been developed to determine why vacant land exists in urban areas.¹²⁸

- **Remnant parcels:** These are parcels that are left over from other developments around them. They are characterized by being relatively small, irregular in shape and thus not conducive for large-scale development.
- **Parcels with physical limitations:** These are land parcels that are located in areas prone to flooding or where the topographical shape of the city does not allow for adequate construction, for example.
- **Parcels held for corporate reserves:** large businesses may buy up land next to their existing plots in anticipation of future expansion of their production. This is particularly relevant for the industrial sector.
- **Institutional vacant land:** These are parcels held by public authorities for purposes of either shaping urban growth in the city or alternatively for future infrastructure investments, such as roads.
- **Vacant land for speculation:** This is land held by those who are benefiting from the appreciation of land values due to the growth of the city and associated investments.

In addition to the above, the law governing decentralized taxes had in its rationale a substantial form to with land speculation. The issue under scrutiny is to determine how long the land can be taken as a vacant land. According to scholars determining how long the land has been vacant can help assess why it is vacant. In particular, land that has been vacant for long periods of time without being transacted may be more indicative of development constraints rather than speculation.¹²⁹ Vacant land that is transacted frequently but not

¹²⁶ Astrid R.N and Mihaly K, *Taxation of Vacant Urban Land: From Theory to Practice, International Growth Centre cities that work Policy Note* (2017).

¹²⁷ Idem

¹²⁸ Astrid R.N and Mihaly K, *supra note 49*.

¹²⁹ Adams, David, Disbury, Alan et al, "Vacant Urban Land: Exploring Ownership Strategies and Actions." *The Town Planning Review: Liverpool University Press*, Volume 73, Issue 4 (2002) p. 395-416.

developed on the other hand, may be an indication that this land is more suitable for development as the frequent transactions is an indication of its marketability.¹³⁰

In light of the above reasons, the law on taxes of decentralized entities focuses much on preventing speculation in land matters. It is for this purpose that the article 19 has been rendered invalid on the grounds of being discriminative and found contravening the constitution.¹³¹ Apart from speculation as a reason why people can keep land unused for long however the law didn't detail other reasons as to why the land must be vacant and to what extent the land can be taken as unused land. These reasons were recommended as matters for correction and improvements by the Supreme Court in the case N° RS/INCONST/SPEC 00001/2019/SC opposing MURANGWA Edward Vs Government of Rwanda on unconstitutionality of the article 20 which stipulates that: *“Any undeveloped plot of land is subject to additional tax of one hundred percent (100%) to the tax rate referred to in Article 18 of this Law”*.¹³²

For the purpose of this study, the urban land for individuals with physical limitations should be considered on the list of exempted land for land lease fees until all pre requisite for use are met and confirmed by the competent authority.

1.5.2 Land readjustment and human Habitation Law

It is the mission of the country to ensure adequate living conditions, to enable all residents to access housing, and to establish and anchor both objectives within national policies and programs.¹³³ This refers to positive impacts on the needs of every human being including shelter, income, food security, social inclusion, knowledge and personal productivity.¹³⁴

In order to operationalize this mission statement, the law n°20/2011 of 21/06/2011 governing human habitation in Rwanda have been put in place. It is the supreme law that governs matters of land occupation and construction over settlement lands.

This law recognizes urban replotting and defines it as a land development operation in a given urban area which consists of consolidating plots of land in order to make them suitable for new types of construction.¹³⁵ Just like other laws, it is seen that Rwanda is intending to use efficiently its land compared to the rate of its population growth.

¹³⁰ Idem

¹³¹ Murangwa E et al V Government of Rwanda, N°RS/INCONST/SPEC 00001/2019/SC (29/11/2019), para 98.

¹³² N°RS/INCONST/SPEC 00001/2019/SC *supra note* 52, para 105.

¹³³ Republic of Rwanda, National Housing Policy- Ministry of infrastructure, p.12.

¹³⁴ Idem

¹³⁵ Art 2, 9° Law N°20/2011 of 21/06/2011 Governing Human Habitation in Rwanda (*OG n° Special of 12/07/2011*).

By taking into consideration that the population growth is not proportional with the current state land, it is therefore the aim of the National Housing Policy to develop sufficient and accessible housing placed at a small scale surface. The policy also promotes the partnership with private sector to intensify investments in this sector with the objective of improved adequate living conditions and curb the illegal and informally grown settlements.

Above is another confirmation that having a plot of land as registered in systematic land registration, is not enough to have it fully functional. The aim of the state is to see its population residing on the residential land and without compromising other sectors that may require so many things for human livings.

1.5.3 Change of land use and land rights

Master plan provides that the land of this zone shall be used for this this or that. Proposed zoning under Kigali city master plan covers a wide range of use such residential, commercial, industrial, education, health, religious, cultural, public administration, agricultural, transport, parks, sports and tourism and so forth.

During land registration, all plots were classified in one of the above classes. The Law Governing Land in its article 63 stipulates that: *“The change of land use is carried out in accordance with the master plan and approved by the institution in charge of land management and use. An Order of the Minister¹³⁶ determines the modalities of the change of land use.”¹³⁷* Therefore, it is in this regards that the one who wishes to change the land use of a piece of land in Rwanda must apply with an application in writing.

In harmony with the above regulations, the law No10/2012 of 02/05/2012 governing urban planning and building in Rwanda provides other clarity on how land use can be changed. This fact of having separate legal instruments governing same matters itself demystify how land planning works in distortion. For the scope of this research which is targeting to explore inefficiency in land planning for lands reserved for settlement, residential land is again subdivided in either high density residential zone, medium density residential-expansion zone or improvement zone.¹³⁸ Due to the fact that consultations by the time of drafting the plan was not properly done, there are issues of people falling in categories which does not correspond to their current use. For example, by the time of registration of land titles in 2010 a plot in Kigali was falling in medium density residential but after the 2020 master plan, the plot has been put under high density residential and vice versa. The changes apply from residential to light industries or commercial, from agricultural to residential, etc.

¹³⁶ Ministerial Order No 005/MoE/22 of 15/02/2022 Determining Modalities of change of land use (*OG n° Special of 22/02/2022*).

¹³⁷ Art 63, law N° 27/2021 of 10/06/2021 *supra note 21*.

¹³⁸ Kigali city master 2020, accessible at <https://masterplan2020.kigalicity.gov.rw/> on 05/03/2022.

However, this is not done once and for all. The plan is dynamic, and that's what is the purpose of the Ministerial Order No 005/MoE/22 of 15/02/2022 determining modalities of change of land use. Going through the order, both individuals and public entities are allowed to request for change of land use. On one side, there is a good or bad luck for land owners whose land use has changed in a disadvantageous way and who are forced to comply with the master plans requirements. Just to reiterate that when the use changes onto your piece of land any modification to be made is personal and no additional cost the Government can inject unless in cases of public interest.

On the other side, changes might be coming with an aim to change of master plan and development for strategic investment purpose or in public interest. In this case, once targeted land includes individuals land this infringes right to use because no other development is no longer possible until that envisaged strategic investment project matures.

This simply means that once, your land is changed from A to zone B and you are not able to develop it, you will do nothing else than waiting some investors that will drop to your piece of land any day for compensation.

This illustrates how land use planning is unpredictable and can be a limitation factor to long term investments since the investors after being aware of instant changes will not be certain of the return on their investments. The period of tenure granted by the land title should be observed and probable changes can at least start to occur after the period set on the land lease contract.

As seen above, this therefore pushes people to quit the capital city and move to the peripheries as it is evident in some districts surrounding Kigali where rapid urbanization and urban expansion are occurring. Not only typical informal (i.e. slum-like) settlements but also high-value, low-density development on the urban periphery can use land inefficiently and unsustainably, in contradiction to spatial development strategies.

Special mechanism should be in place to allow landowners create their own entity and adhere to what Government is intending to develop in the changed area. Land owners must be given preferential right over any other private developer and when needs be, they can greatly have assisted in harmony with fostering social – economic wellbeing of its citizens.

1.5.4 Individual land rights and environmental protection

This section aims to assess the connection between environmental protection and individual land rights. The conservation, protection and promotion of environment is regulated by the Law N°48/2018 of 13/08/2018. This law and other implementing orders clarifies the scope of operation and sets out the modalities under which people must adhere to the environmental standards in their daily activities.

Environmental protection can be a limitation to enjoyment of right to land in a way that is prescribed by the law. It is legitimate to leave your property when it falls in the area after getting fair compensation of your belongings.

For the purpose of master plans implementation with regards to environmental protection, they are two major concerns all related to life saving. One is group of people living in a geographically physical delineated as high risk zone and the second is people living in wetlands. All in risk of being overwhelmed by floods, the Government think it is better to relocate the citizens and those areas to be protected in light of environmental protection and striving for having a safe and clean environment which at the end attracts investors. Citizens are persuaded by the local leaders to relocate themselves and the poorest and those falling in category one receive government support in line with social protection policy in place. But the legal concern is how is these relocations link with private right over the land.

In regards to this study, the legal issue at hand is that systematic land registration that happened in 2008 up to 2013 had granted some landowners the right to land. Later on, The PMO No 006/03 of 30/01/2017 drawing up a list of swamp lands, their characteristics and boundaries and determining modalities of their use, development and management was put in place. The fact that this PMO have been enacted five years after the systematic land registration, it is evident that some individuals had already acquired rights of the lands.

This is exactly what happened to the team of residents at Mulindi-Kicukiro District, Kigali City whom rights have been encroached by urgent relocation pursuant to the resolution of National Umushyikirano of 19th -20th 2019.¹³⁹ This had been eventually done in rush without following the law governing expropriation for public interest and citizens unsatisfactory started legal complaints.

The residents' sued the CoK in the case No CMB RAD 00133/2020/TGI/NYGE and city dragged in a bid not to compensate them, the Government side arguing that the citizens had occupied illegally the swamp. After an indepth review and assessment, the court has summoned the city mayor and both parties agreed to settle the litigation amicable through court mediation whereby the City agreed to refund both the land and buildings in line of implementation of master plans provisions.¹⁴⁰

Contrary to the above, the policy and incentives applied to the relocation of people who owned lands in the swamps vary according to the national priority and status of business that the Government want to implement in the given area. For instance, businesses that was operating in the Gikondo wetlands industrial park was relocated to the Special Economic Zone (SEZ) with relative high attention and fair compensation.¹⁴¹ This is

¹³⁹ Umushyikirano 2021, available at <http://umushyikirano.gov.rw/> accessed on 25th March 2022.

¹⁴⁰ Decision N° CMB RAD 00133/2020/TGI/NYGE of 01st September 2020 accessed in Nyarugenge Intermediate Court at 24th February 2022.

¹⁴¹ Instructions of the Minister of Trade and Industry n°20/minicom/2013 of 20/05/2013 Modifying Instructions n° 15/2012 of 23/04/2012 related to the relocation of factories and other facilities located in the Gikondo industrial park, (OG n° 23 of 10/06/2013).

seen as unequal treatment before the law of land owners depending on the nature and strategic orientation of matter that is being solved at hand.

Above cases has similarities one being the fact that all compensation is based on the presentation of land title and construction permits, whoever missed s/he was considered as illegal occupant and must first prove the origin of his property. Beside this, there are so many other scattered cases across the city that was reported including kimisagara residents neighboring mpazi who were relocated to karama village as identified people, who also claimed on the side of fair compensation which will be discussed in the following chapter.

Back to land rights and environment, it was possible in Rwanda for citizens to acquire land in swamps prior organic land law of 2005.¹⁴² Now, the Government is facing a need to reclaim this property, but lacks a comprehensive process and the funds to expropriate these land owners with freehold titles in compliance with the Expropriation Law.¹⁴³ Disagreements on expropriation obligations are rampant amongst Government agencies, with debates centered on whether State requisition of wetlands triggers expropriation and compensation requirements. Until a wetland policy is drafted and approved, or until funds are availed for the expropriation of pre-existing title holders, all in a bid to implement master plans, *de facto* permission to use wetlands is being extended to some individuals, with no clarity of relocation terms, or long-term security of land rights.¹⁴⁴

Disputes over wetland tenure have been recorded during the land tenure regularization program and subsequent issuance of land titles.¹⁴⁵ During parcel registrations, wetlands classifications placed some areas claimed by private individuals under State domain. Many disputes were logged by regularization administrators when persons contested the classification of land they had long inhabited as wetlands.¹⁴⁶ A re-evaluation of the classifications found many individuals' claims were valid, and land titles were issued while wetland boundaries were redrawn.¹⁴⁷ In other cases, claimants were unsuccessful and the wetlands classification was retained. These individuals did not receive land titles and were displaced from the land they claimed without compensation. To avoid these issues to recur, The Prime Minister's Order No 006/03 of 30/01/2017 drawing up a list of swamps land, their characteristics and boundaries and determining modalities of their use and whoever possess the land in zone classified as swamp land will not be allowed to raise new developments until s/he is resettled or expropriated.

¹⁴² USAID, 'Balancing Wetland Sustainable Use and Protection Through Policy in Rwanda', (2014),p.9.

¹⁴³ Idem

¹⁴⁴ Idem

¹⁴⁵ Nizeyimana A, Striving for restoration of wetlands functions and values in the City of Kigali, *International Journal of Environmental & Agriculture Research (IJOEAR)*, Vol-7, Issue-3, (March 2021), p.26.

¹⁴⁶ Idem

¹⁴⁷ Idem

1.6 Partial Conclusion

In order for Rwanda to get a more efficient and effective land use, such problems as discussed in line with Land readjustment and master plans implementation more efforts should be on community participation much more than other conventional techniques do. Sustainable development leaves no one behind, from the conceptualization of the urban redevelopment project up to the end, individual's land right must be a central and land owners be considered. Despite that, the discussion under this chapter shows that a legislative review of all land related laws and policies needed for implementation of development master plans must undergo an extensive review and where possible new legislation must be introduced.

CHAPTER 2: BALANCING MASTER PLANS IMPLEMENTATION AND RESPECT OF RIGHTS OF INDIVIDUALS

Introduction

Development master plans can be a threat to the rights of individuals if the development is not taking care of land owners. Land owners on the other hand, are required to adopt the new measures being taken by to advance on the same pace of development and less complaints about new developments.

The perception of urban development in Rwanda relies on the fact that wherever public amenities reaches the oldest acquirers must relocate and go far to start another lifestyle which is relatively equal to their income. This has pushed the community everywhere to seek for compensation in monetary value and leave the development approaching them. Development master plans is applied to land. Either that land that belongs to individuals or the land that belongs to the state. In some instances, where land is needed for public good, the law regulating compulsory purchase (expropriation) is clear and it provides avenues under which process will take through until the development takes places. However, it is not always the case to see Government having money to compensate citizens and this leads to violation of the laws and procedures.

Master plan is one great tool for a greater urbanization project. Cities always expand and most of the times old slums needs redevelopment. Both of the two calls for local leaders to have a clear vision and skills to adapt the desired improvements. urban development requires having at the local level, adapted tools for planning and regulation, to reinforce capacities at central and decentralized level, and mobilize the public and private sector.¹⁴⁸ Furthermore, it requires human and financial resources to develop and improve cities and other centers in order to improve the living conditions of the entire population which is growing faster due to rural urban migration, particularly the poorest moving to towns in search for improved living.¹⁴⁹

¹⁴⁸ GoR, Ministry of Logacal Governement, *'The Republic of Rwanda National Strategy for Community Development and Local Economic Development'*.

¹⁴⁹ Idem

However, such population growth has not been coupled with the provision of basic amenities, services and housing¹⁵⁰ and has therefore resulted in uncontrolled spatial development¹⁵¹, proliferation of informal settlements and environmental degradation¹⁵².

There might be a link between the goodness of master plan and the population growth. It is therefore important to underline that a master plan serves as an official policy guide for a city, any ordinance pertaining to the use of land or the growth and development of the city should conform to the goals and policies envisioning the social economic well-being of the community instead of impoverishing them.

The urbanization process is a driving force of economic development where it can yield tangible results as long as it is controlled, planned and directed in line with accepted standards and norms.¹⁵³ It must be implemented within the framework of sustainable development while meeting the needs of the people and contributing to their social and economic development with due regard and consideration to environmental sustainability as well as safeguarding the land rights of individuals.¹⁵⁴

This chapter discusses the mechanisms under which master plans should be implemented in the City of Kigali and other secondary cities but at the same time perseverance of individuals rights to right must be adhered. They are some mechanisms which are in place but don't be used maximally in the interest of landowners without compromising the implementation of urban development plans and they are others we plead for improvement to cater for land rights protection along the urbanization process.

2.1 Partnerships in urbanization process

Partnerships are important to play a key role for the success of every project, especially big projects that involves the community who are at the same time the beneficiaries. Under this section, we are about to explore possible partnerships envisioning to move urbanization projects mainly those intending to replot and resize individuals parcels in a bid to fast truck the implementation of master plans.

¹⁵⁰ Manirakiza V, *Urbanization Issue in the Era of Globalization: Perspectives for Urban Planning in Kigali*, (2012), Available online at: <https://docplayer.net/21199533-Urbanization-issue-in-the-era-of-globalization-perspectives-for-urban-planning-in-kigali-vincent-manirakiza.html> [accessed on 29 March 2022].

¹⁵¹ World Bank Group. *Reshaping Urbanization in Rwanda: Urbanization and the Evolution of Rwanda's Urban Landscape*; World Bank Group: Washington, DC, USA, (2017), p.40.

¹⁵² Rwanda Environment Management Authority. *Kigali: State of Environment and Outlook Report 2013*; Rwanda Environment Management Authority: Kigali, Rwanda, (2013).

¹⁵³ Ministry of infrastructure, '3Rd National Urban Forum Rwanda ' (2019), p.29.

¹⁵⁴ United Nations, 'A Framework for Advancing Environmental and Social Sustainability in the United Nations System' (2012), p.25.

2.1.1 Public Private Partnerships

Rwanda believes that both private and public sector can play a pivotal role in supporting accelerated delivery of strategic national investments via public private partnerships (“PPPs”). It is against this political will that it has enacted PPP law to regulate matters of common interest in a bid to advance the country’s economy.¹⁵⁵ Through Rwanda Development Board, PPP guidelines were developed to detail more how the Government is willing to cooperate with the private sector for advancement of the goals set.¹⁵⁶

Now, how does this partnership link with urbanization and master plans implementation is the purpose of this section. In the PPP law, the list of acts considered as potential sectors to be covered under this scheme are transportation, including roads, railways, airports, bridges, tunnels, waterways and inland ports; those from energy including water energy, gas energy, solar energy, wind energy, geothermal energy, biogas energy and peat; social affairs, including those related to education, culture, health, sports and leisure; tourism, including tourism related to history, hotels, parks and tourism attractions; natural resources and environment, including those related to forestry, oil and oil products, minerals, water sanitation and waste disposal; telecommunication and information technology;¹⁵⁷ but nothing related to urbanization in form cities expansion or redevelopment.

Going through the above list, there is no clear path that outlines how the Government can partner with local communities or even private developers in housing development. This approach has been the issue of debate in the UN Habitat global urban economic dialogue series for years ago and they decided to recommend nations to explore its possibilities for use.

The UN Habitat believes that PPPs are of advantage in Housing projects and urban development because they are cost savings.¹⁵⁸ Cost savings materialize in several different forms but are mainly due to the private sector’s role as a mutual partner in the project.¹⁵⁹ Where PPPs projects worked are renowned to deliver projects on time, with financing risk routinely transferred to the private consortium which is created at the very beginning of the project, any delays in meeting the agreed upon timelines can lead to additional costs for the private partner as it alone carries the debt for a longer period of time. Therefore, the private sector has a direct financial interest in ensuring that projects and services are delivered on-time¹⁶⁰

They are also known for improved levels of service which was reported to be the major challenge for implementation of land readjustment in serviced sites in Kigali. Once this can be a model to apply, the projects

¹⁵⁵ The Law N°14/2016 of 02/05/2016 Governing Public Private Partnerships, (*OG n° 22 of 30/05/2016*).

¹⁵⁶ Public Private Partnership Guidelines, (*OG n°29 bis of 16/07/2018*), p.10

¹⁵⁷ Art 5, The Law N°14/2016 of 02/05/2016, *supra note 153*.

¹⁵⁸ UN Habitat, Public Private Partnerships in Housing and Urban Development, The Global Urban Economic Dialogue Series (2011), p.3.

¹⁵⁹ *Idem*

¹⁶⁰ *ibid*

feasibility study can be smooth, because the private investors are always given priority in service delivery more than when the projects are championed by the community themselves. Any landowner who can have any land related problem can be easily responded and getting fair and timely compensation can by assumption be quicker than when it the government dealing with the community alone. When brought together, the strengths from the public and private sectors, PPPs produce the unique ability to share a diverse range of resources, new technologies, innovative ideas and skills in a cooperative way that can work to improve how urban infrastructure assets and services are delivered to the people.¹⁶¹

Urban areas across the world are characterized by their own set of complex issues, the financial challenges are mostly the same; at all levels of economic development, there is a far greater financing need for urban development projects than can be provided by the traditional public prize alone.¹⁶² Because of this, Governments around the world are turning to PPPs as one possible financing option for large scale investments in the provision of affordable housing and other basic infrastructure assets.¹⁶³ This may probably be the best option for provision of affordable houses in Rwanda which have been challenged by the intended beneficiaries to be of high cost depending on their income.

It is commonly that laws evolve as time goes on. Looking at the law governing PPPs in Rwanda, the law must be improved and amended to capture new trending sectors. These sectors can be economically viable and hence attracts the private sector for investment, but when the practice proves that it has never been used such method anywhere in the country, it will take a lapse of time to make it happen until the practice is imported from abroad.

An appetite for government to choose patterning with private should not only be viewed as a social capital. It rather has an economic gain. Once private investors build many apartments, the state benefits in two folds: first benefit lies on the efficiency use of and reduction of people living I misery condition, the second is an increase of taxes and land fees collected over the new developments compared to taxes initially that could be imposed to vacant lands or slum dwellers.¹⁶⁴ PPPs have been conceived as a mechanism that supports big projects but in most jurisdictions there an option of applying the same mechanism in small projects and small businesses at the community level.¹⁶⁵

It is in this regards we recommend that Public Private Partnership laws be included in community engagements projects though seems to be of lower value but helps in long term development. This is because when

¹⁶¹ Idem

¹⁶² UN Habitat, Public Private Partnerships in Housing and Urban Development, *supra* note, 156, p.2.

¹⁶³ Idem

¹⁶⁴ Darja R, Public-Private Partnerships in Urban Development in the United States, University of California, p.13 accessed at <https://core.ac.uk/> on [10th May 2022.]

¹⁶⁵ Darja R, *supra* note, p.30

community is engaged, the country economic growth accelerates rapidly and the lives of citizens changes which is the overall goal of urban development strategies.

2.1.2 Partnership with local government through Imihigo

Imihigo also known as performance contract in Rwanda has yield the best outcome in terms of performance but also in terms of impact. It is the process that all citizens join hands with local leaders in planning of the country annually with the aim of putting a citizen at the of transformation.¹⁶⁶

Performance contracts, besides being the performance based management tool to strengthen strategic planning and management and improve service delivery in the Local Government system¹⁶⁷ it is also a platform whereby citizens identify the priority of their community and set targets to be achieved with support of the Government. Performance contracts were known to uphold the country on high range of development indicators.¹⁶⁸ Once this is put in place in matters pertaining urban housing can increase citizen participation and shift the responsibility to the community who by nature of Rwandan culture are problem solvers and therefore the state remains with supervisory role and prioritize service delivery with aim to tick the box of scoring the targets.

First implemented with district mayors, Imihigo, were later expanded across government ministries and agencies. The increased focus on performance of public officials helped Rwanda achieve impressive rates of economic growth, rapidly improve infrastructure, and increase health and education outcomes for its citizens. More recently, however, critics noted that focusing on district Imihigo targets – which were largely derived from central government priorities and financed by the national budget – had potentially limited the opportunity for citizen participation and for local governments to implement their own policies and solutions.¹⁶⁹

Line ministries, public agencies and districts are required each year to sign formal public service agreements to deliver key specific outputs. The activities to be included in the performance contracts are derived from the SSPs, and DDPs, Cabinet resolutions, leadership retreats and through grassroots consultations. The policy actions are clustered in three broad categories of social welfare, good governance and economic development, and they must be high priority programs. The remaining routine actions are considered in the district development plans. Attention is given to key issues of public service delivery, including issues with a greater impact on community well-being and public finance management.¹⁷⁰

¹⁶⁶ African Development Bank, performance contracts and social service delivery- lessons from Rwanda, (2012), p.5

¹⁶⁷ AfDB, *supra note 164*, p.6

¹⁶⁸ World Bank, 'Fusing Tradition with Modernity: Imihigo Performance Contracts in Rwanda' (2016), p.5.

¹⁶⁹ *Idem*

¹⁷⁰ Social Service, Delivery-Lessons From and African Development Bank, 'Performance Contracts', (2012), p.7.

It is our hope that once the implementation of master plans more specifically land readjustment intended to enable land owners access roads building permits are streamlined in district performance contracts, these can be attained timely and citizens get their rights redressed by the national priorities. One, these projects can benefit from national budgeting for easy of acceleration but second, they can be implemented faster due to that emergency that will be followed by annual evaluations. If not done this way, at least they can be factored in the District Development Plans which are designed for a lengthy of five years but this can remove ambiguity of to know when the land owner will be allowed his/her right to enjoy the rights conferred upon him by the land title.

2.1.3 Role of development partners

The role of development partners is notably very crucial to strengthen performance of the government in urban planning and development. It is against this that the GoR together with its partners have been cooperating in the project entitled Environmental and Social Management Framework (ESMF) which is being prepared to support the environmental and social management and implementation of the Rwanda Urban Development Project.¹⁷¹ Apart from their own resources, the project is funded by World Bank. Currently the project is at its second phase which is a continuation of the RUDP 1 project under implementation with an additional scope of interventions in wetlands restoration, flood control, urban planning and several technical assistance topics to be supported.

The current project has 4 components to support i) basic urban infrastructure (roads, drainage works, footpaths, street lighting) in six secondary cities (Huye, Muhanga, Musanze, Nyagatare, Rubavu and Rusizi) and in the City of Kigali (CoK), including here flood control works; ii) restoration of modified/urban wetlands and recover them to support the greening urban strategy of Rwanda with support of the GEF 7 funding; iii) technical assistance for urban planning, waste management, etc.¹⁷²

This is one of the biggest projects in urban development in the city and secondary cities. Going through its core objectives, the project does not tackle any issue of land owners in urban area who are not getting their rights to habitation. This simply means that it is the component that have been thrown in the land owners' hands to manage in accordance to their priorities. Reason why it is the aim of this study to compel the Gov and partners for future projects to budget and plan for few activities in this area.

¹⁷¹ Republic of Rwanda, Rwanda Urban Development Project (RUDP II), (May 2020) p.1.

¹⁷² Ibid

2.2 Learning from success of Land Use Consolidation policy

The NLUDMP recognized that land consolidation principles have been directed towards agriculture sector only. One might wonder why this shouldn't be applied in the context of urban and rural settlement planning as well.

From this policy guidance, this study analyses how and to what extent the land consolidation policy brought positive changes in Rwanda's land management to explore whether they are positive traits we can borrow and help in land use for lands reserved for settlement. Land use Consolidation was established in 2008. The policy envisioned to put together small plots with the aim of making them viable and more productive per units of investment through economies of scale.¹⁷³

Land use consolidation (LUC) was followed by resettlement of the people from agricultural area to residential areas.¹⁷⁴ This was done to avail free land for agriculture and for forming a residential village that would facilitate people to access government facilities like basic infrastructures easily. Therefore, the objective of LUC was based on improving agricultural production and contributing to land use planning in villages.¹⁷⁵

In practice, there are variants of implementing land consolidation. Land consolidation was done in different models each differing in terms of the process involved and also the extent of voluntarism among or coercion of the affected community land owners.¹⁷⁶ 'Comprehensive' land consolidation includes the re-allocation of parcels together with a broad range of other measures to promote rural development.¹⁷⁷ Examples of such activities that promotes rural development includes: village renewal; support to community-based agro-processing; construction of rural roads; construction and rehabilitation of irrigation and drainage systems; erosion control measures; environmental protection and improvements, including designation of nature reserves; and creation of social infrastructure, sports and leisure grounds and other public facilities among others.

Other forms of consolidation are voluntary or individual types.¹⁷⁸ In voluntary consolidation schemes, unlike comprehensive schemes, all participants must agree fully with the proposed project. As a result, voluntary projects tend to be small, and voluntary consolidation tends to be best suited to address localized problems.¹⁷⁹ Voluntary projects usually have fewer than 10 participants, but in some cases this number may be higher.¹⁸⁰

¹⁷³ NLUDMP, *supra note 2*, p.135.

¹⁷⁴ Rubanje I, *Linking Land use, Tenure and consolidation in Rwanda*. (2016), p.20.

¹⁷⁵ Idem

¹⁷⁶ idem

¹⁷⁷ T.Veršinskas et al, 'Land Consolidation' Legal brief 1 FAO (2021), p.2.

¹⁷⁸ Idem

¹⁷⁹ Musahara H, *Improving tenure security for the rural poor. Rwanda-Country Case Study Improving Tenure Security for the Rural Poor*, FAO, Nakuru, Kenya (2006), p. 19.

¹⁸⁰ Idem

Individual consolidation involves spontaneous consolidation of holdings, without the direct involvement of the state. However, the state may provide an enabling environment for consolidation by promoting instruments such as joint land use agreements, leasing and retirement schemes. Experience in a variety of countries has shown that entirely voluntary consolidation tends to be a “slow and unsatisfactory” process.¹⁸¹ This is due to difficulties of community collective action, which suggest that progress would be particularly slow in communities where social bonds are weak or strained. Two conceptual issues are noteworthy.

First, in Rwanda it is clearly known that consolidation is related to the use of land reserved for agriculture. This should draw attention from the international fora of which many parts of the world differ forms of land consolidation with target of tapping economies of scale. This is operationally the principal rationale, although some scholars prefer to focus on specific government goals such as agricultural transformation, more ambitiously referred to as a ‘Green Revolution’¹⁸², food security or more modestly food self-sufficiency and in quite radical discourses as ‘consolidation of power’ in the hands of the state¹⁸³.

Across all these, LUC in Rwanda is both a land and an agriculture issue. In principle, it originated from the Rwanda Land Law and Policy.¹⁸⁴ In practice, it is part of agricultural transformation (GoR, 2007-2008). As noted in the citations above, LUC is part of the CIP. In 2004 and 2005 respectively, the government of Rwanda released land policy and law. Since then, it had then become clear that land use, crop intensification matters and villagization would be linked. In 2000, the draft of Vision 2020 had also been produced and was published in 2002.¹⁸⁵ The poverty reduction strategy, which was to run for three (3) years, was enacted in 2002¹⁸⁶ and referred to land reform and consolidation as part of the medium-term strategy for poverty reduction. The Organic Land Law No. 08/2005 of 14 July 2005 put it forthrightly, saying that Land Consolidation was: “a procedure of putting together small plots of land in order to manage the land and use it in an efficient manner so that the land may give more productivity”.¹⁸⁷ The CIP was then initiated in September 2007 to increase the agricultural productivity of high-potential food crops and to provide Rwanda with greater food security and self-sufficiency.¹⁸⁸

¹⁸¹J.M. Zhou, How to Carry Out Land Consolidation: An International Comparison, *European University Institute, Department of Economics, Italy* (1999). Available at <http://www.iue.it/ECO/WP-Texts/> [28/3/2022].

¹⁸² Ansoms, et.al, A Green Revolution for rural Rwanda: Reconciling production growth with small-scale risk management (2000), p.7.

¹⁸³ C. Huggins, consolidating land, consolidating control: state-facilitated ‘agricultural investment’ through the ‘Green Revolution’ in Rwanda. *Land Deal Politics Initiative Working Paper* (2013), P.11.

¹⁸⁴ GoR, Rwanda National Land Policy. In Ministry of Lands, Environment, Forestry, Water and Natural Resources (Ed.), Kigali (2004).

¹⁸⁵ GoR, Rwanda Vision 2020. Kigali, Rwanda (2002).

¹⁸⁶ GoR, “Poverty Reduction Strategy Paper. Kigali-Rwanda”, (2002), Retrieved from <http://siteresources.worldbank.org/INTPRS1/Resources/Country-Papers> [accessed on 24/3/2022].

¹⁸⁷ Idem

¹⁸⁸ Musahara H, *supra note* 177, p.20.

The government of Rwanda through recognition of the importance of mixed crops in smallholder farming, found LUC appropriate for a modernizing agriculture aimed at food security and self-reliance.¹⁸⁹ As noted earlier, Vision 2020 and the Poverty Reduction Strategy Paper were first to mention the need to transform Rwanda's economy and to encourage good use of land for agricultural development.¹⁹⁰ In 2009, the Strategic plan for agricultural transformation phase 2 was designed for 2009 to 2012, to coincide with the conclusion of the Economic Development and Poverty Reduction Strategy.

It is still important to see how the programme has influenced livelihoods of people socio-economically and in a sustainable manner in relation to environmental resources; and whether in the process it has shifted land relations that may cause conflict over resources including water. One of the terms of the study for this chapter was to establish whether LUC was a voluntary programme or whether it involved government compulsion.

In a report concluded in March 2013 and based on qualitative data from 18 sites, it was noted that initial phases involved some degree of government compulsion and most of the farmers had shown resentment at being required to grow a single crop. Indeed, the matter was a focus of political activists who linked LUC to state control and power consolidation.¹⁹¹ The question here can be more specifically interrogated with regard to a specific crop such as rice and use of specific resources such as water, which are the theme of the entire study.

The study report mentioned above indicated that farmers had almost unanimously adopted LUC and acknowledged its advantages with regard to food security and cash income. The positive views expressed by farmers can be explained by the dramatic increase in yields of priority crops. What is noteworthy, however, is that the reduction of tension between farmers, local leaders and the government was the result of a carrot and stick strategy.

The government, at subsidized rates, provided farmers with work in cooperatives or groups, fertilizers and improved seeds. A farmer not within the accepted groupings would not be given these services. The same services governed water use for irrigation. The study also noted that some crops, notably maize, may have been getting more support and promotion than other crops. Being variously distributed in different regions meant some communities differentially got more developmental support than others. Crops like soya, with a lot of nutritional significance to communities, were not favored by the government as such, but thrived by getting

¹⁸⁹ Ministry of Agriculture and Animal Resources (MINAGRI), *Farm Land Use Consolidation in Rwanda: Assessment from the Perspectives of Agriculture Sector*. Kigali: Republic of Rwanda, (2012).

¹⁹⁰ *Idem*

¹⁹¹ Huggins C, *Consolidating land, consolidating control: What future for smallholder farming in Rwandan's "Green Revolution"?* Paper presented at the *International Conference on Global Land Grabbing II*, Cornell University, Ithaca, NY. (2012, October). p.7.

support from government agencies through other channels. A typical example was that of arrangements with the Ministry of Defence in western parts of the country.¹⁹²

The distribution of LUC crops (figure 12.1) shows areas where there was general government support. However, this should not, without evidence, be wrongly interpreted as areas where there were these crops and especially where maize and rice may have been receiving more government support. On the same side of the coin, these could have been reaping a relatively larger share of the benefits of LUC. On the flip side of the observation, the same areas may have been receiving a more vigorous intervention of the state in matters of small peasant agricultural production and relations. Although the latter argument can be easily picked up by human rights critics of LUC, our study indicated that there had not been an adequate explanation why LUC farmers, as indicated, had accepted and were satisfied with LUC, and why 20 percent or more were still dissatisfied.

With regard to land relations, land consolidation focused on land use and not land ownership. In valleys, the growth of maize did not affect ownership of small parcels of land. The only issue documented was that some farmers had tiny plots that were not viable and to get support they had to present plots in groups, surrendering nominal that wetlands were owned by the state and no conflicts were noted on the use of marshlands.

From the above LUC was designed for farmers and it recorded a number of success which can serve as a landmark that can lit the land consolidation process in the residential areas.

One good thing to appreciate under LUC is that people put together their lands and Government contributed by adding an additional land for swamps. In addition to wetlands, the government, at subsidized rates, provided farmers with work in cooperatives or groups, fertilizers and improved seeds.

It is obvious that where the government puts emphasis businesses runs smoothly. If the same can be applied in land readjustment processes, there is no doubt that irregularities noted can be moved away. What kind of incentives we think can be given to the people/landowners willing to put together their lands for physical plans development? They can for instance be given a waiver for land permits fees, annual rental fees, subsidized rates of electricity and water as a reward to agree giving free land to the state for roads and other basic infrastructures as a good gesture of contributing to the urban development. But failure to do so may lead to unfair taking of individuals lands which is illegal and may attract issues pertaining to expropriation for public interest.

¹⁹² Birasa N, Land Use Consolidation and Crop Intensification in Rwanda, *Working Paper Cited in Deliverable 3: Literature Review* (2013), p.18.

2.3 Fair Compensation to the displaced landowners

The most popular tool for implementation of urban development is the eminent domain or the expropriation for public interest. Expropriation in the public interest is defined as: *“An act based on power of Government, public institutions and local administrative entities with legal personality to remove a person from his/her property in the public interest after fair compensation”*¹⁹³

As discussed earlier in the preceding chapter, master plan implementation in the settlement sector, targets two zones. On the one hand is urban redevelopment of slums and on the other hand, is city extension in green land. In a race to implement the provisions of master plan, and for the purpose of this research, firstly, we intend to analyse mechanism that is in place to compensate land owners in sites where physical plans are being serviced and it is proved that there had been a land rights encroachment, and secondly, the compensation mechanism used by the CoK as a new approach for implementation of master plan. All of these mechanisms above are analysed in light of provisions of expropriation law.

Before going through compensation mechanisms, let's recap on a flash back and reexamine how expropriation has been perceived and performed in other sectors.

The concept of public interest has been an issue of controversy between the expropriator and the land owners intended to be expropriated.¹⁹⁴ There are common acts described as public interest but they are others which has a business nature and requires advanced feasibility study and demonstration of socio-economic impact that projects will accrue to the citizens.

The issue of property valuation for the purpose of determining compensation follows.¹⁹⁵ Despite the regulations on the benchmark prices set in different legal instruments, disputes arise over the determination of price to be used since some technicians in land valuation tend to apply low costing and the citizens suspect that the real property valuers had connived with the private investors to quote less. This usually groom the citizens and the resist to the prices until counter valuations are made. In addition to this, procedures have been also breached and significant delays for payment after conclusion of the pecuniary payment and signature of all statutory obligations.¹⁹⁶

¹⁹³ Art 2, N° 32/2015 of 11/06/2015 Law relating to Expropriation in the Public Interest, (*OGn° 35 of 31/08/2015*).

¹⁹⁴ Ikirezi M, Masengo F and Anna K, Implementation of the Expropriation law in Rwanda, USAID Policy Research No2 (2014), p.11.

¹⁹⁵ Idem

¹⁹⁶ NPA, Analysis of Land Expropriation and Transfer Process in Rwanda (2017), p.28

- **Compensation in physical plans**

Putting the challenges of the expropriation in general aside, in sites where physical plans are implemented i.e in the context of green area for city expansion, it is not clear and there is no common understanding on the compensation mechanism in place. Site committees use their own bylaws and try to convince the victim of the land replotting process. Some use pecuniary compensation based on current market value depending on where the land is located, others use the rules in percentage and they enroll sum of square meters lost by the claimant, with this method you might find two or three people registered on the same land title as a result of their land surface balances or simply others encourage selling the remaining part of parcel after roads servicing amongst one of them who is willing to buy. We have learnt that site committees have set their own price/sqm to help them handling these specific cases. However, it happens that the victim is not happy and intends to sue on the ground of trespassing his/her property and courts have been responding positive to their claims. This notifies local leaders to take extra care while approving and processing physical plans projects.

- **Compensation in informal settlements dwellers**

In a bid to eradicate informal settlements in Kigali, land acquisition for urban redevelopment and resettlement and affected residents who occupies the land for many years are being thought as new innovative approaches to hit the target. As discussed earlier, they are two categories mainly on target: Category one is the people living in informal settlements in high risk zones and those living in wetlands, category two is formed by people in informal settlement who occupies prime land that is attractive to the investors, many of them interested in real estate development, a point which as discussed in the preceding section turns around as a matter of controversy depending on its commercial character.

One size fits all houses are being introduced as a compensation to the displaced people from wetlands and high-risk zones and other relative zones marked as slums. They are registered as condominiums to the owners and some have presented issues in ownerships and even the value being contested by the proposed new acquirers. The live example can be given from the team of people who are in contestation with the CoK from Kangondo and Kibariro villages of Nyarutarama cell, Remera Sector in Gasabo District who were living in informal settlement and the city attempted expropriation for compensation of newly built up houses in Busanza but this was challenged by some of the residents which is still under progress in court.¹⁹⁷ This compensation mechanism is more envisaged as a land use mechanism than advancing individuals right to land. It also presents hick ups in procedures from which if nothing is changed might cause the government enormous loss of two folds: On one side of the loss is related to the built up houses occupation rate which is and will remain low because

¹⁹⁷ Ntabareshya JDD, Abaturage ba Kangondo batsembeye Umujyi wa Kigali ko bataba mu nzu wifuzaga kubimuriramo available at <https://igihe.rw/ubutabera-2047/article/abaturage-ba-kangondo-batsembeye-umujyi-wa-kigali-ko-bataba-mu-nzu-wifuzaga> accessed at [29th March 2022].

selected occupants refused to come in and second the intended occupants can/will be through court ruling awarded compensation in pecuniary style on top of money used for construction of the houses.

Previously, affected people were used to be given an option to choose between direct financial compensation or compensation in kind by giving them new houses.¹⁹⁸ In most of the times affected people chose the financial compensation and refused houses or lands basically due to the fact that the proposed new lands or houses are far from city center or the parcels are small compared to what they had and in consideration of banks loans for others.¹⁹⁹

Concerning the issue of compensation in kind, the local authority has defended the approach to be one of mechanism to curb the proliferation of slums in informal settlements in neighboring Kigali, to transform the affected households and support the implementation of master plans.²⁰⁰ Because of this, the city authorities have opted for no longer give a compensation in cash and hence there is no room for negotiation with the affected population on this matter. This coercing power is of no doubt in contrast with the provisions of articles 6 and 35 of expropriation law which stipulates that: “*The initiator of an act aimed at the implementation of land use and development master plans shall first negotiate with owners of assets that are affected by the project*”²⁰¹

From the fair compensation perspective, one slot or two units in the new houses is claimed by the affected citizens as not corresponding to their destroyed properties. In the Kangondo case for example the valuation was done only on the land value and left out the value of upper ground developments which is the house and other accessories. This case has again demonstrated the breach of expropriation procedure and citizens sought the process was opaque and not transparent, it was interpreted as disregarding the land rights of affected owners as enshrined in the law.

Furthermore, constraining the option of payment in cash and hold affected people to be compensated in kind is viewed as a decision which is unconstitutional since the latter allows all Rwandan the right to reside in any part of the country of his wish and choice.²⁰²

As said, expropriation refers similarly to government power of eminent domain, compulsory purchase or acquisition of private real property for public interest.²⁰³

¹⁹⁸ Instructions of the Minister of Trade and Industry n°20/minicom/2013 of 20/05/2013, *supra note 139*.

¹⁹⁹ Nikuze A, Richard S and Johannes F, *From Closed to Claimed Spaces for Participation: Contestation in Urban Redevelopment Induced Displacements and Resettlement in Kigali, Rwanda* (2020), p.5

²⁰⁰ *Idem*

²⁰¹ Art 6, Law N° 32/2015 of 11/06/2015 *supra note 191*.

²⁰² Art 26, The Constitution of The Republic of Rwanda.

²⁰³ Tagliarino, N.K.; Bununu, Y.A.; Micheal, M.O.; de Maria, M.; Olusanmi, A. Compensation for Expropriated Community Farmland in Nigeria: An In-Depth Analysis of the Laws and Practices Related to Land Expropriation for the Lekki Free Trade Zone in Lagos. *Land* **2018**, *7*, 23.

Another research on the law on expropriation and its outcomes on the population revealed that relocation has a negative effect on affected population in their daily incomes. This is simply because when someone relocates lose his/her job opportunity and if not the cost of transportation increases and hence reduces in take home sum.²⁰⁴ Its implementation was declared by existing studies to result in unfair compensation which is largely paid in monetary value and dissatisfaction of the expropriated property owners with the paid compensation.²⁰⁵ The unfair compensation and dissatisfaction with the compensation have also resulted in various conflicts between expropriating agencies and property owners.²⁰⁶ Even if the above referenced studies from our point of view focused on the implementation of the expropriation law of 2007, which was amended in 2015. They do not discuss in depth different factors which are behind the payment of the unfair compensation and property owners' dissatisfaction. However, despite the fact that the law was amended in 2017, the latter which provides clear procedures that must be followed by actors in the expropriation in order to determine fair or just compensation value which should be paid to expropriated people, the problem still remains in 2022 just after seven years old of expropriation law.

This communicates to the law makers and law enforcement agencies that the problem is not the law but rather the problem should be analyzed in social economic perspective and how the process through which the expropriation project must pass through.

Procedures are known in the law to be the cornerstone of substantive law. Once rules of procedures are broken, that means that the results even may lead to just compensation and which are stated in the current Rwandan expropriation law. In addition to this, the issue of reference prices, which are determined on the basis of the market prices, for the real properties affected by expropriation and the counter-assessment of the proposed compensation value must be flexible enough to accommodate actual business and dynamics of countries economy. This study therefore explores whether the current expropriation law ameliorates the *status quo* of the old law in the expropriation processes and compensation alongside its implementation in Kigali city.

Just compensation is a significant indicator of justice in the implementation of spatial development programs which affect private property rights²⁰⁷. Justice here means nothing else than happiness and fairness. Globally, this issue has been a point of hot debate and it is tied to compliance to national and international norms regarding compulsory acquisition of private property, which implies the rule of law and transparent valuation processes,

²⁰⁴ Rose H, Mugisha F, Kananga, A and Clay D. *The implementation of Rwanda's expropriation law and its Outcomes on the population* (2016), p.32.

²⁰⁵ Idem

²⁰⁶ Legal Aid Forum. *The Implementation of Rwanda's Expropriation Law and Outcomes on the Population: Final Report*; USAID: Kigali, Rwanda, 2015; 231p, Available online at : <https://landportal.org/fr/library/resources/rwanda-land-research-104/final-report-rwanda%E2%80%99s-expropriation-law-and-outcomes> [accessed on 28 March 2022].

²⁰⁷ He, J.; Sikor, T. Notions of justice in payments for ecosystem services: Insights from China's Sloping Land Conversion Program in Yunnan Province. *Land Use Policy* (2015), P.207–216.

participation of affected people and their negotiation on fair compensation option and value with expropriating agencies.²⁰⁸

Those aspects reflect different patterns of spatial justice, consisting of procedural, recognitional and redistributive.

Scholars of the right to just compensation like Nozick²⁰⁹ and Rawls²¹⁰ who claim for fair compensation when individuals' property rights are infringed through expropriation says that Just compensation helps those affected access other material resources and pursue their livelihoods.²¹¹ These arguments spell out various patterns of spatial justice required for expropriation to result in just compensation.

In this line of thinking, this study aims to investigate if there are features of spatial justice in the current Rwandan expropriation law and its implementation processes in Kigali city and whether they result in just compensation. Issues surrounding compensation for losses suffered who-gets-what when government acquires a piece of land are typically the most complex and controversial aspects of compulsory acquisition.²¹² A long-standing principle in many jurisdictions is that compensation should be guided by the objectives of “equity” and “equivalence” that is, the adequacy of compensation which should be measured against the goal of ensuring that people are neither impoverished nor enriched.²¹³

General Conclusions and Recommendations

Master plans implementations are for good of the citizens. The right to ownership of land is an individual and constitutional right as well. None of the two should be rival to another but rather implementation should follow the straight lines of the law.

Having land title granting rights for the purpose of this study the right to housing is nothing if not accompanied by other government interventions. From what we learnt, the government interventions may come late or even never, the situation which has pushed the landowners to look for solutions themselves but this happened out of the blue and led to land rights violations which latter triggered the development of the practical guide for the

²⁰⁸ Idem

²⁰⁹ Nozick, R. *Anarchy, State, and Utopia*; Basic Books: New York, NY, USA, (1974), P. 367.

²¹⁰ Rawls, J. *A Theory of Justice*; Revised Edition; Cambridge University Press: Cambridge, MA, USA, (1999), P.560.

²¹¹ Gutwald, R.; Leßmann, O.; Masson, T.; Rauschmayer, F. A Capability Approach to Intergenerational Justice? Examining the Potential of Amartya Sen's Ethics with Regard to Intergenerational Issues. *J. Hum. Dev. Capab.* (2014), P. 355–368.

²¹² S Keith and others, 'Compulsory Acquisition of Land and Compensation', Land Reform, Land Settlement and Cooperatives (2008), P.14.

²¹³ Mills Lindsay, 'Compulsory Acquisition of Land and Compensation in Infrastructure Projects' (World Bank-2012).

implementation of detailed physical plans but as highlighted in the analytical study this presents a political good will to solve the matter and get the practice streamlined into the current legal framework.

Once not improved, this will attract the inconsistencies in implementation since as per the guide all sites are endowed the power to use their own developed by laws which at the end will create loopholes and give rise to violation of individuals' land rights.

In this research it has been found that the right to private ownership of land is mostly violated while implementing development master plans, as it was highlighted in the analysis of this study due to the fact that however much plans are better but most of the time citizens are not involved in the planning process of and implementation of master plans. This directly brings the issue of the lack of active participation on the enjoyment their land rights since they end up by finding that their parcels are being surveyed, encroached by beacons and even new roads being traced in their plots without having given their consent to such activities.

In mitigating trying to fill the gaps identified, we have suggested that the huge effort should be on emphasizing on community participation should be more privileged much more than conventional techniques do, this will contribute in the effectiveness of the whole process of master plans implementation and the respect of the right to private ownership of land in Rwanda since the community will be actively involved in this whole process and make it effective.

Other several sectoral laws are seen to be not acting in cohesion with the land law and law regulating urban planning which from our point of view needs to be in harmony and acting as a pool of laws with same target.

For a clear implementation of the solutions identified in this research, we have proposed the following recommendations:

- For the issue concerning the violation of land rights during the implementation of development of master plans we have suggested that there is a need to modify the policies related and subsequent implementing laws and orders, since the land readjustment is seen to be a new model of helping the government in urbanization process. We therefore, advocate for the stand-alone law to regulate the land readjustment since the urbanization will not only be enforced in City of Kigali but also in the secondary cities, and this will be implemented gradually, it is not a one-year activity.
- Concerning the issue of limited Government intervention, it has been noted that the Government has not yet demonstrated factual support to the land owners who willingly showed up to partner in contributing to adherence of urbanization laws set by policymakers, we call for the Government to reiterate this political will and demonstrate tangible support for this tremendous initiative through different mechanisms such as revision of Public Private partnerships to accommodate these new developments and offer incentives to the community willing to comply with building regulations.

- On the issue of legitimacy of acts done by the site committees, since this land readjustment tool is designed as counting on the landowner at the centre, the committees of land owners must be reinforced, legalized or where possible they can be put in forms of cooperatives given their mandates and to enable them discharging their duties. Cooperatives have recorded a great success in Rwanda in different areas and they can be of great use towards problem solving in this journey of lands discharging, deregistration of rights and registration after sites servicing.
- On the issue of compensation, we commend for the initiative of relocation of people affected by the implementation of master plans mainly those pushed to leave in wetlands and high risk zones that are relocated in modern houses living in many units assembled together as one means of land use efficiency. We however, recommend to review the projects feasibility study and ensure proper reintegration of intended users. In addition to this, Condominiums rights should be improved and explained to the general public as it impacts a lot to the new owners of the slots in the houses developed. Condominiums are still seen as properties of less value which refrains people to lightly agree to leave their lands and join the commonly developed houses. But again, this is viewed by the banks as not good collaterals when it comes to use your property as a security in the bank applying for loans. We do recommend to adhere to the existing expropriation law mechanisms as well as explore other possible ways of fair compensation to the landowners in protected and high-risk zones who are found to be legitimate owners instead of forcing them for a fair compensation in form of a leave or take.
- We do also recommend the Government to intensify its efforts to attract private developers who can at their end negotiate with landowners for easy of improving their well-being not only focusing on the maximization of their benefits and ensure access for all to adequate, safe and affordable housing and basic services and upgrade slums.
- On the issue pertaining distractive change of zoning, we lastly call for the Government to enhance inclusive and sustainable urbanization planning by enhancing community participation, integrated and sustainable human settlement planning and management in all aspects of urban development. In this regard, professional bodies like institute of engineers should be revamped and a clear means of engaging land surveyors in these projects must be drawn and adhered.

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