

# NATIONAL COMMISSION FOR HUMAN RIGHTS



## SURVEY ON HUMAN RIGHTS RESPECT DURING EXPROPRIATION FOR PUBLIC INTERESTS IN RWANDA

July 2020



# **SURVEY ON HUMAN RIGHTS RESPECT DURING EXPROPRIATION FOR PUBLIC INTERESTS IN RWANDA**

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## Introduction

Pursuant to Article 42 of the Constitution of the Republic of Rwanda of 2003 revised in 2015, the National Commission for Humana Rights (NCHR) is assigned to promote human rights. To accomplish its obligation, the Law No 19/2013 of 25/03/2013 as modified by the Law No 61/2018 of 24/08/2018 determining the mission, organization and function of the NCHR, empowers the commission to carry out researches on thematic issues and publish findings and address recommendations to different stakeholders and role players for the assurance of human rights.

It is in that regard that the National Commission for Human Rights conducted a survey on respect of human rights during expropriation for public interests in order to assess the level of human rights assurance within expropriation projects in Rwanda; as herein reported.

We acknowledge the contribution of different organs and people who made this survey possible, including respondents, Government agencies, private professional bodies, members of the civil society platform and others who provided information and documentation.

The Commission would like to express the deepest acknowledgement to Swiss Agency for Development and Cooperation in Rwanda for funding the implementation of this survey.

We get this opportunity to call upon all role players to abide by provisions of different sources of law on expropriation in Rwanda, especially the Law N° 32/2015 of 11/06/2015 relating to expropriation in the public interest; for effective assurance of human rights during expropriation. Detailed recommendations for this cause were elaborated, together with the call for organs in charge of amending laws, to improve the same law on its provisions that hinder the full enjoyment of property owners' rights during expropriation.

**Mrs MUKASINE Marie Claire**

Chairperson

National Commission for Human Rights

## Survey summary

It is well known that the right to private property is inviolable especially in a state ruled by the rule of law and signatory of international and regional human rights instruments. But, the need of rapid development and economic transformation has urged Rwanda to use its power of eminent domain to acquire landed properties for the same purpose, through expropriation. The Commission has repeatedly received complaints on human rights violation during expropriation and same claims were routinely raised by the media, scholars and institutions.

The survey focused on four (4) specific objectives: (1) assessment of human rights respect during expropriation for public interests in Rwanda, (2) proposition of mechanisms to prevent human rights violations during expropriation, (3) suggestion of effective remedial actions for victims of human rights violations resulted from expropriations and (4) formulation of recommendations to relevant stakeholders. In order to attain those objectives, both quantitative and qualitative approaches were applied. Hence, the findings are as follow.

## The right to information

The ICCPR (art. 19) and the Constitution of the Republic of Rwanda (art. 38) define the right to information as forth: " Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice". But it is subject to certain lawful restrictions, such as respect of the rights or reputations of others and the protection of national security or of public order, or of public health or morals. In the context of expropriation, right to information is associated with enabling property owners to have complete and accurate information about the expropriation project, all processes, the roles and responsibilities of various stakeholders included.

The results show that 85.8% of property owners were informed about the expropriation projects. It is concluded that the remaining 14.2% of property owners should be informed too.

## The right to property

The ACHPR I (art. 14) and the Constitution of the Republic of Rwanda (art. 34 and 35) stipulate that "everyone has the right to private property, whether individually or collectively owned. It is inviolable. And the right to property shall not be encroached upon except in public interest and in accordance with the provisions of the law".

The right to property during expropriation consists of taking the personal interest for public interests with fulfilment of both fundamental and procedural conditions of lawful expropriation. Any violation of the conditions for lawful expropriation including the public interests, due process of law, non-discrimination and compensation; would suffice to draw a conclusion that there has been violation of right to property, because the evictee has not enjoyed her/his full rights over her/his properties.

The study results showed that both substantive and procedural conditions were not fully respected during expropriation for public interests. It was revealed that out of 817 expropriated households on completed projects, 577 (70.6%) were paid their compensation while 240 (29.4%) did not.

As far as compensation time frame is concerned, it was found that among 577 households who received their compensations, 313 (54.2%) households received the compensation within 120 days while 264 (45.8%) were paid after a period of 120 days.

Concerning the relocation of households after receiving the compensations, there was surveyed 42 households who were relocated without being paid yet.

The focus group discussions (FGDs) also highlighted concerns on the non-respect of a time frame of 120 days for compensation of expropriated households and the relocation of households without payment of compensations.

It was noticed that the Government took consideration on this issue and it was captured in the 2020/2021 budget, to reinstate the right to property to the victims.

Referring to Article 2 and Article 35 of the Law n° 32/2015 of 11/06/2015 relating to expropriation in the public interest, fair compensation refers to an indemnity equivalent to the value of land and the activities performed thereon given to the person to be expropriated and calculated in consideration of market prices as well as compensation for disturbance due to expropriation. It is paid in advance and can be paid in monetary form or in any other form mutually agreed upon by the expropriator and the person to be expropriated.

The findings showed that 47.3% of expropriated households expressed that there was unfair determination of compensation. This was linked to valuations inconsistencies highlighted by some property valuers who said they were not independent while determining the fair compensation. Valuation variances, out-dated land price references and voids in current expropriation law were highlighted among other causes of alleged undervaluation.

It was also found that 56% of the respondents did not appreciate the 5% of disturbance allowance, saying it is not sufficient.

The reverence of right to adequate standards of living was evaluated because the study showed linkage between the households' livelihood and the enjoyment of the property rights.

## The Right to an adequate standard of living

The Article 11 of the International Covenant on ESCR highlights that "the States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions". As the landed properties are bedrock of human being activities which are sources of adequate living conditions for human kind, the violation

of right to property can immediately lead to the violation of Right to an adequate standard of living (housing, food, water, sanitation, etc.). The right to an adequate standard of living, includes the right to adequate housing, food, water, sanitation, etc. (art. 11 article of the International Covenant on ESCR).

The results showed that when the compensation delay takes years, the limitation of the right to undertake long term activities on the real properties lead to the loss of capability to cover housing need, food needs and sanitation expenses which in turn results into the violation of right to an adequate standards of living. For further analysis, the study evaluated the respect of right to adequate housing and right to clean environment as forth.

According to the Office of High Commissioner for Human Rights, CESCR General Comment No. 4: The Right to Adequate Housing (Art. 11 (1) of the Covenant) Adopted at the Sixth Session of the Committee on Economic, Social and Cultural Rights, on 13 December 1991; the right to adequate housing is more than just four walls and a roof. It is the right of every one to gain and sustain a safe and secure home and community in which to live in peace and dignity. Among six major element of this right, the study focused on the habitability element of right to adequate housing. In this element; adequate housing should provide elements such as adequate space, protection from cold, damp, heat, rain, wind or other threats to health, structural hazards, and disease vectors.

During the survey, it was found that 12.6 % of 95 non-relocated property owners did not get opportunity to repair their houses, as they were still living there waiting for the compensation. Therefore, the habitability element is not met and there was some less respect of right to adequate housing.

Concerning the right to environment stipulated in Article 22 of the Constitution of the Republic of Rwanda of 2003 revised in 2015 which states that everyone has the right to live in a clean and healthy environment, it is also stipulated in Organic Law n° 04/2005 of 08/04/2005 determining the modalities of protection, conservation and promotion of environment in Rwanda; when expropriation projects expose anyone to unsuitable environment, the right to clean environment is violated.

With reference to Table 4.10, the results showed that 33.5% of surveyed families were exposed to the rain water from various infrastructure projects for the families left in high risks zones. That implies that there were some voids in regarding the right to clean environment. It was found that this is due to the expropriation projects which are not thoroughly analysed and not fully inclusive. The study advises the complementation based on the elimination of the legal loopholes for sustainable human rights respect.

Generally, during the present survey, it was found considerable commitments to the respect of human rights comparing to previous reports though, this progression is still hindered by incomplete files of affected property owners, lack of accountability of different players in expropriation and loopholes in governing legislations.

Based on the findings, the Commission requires different organs to join efforts and protect the rights of property owners who may face different challenges resulting in the non-conformity to the expropriation law and some provisions of the same law that need to be amended.

The Commission recommends both protective and preventive measures as follow:

1. The Commission recommends the Ministry of Finance and Economic planning, in collaboration with expropriating agencies to accelerate the payment of compensation arrears.
2. To establish “The Order of the Prime Minister determining the organization, functioning, responsibilities and composition of the committees in charge of supervision of projects of expropriation in the public interest” provided for in Article 8 of the law N° 32/2015 of 11/06/2015 relating to expropriation in the public interest, the survey reminds the Office of the Prime Minister: has to be established
3. The study has ascertained that only 40.22% of all pasted expropriation projects appreciated fully the due process of law. The expropriating institutions also confirmed it through highlighting that only 45.45% of the expropriation cases respected fully the entire expropriation law. Hence, the Commission recommends MINICOM, MININFRA (particularly REG, WASAC, RTDA and RHA), and MINALOC especially Districts and the City of Kigali, to abide by any substantive and procedural condition set by the expropriation law, while initiating and implementing expropriation projects; and to hold accountable those who are responsible for human rights violations during expropriation.
4. There was identified some loopholes in the law N° 32/2015 of 11/06/2015 relating to expropriation in the public interest related to the non-limitation of the delay period after the legal period of expiration of 120 days. The Ministry of Justice is recommended to set an acceptable period of delay to which a disturbance allowance rate shall be applied as compound rate if not respected.
5. The survey recognised that the Article 22 of law N° 32/2015 of 11/06/2015 relating to expropriation in the public interest was not fully respected. The land prices references were not annually published and those prices did not fully reflect market value. The Ministry of Environment and the Institute of Real Property Valuers (IRPV) are recommended to base on acceptable scientific method in establishing and publishing the annual property reference prices reflecting the market value as provided for by the expropriation law; in addition, the reference prices should be accessible and understandable to the local community. They are also recommended to constantly build the capacity in fair compensation determination and to monitor property valuers involved in the valuation of properties meant for expropriation and inflict sanctions against those who breach on IRPV’s ethical rules and regulations.

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## List of abbreviations and acronyms

<b>ACHPR</b>	: African Charter on Human and Peoples Rights
<b>ALRC</b>	: Australian Law Reform Commission
<b>D.L.</b>	: Decree Law
<b>ESCR</b>	: Economic, Social and Cultural Rights
<b>FGDs</b>	: Focus Group Discussions
<b>IASC</b>	: Inter-Agency Standing Committee
<b>Ibid.</b>	: Ibidem, same author, same publication, same page
<b>ICCPR</b>	: International Covenant on Civil and Political Rights
<b>Id.</b>	: Idem, same author, same publication, different pages
<b>IISD</b>	: International Institute for Sustainable Development
<b>IJRC</b>	: International Justice Resource Centre
<b>IRPV</b>	: Institute of Real Property Valuers
<b>KIIs</b>	: Key Informant Interview
<b>NCHR</b>	: National Commission for Human Rights
<b>No</b>	: Number
<b>O.G.</b>	: Official Gazette
<b>OHCHR</b>	: Office of the UN, High Commissioner for Human Rights
<b>P.</b>	: Page
<b>PM</b>	: Prime Minister
<b>pp.</b>	: Pages
<b>RCSP</b>	: Rwanda Civil Society Platform
<b>UDHR</b>	: Universal Declaration on Human Rights
<b>UK</b>	: United Kingdom
<b>UN</b>	: United Nations
<b>UNESCO</b>	: The UN Educational, Scientific and Cultural Organization
<b>UNODC</b>	: United Nations Office on Drugs and Crime
<b>USA</b>	: United States of America
<b>USAID</b>	: United States Agency for International Development
<b>Vol.</b>	: Volume
<b>WHO</b>	: World Health Organization

## CHAP. I. GENERAL INTRODUCTION

### 1.1. Background

The international, regional and local legal instruments on human and people's rights recognize that the right to private property is inviolable. The 1948 UN Universal Declaration of Human Rights (UDHR)<sup>1</sup>, African Charter on Human and Peoples Rights (ACHPR)<sup>2</sup>. The International Covenant on Economic, Social and Cultural Rights also recognize the right to property<sup>3</sup>. Rwanda is a signatory to different international human rights instruments and has domesticated the principles of non-violation of rights private properties. In this context, articles 34 and 35 of the Constitution of the Republic of Rwanda stipulates<sup>4</sup> that private property is inviolable and cannot be encroached except in case of public interests and rights transfers in line with processes and procedures provided for by the law.

Expropriation is one of the ways one can lose ownership over a given property and for public interests. It is a mechanism that is recognized internationally, as public interests supersede private interests. It should not even constitute an issue, if it were carried out under procedures provided for by laws, without any discrimination or political grounds, and upon prior and fair compensation to the targeted property owners<sup>5</sup>.

Due to the rapid development in Rwanda, there were, there are and there will be many expropriation projects. Potential expropriating agencies in Rwanda are Rwanda transportation agency (RTDA), Rwanda Civil Aviation Authority (RCAA), Rwanda Energy Group (REG), Water and Sanitation Authority (WASAC), Ministry of Trade and Industry (MINICOM), Rwanda Development board (RDB), National Agricultural Export Development Board (NAEB), Ministry of Defence (MINADEF), Rwanda Environmental Management Authority (REMA), central government and local government entities such as Districts and the city of Kigali<sup>6</sup>. Unfortunately, even though majority of expropriators are government agencies; there many claims raised against the violation fundamentals of property rights during expropriation. Hence, the survey intended to scrutinise the status of Acts of violation of human rights during expropriation in Rwanda and provide the recommendation accordingly.

### 1.2. Problem statement

In Rwanda, there have been raised concerns about potential human rights violations through expropriation. Before the promulgation of the new 2015 expropriation act, it was said that there were loopholes in the legislation

<sup>1</sup> Its article 17 provides that (1) "Everyone has the right to own property alone as well as in association with others. (2) No one shall be arbitrarily deprived of his property" (See UN, Universal Declaration of Human Rights, available at <https://www.un.org/en/universal-declaration-human-rights/>, retrieved on March 12th 2020).

<sup>2</sup> According to its article 14, "The right to property shall be guaranteed. It may only be encroached upon in the interest of public need or in the general interest of the community and in accordance with the provisions of appropriate laws" (AU, African Charter on Human and Peoples Rights, available at <http://www.humanrights.se/wp-content/uploads/2012/01/African-Charter-on-Human-and-Peoples-Rights.pdf>, accessed on March 12th 2020).

<sup>3</sup> UN-OHCHR, International Covenant on Economic, Social and Cultural Rights, accessed at <https://www.ohchr.org/en/professionalinterest/pages/cescr.aspx>, on March 12th 2020.

<sup>4</sup> The Constitution of the Republic of Rwanda of 2003 revised in 2015, Official Gazette n° Special of 24/12/2015

<sup>5</sup> UNCTAD, Expropriation, available at [https://unctad.org/en/Docs/unctaddiaeia2011d7\\_en.pdf](https://unctad.org/en/Docs/unctaddiaeia2011d7_en.pdf), visited on March 12th 2020.

<sup>6</sup> Andrews Kananga Daniel Clay Hadley Rose, Frank Mugisha, 'The Implementation of Rwanda's Expropriation Law and Its Outcomes on the Population', in 2016 World Bank Conference on Land and Property, 2016; Ernest Uwayezu and Walter T. de Vries, 'Expropriation of Real Property in Kigali City: Scoping the Patterns of Spatial Justice', Land, 8.2 (2019) <<https://doi.org/10.3390/land8020023>>; Rwanda Civil Society Platform, Analysis of Land Expropriation and Transfer Process in Rwanda, 2017 <[http://www.rcsprwanda.org/IMG/pdf/report\\_on\\_land.pdf](http://www.rcsprwanda.org/IMG/pdf/report_on_land.pdf)>.

on expropriation<sup>7</sup>, as per the 2007 law<sup>8</sup>. However, with the new law<sup>9</sup>, concerns are still raised and discussed via different platforms, including meetings, workshops and conferences in both civil society and governmental organizations<sup>10</sup>, the media<sup>11</sup> and in scholars' publications<sup>12</sup>. For example, the annual reports of National Commission for Human Rights (NCHR) from 2015 to 2018 highlighted that it received many claims for unpaid compensation. In 2015-2016 annual report, amid the total 600 complaints received most of the claims concerned land conflicts and expropriation. The next year, the claims increased to 704. The right to property come foremost with 24.73% of all complaints received by NCHR and the majority of them were unpaid compensation related cases<sup>13</sup>. In addition, in 2017 Rwanda Civil Society Platform survey revealed that 31% of the surveyed household received the compensation after the legal planned period and 44% of them did not received the 5% of delay compensation<sup>14</sup>. Therefore, there may exist either loopholes in the existing law too or the violation of the rule of law. Hence, it is evident that there must be much concern needed about human rights esteem during expropriation. Therefore, while undertaking this survey, the NCHR wanted to assess the status of human rights respect during expropriation in Rwanda and provide both preventive and protective mechanisms to relevant stakeholders in order to make expropriation laws effective.

### 1.3. Objectives

#### 1.3.1. General objective of the survey

The main objective of the survey was to assess the respect of human rights during expropriation for public interests in Rwanda, and provide both preventive and protective recommendations to relevant stakeholders.

#### 1.3.2. Specific objectives

The specific objectives of the survey were:

1. To assess the respect of human rights during expropriation for public interests in Rwanda
2. To propose mechanisms to prevent human rights violations during expropriation
3. To propose effective remedial actions for victims of human rights violations resulted from expropriations
4. To formulate recommendations to relevant stakeholders.

<sup>7</sup> Ikirezi Mireille, Masengo Fidèle and Anna Knox (July 2014), Implementation of Expropriation Law in Rwanda: Challenges and Ways Forward, LAND Project Policy Research Brief No.2, Kigali, Rwanda: USAID LAND Project.

<sup>8</sup> Law N° 18/2007 of 19/04/2007 relating to expropriation in the public interest

<sup>9</sup> Law N° 32/2015 of 11/06/2015 relating to expropriation in the public interest (Official Gazette n° 35 of 31/08/2015)

<sup>10</sup> Hadley Rose, Frank Mugisha, A. K. D. C. (2016) 'The implementation of Rwanda's expropriation law and its outcomes on the population', in 2016 World Bank Conference on Land and Property; Rwanda Civil Society Platform (October 2017), Analysis of land expropriation and transfer process in Rwanda, Final Report (Norwegian People Project), available at [http://www.rcsprwanda.org/IMG/pdf/report\\_on\\_land.pdf](http://www.rcsprwanda.org/IMG/pdf/report_on_land.pdf), visited on March 11th 2020

<sup>11</sup> See for example, Nasra Bishumba, Report shed light on property expropriation issues, in The New Times of March 03rd 2020, available at <https://www.newtimes.co.rw/news/report-sheds-light-property-expropriation-issues>, visited on March 11th 2020.

<sup>12</sup> See for example, "Ernest Uwayezu and Walter T. de Vries, Expropriation of Real Property in Kigali City: Scoping the Patterns of Spatial Justice, Land 2019, 8, 23 (<https://www.mdpi.com/journal/land>); Mugisha John, Compensation for Land Expropriation in Rwanda: The Need for Conventional Approaches to Valuation, JLEA Vol. 3 Issue 1, 296 – 306, Jan. 2015.

<sup>13</sup> CNDP-NCHR, National Commission for Human Rights 2015-2016 Annual Report (Kigali, 2016) <<http://www.cndp.org.rw/index.php?id=269>>; CNDP-NCHR, National Commission for Human Rights 2016-2017 Annual Report (Kigali, 2017); CNDP-NCHR, National Commission for Human Rights 2017-2018 Annual Report (Kigali, 2018).

<sup>14</sup> Platform

### 1.3.3. Survey structure

Apart from this general introduction, chapter two reviews the literature on expropriation and human rights, to learn from the existing documentations and publications, as well as previous studies, about protection and violation of human rights during expropriation. Chapter three presents the methodology used to find an appropriate approach to conduct the study, targeted population and selected participants, tools for data collection and treatment, besides analyses on ethical considerations and data validity, among others. Chapter four first presents and analyses collected data in their quantitative and qualitative forms, before discussing the same data while aligned with human rights in expropriation projects. The last chapter draws conclusions from the survey findings and issues recommendations to relevant concerned stakeholders.

## Chap. II. REVIEW OF THE LITERATURE AND LEGAL FRAMEWORK

The present chapter reviews the literature on acts of violation of human rights within expropriation. It specifically describes how the right to property is part of human rights, and how expropriation is an exception to the full enjoyment of that rights, though when the expropriation is done unlawfully, it breaches on different human rights.

### 2.1. The place of land and other properties in human rights

This section defines and the concept of property and describes how land and properties incorporated thereon are part of the concept property. It also elaborates more on what to understand by right to property and human rights. Moreover, it shows the place of the right to property in both international human rights instruments and domestic sources of law, specifically the Rwandan legal and human rights position on the right to property.

#### 2.1.1. The concept of property, land and properties incorporated thereon

The International Centre for Human Rights and Democratic Development (Rights & Democracy), through Christophe Golay and Ioana Cismas, argues that concept of property within the legal and human rights context can be traced to the early philosophical writings leading to the French Revolution's *Déclaration des droits de l'Homme et du citoyen* and the US Bill of Rights, in the 18<sup>th</sup> Century<sup>15</sup>. This is because a property is anything that can belong to a person. The idea of ownership brings the relationship between the property and the rights of use and disposal of the property, which appeared together with the existence of human rights in France and USA, which in turn inspired the world to adopt human rights, including right to property<sup>16</sup>.

Strictly speaking, property refers to the people's access to and control of things like land, natural resources, the means of production, manufactured goods, inventions and other intellectual products. With that access and control, the property owner is legally empowered to transfer the whole bundle of rights in the object he/she owns to somebody else, as a gift, or by sale or by legacy after death<sup>17</sup>. Besides the idea of ownership, when it comes to the legal definition and classification of properties, and while considering both the common law and the civil law "legal systems"; the term 'property' gets used in common and some legal parlance to describe types of property that is both real and personal. 'Real' property encompasses interests in land and fixtures or structures upon the land. 'Personal' property encompasses tangible or 'corporeal' things – chattels or goods. It also includes certain intangible or 'incorporeal' legal rights, also known in law as 'choses in action', such as copyrights and other intellectual property rights, shares in a corporation, beneficial rights in trust property, rights in superannuation and some contractual rights, including, for example, many debts. Intangible rights are created by law. Tangible things exist independently of law but law governs rights of ownership and possession in them – including whether they can be 'owned' at all. In law, the term 'property' is associated with rights. In *Yanner v Eaton*, the High Court of Australia said: the word 'property' is often used to refer to something that belongs to another. But 'property' does not refer to a thing; it is a description of a legal relationship with a thing. It refers to a degree of power that is recognised in law as power permissibly exercised over the thing<sup>18</sup>.

Different human rights instruments talk about "property", embodying therefore all types of properties, mainly

<sup>15</sup> Christophe Golay and Ioana Cismas, Legal opinion: the right to property from a human rights perspective, The International Centre for Human Rights and Democratic Development (Rights & Democracy), Geneva, 2009, p. 2.

<sup>16</sup> Laurent Sermet, The European Convention on Human Rights and property rights, Council of Europe, Human rights files, No. 11 rev, 1999, p. 18 – 19. Waldron, Jeremy, "Property and Ownership", The Stanford Encyclopedia of Philosophy <https://plato.stanford.edu/archives/sum2020/entries/property/>, April 2020.

<sup>17</sup> ALRC, Definitions of property, Australian Law Reform Commission, 2015 <<https://www.alrc.gov.au/publication/definitions-of-property/>>, April 2020.

<sup>18</sup> Jérémie Gilbert, "Land Rights as Human Rights", SUR 18 (2013), accessed April 14, 2020, <<https://sur.conectas.org/en/land-rights-human-rights/>>, April 2020.



tangible properties as the ones directly associated with the “right to property”. As this report is aligned to “expropriation” which is mainly carried out on land and properties incorporated thereon; it is worth to note that the term “property” in this report also includes land. Some scholars including Jérémie Gilbert wishes that as land covers the majority of existing tangible properties, should be recognized by human rights instruments and rights related to land should be protected as separate and independent rights. In other words, such scholars and human rights activists want land right to be typically perceived as human rights issue<sup>19</sup>.

In any case, while recalling the English common law classification of properties which subdivides properties into personal properties and real properties, whereby the latter are land and things that are attached to the land<sup>20</sup>; therefore, in this report relating to the expropriation and human rights, the term “property” should preliminarily be understood as land and properties incorporated thereon which include buildings and plantations and other properties of the same family.

### 2.1.2. The concept of human rights

Human rights are rights inherent to all human beings<sup>21</sup>, regardless of nationality, place of residence, sex, national or ethnic origin, colour, religion, language, or any other status<sup>22</sup>. Human rights can be classified in a number of different ways. One of the most widely used classifications distinguishes “classic or civil and political rights”, and “social rights that also include economic and cultural rights”, and commonly known as “economic, social and cultural rights (ESCR)”. Classic rights generally restrict the powers of the government in respect of actions affecting the individual and his or her autonomy (civil rights) and confer an opportunity upon people to contribute to the determination of laws and participate in government (political rights). Social rights require the governments to act in a positive, interventionist manner so as to create the necessary conditions for human life and development<sup>23</sup>. ESCR are human rights concerning the basic social and economic conditions needed to live a life of dignity and freedom, including for example the right to work, the right to health, the right to education and the right to an adequate standard of living<sup>24</sup>.

In spite of their categorization or classification, human rights are universal and inalienable, interdependent and indivisible, equal and non-discriminatory. They are universal as it is the duty of all States all over the world to promote and protect all human rights and fundamental freedoms, regardless of their political, economic and cultural systems, as the same States have been part of numerous international human rights conventions, declarations, and resolutions, basically since 1945 with the creation of the United Nations (UN) and 1948 with its Universal Declaration on Human Rights (UDHR). All States have ratified at least one, and 80% of States have ratified four or more, of the core human rights treaties, reflecting consent of States which creates legal obligations for them and giving concrete expression to the universality. Some fundamental human rights norms enjoy universal protection by customary international law across all boundaries and civilizations. Human rights are also inalienable, as they are not supposed to be taken away, except in specific situations and according to due process, as it is the case of expropriation for public interests<sup>25</sup>.

<sup>19</sup> Jérémie Gilbert, “Land Rights as Human Rights”, SUR 18 (2013), accessed April 14, 2020, <<https://sur.conectas.org/en/land-rights-human-rights/>>, April 2020.

<sup>20</sup> Alan Ro. Romero, Distinguish between real property and personal property, Rural Law Center, University of Wyoming College of Law, <<https://www.dummies.com/education/law/distinguish-between-real-property-and-personal-property/>>, April 2020.

<sup>21</sup> UN, Humana rights, <<https://www.un.org/en/sections/issues-depth/human-rights/>>, April 2020.

<sup>22</sup> OHCHR (1), What are human rights, <<https://www.ohchr.org/en/issues/pages/whatarehumanrights.aspx>>, April 2020.

<sup>23</sup> Lincoln University, Classification of human rights, <<http://www.lincoln.edu/criminaljustice/hr/Classification.htm>>, April 2020.

<sup>24</sup> UNESCO, Economic, social and cultural rights, <<http://www.unesco.org/new/en/social-and-human-sciences/themes/advancement/networks/lamo/economic-social-and-cultural-rights/>>, April 2020.

<sup>25</sup> OHCHR (1), Op. cit.

All human rights are indivisible, whether they are civil and political rights, such as the right to life, equality before the law and freedom of expression; economic, social and cultural rights, such as the right to work, social security and education, or collective rights, such as the right to development and self-determination, are indivisible, interrelated and interdependent. The improvement of one rights facilitates advancement of the others. Likewise, the deprivation of one rights adversely affects the others. Human rights are furthermore equal and non-discriminatory. The latter principle applies to everyone in relation to all human rights and freedoms and it prohibits discrimination on the basis of a list of non-exhaustive categories such as sex, race, colour and so on. The principle of non-discrimination is complemented by the principle of equality, as stated in Article 1 of the Universal Declaration of Human Rights: “All human beings are born free and equal in dignity and rights”<sup>26</sup>.

### 2.1.3. The concept of right to property as a recognized human rights

The present report talks about expropriation which is done on land and other properties incorporated thereon<sup>27</sup>. Land is also part of the property and a self-standing human right<sup>28</sup>, though some scholars and human rights activists want land to be recognized as also a separate human rights, by international and domestic legal instruments across the world<sup>29</sup>.

The right to property is recognized by the same legal instruments including the UDHR, the International Covenant on ESCR, as international instruments, the African Charter on Human and Peoples Rights (ACHPR) at continental level and even the Constitution of the Republic of Rwanda:

- For the UDHR, article 17 provides that “Everyone has the right to own property alone as well as in association with others” and that “no one shall be arbitrarily deprived of his property”<sup>30</sup>;
- The same for the International Covenant on ESCR, its article 2 recognizes the right to property as a human rights, as well as the right to housing (article 11), which is also part of property as per the definition of property as seen above<sup>31</sup>;
- For the ACHPR, “The right to property shall be guaranteed. It may only be encroached upon in the interest of public need or in the general interest of the community and in accordance with the provisions of appropriate laws” (article 14)<sup>32</sup>.

Rwanda has so far ratified different international human rights instruments, including the above UDHR<sup>33</sup>, ESCR<sup>34</sup> and ACHPR<sup>35</sup>, and has domesticated the principles of non-violation of right to private properties, in general and land in particular. In this context, articles 34 and 35 of the Constitution of 2003 as revised in 2015 stipulates that

<sup>26</sup> Ibid.

<sup>27</sup> Articles 25 and 27 of the Law N° 32/2015 of 11/06/2015 relating to expropriation in the public interest (Official Gazette n° 35 of 31/08/2015)

<sup>28</sup> OHCHR (2), Land and human rights: standards and applications, Report, Geneva, 2015, pp. 53 – 56, also available at [https://www.ohchr.org/Documents/Publications/Land\\_HR-StandardsApplications.pdf](https://www.ohchr.org/Documents/Publications/Land_HR-StandardsApplications.pdf), visited in April 2020.

<sup>29</sup> Jérémie Gilbert, “Land Rights as Human Rights”, SUR 18 (2013), accessed April 14, 2020, <<https://sur.conectas.org/en/land-rights-human-rights/>>, April 2020.

<sup>30</sup> UN, Universal Declaration of Human Rights, available at <https://www.un.org/en/universal-declaration-human-rights/>, retrieved in March 2020.

<sup>31</sup> OHCHR (3), International Covenant on Economic, Social and Cultural Rights, accessed at <https://www.ohchr.org/en/professionalinterest/pages/cescr.aspx>, on March 12th 2020.

<sup>32</sup> AU, African Charter on Human and Peoples Rights, available at <http://www.humanrights.se/wp-content/uploads/2012/01/African-Charter-on-Human-and-Peoples-Rights.pdf>, accessed in March 2020.

<sup>33</sup> NCHR, Status of the ratification of international and regional human rights instruments by Rwanda, 2nd edition, Kigali, October 2017, p. 9.

<sup>34</sup> The International Covenant on ESCR was adopted in New York on 19/12/1966 and Rwanda acceded to it on 01/03/1975. See the D.L No 8/75 of 12/02/1975, O.G. No 5 of 01/03/1975, p. 230 (cited by NCHR, op. cit., p. 9).

<sup>35</sup> The ACHPR was adopted in Nairobi on 27/06/1981. Rwanda signed the Charter on 11/11/1981 and ratified it on 01/07/1983. See the Law No 10/1983 of 01/07/1983, O.G. No 13 of 01/03/1983, p. 343 (cited by NCHR, op. cit., p. 11).

private property is inviolable and cannot be encroached except in case of public interests and rights transfers in line with processes and procedures provided for by the law<sup>36</sup>. In the same angle, the Rwandan land law provides that the State recognizes the right to freely own land and shall protect the land owner from being dispossessed of the land whether totally or partially, except in cases provided for by the Law<sup>37</sup>.

In sum, the right to property is a human rights recognized by international, regional and national human rights and legal instruments. Therefore, property owners need to be protected in their full enjoyment of rights associated with the ownership and possession of properties. However, for public purpose, the State can order the loss of rights over a property through due process of law. This is the case of expropriation, as discussed in the next section.

## 2.2. Expropriation as the Government's sovereign rights over right to property

This section discusses how, even though a property owner has right to property, the Government can use its power technically known as eminent domain to expropriate her/him, provided that conditions set by laws are met. The section also discusses processes that should not be confused with expropriation, in terms of forced eviction, property confiscation and the evacuation of the people in high risks zones.

### 2.2.1. Overview of expropriation

Expropriation is the taking of private property by government acting in its sovereign capacity<sup>38</sup>. It is compulsory deprivation of property from a private owner. The acquired property either goes to the Government or a private partner of the Government. In any case, the expropriation exercise is led by a public agency<sup>39</sup>. In some jurisdictions like the United States of America (USA), the Government's power to decide the expropriation is commonly referred to as eminent domain and scarcely as condemnation<sup>40</sup>.

The rights of the property owner to be adequately compensated for losses incurred by expropriation is recognized in international law and finds constitutional protection in many jurisdictions. For instance, in the United States, the Fifth Amendment to the constitution provides that "no person shall be deprived of property without due process of law; nor shall private property be taken for public use without just compensation"<sup>41</sup>.

In Rwanda, apart from details provided for the Law specific to expropriation<sup>42</sup>, even though the Constitution of 2003 as revised in 2015 does not directly use the terminology "expropriation", it stipulates that private property is encroached in case of public interests and in line with processes and procedures provided for by the law<sup>43</sup>, on one side. On the other side, the land law defines expropriation as an act of taking away individuals' land by the State due to public interest in circumstances and procedures provided by law and subject to fair and prior

<sup>36</sup> The Constitution of the Republic of Rwanda of 2003 revised in 2015, Official Gazette n° Special of 24/12/2015.

<sup>37</sup> Article 34 of the Law N° 43/2013 of 16/06/2013 governing land in Rwanda, Official Gazette Special No of 16/06/2013.

<sup>38</sup> Mark W. Friedman, Dietmar W. Parager and Ina Popova, Expropriation and nationalization, "Global Arbitration Review", <<https://globalarbitrationreview.com/chapter/1142558/expropriation-and-nationalisation>>, April 2020.

<sup>39</sup> Michael Ray, Expropriation law, <<https://www.britannica.com/topic/expropriation>>, April 2020.

<sup>40</sup> Brian Duignan, Eminent domain law, <<https://www.britannica.com/topic/prescription-property-law>>, April 2020.

<sup>41</sup> Michael Ray, Expropriation law, <<https://www.britannica.com/topic/expropriation>>, April 2020.

<sup>42</sup> Law N° 32/2015 of 11/06/2015 relating to expropriation in the public interest (Official Gazette n° 35 of 31/08/2015)

<sup>43</sup> Articles 34 and 35 of the Constitution of the Republic of Rwanda of 2003 revised in 2015, Official Gazette n° Special of 24/12/2015.

compensation<sup>44</sup>. The land law also emphasizes that the land owner enjoys her/his full rights and that the State shall protect the land owner from being dispossessed of the land, except in case of expropriation due to public interest<sup>45</sup>.

## 2.2.2. Conditions for lawful expropriation – legal framework

Different legal instruments including the 2015 expropriation law which is into force in Rwanda, the expropriation is lawful when it meets conditions provided for by the law, some being substantive and others being procedural, as discussed under this sub-section.

### 2.2.2.1. Substantive conditions

Substantive conditions for lawful expropriation include the public interests of the project, the non-discriminatory characteristic, the due process of law and the payment of compensation to expropriated property owners.

#### 1. Public interests

Also referred to as general interests or public purpose for some jurisdictions, a lawful expropriation must first fulfil the requirement of being oriented to the public interests. Scholars argue that the best terminology would be public interests or general interests, because public purpose may benefit third parties without being oriented to the common interests of the population. This was also confirmed by some court cases. For instance, in the *Van Streepen* the court held that the expropriation of property for the benefit of a third party cannot be for a public purpose, but because the third party's business enterprise in that decision was important for the public as a whole it was accepted that it was in the public interest and consequently valid. This was also accepted in *Bartsch*. In *Bartsch* the court accepted that the expropriation of property for the benefit of a third party cannot be for a public purpose, but "it could qualify as a valid act of expropriation if it could be brought within the realm of an act performed in the public interest"<sup>46</sup>.

In order to avoid conflicts about what to understand by public interests, expropriation laws define the public interests and provide for a list of projects that must be understood as such. This is the case also for the expropriation law in Rwanda. According to article 2 of the same law, an "act of public interest" constitutes an act of Government, local entities with legal personality or public institutions, aiming at the interest or wellbeing of the general public, on one side. On the other side, "expropriation in the public interest" is 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<sup>47</sup>. Thus, the public interest is oriented to the wellbeing of the general public, which include the property owners, who are given fair compensation for their properties.

As above-introduced, except in case it is approved by the Minister in charge of lands, on the Minister's own initiative or upon request by relevant public institution, determines any other activity of public interest; otherwise, no expropriation can be done in Rwanda if its purpose does not appear in the following list of activities of public interest: roads and railway lines (1), water pipes and public reservoirs (2), water sewage and treatment plants (3), water dams (4), rainwater pipes built alongside the roads (5), waste treatment sites (6), electric lines (7), gas and oil pipelines and tanks (8), communication lines (9), airports and airfields (10), motor car parks, train stations

<sup>44</sup> Article 2 (14) of the Law N° 43/2013 of 16/06/2013, aforementioned.

<sup>45</sup> Articles 3 and 34 of the Law N° 43/2013 of 16/06/2013, aforementioned.

<sup>46</sup> BV Slade, Public purpose or public interest and third party transfers, PER, Vol. 7, Potchefstroom, Jan. 2014.

<sup>47</sup> Article 2 (1o) and (4o) respectively, of the Law N° 32/2015 of 11/06/2015, aforementioned. .

and ports (11), biodiversity, cultural and historical reserved areas (12), facilities meant for security and national sovereignty (13), hospitals, health centres, dispensaries and other public health related buildings (14), schools and other related buildings (15), Government administrative buildings and those of public institutions (16), public entertainment playgrounds, gardens and buildings (17), markets (18), cemeteries (19), genocide memorial sites (20), activities to implement land use and development master plans (21), minerals and other natural resources in the public domain (22)<sup>48</sup>.

## 2. Non-discrimination

Domestic laws on expropriation generally do not include the non-discrimination as one of the characteristics of lawful expropriation, as it is the case of example for the public interests and compensation. However, as seen above while discussing the characteristics of human rights which include non-discrimination<sup>49</sup>, expropriation as a derogation to the right to property must avoid discrimination on the basis of sex, race, colour and so on.

Some cases of expropriation with discrimination have however been observed in some investment projects around the world, targeting especially foreign investors, and with political grounds and racial undertakings. Thus, an expropriation or programme of expropriations that singles out aliens generally, or aliens of a particular nationality, or particular aliens, would violate international human rights law on the legality of expropriations, and also violate similar domestic laws, as different human rights treaties have been ratified by States<sup>50</sup>.

Therefore, expropriation projects would be non-discriminatory if they simply aim at public interests as discussed above, which are also communicated to concerned properties, who have right to oppose the expropriation if it does not fulfil the public interests characteristic in general and if it is discriminatory, in particular, as this is recognized by the due process of law in expropriation.

## 3. Due process of law

The due process of law during expropriation is a condition listed among other requirements for lawful expropriation. Domestic laws on expropriation, including the 2015 expropriation law which is into force in Rwanda, do not explicitly talk about the due process. However, still for the case of Rwanda, the Constitution of the Republic of Rwanda insinuates on the due process of law<sup>51</sup>, where it stipulates that “the right to property shall not be encroached upon except in public interest and in accordance with the provisions of the law”<sup>52</sup>. Once provisions of the law on expropriation are applied *mutatis mutandis*, the condition of due process of law is met.

It is worth to note that the condition of due process of law is a doctrine invented by human rights activist and scholars. It is a doctrine in an effort to ensure that the takings power is not abused. Whatever the conduct of parties involved in expropriation, the Due Process of law means that they should guarantee that property owners receive notice and an opportunity for some sort of judicial determination of the legality of the taking before their

<sup>48</sup> Article 5 of the Law N° 32/2015 of 11/06/2015, aforementioned.

<sup>49</sup> OHCHR (1), Op. cit.

<sup>50</sup> August Reinisch, Legality of expropriations, Book chapter in Standards of investment protection, Oxford University Press, 2008, 171 – 204 (p. 186).

<sup>51</sup> Note that the Constitution also has an article on the “due process of law”, but in the context of right to defence in case of accusations and litigations, as well as similar crime and its punishment legality and judicial matters (Article 29 of the Constitution of the Republic of Rwanda of 2003 as revised in 2015, aforementioned), whereas the condition of due process in terms of expropriation combines both, that is, meeting all procedural conditions established by the law in carrying out expropriation and recognizing the right to the affected persons to seek for justice or at least to make some appeals, and where applicable to provide them with legal assistance (Ikirezi Mireille, Masengo Fidèle and Knox Anna, Implementation of Expropriation Law in Rwanda: Challenges and Ways Forward, LAND Project Policy Research Brief No.2, Kigali, Rwanda: USAID LAND Project, July 2014, p. 20).

<sup>52</sup> Article 34 of the Constitution of the Republic of Rwanda of 2003 as revised in 2015, aforementioned.

properties are actually taken. The laws on expropriation, without necessarily using the term “due process of law”, explain what process is due, what the content and form of that process should be, and the likely effects of recognizing due process rights in the eminent domain context, including the right to property owners to appeal against decisions and procedures that are judged unsatisfactory<sup>53</sup>.

The detailed due process of law under the Rwandan expropriation law is discussed under the sub-section on the procedural requirements for lawful expropriation, *infra*.

#### 4. Adequate compensation provided in advance

In spite of different domestic laws on expropriation, the customary international law makes it a primary obligation to all States to pay compensation during expropriation exercises. The commonly accepted approach to determine the value of the properties is the market value method. In addition to the value of properties, States are invited to pay disturbance allowances, as the expropriated families feel other effects than losing their properties, which include disturbances *vis-à-vis* their workplaces, businesses, schools of their children, churches, and family dislocations in general. Domestic laws also specify the nature of compensation, which is generally money, though it is also possible to award compensation in kind. The award of compensation is, therefore, one of the conditions for any expropriation to be considered lawful under both international and domestic law<sup>54</sup>.

Rwanda also applies the fair and prior compensation payment. Fair compensation means that it must correspond to the value of properties to be expropriated. In Rwanda again, the compensation can be paid in monetary form in the Rwandan currency or in any other form mutually agreed upon by the expropriator and the person to be expropriated. Prior compensation means the fair compensation must be paid to the expropriated person before he/she relocates<sup>55</sup>. In addition to the value of land and property incorporated thereon, which also take into consideration their size, nature and location and the prevailing market rates; the compensation amount includes the disruption caused by expropriation, equivalent to (5%) of the total value of the expropriated properties<sup>56</sup>.

##### 2.2.2.2. Procedural conditions

For the expropriation to be conducted lawful, there are procedures that are provided for by the law and which need to be met. They include the initiation of the expropriation project and its approval, communication, collaboration and correspondences with property owners and occupiers, suspension of long-term projects on properties to be expropriated, property valuation and compensation determination, the compensation payment, and thereafter, the relocation of property owners and occupiers.

#### 1. Initiation, evaluation and approval of expropriation projects

In Rwanda, the initiation, evaluation and approval of expropriation include the following key processes:

- Depending upon the nature and level of the project, the expropriation is initiated by or initiated by a private partner but through either the Executive Committee of the District, the executive committee of the Kigali City or the relevant Ministry<sup>57</sup>.

<sup>53</sup> Zachary Hudson, Eminent domain due process, Yale Law Journal, Vol. 119, 2010, 1280 – 1327.

<sup>54</sup> Suzy H. Nikiema, Best practices in compensation for expropriation, IISD, Manitoba/Canada, 2013, pp. 10 – 15 (20 p.).

<sup>55</sup> Article 35 of the Law N° 32/2015 of 11/06/2015, aforementioned.

<sup>56</sup> Article 28 of the Law N° 32/2015 of 11/06/2015, aforementioned.

<sup>57</sup> Article 7 of the Law N° 32/2015 of 11/06/2015, aforementioned.

- Before the whole expropriation procedure, there must be an organ in charge of supervision of expropriation projects<sup>58</sup>. The concerned Government agency should possess legal documents evidencing the appointment of members of the organ. However, there is no standardized policy or guidelines referred to while supervising expropriation projects, and the expropriation law does not provide details about that.
- Before proceeding with expropriation, there should also be a concept paper or any other documentation motivating the public interests associated with the expropriation<sup>59</sup>.
- The organ in charge of supervision/monitoring of the expropriation project assesses its relevance and consults the population which is supposed to be affected to discuss about the public interests character of the project. The same organ describes the project relevance to the approving organ, for the approval of the relevance first<sup>60</sup>.
- Before proceeding with expropriation first steps, it is also checked if there is an approved budget for property valuation and compensation, a budget from the Government if the expropriation leads to the acquisition of the land and properties incorporated thereon by a Government agency or a budget from a private partner if he/she is the one who wants to acquire the land and other properties for a public interest project<sup>61</sup>.
- When the relevance of the project is determined, the budget assured and the project explained to the concerned population, it is therefore approved by either the District Council or Kigali City Council or the Central level competent organ like the Prime Minister's Office or the relevant Ministry, depending upon the nature and level of the expropriation project<sup>62</sup>.

There are also key processes that mandatorily involve collaborating and interacting with the persons who are supposed to be affected by the expropriation project as discussed in the next developments.

## 2. Communication and collaboration with property owners and occupiers

During the expropriation, the concerned property owners interact with competent organs for different occasions and purposes as follows:

- Before submitting the expropriation proposal to the approving organ, the project is first introduced to the concerned population to discuss it and its importance. Those ones who do not see it as relevant, especially in terms of being oriented to public interests, can get opposed against its approval and implementation<sup>63</sup>.
- If the expropriation is to be financially speaking done by a private partner, he/she must first negotiate with people who are supposed to be affected by the Project, for normal acquisition. It is in case negotiations fail that formalities related to expropriation in the public interest follow upon request of the expropriator and the initiator of the project, taking into account the interests of the person to be expropriated<sup>64</sup>.
- After the approval of the expropriation by the competent organ (District Council / Kigali City Council / relevant Ministry or PM's Office), the decision is communicated via radio or a newspaper with wide readership<sup>65</sup>.

<sup>58</sup> Article 8 of the Law N° 32/2015 of 11/06/2015, aforementioned.

<sup>59</sup> Articles 3, 6 and 10 of the Law N° 32/2015 of 11/06/2015, aforementioned.

<sup>60</sup> Articles 11 - 14 of the Law N° 32/2015 of 11/06/2015, aforementioned.

<sup>61</sup> Articles 4, 6 and 7 of the Law N° 32/2015 of 11/06/2015, aforementioned.

<sup>62</sup> Articles 9 and 15 of the Law N° 32/2015 of 11/06/2015, aforementioned.

<sup>63</sup> Article 10 (para 1, 7o) of the Law N° 32/2015 of 11/06/2015, aforementioned.

<sup>64</sup> Article 6 of the Law N° 32/2015 of 11/06/2015, aforementioned.

<sup>65</sup> Article 16 of the Law N° 32/2015 of 11/06/2015, aforementioned

- Again, after the same approval, a list of those ones who are supposed to be affected by the project is posted at any local government organ's office<sup>66</sup>.
- Those ones who are not happy with the project, apply for the review of the expropriation project approval or the review of the list of persons to be expropriated<sup>67</sup>.
- Persons meant to be expropriated are thereafter informed about the commencement of inventory of their properties and their valuation, and the latter must be done in their presence<sup>68</sup>.

Other interactions are about valuation reports, agreeing upon the value of their properties, and payment or not, of the compensation, as discussed here-below.

### 3. Property valuation, compensation determination and payment, and the relocation

The procedural conditions for lawful expropriation also include activities about the valuation of properties to be expropriated, the compensation determination and payment, and in the end, the relocation of the expropriated persons, as here detailed:

1. Property valuers are selected in line with requirements set by relevant laws, which they are supposed to fulfil<sup>69</sup>.
2. After the valuation process, the valuation reports are approved by the competent organs and notified back to concerned persons, including the nature and size of compensation<sup>70</sup>.
3. Concerned persons are given opportunity for the counter-assessment, for those one who are not happy with the valuation reports<sup>71</sup>.
4. The project owner must respect 120 days maximum to have paid the compensation, days counted from the day of its approval by the competent organ (district council, Kigali city council, relevant Ministry or PM's Office). If no, they should seek consent from affected persons for the extension of that period. Failure to do so, they nullify the process and restart it, or they pay additional 5% of delayed compensation, for projects which went beyond 120 days without having paid the concerned persons<sup>72</sup>.

The whole expropriation procedure, every piece of work, has a deadline turning around 15 and 30 calendar days, which are sometimes associated with some challenges but judged to be minor given the size of the persons supposed to be affected by the projects. The challenges include issues regarding lack of proof of ownership for the properties to be expropriated and evidences of matrimonial evidences for the married ones<sup>73</sup>, cases of persons who do not agree about the compensation, while they are under property co-ownership, persons who do not provide their bank accounts where to deposit the compensation for expropriation<sup>74</sup>, and others.

In sum, the expropriation will be said lawful, if all substantive and procedural requirements, as provided for by the law, are met. Otherwise, that expropriation will have violated human rights.

<sup>66</sup> Article 16 of the Law N° 32/2015 of 11/06/2015, aforementioned.

<sup>67</sup> Articles 19 - 21 of the Law N° 32/2015 of 11/06/2015, aforementioned.

<sup>68</sup> Articles 24 - 25 of the Law N° 32/2015 of 11/06/2015, aforementioned.

<sup>69</sup> Article 23 of the Law N° 32/2015 of 11/06/2015, aforementioned.

<sup>70</sup> Article 31 of the Law N° 32/2015 of 11/06/2015, aforementioned.

<sup>71</sup> Articles 33 - 34 of the Law N° 32/2015 of 11/06/2015, aforementioned.

<sup>72</sup> Articles 36 - 37 of the Law N° 32/2015 of 11/06/2015, aforementioned.

<sup>73</sup> Article 26 of the Law N° 32/2015 of 11/06/2015, aforementioned.

<sup>74</sup> Article 38 of the Law N° 32/2015 of 11/06/2015, aforementioned.



## 2.3. Gaps likelihood in the legal framework for expropriation, a threat to human rights

The above developments revealed that expropriation projects are regulated by laws. In Rwanda, the legal framework for expropriation is mainly composed by the 2015 law specific to expropriation for public interests, besides are other key provisions of the 2015 constitution and the 2013 land law. Once provisions of all these sources of expropriation law are met, there would be no way to say that there might be acts of violation of human rights during expropriation. However, the analysis of the main law on expropriation shows that the legal framework itself might be having gaps that can lead to the same violations. The present section presents the same gaps in terms of property valuation methods and the fixation of land prices, fixation of the rate for the disruption compensation, type of payment of compensation and the fate of mortgaged properties during expropriation.

### 2.3.1. Property valuation methods and the fixation of land prices

If no attention is made, the property valuation methods and the fixation of land prices may lead to the valuation of human rights during expropriation. For instance, article 28 of the expropriation stipulates that the valuation considers the basis of size of land and other properties to be expropriated, their nature and location and the prevailing market rates, on one side. On the other side, article 22 of the same law, provides that land values and prices for property incorporated on land consistent with the prevailing market rates are established by the Institute of Real Property Valuers in Rwanda (IRPV), which is supposed to review the same values and prices every year.

However, since the publication of the expropriation law into force in the official gazette of 31/08/2015, IRPV has only managed to publish the same values and prices in the official gazette of 08/11/2018<sup>75</sup>, 3 years after the commencement of the expropriation law enforcement. As this study is conducted in 2020, this means that 2 years has also already lapsed without IRPV having reviewed the values and prices at issue.

Even though the law establishing IRPV recognizes freedom to the valuer to use the valuation method that can enable her/him to determine fair market value of the properties<sup>76</sup>, field works need to assess the independence of the value in this exercise vis-à-vis the published reference prices. In case there is no such freedom and independence, human rights would be violated in disfavour of both the professional valuer and persons whose properties are being expropriated.

### 2.3.2. Fixation of the rate for the disruption compensation

According to article 28 (para2) and 37 of the 2015 expropriation law in Rwanda, the person to be expropriated is paid 5% of the value of her/his land and other properties thereon. This is also supposed to be paid even in case the expropriation project is cancelled whereas concerned people dot disrupted by expropriation procedures that were undertaken.

However, this fixation of the rate for the disruption compensation is not viewed by researchers and international development agencies as a method to a just compensation. According to them, just compensation would constitute a rule in line with which paying such compensation will enable the property owner's financial situation

<sup>75</sup> IRPV, Rwanda lands and property incorporated thereon reference prices: land, construction and crops reference prices, Official Gazette, Special No of 08/11/2018

<sup>76</sup> Articles 27 – 31 of the Law N°17/2010 of 12/05/2010 establishing and organizing the real property valuation profession in Rwanda, Official Gazette n° 20 of 17/05/2010

to remain the same despite the expropriation<sup>77</sup>.

Yet, the 5% is based on the value of the land and other properties, without considering other sources of income to the person to be expropriated, as well as other socio-economic impact of expropriation, which will necessarily change her/his financial status, regardless of the compensation issued to her/him. This would violate human rights, in one way or another.

### 2.3.3. Type of payment of compensation

According to article 38 of the expropriation law, the type of compensation by default is monetary compensation, on one hand. On the other hand, the compensation in kind is also provided for by article 39, but it must be agreed upon between the expropriator and people to be expropriated. This article presents a big gap because it can refrain the Government from implementing public interests, in case concerned people do not express their free consent to be given fair compensation in kind.

For instance, as recently revealed by a study of Ernest Uwayezu and Walter T. de Vries, residents of Kangondo suburb of Kigali City got opposed to the compensation in kind for their lands and other properties thereon, while referring to article 39 of the expropriation law. Whereas the Government in partnership with investors that are enabling the government to improvement settlements in Kigali as an act of public interests wanted to give the residents, modern buildings located in a newly developed suburb of Busanza; the residents insisted that they want monetary compensation<sup>78</sup>.

In case residents do not express their free consent to compensation in kind, and the Government does it contrarily to the provisions of the expropriation, this would be violation of human rights as the requirement of due process of law would not be met. In any case, there is still possibility to correct the gap through amending the law.

### 2.3.4. The fate of mortgaged properties

According to Art.38 (4) of the expropriation law, "in case the property of the person to be expropriated is encumbered by a guarantee provided to a bank or a financial institution, the amount of fair compensation shall be deposited into the account indicated by the bank or financial institution".

This article can also read to the violation of human rights, especially the right to property, because it seems that all powers to decide on the future financial status of the expropriated person belongs in the hand of the bank or financial institution to which he/she had given her/his land and properties thereon as collateral. If it were a 10 years loan, and he/she was using the building to generate income, and he/she was capable to have paid the loan within the same 10 years, he/she is going to lose both the properties and the business; which is contrary to the essence of just compensation.

<sup>77</sup> Kauko VIITANEN, Just Compensation in Expropriation?, FIG XXII International Congress Washington, D.C. USA, April 19-26 2002, pp. 1 – 8.

<sup>78</sup> Ernest Uwayezu and Walter T. de Vries (2), Can In-Kind Compensation for Expropriated Real Property Promote Spatial Justice? A Case Study Analysis of Resettlement in Kigali City, Rwanda, Sustainability 2020, 12(9), 3753; <https://doi.org/10.3390/su12093753>

Therefore, improvements of the law would be worked on in order to protect rights of persons whose properties are expropriated whereas they were serving as collaterals of loans in banks and other financial institutions.

In any case, besides the breach of the expropriation law by expropriation projects managers and related agents; the discussion above reveals that there might be gaps in the legal framework itself, that would be deeply assessed, and therefore lead to the improvement of the law, especially when it comes to property valuation methods and the fixation of land prices, the fixation of the rate for the disruption compensation, types of payment of compensation and the fate of mortgaged properties.

#### 2.4. The synthesis of the literature review

All in all, the review of the literature on expropriation and human rights reveal that though citizens have right to their properties that include land, the Government has power to take possession of their properties, in exchange for a just and fair compensation, and with due process of law. It also showed how different human rights are likely to be violated, when the expropriation is conducted unlawfully. Even though human rights are universal and inalienable, interdependent and indivisible, equal and non-discriminatory; key separate human rights that are likely to be violated include the right to property, the right to life, freedom from cruel, inhuman and degrading treatment, the right to an adequate standard of living, the right to health, the right to information, the right to education, the right to work and the right to human dignity.

As discussed under this literature, though the right to property is inviolable, nowadays, public interests supersede personal interests. Hence, the government has the power of eminent domain, to conduct or allow investors to carry out expropriation projects, which are originally meant to respect the rule of law and other principles of human rights. Unfortunately, the reviewed published reports, works of scholars and the loopholes in the current expropriation law; might probably be signpost of the existence of acts of violation of human rights during expropriation. Next developments of this report discusses the status and current trends of human rights vis-à-vis expropriation in Rwanda, while referring to and cross-assessing both primary and secondary data.

<sup>79</sup> Hamed Taherdoost (2017). Determining Sample Size; how to Calculate Survey Sample Size. International Journal of Economics and Management Systems . <http://www.iiar.org/iiar/journals/ijems>

## Chap. III. SURVEY METHODOLOGY

This section explains how the survey was conducted in detecting the status of human rights respect during the implementation of expropriation projects as well as providing both preventive and protective mechanisms to relevant stakeholders.

### 3.1. Survey approaches

The inquiry began with the analytical approach where the research objective was broken down systematically. This enquiry method enlarged the level of objective understanding and facilitated the solution provision to the problem. The second approach was the Deductive Approach. Here, the study compared the international human rights standards as recognized by different international legal instruments with the local legal instruments on human rights, the domestic laws on constitutional rights and expropriation, as well as observed status of human rights respect during expropriation. This approach clearly eased the determination of whether the use of power of eminent domain respected the human rights during the expropriation practice or not.

### 3.2. Sampling design

The majority of projects requiring expropriation are implemented in urban areas, especially the City of Kigali while the environmental projects, biodiversity conservation projects, rural electrification projects, national roads and water supply grids projects are found in rural areas. In order to select a representative sample, embodying all aspects of expropriation projects; districts with both urban and rural areas were selected across the country, in addition to districts of the capital city as hub of many expropriation projects. Therefore, based on convenience approach and purposive sampling, the survey has selected 15 districts including 2 districts of the City of Kigali, 5 districts accommodating the secondary cities, 1 district with cultural features, 2 districts with satellite settlement and 4 additional districts chosen purposely in order to have at least 3 districts in every province.

Within this angle, specific selected districts are Nyamasheke, Karongi and Rubavu of the Western Province; Musanze, Burera and Gicumbi of the Northern Province; Nyagatare, Rwamagana and Bugesera of the Eastern Province; Kicukiro and Gasabo districts in Kigali City and Muhanga, Nyanza, Nyamagabe and Huye districts of the Southern Province. In every district, at least 3 sectors were surveyed. However, sectors were selected based on presence of expropriation projects and likelihood of irregularities in the projects implementation.

After selecting the geographical location of the respondents, the next step was to determine the sample size. The total expropriated households in the country are not well known. The following sample size formula<sup>79</sup> was used to determine the reliable sample size by considering the confidence level at 95%. The margin of error was  $\pm 5$  and Z-value was equivalent to 1.96.

$$\text{Therefore, } n = \frac{Z^2 (P) (1-P)}{C^2 * Deff}$$

Where: Z= Z-value= 1.96 standard error (at 95% confidence level); 95% of confidence level was used as the standard acceptable set by scientists for surveys with acceptable 1.96 standard error. P = percentage of picking a choice of response equivalent to  $\frac{1}{2}$  for attributing the equal chance to every respondent for selection or not. C=  $\pm 5$  margin error / confidence interval resulted from the choice of 95% confidence level. Deff = design effects (the chosen deff is 2.7 to increase the sample size as same as reducing the margin of error.

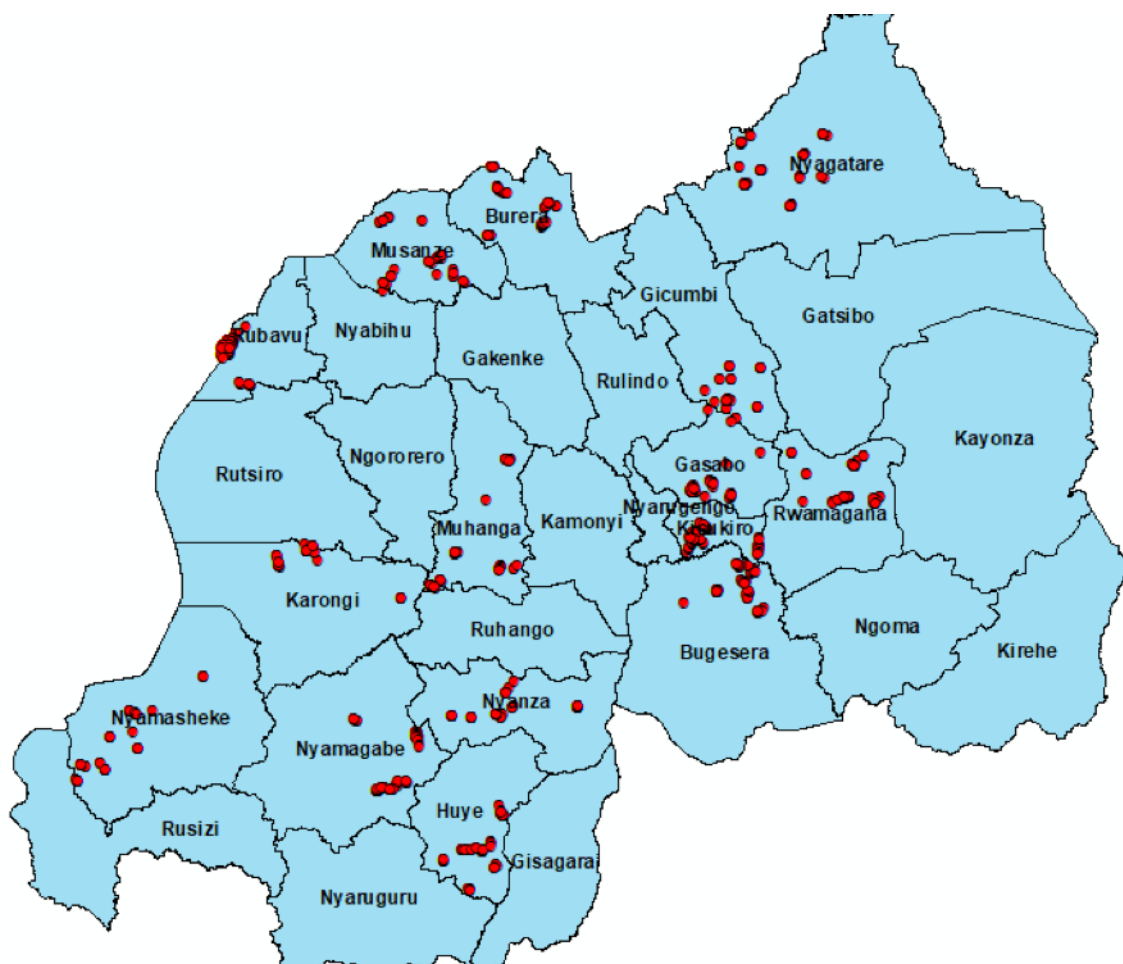
$$\begin{aligned} \text{Thus, the sample size } n &= (1.96 * 1.96 * 0.5 * 0.5) / (0.05 * 0.05) * 2.7 = 384.16 * 2.7 \text{ HHs} \\ &= 1,037.232 \text{ HHs} \\ &\approx 1,037 \text{ HHs} \end{aligned}$$

Thus, the sample size for the study became 1,037 households.

### 3.3. Sampling methodology

After the determination of the sample size, “n”, the next step was to ensure that a region with a higher expropriated households have a higher number of respondents drawn from the region and vice versa. Due to the lack of entire sampling frame, the proportionate stratification was not applicable. Therefore, the purposive sampling and the pure snowballing technics were applied to get the sample size in each location. After sample size determination in geographical areas, the gender based strata was determined based on 30% policy. However, 39.2 % of surveyed households was led by females. The last stage in the sampling process involved the use of simple random sampling (SRS) technique in order to ensure that each identified number of respondents per stratum stands an equal chance of being selected to participate in the Survey. The annex 7.3 illustrate the number of respondents per location and the Figure 3.1 climaxes the spatial distribution of respondents.

**Figure 3 1 Spatial distribution of respondents**



**Source: Plotted based on GPS Coordinated captured during Data collection**

The above figure gives a picture on different places across the country where field survey was conducted. It shows that all provinces of the country were visited whereby at least each province was represented by three (3)

districts, and two (2) in the City of Kigali as said earlier.

### 3.4. Qualitative sampling approach

The total sample size drawn for qualitative analysis was guided by what was provided by Daniel's (2018), which proposes a minimum of 28 respondents for both focus group discussions (FGDs) and the Key Informant Interviews (KIIs). In addition to the sample size for qualitative analysis, we ensured that the total number of participants for the FGDs was at least 7 in order to gather adequate views regarding to the reverence of human rights during expropriation. Therefore, the survey managed to interview 27 key informants and 29 members of FGDs. The total number of both FGDs and key informants was made of 56 members who fall above 28.

### 3.5. Instruments for the survey (data collection)

Instruments of data collection comprised of household questionnaires, KIIs and FGDs. These are elaborated as follows:

#### 3.5.1. Household survey questionnaires

The Household survey questionnaires were critical in capturing most of the data used in the analysis. Effectively, both open-ended and closed questions were used in order to help getting all the relevant information from the respondents with regards to the respect and violation of human rights during expropriation in Rwanda. The Household survey questionnaires were programmed in both English and Kinyarwanda using Open Data Kit Technology. Opting for this technology led us to the use of smartphones and Tablets during data collection.

#### 3.5.2. Focus group discussions

FGDs were used in order to get the views from participants from different backgrounds and professionals in relation to human rights, private sector and local community, whose activities and status relate to expropriation projects. Qualitative data generated from the FGDs were critical in getting in depth understanding of both the guaranteeing and violation of human rights during expropriation in Rwanda, as well as in designing proactive and preventive measures to cease the violation of human rights and formulating recommendations to relevant stakeholders. Notes on experiences and opinions from the discussions, were being taken.

The participants in focus group discussion were listed in the table below

**Table 3. 1 Focus group discussions participants (officials)**

No	Focus group participant (officials )
1	Rwanda Land Management and Use Authority (RLMUA)
2	Ministry of Infrastructure / Rwanda Transport Development Agency (RTDA)
3	Ministry of Infrastructure / Rwanda Energy Group (REG)
4	City of Kigali (CoK)
5	Rwanda Development Board (RDB)
6	Ministry of Trade and Industry (MINICOM)
7	Rwanda Environmental Management Authority (REMA)

8	National Agricultural Export Development Board (NAEB)
9	Water and Sanitation Corporation (WASAC)
10	Ministry of Finance and Planning MINECOFIN

**Table 3.2 Focus group discussions participants (local community)**

No	Focus group participant (local community)
1	Kigali City representatives (3)
2	Districts representatives (4 provinces) (12)

**Table 3.3 Focus group participant (Professionals and Human Rights Activists)**

No	Focus group participant (Professionals and Human Rights Activists )
1	Transparency international
2	Real property valuers (2)
3	Rwanda Bar Association (Lawyers) (2)
4	Office of the ombudsman
5	Rwanda Civil Society platform
6	Property rights experts (2)
7	Elderly person with probity and integrity

### 3.5.3. Key Informant Interviews

The KIIs specifically targeted individuals that are key stakeholders in the promotion of human rights and experts in activities pertaining expropriation in Rwanda. These therefore included Certified Valuers from the Institute of Real Property Valuers in Rwanda (IRPV), District land Valuers and officials in charge of expropriation in other involved agencies. Similarly to the data collected via the FGDs, the KIIs provided much of the qualitative data from the professionals' side. However, the list of Key informant interviews is detailed in the next table.

**Table 3. 4 Key Informant Interviews**

No	Key Informant Interviews	Size
1	Certified Valuers who participated in expropriation	6
2	Official in Charge of Expropriation in District	15
3	Official in Charge of Expropriation in CoK	1
4	Official in Charge of Expropriation in REG	1
5	Official in Charge of Expropriation in RTDA	1
6	Official in Charge of Expropriation in MINICOM	1
7	Official in Charge of Expropriation in WASAC	1
8	Official in Charge of Expropriation in Rwanda Housing Authority (RHA)	1
9	National Agricultural Export Development Board (NAEB)	1
	Total KIIs	28

### **3.6. Survey targeted projects**

The survey did not survey all projects qualified as expropriation for public interests. Rather, some key and common expropriation projects were identified as follows:

1. Road projects
2. Genocide memorial sites
3. Electrical line
4. Water pipes and public reservoirs
5. Implementation of land use plans
6. Master plan implementation
7. Administrative buildings
8. Airports and airfields
9. Biodiversity, cultural and historical reserved areas
10. Facilities meant for security and national sovereignty
11. Government administrative buildings and those of public institutions
12. Public entertainment playgrounds, gardens and buildings
13. Minerals and other natural resources in the public domain

### **3.7. Data quality and validity**

Another important aspect for the instruments of data collection was to verify the quality of the questions of the questionnaire, interview guide and FGDs. This was achieved through a thorough process of validation of the instrument in a meeting that convened by the NCHR, after testing them on field. Besides this, data were collected from the rights informants who either represent institutions that frequently carry out expropriation, or are expert in expropriation projects providing related services before, during or after expropriation, or got involved into expropriation as property owners and neighbours to expropriated areas who are victims of expropriation projects.

### **3.8. Data analysis**

Several approaches were used for analysis of the findings of the survey. As such, these were conducted in consideration of whether the data is quantitative (numerical) and qualitative (non-numerical) as explained below:

#### **3.8.1. Analysis of quantitative data**

Quantitative data were analysed in the IBM SPSS version 23 Statistical Software. The analysis particularly focused on descriptive approach in order to help create a clear picture of the respect of human rights during the process of expropriation. Accordingly, this approach mostly made use of frequencies, percentages, mean, and standard deviation.



**Table 3. 5 Various Approaches to Analysis of Quantitative Data from the Survey**

<b>Statistical Analysis Approach</b>	<b>The Statistical Measures</b>
Frequencies/ Percentages	<ul style="list-style-type: none"><li>• Number of participants from the household survey</li><li>• The level of the respect of human rights during expropriation</li><li>• Number of thematic words/ phrases relating to the respect of human rights from the qualitative data</li></ul>
Statistical tests	<ul style="list-style-type: none"><li>• Chi-square (measure of association)</li></ul>

### **3.8.2. Analysis of qualitative data**

The analysis specifically used the technique of content analysis that focuses on grouping of a text from the transcripts on the basis of their subject areas in order to generate thematic nodes in the Software. This was therefore guided by the key indicators for the survey including barriers in respect of the human rights, challenges in expropriation and the quality of services provided by the expropriation institutions.

### **3.9. Data presentation**

Presentation of the findings of the survey was made by use of charts, diagrams, tabulation, among others. These presentation techniques were aimed at generating a clear visual representation in order to aptly describe the respect of human rights during expropriation.

### **3.10. Ethical considerations**

The survey on the respect of human rights during expropriation in Rwanda was carried out within the confines of ethical considerations. The survey process adhered to the following aspects:

#### **3.10.1. Communication to authorities**

The Commission communicated all the relevant institutions in Rwanda in order to inform them about the survey and facilitation in that regard.

#### **3.10.2. Privacy and confidentiality**

The survey conformed to the best practices in ensuring that information obtained from the respondents was treated with utmost privacy and confidentiality. Moreover, this emphasized on the instruments of data collection, for the respondents to feel comfortable in providing the information for the survey, without divulging their identities.

#### **3.10.3. Acknowledgement of sources for the survey**

There is full acknowledgement of various sources of information that is critical in helping to generate a report write up on the respect of human rights during expropriation. This also included acknowledgement of sources of Figures, Tables and Scholarly literature in the preparation of the Desk review report.

#### **3.10.4. No harm to the Participants**

The survey was conducted in a manner that ensures that there is no harm posed to the public or any individual. This therefore involved taking all the necessary precautions and safety measures into consideration.

#### **3.11. Spatial and time limitations**

The survey covered all four provinces and Kigali city. The surveyed sites were selected based on the bulkiness of expropriation projects in the same geographical areas over a period of 60 days. However, the period changed from previous 45 days planned period to 60 days due to the measures to fight against Covid19 Pandemic. Among other mitigation strategies, more enumerators were hired in a parallel way in different districts and the data collection was conducted with compliance to the Covid-19 response measures, both on field and during interviews and FGDs.

## Chap. IV. DATA PRESENTATION, ANALYSIS AND DISCUSSION

The present chapter presents analyses and discusses the status of human rights respect within recent expropriation projects in Rwanda. It also touches on the proposed mechanisms to prevent human rights violations during expropriation as per the survey informants' opinions, as well as the proposed effective remedial actions for victims of human rights violations resulting from expropriations.

### 1.1. The characteristics of respondents

The survey covered 1037 households in 15 selected districts of Rwanda, whereby 86.8% of respondents were the expropriated household equivalent to 900 households, and the 13.2% were the households that remained in the neighbourhood of the expropriated places. Among these respondents, 5.6 % of households were headed by children while the parent heads of families were 94.4 %. The female heads of families were 39.2% of total respondents, which figures respect the gender balance policy. The youngest heads of families were 6.1% and they were on the age range of [20 – 30] years. Moreover, 10% of total respondents had no person with formal education, while 62.3% of households had at least a family member who attended high school and above. Only 13 families (13.2% of total respondents) had at least one family member who graduated from the University, as it is well illustrated together with detailed information in Table 4.1 on the next page and Figure 3.1 on spatial distribution of household respondents in the whole country in methodology section.

Have you ever been Expropriated?				
	Frequency	Percent	Valid Percent	Cumulative Percent
Yes	900	86.8	86.8	86.8
No	137	13.2	13.2	100.0
Total	1037	100.0	100.0	
Head of the family				
	Frequency	Percent	Valid Percent	Cumulative Percent
Parent	979	94.4	94.4	94.4
Elderly Child	58	5.6	5.6	100.0
Total	1037	100.0	100.0	
Gender of the Head of The family				
	Frequency	Percent	Valid Percent	Cumulative Percent
Male	630	60.8	60.8	60.8
Female	407	39.2	39.2	100.0
Total	1037	100.0	100.0	
Age range of the head of the household				
	Frequency	Percent	Valid Percent	Cumulative Percent
20-30	63	6.1	6.1	6.1
30-40	222	21.4	21.4	27.5
40-50	289	27.9	27.9	55.4
50-60	229	22.1	22.1	77.4
60 and above	234	22.6	22.6	100.0
Total	1037	100.0	100.0	
Highest education level in the family				
	Frequency	Percent	Valid Percent	Cumulative Percent
A level (HS)	281	27.1	27.1	27.1

No School	104	10.0	10.0	37.1
O level	186	17.9	17.9	55.1
Primary	287	27.7	27.7	82.7
TVET	42	4.1	4.1	86.8
University	137	13.2	13.2	100.0
	Total	1037	100.0	100.0

**Source: Fields survey June 2020**

Apart from the local community, the key informant interviews (KIIs) were conducted from various stakeholders involved in expropriation as detailed in methodology. Besides that 3 focus group discussions (FGDs) were organized in a manner that assures the full and equitable representation of all stakeholders. The FGDs were made of the local community group, professionals and human rights activists group, the concerned officials group, and the community.

## 1.2. Data presentation and analysis

Besides the characteristics of informants of the survey, this section presents and analyses collected data on reverence of human rights during expropriation and probable causes of the same irregularities, which enabled to determine instruments to prevent human rights violations during expropriation and mechanisms to protect victims, as discussed in this chapter.

### 4.2.1. The level of human rights respect during expropriation

With reference to the legal framework, the status of human rights during expropriation in Rwanda was assessed in the survey are presented and analysed as forth:

#### 4.2.1.1. Right to information

The procedural conditions for expropriation in Rwanda require the expropriators to inform the affected persons about the public interest project which is going to be undertaken in the area. To assess act of right to information violation, the survey assessed whether the communication provided in expropriation law have been observed or not. Therefore, table 4.2 how the 900 expropriated households showed the level of compliance to the obligation of communicating and collaborating with property owners to be expropriated.

**Table 4. 2 Level of communication and collaboration with property owners to be expropriated**

			Got sensitized about the “public interests” character of the expropriation project			Total
			Yes	No	I don't know	
Got sensitized before expropriation take place?	Yes	Count	746	22	4	772
		% of Total	82.9%	2.4%	0.4%	
	No	Count	22	100	6	128
		% of Total	2.4%	11.1%	0.7%	
Total	Count	768	122	10	900	
	% of Total	85.3%	13.6%	1.1%	100.0%	

**Source: Field survey June 2020**

As Table 4.2 illustrates it, among the expropriated households, 85.8% of respondents were informed about expropriation projects before their implementation. In a similar angle, 82.9% of respondents learnt about the “public interests” character of expropriation projects in which they got involved. Only 14.2% of respondents were not communicated about the projects. Given the above indicated procedural conditions, it would be better if every affected person is communicated effectively.

Apart from household respondents, the surveyed expropriating agencies confirmed that the effective communication was at the rate of 63.64%. It means that only 8 organs among 22 did not fully (1) introduce and discuss the project and its importance to the concerned population before submitting the expropriation proposal to the approving organ, (2) communicate the decision via radio or a newspaper with wide readership after the approval of the expropriation by the competent organ after the approval of the expropriation by the competent organ, and (3) poste at any local government organ’s office the list of those ones who were supposed to be affected by the project as requested by the expropriation laws (art. 10, §1, 7; Art. 16, EL and Art. 16, EL). Not that, this rate was reduced to the severe measure of gauging by fitting all three conditions at once. The rate can increase however, if at least two indicators are considered. These level of communication have been confirmed by FGD too; where the local community FGD confirmed the sometimes the communication about expropriation were conducted in community meeting but in informatively rather than a dialogue and some persons who needed special communication were not considered. On the other side the professionals and officials FGD reported that the communication were not effective at the beginning of expropriation practice. But they affirmed that the current trend is positively progressing, and the current status of violating right to information is at the very low rate. Apart from right to information, the next “Right to property” is the principal right to consider in expropriation for public interests.

#### 4.2.1.2. Right to property

Article 34 of the National constitution of 2003 revised in 2015 states that “ the right to property shall not be encroached upon except in public interest and in accordance with the provisions of the law”. The Expropriation is for public interests. When the expropriation project is not for public interest or is not respecting the provision of law or both, the Right to property is violated. The study investigated the violation of right to property through assessment both substantive and procedural conditions of lawful expropriation for public interests.

#### 1. Substantive conditions

The legal framework highlighted that the substantive conditions of legal expropriations requires the expropriation to be for Public interests, respect the Non-discrimination, respect the Due process of law and should provide Adequate compensation provided in advance. Hence these conditions have been evaluated as forward:

##### *i. Public interests and Non-discrimination*

Among the 900 surveyed expropriated households, none of respondents have indicated the discrimination acts during expropriation in Rwanda. Therefore, the Non-discrimination condition has been fully respected. Concerning the public interests, the next table 4.3 illustrates whether the expropriation projects were for public interests or not.

**Table 4. 3 Assessment on views of expropriated households on whether the expropriation was for public interests or not**

			Was the expropriation done for public interest?			Total
			Yes	No	I don't know	
Got sensitized about public interest nature of the intended expropriation project	Yes	Count	750	21	4	775
		% of Total	83.3%	2.3%	0.4%	86.1%
	No	Count	22	97	6	125
		% of Total	2.4%	10.8%	0.7%	13.9%
Total		Count	772	118	10	900
		% of Total	85.8%	13.1%	1.1%	100.0%

**Source: Field survey June 2020**

As presented in Table 4.3, it is true that 85.78 % of household respondents agreed that expropriation was done for public interests. In the remaining 14.2% did not confirm that, 103 respondents were not explained how the intended project is for public interests and 4 respondent got explained but did not understand whether the expropriation is for public interest or not. Further, for the remaining 21 (2.3%) respondents who were sensitized about public interest but confirmed that the expropriation was not for public interests. Their responses on the on question concerning the intended activities contradicted their view. All the intended activities are listed by current expropriation law N° 32/2015 of 11/06/2015 relating to expropriation in the public interest as the public interests activities. However, this is the sign that the procedure to explain to the concerned property owners the “public interest” character of the expropriation project was not efficient and effective too. Hence, the public interest conditions were fully respected too; regardless the irregularities caused by inefficient sensitization to some affected persons.

#### **ii. The due process of law**

The survey evaluated the whether the current law N° 32/2015 of 11/06/2015 relating to expropriation in the public interest were fully observed during the expropriation. Hence, both fundamental and procedural conditions were evaluated combined. The only left condition is the existence and function of the supervisory committee as long as the ministerial order in concern is not yet enacted. Hence, the Table 4.4 helps to analyse the level of legal compliance in expropriation projects in general.

**Table 4. 4 The level of legal compliance in expropriation projects by expropriating agencies**

Total surveyed	Compliant	Percentage Compliant	Percentage Non-compliant
<b>Expropriated households</b>			
<b>900</b>	<b>362</b>	<b>40.22%</b>	<b>59.78%</b>
<b>Expropriating agencies</b>			
<b>22</b>	<b>10</b>	<b>45.45%</b>	<b>54.55%</b>

**Source: Field data survey in June 2020**

The study evaluated the number of cases that have full fulfilled the whole substantive and procedural requirements as provided in the expropriation irrespective of the supervisory committee, cases of mortgaged properties and cases of informal communication. The overall average 40.22% of compliance level against 59.78% of partial

compliance were achieved among 900 expropriated households. According to 22 expropriating agencies, the overall average 45.45% of compliance level, against 55.55% of partial compliance were achieved respectively.

Note that the most violated condition, as reported by focal persons of these institutions and other informants and respondent of the survey, is the delays in compensation and sometimes relocation of property owners before compensation payment, whereas it is not accepted by law.

Evidently, the voids which were revealed in this study were in one way or another linked to the hardship in meeting the expropriation law.

### **iii. Adequate compensation provided in advance (before relocation)**

It is argued that the lawful expropriation should respect the condition of compensation before relocation. Here the inquiry assessed the fulfilment of this condition.

**Table 4. 5 Level of compensation provided before relocation**

		Expropriation status		Total
		Ongoing	Not on going	
The compensation was provided before the relocation	No	17 (1.9%)	25 (2.8%)	42 (4.7%)
	Yes	84 (9.3%)	774 (86%)	858 (95.3%)
Total		101 (11.2%)	799(88.8%)	900 (100%)

**Source: field survey June 2020**

Table 4.5 indicated clearly that 95.5% of 900 surveyed expropriated household received their compensations before relocation and 42 (4.7%) households were relocated without receiving the compensations before

It can be concluded that there are still some gaps to fill such as the bigger gap in respect of due process of the law and fewer gap in adequate compensation in advance conditions.

## **2. Procedural conditions**

The procedural conditions of lawful expropriation are only perceived if the next evaluated conditions are fully respected.

### **i. Initiation, evaluation and approval of expropriation projects**

Referring to Appendix 7.2, the survey results confirmed that the 100% of the expropriated projects were initiated, evaluated and approved by the competent organs. If the expropriation was initiated by a private organ, the initiator have shared with the qualifying organ about the expropriation proposal for public interests assessment and project endorsement and transfer to competent organs for approval. Unfortunately, there were some irregularities in respecting some conditions. For example 58.83 % of surveyed competent expropriating organs retorted that, if it was the private investor who initiated the expropriation; the initiators were sent to negotiate with the households. It means that 41.17% of expropriating institutions did not send the private initiators to negotiate with the target persons. On the other side, 82.4% of private initiator cases, the responsible board checked the liquidity availability beforehand as prescribed by expropriation law (Art. 6). Apart from the private initiators, twenty districts checked whether the intended projects are for public interests or not. As the matter of

the facts, 90.9% of 22 key informants from agencies, had concept paper or other documentation motivating the public interests associated with the project before proceeding to expropriation. Generally, 86.36% of the total surveyed initiators assessed whether there were an approved budget for property valuation and compensation before statutory land acquisition.

**ii. Communication and collaboration with property owners and occupiers**

Concerned with this condition, the right to information section illustrated clearly that the current trend in communication is on significant rate; 85.8% as reported by the household respondents. But the collaboration is not yet at the very promising rate; the KIIs reported 63.64%. Hence, this condition of communication and collaboration with property owners and occupiers is met but with some irregularities.

**iii. Property valuation, compensation determination and payment, and the relocation**

The evaluation of this condition was conducted by assessing the perception of expropriated households about the concerned topic and later, the views of key informants on the same issue. Starting from the local community respondents, table 4.7 presents other perceptions of expropriated property owners on expropriation projects they got involved in.

**Table 4. 6 The perceptions of the expropriated households on expropriation projects**

Perceptions Statement	Strongly Agree	Agree	Neutral	Disagree	Strongly Disagree	Total
During the process, there was unfair valuation of my properties	163 (18.1%)	263 (29.2%)	108 (12.0%)	312(34.7%)	54(6.0%)	900(100.0%)
During the process, there is less flexibility on the payment mode	88(9.8%)	183(20.3%)	161(17.9%)	386(42.9%)	82(9.1%)	900(100.0%)
5% of disturbance allowance is sufficient	53(5.9%)	242(26.9%)	101(11.2%)	225(25.0%)	279(31.0%)	900(100.0%)

**Source: Field survey June 2020**

Table 4.6 indicates that 47.3 % [strongly agree (18.1%) and agree (29.2%)] of respondents expressed that the valuation of their properties were not fair, 40.7% agreed that the valuation of their properties were fair [disagree (34.7%) and strongly disagree (6%)] while the remaining 12% were neutral. It was found that, around 30. % needs flexibility to choose the type of compensation and this was also confirmed in FGDs. They said that there is a need of mutual agreement for persons to be given other properties like land and buildings, instead of being given money, which is considered as the default compensation by law. Furthermore, it was revealed that more than 50% of respondent were not happy with the fixed 5% of disturbance allowance. The survey also asked property valuers about their independence while carrying out valuation of properties to be expropriated.



**Table 4. 7 The level of independence of property valuers during expropriation**

The valuer is fully independent during expropriation	Frequency	Percent	Cumulative Percent
Disagree	3	50.0	50.0
Agree	2	33.3	83.3
Strongly Agree	1	16.7	100.0
Total	6	100.0	

**Source: field survey June 2020**

Table 4.7 shows that some of the consulted property valuers who led on the valuation of recent expropriation projects did not feel independent. The fact for 3 of 6 informants (50%) to have disagreed on having the independence, against 33.3% who agreed and only 16.7% who strongly agreed on having the freedom while valuing the affected properties; it is a sign that the value of properties to be expropriated do not, to some extent, meet reality; which is also contrary to the Law. The major reasons of this were that the valuer should refer to the references prices which are outdated in the most of the time.

Apart from property valuation and compensation determination, the survey evaluated the payment compensation and relocation status. Among surveyed 900 expropriated households, the 83 ongoing expropriation cases with the legal compensation period which had not yet exceeded were excluded. Therefore, the survey analysed the compensation status based on the remaining 817 households.

**Table 4. 8 The compensation status**

	Frequency	Percent	Valid Percent	Cumulative Percent
<b>Meeting the compensation in general</b>				
Not yet received compensation	240	29.4	29.4	29.4
Received compensation	577	70.6	70.6	100.0
Total	817	100.0	100.0	
<b>Meeting the compensation in 120 days</b>				
Compensated after 120 days	264	45.8	45.8	45.8
Compensated in 120 days	313	54.2	54.2	100.0
Total	577	100.0	100.0	

**Source: Field survey June 2020**

Table 4.8 about meeting the compensation shows that among 817 households, 577 (70.6%) were paid their compensation while 240 (29.4%) did not. It was further found that among 577 households who received compensations, 313 (54.2%) households received the compensation within 120 days while 264 (45.8%) were paid after a period of 120 days. Key informants and FGDs reported that the delays were due to disagreement between expropriators and concerned persons, the incomplete files and disputed properties.

Moreover, among 240 households who did not receive compensation and 83 families with on-going expropriation projects; the survey wished to evaluate whether there were families which were requested to relocate from their properties before getting compensated.

**Table 4. 9 Being requested to relocate before compensation payment**

		Receive compensation		Total
		No	Yes	
Requested to relocate	No	281	0	281
Total	Yes	42	0	42
		323	0	323

**Source: Field survey June 2020**

By the time of field survey, as it can be seen in Table 4.9 which complements with Table 4.8 about the meeting payment of compensation that among the 323 households which did not get compensation, 281 (87%) remained in their properties while 42 (13%) were requested to leave their properties before the compensation payment. These cases were mainly found in road construction projects where 32 cases were identified in Districts and RTDA road projects, 8 in REG projects and 2 in RDF projects.

Hence, the property valuation, compensation determination and payment, and the relocation condition was met at the significant rate but the compensation determination and valuation of affected properties are not yet fully pragmatic due to the conditions of current expropriation law and outdated reference prices. Therefore, the procedural conditions were not fully met too. There are still some holes to seal such as the bigger gap in respect of fair valuation and fewer gap in evaluation and approval of expropriation projects conditions. However, one may conclude that the right to property was not fully esteemed as long as both substantive and procedural conditions were not fully respected too. There are still some tasks to accomplish. Unfortunately, the dodges in meeting both substantive and procedural conditions in expropriation lead to the decrease of adequate standard of living. Therefore, the right to adequate standards of living was evaluated too.

#### 4.2.1.2.1. Right to an adequate standard of living

To evaluate the status of Right to an adequate standard of living (housing, food, water, sanitation, etc.), the social, cultural and economic standard of living were assessed. These cover matters like church services, employment, transport, market and capacity on the market, ownership over properties, renovation and usage of the properties and others. Collected data as hereunder presented, show the status of these elements for some property owners.

**Table 4. 10 Impact of expropriation on the standard of living**

Statement	Yes	No	Total
Did the expropriation exposed you to rain water	347(33.5%)	690(66.5%)	1037(100.0%)
Did the expropriation disturb your access to Church	60(5.8%)	977(94.2%)	1037(100.0%)
Did the expropriation disturb your access to job	268(25.8%)	769(74.2%)	1037(100.0%)
Did the expropriation disturb your access to the market	117(11.3%)	920(88.7%)	1037(100.0%)
Did the expropriation disturb your access to public transport	78(7.5%)	959(92.5%)	1037(100.0%)

**Source: Field survey June 2020**

As indicated in Table 4.10, expropriation projects did not disturb much the social, cultural and economic standard

of living in general. However, for both the expropriated and their neighbours who stay in their own properties, 347 out of 1037 (33.5%) reported exposure to rain water. The rain water from various infrastructure projects endangered families that were left in high risks zones. This is similar to what happens in terms of losing access to jobs, as confirmed by 25.8%, because some workplaces would be the areas from which workers and employees were expropriated whereas their owners shall not go to settle with the same clients and same business depending upon where s/he is heading to. One may conclude that these are normal which are associated with the general relocation conditions and noise in the construction sites. It cannot be classified as source of human rights violation as long as it depends on the adaptability of the affected person.

In addition to questions on both expropriated and non-expropriated households, the survey traced the perception of the expropriated ones on the socio-economic impacts of expropriation projects, after their relocation.

**Table 4. 11 Perceptions of the expropriated households on socio-economic impacts of expropriation projects**

Perceptions Statement	Strongly Agree	Agree	Neutral	Disagree	Strongly Disagree	Total
The expropriated households lost their economic status	165 (18.3%)	354(39.3%)	55 (6.1%)	257(28.6%)	69 (7.7%)	900(100.0%)
The expropriation affected the relocated families socially	59(6.6%)	232(25.8%)	172(19.1%)	347(38.7%)	90(10.0%)	900(100.0%)
The remaining families, neighbours of relocated families, lost their potential sources of income	86(9.6%)	207(23.0%)	172(19.1%)	366(40.7%)	69(7.7%)	900(100.0%)
During the process, remaining families, neighbours of relocated families, got affected socially	35(3.9%)	170(18.9%)	218(24.2%)	408 (45.3%)	69(7.7%)	900(100.0%)
5% of disturbance allowance is sufficient	53(5.9%)	242(26.9%)	101(11.2%)	225(25.0%)	279(31.0%)	900(100.0%)

Table 4.11 shows that 18.3% and 39.3%, that is more than 50%, strongly agree and agree, respectively, that expropriation made households lose their economic status, due to the ways families are disturbed during expropriation. This is not due to the limited compensation, rather the limited ability to manage the cash received after compensation. For example in rural areas there are some households who thoughts that the received millions can do numerous activities. Hence, they misused their money which finished before acquiring new homes and or alternative farming land. Therefore, there are now fighting with consequences. Evidently, it is crucial that the dialogue with the local community should be strengthened to increase the affected persons' capability. Moreover, the majority of respondents, again, view that the 5% of disturbance allowance paid to expropriated property owners in addition to the value of their properties should not be fixed. Table 4.11 shows that only 53 out of 900 respondents (5.9%) and 242 representing 26.9%, that is, 32.8% in total, strongly agreed and agreed, respectively, that the 5% of disturbance allowance is sufficient, against 56% who refuted its sufficiency and only 11.2% who remained neutral. Therefore, it would be better if the disturbance allowance is determined based on the accrual disruption rather than the prefixed figure. This was confirmed in interviews with property valuers who got involved in expropriation projects too.

As also discussed above, there are some families who got expropriated before having received any compensation due to the projects urgency. This impacted on the victims, economically and socially. It is not only the matter of delaying compensation or starting implementing the public interests activity without compensation; it is also a challenge when the property owner remains in the possession of properties, but has no right to carry out long-term activities on land, for instance, or cannot be given permit to renovate or repair his/her building, because s/he is located in the expropriation zone.

**Table 4. 12 Rights repair buildings under the expropriation**

Items	Allowed	Not allowed	Total
Allowed to repair houses	23 (24.2 %)	12 (12.6 %)	35 (36.8%)
Allowed to undertake long-term activity on other properties other than houses	26 (27.4%)	34 (35.8%)	60 (63.2%)
Total	49 (51.6 %)	46 (48.4%)	95 (100%)

**Source: Field survey June 2020**

Table 4.12 shows that among 95 households who remained in their properties, from 323 who did not receive compensation, only 23 representing 24.2% managed to repair their buildings, whereas 12 (12.6 %) did not manage to do maintenance of their buildings, even though the 120 days for the validity of the expropriation valuation report and the payment of compensation had elapsed. This is the general challenge to the local authorities and the CoK authorities who are in charge of human settlements due to the unlimited lateness period loophole in the current expropriation law. Finally 34 (35.8%) could neither do any long-term activities on their land nor access to their forest plantations.

In sum, expropriation projects go with the ordinary challenges associated with relocation and construction of big infrastructures; these are either due to mistakes done by expropriating agencies or due to the property owners to be expropriated. Some other challenges are associated with the status of the expropriation law. Hence, based on the discussed findings in this section 4.2.1, one may conclude that there were some acts of human right violation during expropriation for public interests. The survey also learnt about the causes of irregularities lead to violation of the assessed rights, as discussed in the next developments.

#### **4.2.2. Probable causes of irregularities in expropriation projects**

Causes of irregularities lead to acts of human right violation in expropriation projects can be analysed from all sides, including the side of expropriating agencies, property owners to be expropriated and the status of the law.

##### **4.2.2.1. The role of expropriating agencies and their stakeholders**

KIIs and FGDs as well as interviews with focal persons of expropriating agencies, common issues associated with irregularities in expropriation projects include the limited planning and budgeting on the side of the expropriating agencies (Appendix 7.2), and urgent projects on the side of the expropriating agencies, especially the implementation of performance contracts (commonly known as imihigo) for public benefits; look at Appendix 7.2.

To these causes, FGDs participants argued that in some cases there is lack of ownership and accountability in some expropriation projects, especially those ones with many stakeholders, including expropriation initiated at central level and implemented at local government level. In such circumstances, some of those

expropriating agencies do not care about meeting all substantive and procedural conditions set by the law for a lawful expropriation. FGDs participants believe that the status of such projects constitute a kind of hideout for stakeholders to escape responsibility.

#### 4.2.2.2. The role of property owners to be expropriated

The households to be expropriated have contributed to the realised irregularities in one way or another to the non-conformity to expropriation legal provisions by the expropriating agencies. Common issues raised by expropriators and KIs and FGDs participants, they include the incomplete files and disputed properties on the side of property owners to be expropriated, ignorance of law and rights, financial constraints which does not allow them to pay property valuers for counter-valuation, when they are not happy with the value given to their properties. The survey also tried to look at demographic status of property owners to be expropriated, to see if there is correlation with some irregularities found in expropriation.

For issues relating to incomplete files of households to be expropriated, during the FGDs, representatives of expropriating agencies clarified that the lack of land title deed or any other written official evidence of property ownership, is one of the causes of delay in compensation. In the same framework, properties that include land, while under litigation, the compensation cannot take place unless in case there is court decision. This is the same case for land which has not yet been registered and properties under succession, when heirs or any to other competent successor has not yet got the title deed. Similarly, some people in rural areas have not yet understood how land which is under 1 hectare cannot be subdivided but can however be registered to all those who have ownership over it with their percentage of ownership; which also delays the compensation. Furthermore, people to be expropriated, especially from rural areas, they do not have enough knowledge about laws that apply to expropriation, and their rights in case the same laws got violated, as confirmed by FGDs. This goes together with financial incapacity to pay themselves the property valuer for counter-valuation.

In addition, we wanted to examine if there exist the Correlation between getting the compensation and the head of the family. Thus, we run the Chi-square Tests by which the level of significance was 5%. The result is shown in the table 4.13.

**Table 4. 13 Relationship of receiving compensation and whether the household representative is a child or a parent**

		Did you receive your compensation yet?		Total	
		No	Yes		
Head of the family	Parent	300	551	851	
	Elderly Child	23	26	49	
Total		323	577	900	
Chi-Square Tests					
	Value	df	Asymptotic Significance (2-sided)	Exact Sig. (2-sided)	Exact Sig. (1-sided)
Pearson Chi-Square	2.750 <sup>a</sup>	1	.097		
Continuity Correction <sup>b</sup>	2.266	1	.132		
Likelihood Ratio	2.660	1	.103		
Fisher's Exact Test				.125	.068
N of Valid Cases	900				

a. 0 cells (0.0%) have expected count less than 5. The minimum expected count is 17.59.
b. Computed only for a 2x2 table

**Source: Field survey in June 2020**

From the above results, our interest was the Pearson Chi-Square. The value of the test statistic is 2.750. The corresponding p-value of the test statistic is  $p = 0.097$ . Since the p-value is greater than our chosen significance level ( $\alpha = 0.05$ ), we do not reject the null hypothesis. Rather, we conclude that there is not enough evidence to suggest an association between getting compensation and head of the family. As conclusion, no association was found between getting compensation and head of the family behavior ( $X^2(1) = 2.750, p = 0.097$ ).

And we wanted to examine if there exist the Correlation between getting the compensation and the gender too. Thus, we run the Chi-square Tests by which the level of significance was 5%. The result is shown in the next table.

**Table 4. 14 Relationship of receiving compensation and whether the household representative's gender**

Gender of the Head of The family * Did you receive your compensation yet?						
		Did you receive your compensation yet?		Total		
		No	Yes			
Gender of the Head of The family	Male	197	357	554		
	Female	126	220	346		
Total		323	577	900		
Chi-Square Tests						
	Value	df	Asymptotic Significance (2-sided)	Exact Sig. (2-sided)	Exact Sig. (1-sided)	
Pearson Chi-Square	.068 <sup>a</sup>	1	.794			
Continuity Correction <sup>b</sup>	.036	1	.850			
Likelihood Ratio	.068	1	.794			
Fisher's Exact Test				.830	.424	
N of Valid Cases	900					
a. 0 cells (0.0%) have expected count less than 5. The minimum expected count is 17.59.						
b. Computed only for a 2x2 table						

**Source: Field survey in June 2020**

From the above results, the value of the chi-square test statistic is 0.068. The corresponding p-value of the test statistic is  $p = 0.794$ . Since the p-value is greater than our chosen significance level ( $\alpha = 0.05$ ), we do not reject the null hypothesis. Rather, we conclude that there is not enough evidence to suggest an association between getting compensation and head of the family. As conclusion, no association was found between getting compensation and the gender of head of the family behavior ( $X^2(1) = 0.068, p = 0.794$ ).

### 4.2.2.3. Loopholes in the expropriation law

Mainly qualitative data got through KIIs and FGDs show that participants advance some reasons that the actual expropriation has gaps that contribute to irregularities in expropriation projects. Evoked reasons include legalism, properties serving as collaterals to banks, the IRPV prices which got only published since 2018, the used valuation methods and the choice of compensation.

**Table 4. 15 Legalism in the expropriation law**

Do you think there is much legalism in the expropriation law, hard to meet?					
		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Yes	15	68.2	68.2	68.2
	No	7	31.8	31.8	100.0
Total		22	100.0	100.0	

**Source: Field survey June 2020**

Table 4.15 shows that 68.2% of interviewed officials confirm that there is legalism in the expropriation law against 31.8% who refuted the presence of legalism in the law. When it comes to details with interviews, as also confirmed by FGDs; the procedure to inform concerned communities in meetings, giving communiqués on radios and newspapers, publishing the lists, explaining the public interests character of the project, involvement of the district councils for local government and similar policy level organs for the central government, in all steps, including the approval of the valuation reports and compensations, and other procedures were judged to be tiring. This is the same for the power given to people to be expropriated to consent to the compensation when it is not paid in money. It becomes an issue when some people refuses, whereas the project was meant to assure public interests, with an example of implementing the city master plan; interests that are not easily understood by those to be expropriated.

In any case, all role players from all sides contribute to irregularities caused some less respect of human rights in expropriation projects, besides the status of the law, as argued by the different informants of the survey. However, both preventive and protective mechanisms to mitigate human rights violation during expropriation were surveyed as discussed in the next sections.

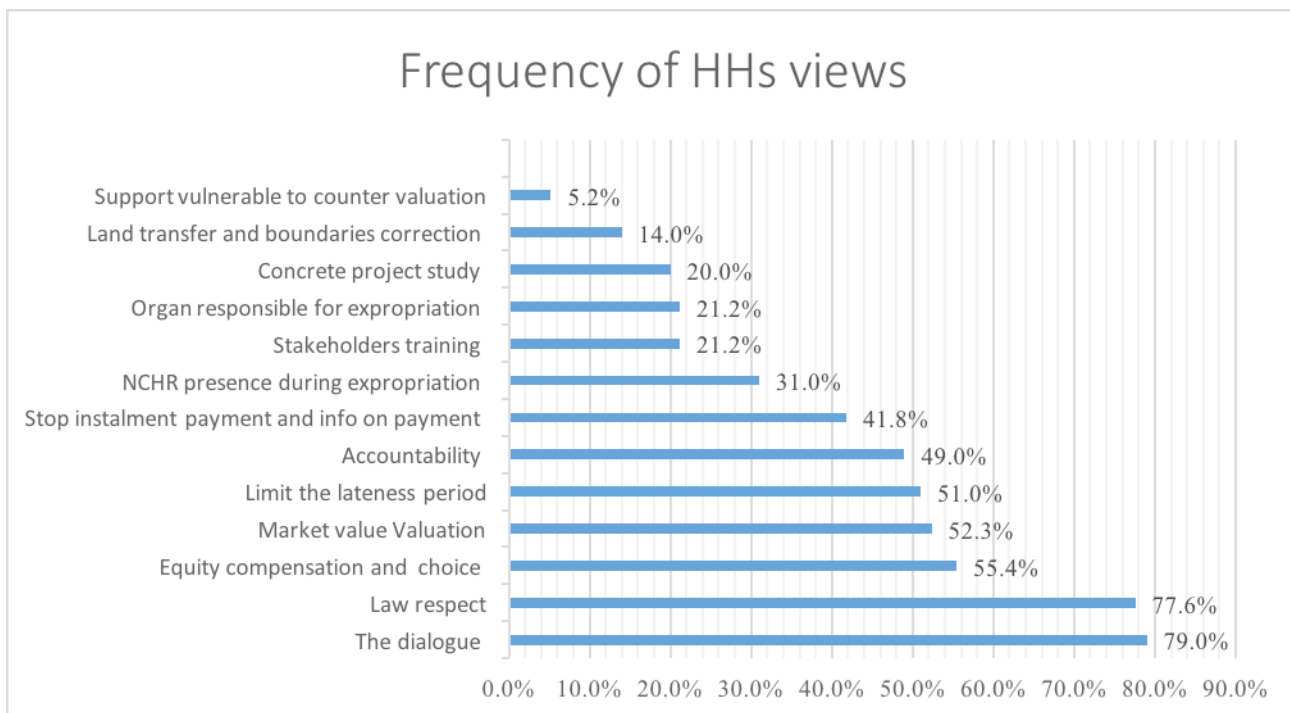
### 4.2.3. Opinions on the mechanisms to avoid irregularities in expropriation projects

Respondents, informants and participants of all azimuths of the survey, provided their opinions on what can be done for the prevention of irregularities found in expropriation projects. They included respondents from expropriated households and their neighbours, and participants to KIIs and FGDs.

#### 4.2.3.1. Expropriated households and their neighbours

Expropriated households and neighbours who were not expropriated, expressed their opinions on what should be done to avoid irregularities in expropriation projects that can be sources of violations of human rights.

**Figure 4. 1 HH views on Preventive mechanism**



**Source: Field survey June 2020**

Referring to the Figure 4.2, the highest preventive measure suggested by households is the dialogue with them when the expropriation project is going to be initiated and implemented. In developments above, they clearly revealed that the sensitizations were just informative without local community's participation and opportunity to exploit expropriation projects. The second is the legal compliance which scored 77.6 %. The community also suggests to receive a fair compensation and to choose the type of compensation at a 55.4% level. Another suggested mechanism to avoid irregularities in expropriation is the reference to the market value while carrying out the property valuation, with 52.3%. Another element that acquired majority of respondents is the avoidance of delays in compensation payment, at 51%. Other elements for lawful expropriations do not interest much the expropriated ones, as they scored less than 50%, including accountability, payment in instalments, The presence of the NCHR in expropriation projects, the stakeholders capacity building, establishment of an organ in charge of expropriation, concrete expropriation project study and plan, corrections in land transfers and boundaries, and the financial support to targeted poor households for counter-valuation purposes.

#### 4.2.3.2. Local community focus group

The local community, in FGDs, proposed that the compensation should be equity rather than prefixed prices. The equity compensation for the local community, were intended to mean the consideration of life after expropriation. Sometimes the expropriated community cannot enjoy the public interest activities that lead to their expropriation, whereas they contribute to the same through losing ownership over their properties and other socio-economic interests. Secondly, the accountability of the valuation technician who sometimes violate the practice willingly, got suggested by the community. The local community FGDs dared to say that valuation technicians may act under the influence of either party, being the expropriating agency or the property owner who has capacity to bribe them. They also wish that the negotiations with private investors would be carried out, because they may hide themselves in the public interests character of their investments and act as if it is a governmental institution that is expropriating. Negotiations would accelerate the payment of compensation and would give property owners right to bargain and get a compensation they hare happy for. Lastly, the community suggested the establishment of a framework allowing the low income earner to undertake the counter valuation whenever they are not satisfied with valuation reports, because some of them unhappily accept the payment because they



cannot get opposed to the expropriation.

#### **4.2.3.3. Government officials and their partners' focus group**

The focus group composed of Government institutions and companies fully owned by the Government and which are involved in expropriation recommended first the establishment of an independent governmental institution responsible for expropriation projects in Rwanda, in order to avoid breaches in their implementation as herein discussed. If the Government is not capable to establish such institution, the focus group suggested regular capacity building initiative for legal compliance in expropriation projects. The third suggested solution was the regular and timely release of land and other properties reference prices by the IRPV. The focus group furthermore wished that any person behind breaches in expropriation projects should be held accountable, which would play an exemplary role to others, and would therefore limit the violation of expropriation legal provisions. Lastly, due to cases they receive from claimants of expropriation compensations, they wished that the expropriation law would be amended, to include an article about the prescription of right to compensation, to avoid negligent and malicious people who come to claim for compensations of 10, 20 years old, as the same prescriptions exist in other laws.

#### **4.2.3.4. Professionals and human rights activists focus group**

The last focus group which was composed of participants from professional bodies and human rights activists operating in the areas of land, property rights and expropriation, advocated for: (1) a detailed and thorough study, together with detailed implementation plan and related budget, and with a socio-economic impact analysis for the community to be expropriated, instead of abrupt implementation of expropriation projects, sometimes without clear plans and budgets; (2) the establishment of expropriation departments for organs that seem to have regular expropriation projects; (3) proper annual revision of property reference prices by IRPV in order to reflect the market value; (4) the amendment of the expropriation law especially articles about paying the compensation to a bank when the expropriated property was given to the bank as a collateral<sup>80</sup>. To this last opinion, the FGDs shared experience on so many cases whereby property owners lose both properties and compensations, as they lost their properties ownership and compensations are paid on the account under the banks' custody, without any legal provision obliging the bank to re-negotiate the loan agreement, so that property owners can get a second chance to own other properties using the same compensations. Participants strongly wished that the law be amended to address the matter.

#### **4.2.4. Opinions on the effective remedial actions for victims of irregularities found in expropriation projects**

Generally, the proposition of the remedial actions to the victims of irregular expropriation projects were almost the same for the local community or, Government officials, professional bodies and human rights activists who participated in the FGDs and interviewees of KIIs. Their focus is the accountability of officials whose malpractices lead to the violation of human rights during expropriation. However, these participants said they are optimistic about the remedy prepared by the Government, as the Ministry of Finance provided explanations before the Parliament during the presentation of the budget for the financial year 2020/2021, where there is a budget line to pay delayed compensations in expropriation projects. However, as this remedy is limited to only paying the

<sup>80</sup> According to art. 38 (para4) of the expropriation law, "in case the property of the person to be expropriated is encumbered by a guarantee provided to a bank or a financial institution, the amount of fair compensation shall be deposited into the account indicated by the bank or financial institution".

compensations, sometimes without delay interests; still the suggested commission would detect other breaches – not only the compensations, case by case, so that responsible parties would be held accountable, so that such breaches should not reappear in the future.

### 4.3. Results discussion

After presenting and analysing data, the survey report discusses results, in this section, orienting them to potential of human rights violation during expropriation, causes of some irregularities. The discussion hereunder is also extended to what can be done to avoid more violations and to award remedy to victims, while drawing conclusions from the above pieces of analysis.

#### 4.3.1. Potential of human rights violation during expropriation

In this part, the study discussed the results to the references standards of Human Rights in light of facilitating the conclusion making whether there have been human rights violation during expropriation or not. Hence, though cases of irregularities in expropriation projects as discussed above are not many compared to the compliance to the expropriation legal provisions; some of the same irregularities are hereunder discussed to see the eminence of human rights deference during expropriation. They include the right to information, right to property, and right to an adequate standard of living (housing, food, water, sanitation, etc.).

##### 4.3.1.1. Right to information

As discussed supra, the right to information is guaranteed by both the ICCPR (art. 19) and the Constitution of the Republic of Rwanda (art. 38). The ICCPR (art. 19) defines the right to information as forth: **“Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice”**. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary: (1) for respect of the rights or reputations of others; (2) for the protection of national security or of public order, or of public health or morals. Similarly, Constitution of the Republic of Rwanda (art. 38) says that “freedom of press, of expression and of access to information are recognized and guaranteed by the State”. Therefore, in the context of expropriation, right to information is associated with enabling property owners to have complete and accurate information about the expropriation project, all processes, the roles and responsibilities of various stakeholders. Even the expropriation law clarifies that it belongs to the expropriator to collaborate with them, including publishing the list of specific evictees and related communiqué on radio and in newspapers<sup>81</sup> before even starting the property valuation exercise in which property owners are also supposed to be involved, with possibility to undertake counter-valuation once they are unhappy with the valuation report<sup>82</sup>. However, as Table 4.2 indicates it, though 85.8% of property owners confirmed having been informed about the expropriation projects. This is the great achievement compared to the low level right to information respect reported in the literature review, where RCSP argued that landowners are not notified about the expropriation, its purpose and the procedures followed. There were also many specific cases of people seeing valuers touring their land and taking measurements without any prior notice were reported in various areas (Kicukiro, Nyamagabe and Gakenke districts)<sup>83</sup>; and similarly, confirmed by the USAID funded research project carried out in 2014<sup>84</sup>. However, even though the respect of social economical rights depends on the means, the remaining 14.2% of property owners who say not get informed should be clearly informed too. These figures were cross-confronted with qualitative data from FGDs where participants said that

<sup>81</sup> Article 16 of the Law N° 32/2015 of 11/06/2015, aforementioned.

<sup>82</sup> Articles 33 – 34 of the Law N° 32/2015 of 11/06/2015, aforementioned.

<sup>83</sup> RCSP, Analysis of land expropriation and transfer process in Rwanda, Civil Society Public Policy Dialogue, Kigali Convention Center, 30th November 2017, pp. 6 and 8.

<sup>84</sup> Ikirezi Mireille, Masengo Fidèle and Knox Anna, Op. cit., p. 19.

for some urgent projects, some processes including informing the community of the expropriation areas about the project are not taken into consideration. Hence, the suggested dialogue and community participation in expropriation projects will fulfil the remaining gap.

#### 4.3.1.2. Right to property

The constitution of the Republic of Rwanda (art. 34) stipulate clearly that “everyone has the right to private property, whether individually or collectively owned. It is inviolable. And the right to property shall not be encroached upon except in public interest and in accordance with the provisions of the law”. Furthermore, the ACHPR I (art. 14) ensures that the right to property shall be guaranteed and it may only be encroached upon in the interest of public need or in the general interest of the community and in accordance with the provisions of appropriate laws. Expropriation consists of taking personal interests for public interests. Therefore, right to property during expropriation, entails of taking the personal interest for public interests with veneration of both fundamental and procedural conditions of lawful expropriation. Though human rights are universal and inalienable, interdependent and indivisible, equal and non-discriminator; all human rights violated through expropriation projects are centred to the violation of the right to property, because expropriation is all about relocating the property owner from her/his properties. As also discussed, any violation of the four conditions for lawful expropriation including the public interests, due process of law, non-discrimination and compensation; would suffice to draw a conclusion that there has been violation of right to property, because the evictee has not enjoyed her/his full rights over her/his properties.

Guaranteed by the International Covenant on ESCR (art. 2 and 17), the ACHPR I (art. 14) and the Constitution of the Republic of Rwanda (art. 34 and 35) in the context according to which no one shall be arbitrarily deprived of her/his property except under procedures and reasons provided for by the relevant laws; the present survey showed that some property owners lost their properties without expropriators to have fulfilled some of both substantive and procedural conditions set by the expropriation law: the due process of law and the payment of compensation to expropriated property owners, as well as the communication of the initiation of the expropriation project and its approval, collaboration and correspondences with property owners, fair property valuation and compensation determination, the fair and prior compensation payment, of course before the relocation of property owners.

Yet, the analysis of data revealed that 70.6% of all expropriated families received their compensation. Among 577 compensated households, 313 (54.2%) had received their compensation in 120 days, while 240 households (29.4%) did not receive the compensation at all Table 4.8. Again, Table 4.9 shows that among the 323 households which did not get compensation, 42 representing 13 % got requested to leave their properties without the compensation payment and 120 days had elapsed. Briefly, the study revealed that 40.22% of all pasted expropriation projects appreciated fully the due process of law. The expropriating institutions also confirmed it through highlighting that 45.45% of the expropriation cases respected fully the entire expropriation law. Finally, the FGDs confirmed that the Government itself recognizes that there are people who are still waiting for their compensations, reason why this was captured in the 2020/2021 budget, though the violations of the right to property has already been done. Furthermore, most alarmingly, FGDs participants raised any issue of how the law are not clear on the right to property respect in a scenario whereby property owners lost ownership from their properties as a result of expropriation, and yet do not get their compensations, because their properties constitute collaterals to loan agreements. In such situation, property owners remain in a permanent dilemma, as the loss of ownership over their properties is provided for by the law, together with the fact to channel their compensation to their creditors, banks, without any alternative for them to survive or acquire new properties. Apart from right to property in general, it is essential to discuss the right to fair compensation separately.

#### 4.3.1.2.1. Right to fair compensation

Fair compensation refers to an indemnity equivalent to the value of land and the activities performed thereon given to the person to be expropriated and calculated in consideration of market prices as well as compensation for disturbance due to expropriation<sup>85</sup>. The right to fair compensation is provided for by the Law n° 32/2015 of 11/06/2015 relating to expropriation in the public interest in its article 4 that stipulates that every project, at any level, which intends to carry out acts of expropriation in the public interest, shall budget for valuation of the property of the person to be expropriated and for fair compensation. The article 35 of the same law provides that payment of fair compensation in advance can be paid in monetary form in the Rwandan currency or in any other form mutually agreed upon by the expropriator and the person to be expropriated. However, the study revealed some acts of violation of this right. For example, in Table 4.6, 47.3% of expropriated households claimed that there was unfair determination of compensation. 56% of the respondents agreed also that the 5% of disturbance allowance is not sufficient Table 4.11. And finally, 29.4% of 900 expropriated households did not receive their compensation at all Table 4.8. These were emphasized by 50% of the real property valuers participated in expropriation highlighted that they were not independent while determining the fair compensation Table 4.7. Therefore, unfair determination of compensation results in provision of unfair compensation, where violation of right to fair compensation. However, this is due to the valuation variances, outdated land price references and voids in current expropriation law.

To sum up, the survey can confirm that there is an increase of the right to property respect but still hindered by inaccurate reference prices, valuation variances, loopholes in legal matters where the Ministerial order establishing the supervisory committee is still missing and void of current law about the mortgaged properties and type of compensation. Hence, the enactment of these regulations will lead to full respect of property rights.

#### 4.3.1.2.2. Right to an adequate standard of living

Article 11 of the International Covenant on ESCR highlights that “the States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions”. As the landed properties are bedrock of human being activities which are sources of adequate living conditions for human kind, the violation of right to property can immediately lead to the violation of Right to an adequate standard of living. As discussed, the right to an adequate standard of living, includes the right to adequate housing, food, water, sanitation, etc. (art. 11 article of the International Covenant on ESCR). In other words, one cannot talk about adequate standard of living, if the basic needs pertaining housing, food, water, sanitation, etc. are satisfied. The interdependence and indivisibility of human rights show us that we have covered these types of needs in above discussions.

However, it is worthy again to say that if the payment of compensation is meant to be done within 120 days counted from the day it was agreed upon between the expropriator and the person to be expropriated, and that unfortunately when this is not paid within the same timeframe, the property owners are no longer allowed to undertake long term projects, including agricultural ones and other economic activities that yield money to the people, so that they can afford food, water and sanitation, and again if they cannot repair their houses; the right to an adequate standard of living is violated. For example, Table 4.12 indicated that 35.8% of not relocated households waiting for their compensation for more than 120 days did not manage to undertake any long term activity on the agricultural land nor accessing their tree plantations. For all these reasons, the survey confirms that there has been some violation of the right to adequate living in surveyed expropriation projects. However, these violations are being eliminated through the budgeting for the arrears in compensation; and the study

<sup>85</sup> Law n° 32/2015 of 11/06/2015 relating to expropriation in the public interest (art.2)

advised the complementation based on the elimination of the legal loopholes for sustainable human rights respects. Although, the right to adequate standards of living, it is worthy that right to adequate housing and right to environment are discussed separately thereafter.

#### **4.3.1.2.2.1. Right to adequate housing**

The right to adequate housing is more than just four walls and a roof. It is the right of every one to gain and sustain a safe and secure home and community in which to live in peace and dignity.<sup>86</sup> There are elements of the right to adequate housing such as (1) Legal security of tenure; (2) Affordability; (3) Cultural adequacy; (4) Availability of services, materials, facilities and infrastructure; (5) Accessibility; (5) Location and (6) Habitability. This study focused on the last element of right to adequate housing. In habitability element; adequate housing should provide for elements such as adequate space, protection from cold, damp, heat, rain, wind or other threats to health, structural hazards, and disease vectors. Unfortunately, there are few household who did not manage to repair their houses due to the limitations associated to their property rooted from expropriation projects. And this is what is presented in Table 4.12, 12.6 % of non-relocated property owners (12 out of 95) did not get opportunity repair their houses, as they were still living there waiting for the compensation. Therefore, the habitability element is not met. Hence, there were acts of violating right to adequate housing.

#### **4.3.1.2.2.2. Right to clean environment**

The right to environment is stipulated in Article 22 of the Constitution of the Republic of Rwanda of 2003 revised in 2015 which states that everyone has the right to live in a clean and healthy environment. It is also stipulated in Organic Law n° 04/2005 of 08/04/2005 determining the modalities of protection, conservation and promotion of environment in Rwanda<sup>87</sup>. When expropriation projects expose anyone to unsuitable environment, the right to clean environment is violated. With reference to table 4.10, the results showed that 33.5 % of surveyed families were exposed to noise. This is to say that 33.5% of surveyed families were exposed to the rain water dangers from various infrastructure projects, the families left in high risks zones, dumping activities related to the projects required expropriation, air pollution, traffic noise, vocal noise, dusts noise etc... Therefore, basing on findings, there were some acts of violating right to clean environment. However, this is due to the expropriation projects which are not thoroughly analysed and not fully inclusive.

All in all, while taking into consideration of the universal and inalienable, interdependent and indivisible characteristics of human rights, the survey generally confirm that there have been some few acts of violations of the right to information, right to property, and right to an adequate standard of living (housing, food, water, sanitation, etc.), in surveyed expropriation projects. This should not however continue like this, reason why the next developments concentrate on mechanisms for their prevention.

### **4.3.2. Mechanisms for the prevention of human rights violations during expropriation**

Participants to the survey suggested different mechanisms for the prevention of expropriation irregularities. They include a detailed and thorough study, together with detailed implementation plan and related budget and with a socio-economic impact analysis for the community to be expropriated. They also include dialogue with targeted property owners when the expropriator is a private investor, the effective information and collaboration with households to be expropriated, prior and fair compensation, compensation in equity rather than prefixed prices,

<sup>86</sup> Office of High Commissioner for Human Rights, CESCR General Comment No. 4: The Right to Adequate Housing (Art. 11 (1) of the Covenant) Adopted at the Sixth Session of the Committee on Economic, Social and Cultural Rights, on 13 December 1991 (Contained in Document E/1992/23). <https://www.ohchr.org/en/issues/housing/toolkit/pages/righttoadequatehousingtoolkit.aspx>

<sup>87</sup> Organic Law n° 04/2005 of 08/04/2005 determining the modalities of protection, conservation and promotion of environment in Rwanda

right to choose the type of compensation, and reference to the market value while carrying out the property valuation. Moreover, they proposed the establishment of an independent governmental institution responsible for expropriation projects in Rwanda; but this suggestion is against the decentralization policy of the Government of Rwanda if the proposed institution would be technical instead of strategic. Therefore, the establishment of expropriation departments for organs that seem to have regular expropriation projects can complement the prior proposed idea. Other proposed mechanisms are; proper annual revision of property reference prices by IRPV in order to reflect the market value, and accountability for all role players in the violations of human rights during expropriation. On the side of the legal and policy framework, participants to the study wished for an amendment of the expropriation law to limit the period during which property owners have right to claim compensation (prescription), limiting the lateness period and amendment of the same law in regards to the mortgaged properties when the expropriated property was given to the bank as a collateral.

One can see that the majority of mechanisms suggested by participants to the survey are related to the provisions of the expropriation law. Bargaining with the private investor, being informed of all steps of the expropriation and the public interests characteristics, fair and prior compensation and others, they are all provided for by the expropriation law. They are among other key conditions for lawful expropriation as discussed supra, which conditions include the public interests of the project, the non-discriminatory characteristic, the due process of law and the payment of compensation to expropriated property owners and a clear procedure, from the initiation of the project, its planning and budgeting, collaboration with the community, valuation, up to the payment of compensation, before the relocation of the property owner. They also include the obligation of IRPV to regularly and annually review property reference prices, which is not respected.

Therefore, the survey confirms that preliminary mechanisms for the prevention of violations of human rights violation lie in the full and effective compliance to the expropriation law. Additional mechanisms for the prevention purposes would be holding accountable those who are responsible for previous human rights violations to play an exemplary role to their successors, so that the latter should remember to avoid making similar mistakes. They would also include the amendment of the expropriation law to address the raised matter of mortgaged properties where compensations are paid to creditors, compensation in equity rather than IRPV's prefixed prices, which would go together with the non-fixation of the rate for the disruption compensation. The law also needs to limit long-lasting claims for compensation for negligent property owners, in terms of fixing prescription period for the right to claim for compensations, to enable expropriating agencies to freely deal with new expropriation cases, instead of having the burden to treat old cases, some of which appear after many restructuring of governmental institutions and their affiliated agencies and partners. With a special attention, the survey supports the opinion of having internal departments whose missions are only related to expropriation for enhancing the due process of law and accountability to concerned staff in case of violation of human rights and or abuse of power.

#### **4.3.3. Effective remedial actions for victims of human rights violations resulting from expropriation projects**

For pending cases of acts of violation of human rights, according to the law, victims of violations of human rights during expropriation normally have right to sue responsible organs in courts of justice, for courts to decide either on the continuation of expropriation projects or forcing those agencies to pay compensations and related damages within given periods of time. However, as most of these projects are implemented by Governmental agencies and that the 2020/2021 budget has catered for arrears of expropriation compensations; victims cannot be advised to seek for justice in courts, though they still have those rights.

In any case, as also suggested by different participants to the survey, accountability for cases whereby government officials, valuation technicians and other role players, negligently or maliciously did not comply with expropriation legal provisions, until leading to such breaches, and therefore be personally held answerable.

## Chap. V. CONCLUSION AND RECOMMENDATIONS

The survey on the human rights respect during expropriation for public interests in Rwanda had objectives of assessing the level of human rights respect during expropriation for public interests, to propose mechanisms to prevent human rights violations during expropriation, to propose effective remedial actions for victims of human rights violations resulted from expropriations and to formulate recommendations to relevant stakeholders. This chapter draws conclusions from the survey and issues recommendations to concerned organs.

### 5.1. Conclusion

In terms of conclusions, in line with the assessment of assessment of the human rights reverence during expropriation in Rwanda, the study found that in some expropriation projects, both procedural and substantive conditions for lawful expropriation were not fully respected. But it is splendid that the level of human rights respect increased compared to previous reports. For instance, the study revealed that 85.8% of respondents were communicated about the projects before their implementation, 52.6% were happy with the value given to their properties, and 70.6 % received their compensation and budget for compensation arrear were covered in the approved Government budget 2020-2021 for remaining 29.4% without compensation.

Moreover, the survey revealed that the irregularities found during the survey, regardless of their level, are due to the poor planning and budgeting, and urgent projects on the side of the expropriating agencies, especially the implementation of performance contracts (commonly known as imihigo) for public interests. On the side of property owners to be expropriated, the survey found that irregularities in expropriation projects result in incomplete files and disputed properties, ignorance of law and rights, financial constraints which does not allow them to pay property valuers for counter-valuation, when they are not happy with the value given to their properties. And finally, the last not the least is the loopholes in current expropriation law and missing of ministerial order establishing the supervisory committees.

It is in this regards that the survey concludes that there were some minor irregularities in expropriation projects are associated with acts of violations of human rights. Specific violated human rights, though they are not extended to all property owners, include the right to information in that few property owners did not get informed about the projects, right to property as some property owners got relocated before receiving their compensations, others delayed to be paid their compensations before total relocation. Furthermore, there were some violation of right to adequate standards of living (including the right to adequate housing, food, water, sanitation, etc.), as irregularities in expropriation projects prevented some households, to renovate their building, to get money to cover their expenses and or investment.

Findings that led to the prior conclusions, also led to the suggestion of mechanisms for the prevention of human rights violations during expropriation as well as remedial actions that should be taken in favour of victims of human rights violations within expropriation projects, which mechanisms are included in the recommendations presented hereunder.

### 5.2. Recommendations

The following recommendations are formulated to the relevant stakeholders for the respect of human rights during expropriation for public interests in Rwanda.

1. The Commission recommends the Ministry of Finance and Economic planning, in collaboration with expropriating agencies to accelerate the payment of compensation arrears.
2. To establish “The Order of the Prime Minister determining the organization, functioning, responsibilities and composition of the committees in charge of supervision of projects of expropriation in the public interest” provided for in Article 8 of the law N° 32/2015 of 11/06/2015 relating to expropriation in the public interest, the survey reminds the Office of the Prime Minister: has to be established.
3. The study has ascertained that only 40.22% of all pasted expropriation projects appreciated fully the due process of law. The expropriating institutions also confirmed it through highlighting that only 45.45% of the expropriation cases respected fully the entire expropriation law. Hence, the Commission recommends MINICOM, MINIFRA (particularly REG, WASAC, RTDA and RHA), and MINALOC especially Districts and the City of Kigali, to abide by any substantive and procedural condition set by the expropriation law, while initiating and implementing expropriation projects; and to hold accountable those who are responsible for human rights violations during expropriation.
4. There was identified some loopholes in the law N° 32/2015 of 11/06/2015 relating to expropriation in the public interest related to the non-limitation of the delay period after the legal period of expiration of 120 days. The Ministry of Justice is recommended to set an acceptable period of delay to which a disturbance allowance rate shall be applied as compound rate if not respected.
5. The survey recognised that the Article 22 of law N° 32/2015 of 11/06/2015 relating to expropriation in the public interest was not fully respected. The land prices references were not annually published and those prices did not fully reflect market value. The Ministry of Environment and the Institute of Real Property Valuers (IRPV) are recommended to base on acceptable scientific method in establishing and publishing the annual property reference prices reflecting the market value as provided for by the expropriation law; in addition, the reference prices should be accessible and understandable to the local community.



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## 7. APPENDIX

### 7.1. Perceptions of the Valuers on the expropriation

Perceptions Statement	Strongly Agree	Agree	Neutral	Disagree	Strongly Disagree	Total
Expropriation was done for the public interest	2(33.3%)	3 (50.0%)	0 (0.0%)	0 (0.0%)	1(16.7%)	6(100.0%)
The sensitization of expropriation is always done on the rights time	0 (0.0%)	0(0.0%)	4(66.7%)	2(33.3%)	0 (0.0%)	6(100.0%)
The Expropriator, ignores the consequences on living conditions of persons to be expropriated	0	3 (50.0%)	2 (33.3%)	1(16.7%)	0(0.0%)	6(100.0%)
The valuer is fully independent during expropriation	1(16.7%)	2(33.3%)	0(0.0%)	3(50.0%)	0(0.0%)	6(100.0%)
Some lawful claims against expropriation are ignored	0(0.0%)	2(33.3%)	2(33.3%)	1(16.7%)	1(16.7%)	6(100.0%)
sometimes people are sacked away before 120	1(16.7%)	2(33.3%)	0(0.0%)	2(33.3%)	1(16.7%)	6(100.0%)
Sometimes there are mistreating of the appeal on the estimated value.	0(0.0%)	1(16.7%)	1(16.7%)	2(33.3%)	2(33.3%)	6(100.0%)
Most of the time they are delay in fair compensation and the expropriation remain valid without agreement	0(0.0%)	4(66.7%)	2(33.3%)	0(0.0%)	0(0.0%)	6(100.0%)
They always provide the right to choose the form of fair compensation	0(0.0%)	3(50.0%)	2(33.3%)	0(0.0%)	1(16.7%)	6(100.0%)
There is a lack of fair compensation and the expropriation remain valid without agreement	0(0.0%)	2(33.3%)	0(0.0%)	3(50.0%)	1(16.7%)	6(100.0%)

During the process, there is limited rights on the property while the expropriation exceeded the planned compensation and the expropriation in public interest remain valid	2(33.3%)	2(33.3%)	0(0.0%)	2(33.3%)	0(0.0%)	6(100.0%)
Disturbance allowance of 5 % is enough	1(16.7%)	0(0.0%)	1(16.7%)	2(33.3%)	2(33.3%)	6(100.0%)
No provision of disturbance allowance (5%) while the expropriator refrain the expropriation in public interest	0(0.0%)	3(50.0%)	2(33.3%)	1(16.7%)	0(0.0%)	6(100.0%)
The compensation is always paid in 120 days after approval of expropriation	0(0.0%)	4(66.6%)	0(0.0%)	1(16.7%)	1(16.7%)	6(100.0%)
During the expropriation, the population are informed at every stage	1(16.7%)	2(33.3%)	1(16.7%)	2(33.3%)	0(0.0%)	6(100.0%)
During the process, there exist the ignorance the economic loss of the remaining not expropriated community	1(16.7%)	3(50.0%)	1(16.7%)	0(0.0%)	1(16.7%)	6(100.0%)
During the process, there is less flexibility on the payment mode	2(33.3%)	1(16.7%)	2(33.3%)	1(16.7%)	0(0.0%)	6(100.0%)
During the process, there exist the social loss of the remaining not expropriated community	2(33.3%)	3(50.0%)	0(0.0%)	0(0.0%)	1(16.7%)	6(100.0%)
The 5% planned for delays are always given after delay	0(0.0%)	2(33.3%)	1(16.7%)	3(50.0%)	0(0.0%)	6(100.0%)

**Source: Field survey June 2020 7.2.**

## 7.2. Irregularities in expropriating agencies table

<b>7.2.1. If the expropriation was initiated by a private organ, have the initiator shared with the District/Kigali City/ Ministry, the expropriation</b>				
	Frequency	Percent	Valid Percent	Cumulative Percent
Yes	9	100.0	100.0	100.0
No	0	0.0	0.0	
Total	9	100.0	100.0	
<b>7.2.2. If the expropriation was done for a project of a private initiator to be implemented: Did you first send the initiator to negotiate with people who were supposed to be affected by the Project?</b>				
	Frequency	Percent	Valid Percent	Cumulative Percent
Yes	10	58.8	58.8	58.8
No	7	41.2	41.2	100.0
Total	17	100.0	100.0	
<b>7.2.3. Did you assess if the private initiator had liquidity for property valuation and compensation?</b>				
	Frequency	Percent	Valid Percent	Cumulative Percent
Yes	3	17.6	17.6	17.6
No	15	82.4	82.4	100.0
Total	17	100.0	100.0	
<b>7.2.4. Before proceeding with expropriation, was there a concept paper or any other documentation motivating the public interests associated with the expropriation?</b>				
	Frequency	Percent	Valid Percent	Cumulative Percent
Yes	20	90.9	90.9	90.9
No	2	9.1	9.1	100.0
Total	22	100.0	100.0	
<b>7.2.5. Before proceeding with expropriation, was there an approved budget for property valuation and compensation?</b>				
	Frequency	Percent	Valid Percent	Cumulative Percent
Yes	19	86.4	86.4	86.4
No	3	13.6	13.6	100.0
Total	22	100.0	100.0	
<b>7.2.6. Level of effective communication</b>				
	Frequency	Percent	Valid Percent	Cumulative Percent
Valid Yes	8	36.4	36.4	36.4
No	14	63.6	63.6	100.0
Total	22	100.0	100.0	
<b>7.2.7. Did you respect the 120 days maximum to have paid the compensation,</b>				
	Frequency	Percent	Valid Percent	Cumulative Percent
Yes	16	72.7	72.7	72.7
No	6	27.3	27.3	100.0
Total	22	100.0	100.0	

<b>7.2.8. Agreement on expropriation continuity after delays in compensation and additional 5% of disturbance allowance</b>				
	<b>Frequency</b>	<b>Percent</b>	<b>Valid Percent</b>	<b>Cumulative Percent</b>
Yes	2	33.3	33.3	33.3
n/a	1	16.7	16.7	16.7
No	3	50.0	50.0	100.0
Total	6	100.0	100.0	
<b>7.2.9 Cancelled expropriation cases,</b>				
	<b>Frequency</b>	<b>Percent</b>	<b>Valid Percent</b>	<b>Cumulative Percent</b>
Yes	4	18.2	18.2	18.2
No	18	81.8	81.8	100.0
Total	22	100.0	100.0	
<b>7.2.10. Received 5% of disturbance allowance as expropriation is cancelled</b>				
	<b>Frequency</b>	<b>Percent</b>	<b>Valid Percent</b>	<b>Cumulative Percent</b>
Yes	1	25.0	25.0	25.0
No	3	75.0	75.0	100.0
Total	4	100.0	100.0	

*Source: Field survey June 2020*



### 7.3. Number of respondent per Provinces, Disticts and Sectors

		Number of Respondents									
		Provinces			Districts				Sectors		
		Expropriated	Not Expro.	Total	District Name	Expropriated	Not Expro.	Total	Sector Name	Expropriated	Not Expro
City of Kigali	127	20	147	Gasabo	61	9	70	Bumbogo	11	0	11
								Gatsata	1	0	1
								Ndera	19	5	24
								Remera	30	4	34
				Kicukiro	66	11	77	Gahanga	32	8	40
								Kagarama	17	2	19
								Kigarama	2	0	2
Eastern	181	27	208	Bugesera	60	9	69	Rilima	5	5	10
								Nyamata	13	4	17
								Juru	42	0	42
				Nyagatare	61	9	70	Karama	28	4	32
								Tabagwe	6	1	7
								Nyatare	27	4	31
				Rwamagana	60	9	69	Gishari	21	4	25
								Kigabiro	20	2	22
									19	3	22

Northern	170	27	197	Burera	50	9	59	Butaro	12	1	13
								Cyanika	10	2	12
								Kagogo	14	1	15
								Rusarabuye	14	5	19
				Gicumbi	60	9	69	Bukure	13	1	14
								Muko	11	1	12
								Rutare	20	4	24
								Rwamiko	16	3	19
				Musanze	60	9	69	Gacaca	22	1	23
								Gataraga	8	1	9
								Kinigi	17		17
								Muhoza	10	6	16
									3	1	4

Southern	245	36	281	Huye	57	9	66	Gishamvu	7	0	7
								Huye	16	1	17
								Karama	5	2	7
								Ngoma	6	1	7
								Rudashya	18	2	20
								Tumba	5	3	8
				Muhanga	60	10	70	Kabacuzi	1	0	1
								Kiyumba	7	3	10
								Nyamabuye	20	4	24
								Nyarusange	31	2	33
								Shyogwe	1	1	2
				Nyamagabe	68	7	75	Gasaka	33	6	39
								Kaduha	6	1	7
								Mbazi	29	0	29
				Nyanza	60	10	70	Busasamana	17	8	25
								Kigoma	3	0	3
								Muyira	18	2	20
Nyagisozi	12	0	12								
	10	0	10								

Western	177	27	204	Karongi	58	7	65	Bwishyura	32	5	37
								Murundi	5	0	5
								Rwabicuma	21	2	23
				Nyamasheke	58	10	68	Bushekeri	10	0	10
								Bushenge	9	3	12
								Kagano	6	0	6
								Kanjongo	4	0	4
								Ruharambuga	11	1	12
								Shangi	18	6	24
				Rubavu	61	10	71	Gisenyi	22	6	28
								Nyamyumba	9	1	10
									30	3	33
Total	900	137	1037		900	137	1037		900	137	1037

**Source: Field Survey June 2020**