



THE CHALLENGES OF EXPROPRIATION AND THE RIGHT TO PROPERTY: A CASE OF RWANDA'S URBANIZATION POLICY

by

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DECLARATION

I, the undersigned, hereby declare that the work contained in this dissertation is my own original work and has not previously in its entirety or in part been submitted at any other university for a degree.

Signature.....

Date.....

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I would like to dedicate this dissertation to my parents. I appreciate all the sacrifices you have made for me.

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SUMMARY

Rwanda is developing country whose economy has been characterized by rapid urbanization in the last decade. The Government has embarked on projects like the Kigali master plan to boost development. In order to get around the hurdle of ownership and the right to property, states may compulsorily acquire property from an individual in the interest of the public. The rules that govern such acquisition of property must strictly followed otherwise the acquisition will be deemed illegal. Rwanda is party of UDHR by virtue of membership to the United Nations as well as several other international and regional treaties on human rights.

The issue which forms the core of this research is the problem of displacement of inhabitants from a particular area earmarked for development. The issue of displacement arises in the compulsory acquisition of land. This imposes an obligation on policymakers to respect human rights when pursuing the objective of development and urbanization. This research exposes the challenges that have been associated with Rwanda's law and policy on expropriation and proposes some recommendations.

LIST OF ABBREVIATIONS

ACHPR	African Charter on Human and Peoples' Rights
AU	African Union
CEDAW	Convention on the Elimination of Discrimination against Women
CERD	Convention on the Elimination of all form of Racial Discrimination
EAC	East African Community
EACJ	East African Court of Justice
EALA	East African Legislative Assembly
ECOWAS	Economic Community of West African States
HRC	Human Rights Council
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
IMLU	Independent Medical Legal Unit
NGO	Non-Governmental Organization
OAU	Organization of African Unity
OHCHR	Office of the High Commissioner for Human Rights
RWF	Rwandan Francs
SERAC	Social and Economic Rights Action Centre
UDHR	Universal Declaration on Human Rights
UN	United Nations

TABLE OF CONTENTS

DECLARATION	i
ACKNOWLEDGEMENTS	ii
SUMMARY	iii
LIST OF ABBREVIATIONS	iv
TABLE OF CONTENTS.....	v
Chapter one.....	1
1 Introduction.....	1
1.1 Statement of the problem	4
1.2 Research questions	5
1.3 Research methodology	5
1.4 Limitations of the study	6
1.5 Significance of the study	6
1.6 Literature overview	7
1.7 Chapter outline	10
Chapter two.....	12
2 International and regional protection of property rights	12
2.1 The concept of property	12
2.2 Property rights under international law	13
2.2.1 The non-inclusion of property rights in ICCPR and ICESCR.....	14
2.2.2 The inclusion of property rights in other treaties.....	15
2.2.3 Protection and enforcement of property rights in international law	15
2.3 The right to property in the African human rights system	17
2.3.1 Inter-state complaints.....	19
2.3.2 State party reporting.....	20
2.3.3 Individual complaints system.....	20
2.3.4 The African Court on Human and Peoples' Rights	23
2.4 Human rights in an East African context.....	24
2.4.1 Promotion and protection of human rights in East Africa.....	24

2.4.2	The role of the East African Court of Justice.....	25
Chapter three	28
3	Rwanda’s law and policy on expropriation of property	28
3.1	Expropriation in Rwanda.....	28
3.1.1	Public interest	29
3.1.2	Just compensation	30
3.2	Irregularities in Rwanda’s expropriation.....	32
3.2.1	Inadequate compensation	32
3.2.2	Delayed payment of compensation.....	33
3.3	Redressing injustice arising from expropriation	35
3.3.1	The court system.....	35
3.3.2	Human Rights Commission	36
Chapter four	40
4	Expropriation in different legal systems and best practices	40
4.1	Property under the Civil law system	40
4.2	Property under the Common law system	42
4.3	Comparison between the Civil and Common law systems.....	44
4.4	Synopsis of Rwanda’s colonial legacy.	44
4.5	Expropriation practices in other jurisdictions.....	45
4.5.1	South Africa’s law on expropriation.....	46
4.5.2	Uganda’s law on expropriation	48
Chapter five	51
5	Conclusion and recommendations	51
5.1	Recommendations	53
5.1.1	Separation of power to expropriate from determination of compensation	53
5.1.2	Removal of appeal to the Commission before having access to court.....	53
BIBLIOGRAPHY	55

Chapter one

1 Introduction

Rwanda¹ is a developing country whose economy has been characterized by rapid urbanization in the last decade. Acting upon a vision pioneered by President Kagame, the Ministry of Sports and Culture adopted the Kigali Conceptual Master Plan (KCMP)² as a guide for the expansion and development of the capital city. The KCMP that was drawn up by the OZ Architecture Team was officially adopted by Parliament in 2008. The plan does not only seek to urbanize the city and surrounding areas, but it also completely revises the land use, infrastructural setup as well as taking into account environmental and sustainability concerns of the modern world.³ The introduction of the KCMP promises both current and future inhabitants of the city better standards of living by opening up employment opportunities as well as improving infrastructure and communication services. Not only will it also facilitate development, it will also ensure sustainable growth of the country's economy as a whole.

However, all urbanization policies are pursued at a cost of culture and tradition, and at the expense of the comfort of some persons in society. This is justified by the consideration that urbanization benefits the greater population and as such it would outweigh the comfort of a few individuals.⁴ It must be emphasized that the welfare and wellbeing of the individual is placed at the center of development. It would therefore call for a weighing exercise between the costs of development versus the wellbeing of individuals. It would follow that if the costs outweigh the wellbeing of the public, such development must be abandoned. One such cost which forms the core of this research is the problem of displacement of inhabitants from a particular area earmarked for development.

¹ The Republic of Rwanda is a sovereign State located in Eastern Africa. Rwanda is a landlocked country bordered by Burundi, the Democratic republic of Congo, Uganda and Tanzania.

² The Kigali Conceptual Master Plan (KCMP). Available at: http://www.rdb.rw/uploads/media/KIGALI_CONCEPTUAL_Master_Plan.pdf (accessed on 29 Oct 2012).

³ The Master Plan has won some important planning awards including the American Planning Association Daniel Burnham Award for Best Comprehensive Plan (2009) and the American Society of Landscape Architects Award for Best in Planning (2010).

⁴ Cohen B. "Urbanization in developing countries: Current trends, future projections, and key challenges for sustainability." (2006) *28 Technology in Society* 1–2, pp. 63–80.

This imposes an obligation on policymakers to respect human rights when pursuing the objective of development and urbanization. The issue of displacement arises in the compulsory acquisition of land. In order to get around the hurdle of ownership and the right to property, states may compulsorily acquire property from an individual in the interest of the public. The rules that govern such acquisition of properties must be strictly adhered to otherwise the acquisition will be deemed illegal. Rwanda is party to the UDHR⁵ by virtue of membership to the United Nations as well as several other international and regional treaties on human rights. These include the African Charter on Human and People's Rights,⁶ International Convention on Civil and Political Rights,⁷ International Covenant on Economics, Social and Cultural Rights; and Convention on the Elimination of all forms of racial Discrimination⁸ to mention but a few.

The right to property⁹ is one of the rights recognized under the Universal Declaration of Human Rights. The right to property is a subsection of the broader class of civil and political rights. Human rights are generally categorized as civil and political rights on one hand and socio-economic on the other. Whereas Socio-economic and cultural rights are stipulated in the ICESCR,¹⁰ civil-political rights on the other hand are laid down in the International Covenant on Civil and Political Rights (ICCPR).¹¹ Civil and political rights have a longer history than social, economic and cultural rights and States tend to rank them higher than socio-economic rights.¹² The right to property is generally regarded as a civil right. It was however proclaimed in the *Vienna Declaration*¹³ that all human rights are universal, indivisible and interrelated. *Article 5* further instructs the international community to treat all human rights with fairness and equality, giving all rights the same emphasis. A duty is imposed upon the State to uphold all human rights and freedoms

⁵ The universal declaration of Human Rights, adopted on 10 December 1948, accessed and ratified by Rwanda on February 12th 1962.

⁶ The African Charter on Human and People's Rights adopted on 27/06/1981 and ratified by Rwanda

⁷ The International Convention on Civil and Political Rights adopted in and ratified by Rwanda in 1975.

⁸ The international Convention on Elimination of all forms of Racial Discrimination adopted on 21/12/1965, entered into force on 04/01/1969 and ratified by Rwanda on 1981.

⁹ See Art. 17(1) UDHR.

¹⁰ Adopted by General Assembly *resolution 2200 (XXI)* of 16 December 1966.

¹¹ Adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 December 1966, entry into force 23 March 1976, in accordance with article 49.

¹² Meron T. "On the Hierarchy of International Rights." (1986) *80 American Journal of International Law* 1, at 2.

¹³ The Vienna Declaration and Programme of Action. Adopted on 25 June 1993. A/CONF.157/23.

regardless of political, economic and cultural systems.¹⁴ The author submits that there is no difference between rights that fall under different categories. Human rights in their totality cater to the welfare and dignity of humans.

The preceding analysis supports the notion that no single right can be enjoyed without regard to other rights. For example, it cannot be reasonably said that an individual can enjoy the right to vote if his freedom of movement is curtailed or if he/she does not have some basic education. The author therefore contends that the right to property cannot be enjoyed without regard to other human rights. Moreover, the right to property is an omnibus right that has other entitlement subsumed therein. *Article 17 of the UDHR* which guarantees the right to property places emphasis on two entitlements. Firstly, in sub-article (1) it emphasizes the aspect of ownership which can be exercised individually or jointly with other. Secondly, it prohibits the arbitrary deprivation of property under sub-article (2). Expropriation is therefore one of the lawful limitations to the right of free disposal of property and the Rwandese authorities have invoked their expropriation powers in order to create room for the urbanization plan contained in the KCMP.

Expropriation is the compulsory acquisition of privately owned land by a government. Although the right to property is deemed an inviolable right, there is always a proviso that allows for the compulsory acquisition of property in the interest of the public.¹⁵ In such an instance, the compulsory acquisition must be authorized by law and strictly motivated by public interest. Where it is determined that such compulsory acquisition of property is firstly authorized by law and secondly motivated by public interest, the dispossessed individual or entity must be promptly and adequately compensated.¹⁶ This research therefore seeks to ascertain whether Rwanda fulfilled its human rights obligation to respect the right to property and whether they complied with the procedures set out in the domestic laws regarding expropriation.

¹⁴ *Ibid* at Art. 5.

¹⁵ See for example, Art. 29 of the 2003 Constitution of the Republic of Rwanda.

¹⁶ *Ibid*. See also: Art. 2(3) of the Law no. 18/2007 of 19/04/2007 Relating to Expropriation in The Public Interest which defines “just compensation” as an indemnity to be paid by the expropriating body to the individual(s) who have been dispossessed of land. Compensation is supposed to be calculated against the value of the property and the developments thereupon giving consideration to its market value. Failure to adhere to this consideration will lead to the act of expropriation being deemed illegal.

1.1 Statement of the problem

Urbanization of cities usually brings about improvement of livelihoods through the provision of jobs and introduction of better services like schools, hospitals, roads and communication facilities. However, more often than not, urbanization comes at a significant cost. Over and above latter effects like erosion of culture and tradition, in its initial stages it presents conflicts of land. However, it might necessitate that some individuals are relocated from where they are in order to create room for development. In such instances, States are always quick to expropriate land without proper consideration to the law.

Expropriation invariably raises human rights concerns mainly in relation to the right to property. Given the example of Rwanda and its KCMP, it was foreseeable that a number of people had to be relocated to give way for construction. A number of people had their property expropriated and this raised a number of issues. The exercise of expropriation led to the compulsory acquisition of the properties of low income inhabitants forcing most of them to settle outside of the planned areas with little to no compensation. For those who were compensated, the authorities did not justly compensate them as required by *Law no. 18/2007 of 19/04/2007 relating to Expropriation in The Public Interest*.¹⁷ This not only deprived dwellers of their right to property but also the right to benefit directly out of the value of their properties. This is a fundamental error in the process of expropriation especially in developing countries where development and poverty eradication is closely linked to strong land tenure systems.¹⁸

This is ultimately a violation of human rights as well as municipal law. In the global community today, human rights considerations are heightened and such blatant violations should not be acceptable at any cost whatsoever. Not only does it affect the livelihoods of those affected, it is likely to set a bad precedent for other regimes. The rules on human rights and when they may be curtailed are clearly stipulated by law. In regard to property, an expropriation must expressly be permitted by law. It must then be carried out only in the public interest and that

¹⁷ Article 2(3).

¹⁸ See also: Niyonsenga D. (2013) *Urban planning and social inclusion, a study of Kigali city, Rwanda*. Paper prepared for presentation at the "Annual World Bank Conference on Land and Poverty" The World Bank - Washington DC, April 8-11.

the dispossessed individuals must be justly compensated. This therefore calls for an inquiry into the procedure of the compulsory acquisition of land in Rwanda pursuant to the KCMP policy.

1.2 Research questions

Given the issue at hand, this research seeks to explore the following research questions regarding Rwanda's policy of urbanization in regard to property rights:

- Did Rwandese authorities comply with their human rights obligations as well as the municipal requirements when embarking of the expropriation policy?
- Whether other human rights were violated in the process of expropriation of the land?
- What the effect of non-compliance of the rules if established will be in relation to the expropriation?
- What remedies are available to the displaced persons affected if the expropriation is established to have been illegal?

1.3 Research methodology

The methodology adopted in this study is analytical and comparative. The comparative approach is employed when comparing the Rwandese practice of expropriation to other sovereign states in the region of East Africa. It becomes necessary to examine the course of action that other jurisdictions have taken in the face of the challenge of expropriation. Such practice becomes instructive even in the face of properly formulated rules regarding expropriation. Such practice is highly indicative of the status of human rights in the region and a strong pointer of the willingness and ability of states to respect them. The analytical approach is used to examine the policies and laws adopted to enhance the right to property vis-à-vis expropriation done in the name of public interest in Rwanda.

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

order to achieve this, the research will utilize primary and secondary sources of data. As such, the study will be entirely library based utilizing desktop literature for example journal articles, books, cases, journalist reports, treaties, laws and government policies to mention but a few.

1.4 Limitations of the study

This research being a desktop research does not present serious limitations. Moreover, it mainly utilized primary and secondary sources for instance government policies, treaties, journal articles and commentaries which are accessible to the author. However, whenever one is probing government policies, there may be some information that may be pivotal to the research that the state officials may not be at liberty to disclose or simply because they may be uncooperative. This is usually because the release of such information may result in scrutiny of government's course of action resulting in some possible disgruntlement especially in a contentious case as this where the most valuable resource (land) is involved. Government ultimately will seek to withhold such information that may be indicative of foul play or contentious information that is sensitive. However, the author does not anticipate many of these instances and submits that even though such a hurdle is met, it will not affect the output of the research.

1.5 Significance of the study

The topic of expropriation of land is one of the most contentious issues that states have to carefully handle. This is because it affects individuals' title to land and more often, several immovable developments thereon. If not handled with the due regard it deserves, expropriations can turn into a bloody affair. For this reason, it is important to ensure that governments do not err in any procedure during expropriation. Should this happen, there is need to redress the injustice occasioned to the affected individuals.

However, such irregularities cannot be brought to light if there is not avenue of scrutiny for government actions. Such a research is therefore invaluable in as far as critiquing governments' actions are concerned. This is to ensure that states abide by their human rights obligations as well as domestic law. This research will therefore highlight any irregularities in the Rwandan

expropriation policy pursuant to the Kigali urbanization policy as will make suggestions as to how they can be adequately resolved.

1.6 Literature overview

The right to property is protected under the Universal Declaration of Human Rights Article 17. This Article provides that property may be owned individually or in consort with others. The provision also states that no one shall be arbitrarily deprived of his right to property. Arbitrary deprivation can be explained as impairing the enjoyment of a particular right without regard to the law. It suffices to note that the right to property is not included in the ICCPR nor does it appear in the ICESCR. It is however submitted that this does not affect the status of the right to property.¹⁹ It must be noted that Rwanda is a signatory to all these treaties.²⁰ Moreover, most Constitutions in the world guarantee the right to property. Rwanda is no exception to this. The right to property is guaranteed in the Constitution of the Republic of Rwanda.²¹ The Article reiterates the right as contained in the UDHR and also makes reference to the possibility of interference of the enjoyment of the right to property. However, the Article mandates that any interference with the right to property must be determined by law; it should be done in the public interest, and; it must be followed by fair and prior compensation.

One of the exceptions cited by Rwandese laws that may limit the right to property is expropriation which is provided for in *Law relating to Expropriation in the Public Interest*.²² The act defines expropriation as an act of taking private property by the Government in the interest of the public. The aim of expropriation is to aid development, social welfare, security and territorial integrity.²³ This therefore has the effect of lawfully interfering with ownership if private property. The concept of ownership is commonly defined as the highest claim an individual can have over property.²⁴ It is an exclusive right that is justiciable against other

¹⁹ Krause C. and Alfredsson G. (1999) *Article 17* in Alfredsson G. and Eide A. (eds.) *The Universal Declaration of Human Rights*. Kluwer Law International, Netherlands.

²⁰ For the ratification status of all treaties by country, see the United Nations Treaty Collection website. Available at: <http://treaties.un.org/Pages/Treaties.aspx?id=4> (accessed on 8 May 2013).

²¹ Article 29, 2003 Constitution of Rwanda.

²² N° 18/2007 OF 19/04/2007.

²³ See: Article 2(3) and 3 of the Expropriation Law.

²⁴ Snare F. "The Concept of Property." (1972) *9 American Philosophical Quarterly* 2 at 200.

individuals.²⁵ Ownership is closely tied to the notion of dominion or sovereignty by which an individual or group of individuals assert their right of title to a particular thing against other persons.²⁶ The right of ownership traverses all modern legal systems of the world regardless of whether the right is exercised in an individual or collective capacity. For example, within Roman law as well as American Law, the ownership is defined as a “bundle of rights” which comprises of three subsumed rights.²⁷ These are known as *usus, abusus and fructus*. All these entitlements together form the class of ownership. Taking into account an example of a house, *usus* would refer to the right to dwell in the house without unjustifiable interference from others. *Abusus* on the other hand is the authority to sell, encumber, modify or even destroy it while *fructus* is the right to certain proceeds that may be derived from the house for example rent from leases. Expropriation is therefore an exception to the right to property.

The Government of the Republic of Rwanda embarked on an ambitious urbanization policy to remodel the country’s capital, Kigali. Not many countries in the region have been as determined as Rwanda when it comes to planning for urbanization. In this policy, Rwanda aims at being a middle income country by the year 2020 including being a regional pool for investment, finance and logistics.²⁸ To facilitate this policy, the government adopted the Kigali Conceptual Master Plan, designed by Oz Architects and complemented by a Singaporean firm, Surbana²⁹ for the finer details. The plan serves as a guide to development as well as a goal to be achieved. The Master Plan lays out critical land reform plans which boast of a green and environmentally friendly Rwanda come 2020. Over and above creating an environmentally friendly city as well as an investment haven, the Master Plan envisages the transformation of slums into parks, commercial districts and tourist resorts.

In order to facilitate this policy, Rwanda has carried out a number of reforms in order to ensure the maximization of available funds. One of the major reforms is the adoption of the model

²⁵ Merrill T.W. “Property and the Right to Exclude.” (1998) 77 *Nebraska Law Review* 730

²⁶ Herman S. “The Uses and Abuses of Roman Law Texts.” (1981) 29 *American Journal of Comparative Law* 4, pp. 671-690.

²⁷ Herman S. (1981) 29 *American Journal of Comparative Law* 4, at 672.

²⁸ Goodfellow T. (2013) *Kigali 2020: The Politics of Silence in the City of Shock*. Available at: <http://www.opendemocracy.net/opensecurity/thomas-goodfellow/kigali-2020-politics-of-silence-in-city-of-shock> (accessed 8 April 2013).

²⁹ Surbana is a Singapore based building consultancy firm.

employed by Singapore in which social security funds are channeled for housing development. This indicates overwhelming commitment by the government to the urbanization of Rwanda.³⁰

Although, the KCMP has not been appealing to everybody, it is a step in the right direction. It will boost economic growth and investment as well as improve the livelihood of citizens. It however has to be meticulously planned and coordinated in order to avoid any injustice that may be occasioned in the process. With the Master Plan adopted in 2008,³¹ it was foreseeable that a number of people had to be moved to give way for construction. The government began the highly anticipated expropriation program in Kimicanga in Kimihurura Sector, Gasabo District on 29 December 2011 pursuant to the KCMP. The Mayor of the area, Willy Ndizeye confirmed the expropriation and compensation of close to 200 families in the area. The Mayor alleged that more than RWF 1 billion had been spent to compensate or relocate the affected persons in the area.³² The Deputy Mayor of Kigali City pointed out other areas which were earmarked for expropriation. These included the settlement of Urumuri, Isano, Inyamibwa and Isangano. He noted that the entire process of expropriation would cost almost RWF2.5 billion to be financed by the Ministry of Finance. Although the expropriation in Kimicanga had been given a deadline of the end of December 2011, the Mayor noted that there were already disputes regarding the expropriation that slowed down the process. It is foreseeable that disputes relating to expropriation will inevitably arise and must be addressed promptly.

A number of people had their property expropriated and this raised a number of issues. The inhabitants were given an option to either be resettled 15km out of the earmarked area or be compensated. For those who were compensated, the authorities did justly compensate them as required by *Law no. 18/2007 of 19/04/2007 relating to Expropriation in The Public Interest*.³³ Over 60 residents on the 2 April 2013 stormed the offices of the Kigali City Council demanding

³⁰ Goodfellow notes that one minister envisioned Rwanda being entirely urban in the near future. However, according to [indexmundi.com](http://www.indexmundi.com), 90% of Rwandans are currently rural farmers. This strongly suggests that Rwanda's agricultural sector is not a sustainable GDP contributor. This could be explained by the fact that the largest sector of agriculture in Rwanda is mainly subsistence farming. Due to the low GDP of the country, it would definitely take more time in order for Rwanda to become entirely urbanized. See: Rwanda Economy Profile 2013. Index Mundi. Available at: http://www.indexmundi.com/rwanda/economy_profile.html (accessed 13 May 2013).

³¹ The KCMP was adopted by Rwanda Parliament in 2008.

³² Asiimwe B.R. (December 29, 2011) *Kimicanga expropriation kicks off*. The New Times Rwanda. Available at: www.newtimes.co.rw/news/index.php?i=14854&a=48571 (accessed 14 May 2013).

³³ *Article 2(3)*.

delayed payments. The residents had been promised payment before April but nothing had been received.³⁴ Unfortunately, this is just an example of the many cases of procedural impropriety which needs to be resolved. It does not only constitute an illegality but is also a breach of human rights. Although the evidence might point to the fact that most affected families are promptly and adequately compensated, even one case of irregularity is bad enough. This not only affects an individual's economic situation but also their standard of living. No irregularities should be tolerated. This study therefore examines the expropriation process of Rwanda to ascertain whether it complies with international as well as municipal law standards.

1.7 Chapter outline

Chapter 1 is the introductory chapter. It gives a summary of the study and what is to be generally expected in the study. It presents the problem created by expropriation in pursuance of the urbanization policy adopted by the government of the Republic of Rwanda. It also gives the research aims and objectives as well as the literature review. This chapter concludes by giving an outline of what the study entails.

Chapter 2 examines the UN system of protection of the right to property as well as the regional level. It examines the concept of property and the scope of operation the right to property. At regional level, the research will examine the protections afforded to property in the African Human Rights System. It will go a step further in examining the East African framework protection of the right to property.

Chapter 3 looks at Rwanda's law and policy of expropriation enabled by the Kigali Conceptual Master Plan. It examines the concept of ownership and the conditions under which ownership of property may be interfered with under the international and municipal frameworks that dictate the legality of expropriation. It also highlights some contentious cases that have resulted from Rwanda's property rights regime.

³⁴ Habimana C. (May 2, 2013) *Expropriation: Nduba Sector Residents Angry at Delayed Payments*. Available at: <http://en.igihe.com/news/expropriation-nduba-sector-residents-angry-at.html> (accessed 14 May 2013).

Chapter 4 is a comparative chapter which seeks to reconcile the various approaches to the concept of property. This chapter will highlight the different approaches to property rights between French Law and other legal systems. The chapter will additionally examine the practice of neighbouring countries that encountered the challenge of expropriation to determine best practices. Such actions can serve to inform Rwanda's law and policy on expropriation.

Chapter 5 is the concluding chapter. It draws conclusion from the entire study and makes recommendations if any.

Chapter two

2 International and regional protection of property rights

This Chapter examines the protection of the right to property under international law which is mainly provided for under the UN system of human rights. The study will also examine regional mechanisms of protection of the right to property and in particular, the African regional system of human rights. The chapter will conclude by analysing Rwanda's protection of the right to property and the enforcement mechanisms put in place to redress any violations that may occur.

2.1 The concept of property

Property rights are a dynamic and contentious topic in both municipal and international law. This area of the law affects individuals on a daily basis and as such deserves to be treated with great caution in order to ensure peace and stability. Under international law, the right to own property is guaranteed by Article 17 of the UDHR.³⁵ The right to property is modelled around the Western conception of individual entitlements which in effect prevents interference of title from other persons and the State.³⁶ This conception of rights ultimately conflicts with certain social and cultural right. As such, different legal systems around the world approach the topic of property from varied perspectives. Krause and Alfredson argue that the formulation of property rights in treaty law adopts a western perspective of individualism which has been criticised for hindering social progress.³⁷ This argument is true to a certain extent especially in the face of reconciling property rights with concepts like equality and social responsibility. Strong property rights regimes may have a tendency of justifying certain vices in society for instance segregation, income inequality and strong social classes. Rousseau, in his famous book "The Social Contract" argued private property rights were a means of repression of the liberties of man. This book was written during the period of feudalism in France where the privilege to

³⁵ Adopted and proclaimed by General Assembly resolution 217 A (III) of 10 December 1948.

³⁶ Sjaastad E. and Bromley D.W. "The Prejudices of Property Rights: On Individualism, Specificity, and Security in Property Regimes." (2000) *18 Development Policy Review* 4, pp. 365–389.

³⁷ Krause C. and Alfredson G. (1999) Article 17, pp. 359-378 in Alfredson G. and Eide A. (eds.) *The Universal Declaration of Human Rights*. Kluwer Law International. Netherlands.

own property was vested in a few noblemen who formed the elite class of society. Angered by the fact that the serfs were forced to work for the noblemen with little or no remittance, Rousseau went as far as proposing that no man should own any property.³⁸ While the law gives primacy to protection of the privileged members of society in their abundance of wealth, the underprivileged will often go without food, shelter and clothing.

Although this might be the bitter reality, it is submitted that society would fall into pandemonium if protection of property rights are disregarded. The result would be unjust dispossession of rightful title from those who have worked hard to amass their wealth. In the world today, the bulk of property disputes in relation to land arise out of contested title and compulsory acquisition of property. The UDHR³⁹ was therefore adopted with property rights taken into account.

2.2 Property rights under international law

The right to property is a contentious right in the international bill of rights. There are three major instruments that have come to be regarded as the “international bill of rights.” These include the Universal Declaration of Human Rights,⁴⁰ the International Covenant on Civil and Political Rights⁴¹ and the International Covenant on Economic, Social and Cultural Rights.⁴² Under Article 17 of the UDHR, property may be held by one individual or in association with others. The provision in effect limits the State and other individuals from interfering with the lawful rights in title or ownership. It must be noted that this right is a specific entitlement that protects privately owned property. However, just like all most other rights, the right to own property is not an absolute entitlement. There are stipulated instances under which the right may be lawfully curtailed. It is generally accepted that any limitation on property rights must be sanctioned by the law and carried out in the interest of the public followed by adequate

³⁸ See also: Rousseau J.J. (1762) *The Social Contract. Book I, 7-The Sovereign, Paragraph 8. 1762.* Available at: http://www.constitution.org/jjr/socon_01.htm (accessed 29 May 2013).

³⁹ Adopted and proclaimed by General Assembly resolution 217 A (III) of 10 December 1948.

⁴⁰ *Ibid.*

⁴¹ Adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 December 1966. Entry into force 23 March 1976, in accordance with Article 49.

⁴² Adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 December 1966. Entry into force 3 January 1976, in accordance with Article 27.

compensation. However, such restrictions considerably vary in the different legal systems of the world. Given the disparity in the approach to property in the various legal systems, it is not perceivable that there can be a uniform standard in the administration of property rights.

2.2.1 The non-inclusion of property rights in ICCPR and ICESCR

It must however be noted that whereas the right to property is contained in the UDHR,⁴³ it does not appear in the ICCPR nor in the ICESCR. Citing reasons like the disparity in legal systems which view property from different approaches, there was a challenge including property rights in the ICCPR and ICESCR. A number of issues could not be agreed upon because it would suppose a common standard for the administration of property rights. Such a “common standard would be undesirable at law given the fact that different countries in the world utilize different legal systems. As such, the different legal systems approach property rights from different perspectives. It would therefore have an effect of harmonizing the disparities that exist in the different legal systems which would be fundamentally wrong. It is no wonder that issues like the amount of compensation; when compensation should be paid; the due process; and, even the inclusion of the right to property itself could not be agreed upon.⁴⁴

It is however submitted that the non-inclusion of the right to own property in the ICCPR and ICESCR does not imply that the status of the right is diminished. It still forms an integral part of human rights law and is captured in the UDHR which constitutes a standard for Members States to follow. It is in effect an expression of the basic principles and ideals that the international community recognizes. The 1993 Vienna World Conference on Human Rights⁴⁵ placed a duty upon States to promote and protect all human rights and fundamental freedoms, regardless of their political, economic and cultural systems.⁴⁶ This reflects the legal obligation placed upon States to respect all human rights by virtue of their consent to be bound by these treaties and is

⁴³ Article 17 of the UDHR.

⁴⁴ Krause C. and Alfredson G. (1999) Article 17, pp. 359-378 in Alfredson G. and Eide A. (eds.) *The Universal Declaration of Human Rights*. Kluwer Law International: Netherlands, at 359.

⁴⁵ The Conference was convened in Vienna, Austria from the 14th to 25th of June 1993.

⁴⁶ See *Article 5 of the Vienna Declaration and Programme of Action*. Adopted by the World Conference on Human Rights on 25 June 1993. A/CONF.157/23. Art. 5 states that, “*All human rights are universal, indivisible and interdependent and interrelated. The international community must treat human rights globally in a fair and equal manner, on the same footing, and with the same emphasis.*”

also a reflection of the universality of human rights.⁴⁷ As such, human rights form an intrinsic part of the law that ensures humane treatment and social justice. It is therefore submitted that the right to own property remains sacrosanct and must be respected unlike the African Charter which protects property.

2.2.2 The inclusion of property rights in other treaties

Although property rights are omitted in the ICCPR and ICESCR, the entitlement is found in other instruments that emphasize equal treatment. The right to own property, just like any other human right is founded on principles of equality and non-discrimination. As such, non-discrimination treaties that contain the right to property seek to ensure the enjoyment of the entitlement without regard to any form of partiality. The two notable treaties that contain the protection include the Convention to eliminate all forms of Discrimination against Women (CEDAW)⁴⁸ and the Convention on the Elimination of Racial Discrimination (CERD).⁴⁹ Under these instruments, all forms of incapacity of women in regard to owning property and conclusion of contracts with property involved are removed. Women are empowered to deal with property on the same footing as their male counterparts. This would therefore include acts like ownership, acquisition, management, administration, enjoyment and disposal thereof. It is submitted that this emphasizes the primacy of the property rights which must be respected and above all enjoyed by all persons without regard to any discriminative criteria.

2.2.3 Protection and enforcement of property rights in international law

The Vienna Convention⁵⁰ places a duty upon States to promote and protect all human rights and fundamental freedoms, regardless of their political, economic and cultural systems.⁵¹ A strong system of protection of human rights under the auspices of the UN was modeled to

⁴⁷ For a discussion on the universal nature of human rights, see: Donnelly (2007) 29 *Human Rights Quarterly* 2, pp. 281-306. Donnelly presents an argument which explores the legal, social and cultural framework in determining the relative universality of human rights. He concludes that although there is a disparity of practices around the world regarding the approaches to humanity and dignity, there is a consensus regarding the universality of human rights which was affirmed in the Universal Declaration of Human Rights.

⁴⁸ Adopted in 1979 by the UN General Assembly, is often described as an international bill of rights for women.

⁴⁹ Adopted and opened for signature by the United Nations General Assembly on 21 December 1965, and entered into force on 4 January 1969.

⁵⁰ The Conference was convened in Vienna, Austria from the 14th to 25th of June 1993.

⁵¹ See *Article 5 of the Vienna Declaration and Programme of Action*. Adopted by the World Conference on Human Rights on 25 June 1993. A/CONF.157/23.

ensure that states ensure that human rights are enforced. The UN system comprises of the General Assembly, The Human Rights Council (HRC), The Office of the High Commissioner of Human Rights and the Security Council.⁵² Within the UN system, human rights are implemented and monitored under treaty based mechanisms and the UN-based Mechanisms. A majority of human rights treaties create bodies for the monitoring and implementation of the rights therein. These Committees mainly employ four mechanisms in carrying out their mandate. These include reporting mechanisms, individual-based complaints, inter-state complaints and investigatory systems.⁵³

Further, the UN system also provides for Special Procedures under which human rights are implemented and monitored. Special procedures include Thematic Procedures and Country Specific Procedures that were created under the Commission on Human Rights.⁵⁴ The distinction between thematic mandates and country specific mandates is while the former deals with the implementation of a particular right internationally, for instance the right to education, the latter deals with implementation of all human rights in a specific country. According to the OHCHR, as of 1 January 2013, the HRC had 36 thematic mandates while the country mandates were 12. The UN Commission on Human Rights was replaced in 2006 with the Human Rights Council which continued to utilize Special Procedures.⁵⁵ Special Procedures are comprised of individuals called rapporteurs, representatives or experts, or at times a group of individuals referred to as a working group. Their role is mainly to investigate serious violations of human rights on behalf of the Human Rights Council and the General Assembly. They carry out their mandate by collecting information on the implementation of particular

⁵² The United Nations Non-Governmental Liaison Service (NGLS). *The United Nations Human Rights System: How to make it Work for You*. UNCTAD/NGLS/2008/2. Palais des Nations, CH-1211 Geneva 10, Switzerland and Room DC1-1106, United Nations, New York NY 10017, United States. Available at: http://www.un-ngls.org/IMG/pdf/Final_logo.pdf (accessed 20 April 2013).

⁵³ See also the Human Rights Bodies-Complaints Procedures available at the Office of High Commissioner of Human Rights website. Available at: <http://www2.ohchr.org/english/bodies/petitions/> (accessed 28 April 2013).

⁵⁴ See Special Procedures of the Human Rights Council available at the Office of High Commissioner of Human Rights website. Available at: <http://www.ohchr.org/EN/HRBodies/SP/Pages/Welcomepage.aspx> (accessed 28 April 2013).

⁵⁵ Terlingen Y. "The Human Rights Council: A New Era in UN Human Rights Work?" (2007) *21 Ethics & International Affairs* 2, pp. 167-178.

rights, identifying serious violations of human rights and investigate ways of improving the implementation of affected rights.⁵⁶

The Human Rights Council that replaced the UN Commission on Human Rights in 2006 is charged with the mandate of addressing “gross systematic violations of human rights.”⁵⁷ The Commission was replaced with the Council because it was considered to have become too political; its membership was comprised of countries that violated human rights; it had failed to respond timeously to emergencies of human rights violations; and its operations were shrouded by onerous procedures which hindered productivity.⁵⁸ These procedures are very important in the enforcement of human rights and redressing alleged violations. However, the difficulty in relation to the right to property is that it is only contained in the UDHR. The issue is whether Member States are bound by their obligations under the UDHR. There are long standing contentions that the rights and entitlements in the UDHR are not legally binding and only constitute a standard that Member States seek to uphold. It is however submitted that the UDHR constitutes a minimum standard which states have an obligation to respect. As such they are highly authoritative. In addition, most Constitutions if not all include property rights in their Bills of Rights according to their various legal systems. This in effect highlights the primacy of property rights in the world today.

2.3 The right to property in the African human rights system

Unlike the international covenants regional human rights systems have developed to accommodate the right to property. The African Charter guaranteed the rights to property and Rwanda on Human and Peoples’ Rights which was adopted by Organisation of African Unity (OAU)⁵⁹ is the region’s principle human rights instrument. The OAU was replaced by the African

⁵⁶ Gutter J. “Special Procedures and the Human Rights Council: Achievements and Challenges Ahead.” (2007) 7 *Human Rights Law Review* 1, pp. 93-107.

⁵⁷ For more information on the Human Rights Council, please visit the United Nations Human Rights website. Available at: <http://www.ohchr.org/EN/HRBodies/HRC/Pages/AboutCouncil.aspx>. (accessed 29 May 2013).

⁵⁸ Chirwa D.M. (2007) *Socio-Economic Rights in International Human Rights Law*. Available at: <http://www.communitylawcentre.org.za/projects/socio-economic-rights/> (accessed 29 May 2013).

⁵⁹ The OAU was established on 25 may 1963 with a total of 32 African member states and was later replaced by the African Union on 26 may 2001.

Union (AU)⁶⁰ in 2002 and to date all countries on the African continent are members of the AU with the exception of Morocco. Rwanda had been a member of the OAU from 25 May 1963 and her membership was retained under the new AU. The right to property is guaranteed under Article 14 of the African Charter on Human Rights. The provision goes a step further to provide for certain circumstances under which the right may be lawfully limited. These exceptions include the public need and general interest of the community in accordance with state law.⁶¹ In addition to the protection of property rights, the African charter also provides that all persons have the right to freely dispose of their wealth and natural resources and no one may be deprived of this right.⁶² In instances where an individual(s) is spoliated of their property, they shall have a right to recover the property as well as compensation.⁶³

The emphasis of property rights in the African Charter signifies sanctity of property and its centrality to development. Furthermore, land in Africa and the rest of the world is considered to be the most valuable resource and a bulk of legislation is devoted to its protection thereof. It is no wonder that the African Charter takes steps to recognise, protect and monitor the enforcement of property rights under Article 17. However, the issue to be explored is whether an individual in Rwanda whose right to property has been violated can enforce his/her right under the African Charter.

The African Charter provides for measures of safeguarding the rights therein. Part II of the Charter establishes the *African Commission on Human and Peoples' Rights*⁶⁴ that is charged with the mandate of enforcing, promoting and disseminating the rights guaranteed in the African Charter.⁶⁵ The Commission carries out its mandate through inter-state complaints, state reporting and individual complaints mechanisms. The African Commission has received a number of complaints involving property rights for example Endorois case and SERAC v Nigeria which will be discussed under section 2.3.3 of this dissertation, which examines the individual complaints system.

⁶⁰ The AU was officially launched on 9 July 2002 in South Africa.

⁶¹ Article 14 of the African Charter.

⁶² See Article 21(1) of the African Charter.

⁶³ Article 21(2) of the African Charter.

⁶⁴ Article 30 of the African Charter.

⁶⁵ See: Mandate of the Commission, Article 45(1-4) of the African Charter.

2.3.1 Inter-state complaints

An inter-State complaint is a procedure by which one country lodges a case against another state alleging a violation of the latter's obligation. In order for an inter-state complaint to be admissible, both states must be party to the Convention in question. The complaining State party must have reason to believe that the other state is not abiding by the obligations of the African Charter.⁶⁶ The complaining State according to Article 47 must author a written communication addressed to the responding State, the AU and the Chairperson of the African Commission. The responding State is given three months to respond to the allegations.⁶⁷ If the matter is not resolved adequately through for instance negotiation or other peaceful means, either State shall have the right to refer the matter to the Commission through the Chairman and must inform the other State of such a development.⁶⁸ However, a State may refer the matter directly to the Commission through the Chairman if there is evidence of a violation of the African Charter.⁶⁹ The Commission may only entertain a matter submitted it within these provisions if available local remedies have been exhausted except if they are unduly delayed.⁷⁰

It is submitted that this mechanism has its weaknesses. States in principle view each other as "equals" and one state may be presumed to be meddling in another state's internal affairs. As such, states do not frequently invoke these mechanisms for fear of being attacked themselves. An example of such an occurrence was when the former Kenyan Prime Minister Raila Odinga spoke out on the Zimbabwean human rights situation referring to the crisis as a shame and embarrassment to the African Continent. He lamented on President Mugabe's unresponsiveness towards the international community outcry for peace and suggested that the UN and AU send peacekeeping forces to restore calm in Zimbabwe.⁷¹ President Mugabe's spokesmen, George Charamba hit back at Raila Odinga noting that he should have been the last person to speak about the situation in Zimbabwe. Charamba added that Odinga himself had raw blood of innocent Kenyans on his hands and was in no position to condemn the

⁶⁶ Article 47 of the African Charter.

⁶⁷ *Ibid.*

⁶⁸ Article 48 of the African Charter.

⁶⁹ Article 49 of the African Charter.

⁷⁰ Article 50 of the African Charter.

⁷¹ See: <http://supportzimbabwe.com/stories/index.php?i=3>

Zimbabwean Government.⁷² Despite its short comings, an inter-state complaint is still a valuable enforcement mechanism of human rights. In an instance where a state violates property rights and that state is a member of the AU, another state may rightfully bring a complaint against the violating state to compel the latter to abide by its obligations.

2.3.2 State party reporting

State reporting is another method employed by the Commission to ensure that member states abide by their obligations under the Charter. Article 62 of the African Charter requires member States to submit reports on their human rights situations. These reports are to be submitted to the Commission every two years and are to be made public in accordance with Rule 74.⁷³ The purpose of state reporting is to ensure that states carry out the obligations stipulated in the African Charter. In these reports, states highlight the progress they have made in enforcing human rights and the hardships they have encountered. In order to ensure transparency and accuracy of information, the Commission may receive shadow reports from NGO's and civil society organizations regarding the human rights situation in the country. This is a very vital tool in as far as exposing the human rights situations for example the Zimbabwe land crisis that had adverse effects on property rights in the country.⁷⁴ The state reporting mechanism is therefore an effective way of monitoring the enforcement of property and other rights

2.3.3 Individual complaints system

The individual complaints system is a mechanism by which a person (natural or juristic) whose human rights have been allegedly violated by a member state brings the matter before the Commission seeking a resolution. The Commission is authorized under Article 55 of the African Charter to receive complaints from persons alleging that their human rights under the Charter have been violated. For a communication to be admissible, it must comply with the conditions of Article 56. The communication must indicate who the author is even if anonymity is

⁷² Hard Talk Kenya (21 March 2012) "Raila Odinga has Raw Blood of Innocent Kenyans on His Hands!" – George Charamba. Available at: <http://hardtalkkenya.wordpress.com/2012/03/21/raila-odinga-has-raw-blood-of-innocent-kenyans-on-his-hands-george-charamba-2/> (accessed 27 March 2013).

⁷³ Rules of Procedure of the African Commission.

⁷⁴ See also: Mitchell T.W. "The Land Crisis in Zimbabwe: Getting behind the Myopic Focus upon Black & White." (2001) 11 *Indiana International & Comparative Law Review* 3, pp.587-603.

requested; the communication must be linked to the African Charter; it must not be phrased in insulting or disparaging language; it must not be solely based on media reports; local remedies must have been exhausted except if they were not available, inaccessible or unduly delayed; and, no final decision by a competent court has been reached.⁷⁵ If an individual whose right to property has been breached and can satisfy the above conditions, the African Commission may entertain his/her claim.

It must be noted that all the other regional systems of human rights are victim based. This means that only a victim of human rights violations may sue for enforcement. Article 55 does not place restrictions on who may submit a complaint to the Commission. This Article has been interpreted to grant *locus standi* to the victim, their families, NGOs and other civil society organizations. This is the peculiarity of the African human rights system that does not require the victim to vindicate his rights in person. There is a heightened status of intergovernmental institutions, national human rights institutions, NGOs and other stakeholders in the African human rights system. These institutions and persons under *Rule 62 of the Rules of Procedure of the African Commission* may be invited to participate in the Commission's sessions that do not involve voting. These institutions play a big role in the enforcement of human rights in Africa. Not only do they actively provide and defend human rights, they also act as watchdogs and whistleblowers that ensure that states abide by their obligations in the Charter. It must also be noted that when the Commission finds a violation of human rights, it makes recommendations to the State concerned. There was a serious concern with the enforcement of such recommendations and it was with this in mind that the African Court was established.

The African Commission has received a numbers of complaints involving property rights for example *Endorois case* and *SERAC v Nigeria*. Under the *Endorois case*⁷⁶ the complaint was made against Kenya under the constitution and the African Charter on Human and People's Rights. In 1970, the Kenya government forcefully removed the Endorois from the Lake Bogoria in the rift valley. The initiative by the government to evict the Endorois people was to gazette the area as a game reserve for purpose of tourism. The Endorois people were promised compensation and

⁷⁵ Article 56(1-7) of the African Charter.

⁷⁶ *Centre for Minority Rights Development (Kenya) and Minority Rights Group International on behalf of Endorois Welfare Council v Kenya*, 276/2003.

other benefit that never materialized. The Endorois people are pastoralists who had inhabited the Lake Bogoria area for centuries. They lived, farmed and had religious and ceremonial sites in the area yet the government restricted access to the area immediately. Domestic legal effort did not yield positive result for Endorois who later submitted the claim through the Centre for Minority rights to the African Commission. The Commission came to the conclusion that the government had violated the rights to culture;⁷⁷ development;⁷⁸ free disposition of natural resources;⁷⁹ religious practice;⁸⁰ and the right to property.⁸¹ The Commission recommended that the Endorois people be restituted to the Lake Bogoria area and that compensation be paid. However, the government of Kenya has not yet complied with the recommendations of the Commission.⁸²

The *SERAC v Nigeria*⁸³ was a complaint that alleged violation of articles 2, 4, 14, 16, 21, 24 of the African Charter. It was alleged in this communication the government had violated the right to health, dispose wealth, environment and property of Ogoni people. It was alleged that during oil exploration, there was improper waste disposal into the water and oil spillages that rendered the land infertile and inhabitable. The Ogoni people lived on the land their livelihoods depended on fishing and farming. The livelihoods of the Ogoni people were impaired and the toxic spillages posed a serious health risk to the inhabitants. The Commission held the government failed to prevent pollution and environmental degradation and this constituted a violation of the rights to health, satisfactory environment and the right to free disposal of wealth and natural resources. The commission also held that the right to housing, which is founded on the right to property, health and family, was violated. The commission ordered that attacks on the Ogoni people who had retained to rebuild their houses must stop and that victims should be compensated. The Commission also directed the government to carry out

⁷⁷ art 17 ACHPR.

⁷⁸ Art 22 ACHPR.

⁷⁹ Art 21 ACHPR.

⁸⁰ Art 8 ACHPR.

⁸¹ Art 14 ACHPR.

⁸² Kimathi L. "The Endorois Community Case to the African Commission on Human and Peoples' Rights." (2012) Available at: <http://africapeacepoint.net/Downloads/Endorois%20paper.pdf> (accessed 21 July 2014).

⁸³ Social and Economic Rights Action Centre & the Centre for Economic and Social Rights v Nigeria. Communication No. 155/96.

environment and social impact assessment to determine the environmental and health risks in the area. However, the new Nigerian Administration in 2000 noted that there were still atrocities taking place in Ogoniland and the Niger delta area by the oil companies.⁸⁴

Through such cases, the African Commission has been alive to the challenges faced by individuals when it comes to property rights. The individual complaints system under African Commission is an invaluable avenue for monitoring and enforcing property and other rights.

2.3.4 The African Court on Human and Peoples' Rights

The African Court of Human and Peoples' Rights was established under Article 1 of the Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights.⁸⁵ The Court has a complementary mandate to the Commission in its dispensation of justice.⁸⁶ The jurisdiction of the Court which is only applicable to states that have ratified the Protocol extends to the all cases and disputes regarding the Charter and any other human rights instrument ratified by the state in question. The implication of the clause is that it extends the jurisdiction of the Court beyond the African Charter. Therefore, since Rwanda has ratified the Protocol, the Court may entertain a matter regarding all human rights treaties the State has ratified.

On the question of access to the Court, states and the Commission may lodge a matter before the Court regarding a state that has ratified the protocol.⁸⁷ NGOs with observer status and individuals may be entitled to institute a matter against a state party that has made the Declaration in terms of Article 34(6) of the Protocol. Rwanda became the sixth African Country to make the Article 34(6) declaration permitting individuals and NGOs to directly access the Court.⁸⁸ This is a very commendable step by the Rwandese Government in as far as

⁸⁴ Note Verbale 127/2000 submitted by the Nigerian government at the 28th session of the Commission (October 2000).

⁸⁵ Adopted by the OAU in Burkina Faso, June 1998 and came into force on 25 January 2004. However, to date, only 26 countries have ratified the Protocol. For further information on ratifications, see: <http://www.achpr.org/instruments/court-establishment/> (accessed 29 May 2013).

⁸⁶ Article 2 of the Protocol to the ACHPR.

⁸⁷ Article 5(1-2), Protocol to the ACHPR.

⁸⁸ For more details, please see: <http://www.african-court.org/en/index.php/news/press-releases-2/342-rwanda-deposits-the-article-34-6-declaration-allowing-individuals-and-ngos-direct-access-to-the-african-court> (accessed 28 May 2013).

enforcement of rights is concerned. By implication, if an individual's right to property is violated, he or she may take the matter directly to the Court provided his/her claim complies with the rules of admissibility contained in Article 56 of the African Charter.⁸⁹ The major difference between the Commission and the Court is that while the Commission gives recommendations, the Court passes judgments that are binding on state parties. Article 28(2) provides that judgment by Court shall be final and non-reviewable. The Court would therefore be a very practical forum for individuals especially from a state like Rwanda which has both ratified the Protocol and made the Article 34(6) declaration. Individuals who comply with the admissibility criteria of Article 56 of the African Charter may be entitled to have their matters heard before the Court. The chapter will now examine the East African sub-regional human rights system.

2.4 Human rights in an East African context

The East African Community (EAC) is a sub-regional intergovernmental organization comprising of five countries. These include Kenya, Uganda, Tanzania, Rwanda and Burundi. The aim of the organization is to foster social, political and economic stability in the region through integration, increased competitiveness, investment and trade.⁹⁰ The treaty establishing the EAC was signed on 30 November 1999 and entered into force on 7 July 2000. It originally comprised of three principle states these being Kenya, Uganda and Tanzania. The Republics of Rwanda and Burundi acceded to the EAC Treaty and were granted membership on 1 July 2007.

2.4.1 Promotion and protection of human rights in East Africa

One of the major concerns of the EAC is the protection and promotion of human rights.⁹¹ The EAC has provided for annual meetings of National Human Rights Commissions from the various countries to exchange views, best practices ideas and challenges in the enforcement of human rights at a regional level. This Council of human rights Commissions comes up with decisions that are pertinent to the enforcement of human rights in the region. The Council adopted a

⁸⁹ Article 6(1) of the Protocol to the ACHPR.

⁹⁰ For more information on the EAC, visit <http://www.eac.int/> (accessed 28 May 2013).

⁹¹ See Article 6 EAC Treaty.

Plan of Action on Promotion and Protection of Human Rights in East Africa.⁹² The EAC Plan of Action on promotion and protection of human rights in East Africa provides for a framework of policies, strategies and activities that address promotion and protection of Human Rights. The main objective is to complement Partner States' policies, laws, programs and strategies regarding the enforcement of human rights.

Council also recommended the establishment of an EAC Bill of Rights which included enforcement mechanisms, capacity building, reporting obligations and dissemination of human rights.⁹³ The East African Legislative Authority (EALA) passed the EAC Bill of Rights on 25 April 2012 which contains a number of rights therein. Most relevant to this topic is Article 22 that protects the right to acquire, hold and dispose property either individually or collectively. The provision also provides for circumstances under which the right may be lawfully be limited. These include expropriation in the public interest, safety, morality or health, town and country planning and in the benefit of the public.⁹⁴ The Article also clearly provides that any person whose property has been compulsorily acquired shall have direct access to a court, tribunal or other forum to settle any grievance that may arise therein for instance rights, compensation and the legality of the taking.⁹⁵ The EAC Bill of Rights deals comprehensively with property rights clearly elaborating on the factors to be considered when limiting the right. Although the Bill has not been acceded to by the Partner States, it is a remarkable document and the author is satisfied that it caters to the needs of the EAC sub-region.

2.4.2 The role of the East African Court of Justice

The East African Court of Justice is new avenue that has been created under East African Community to monitor implementation for human rights and property rights in particular. The East African Court of Justice is established under Article 9 of the EAC Treaty is one of the organs of the EAC. The mandate of the Court is to enforce, interpret and ensure compliance to the provisions of the EAC Treaty. The Court became operational on 30 November 2001 following

⁹² EAC/CM 15/Decision 36 of 2009-09-04.

⁹³ EAC/CM 18/Decision 33 of 2009-09-04.

⁹⁴ Article 22(1) (a) of the EAC Bill of Rights.

⁹⁵ Article 22(2) of the EAC Bill of Rights.

the inauguration of the judges who convene in Arusha on a need basis. The Court has jurisdiction to interpret and apply the treaty, and shall have such other original, appellate, human rights and other jurisdiction as will be determined by the Council.⁹⁶ Partner States, natural and juristic beings resident in a partner state may bring a case before the Court on grounds of breach of an obligation in the treaty. While the Court may not have a mandate as clear as that of ECOWAS, the EA Court of Justice has been proactive on issues of human rights. Although the Council has not formalized its human rights jurisdiction, Court has not hesitated to protect human rights under the EAC Treaty. An example is the case of *Sarone Solomon v Kenya* that had a human rights aspect to it.

The EACJ was faced with a case on 29 June 2011 in which the Independent Medical Legal Unit (IMLU) filed an action against the Kenyan government for failing to prosecute Kenyan security forces who carried out torture, extra-judicial killings and other violations of human rights during the conflict at Mt. Elgon between 2006 and 2008. It was alleged that they were responsible for close to 200 disappearances. The Attorney General sought a dismissal on grounds that according to Article 27 of the EAC Treaty, the Council had not yet extended the jurisdiction of the Court to human rights violations. IMLU countered this argument alleging that reading the Vienna Convention on the Law of Treaties Article 27 in good faith resulted in the granting the Court jurisdiction. The Court agreed with IMLU and asserted jurisdiction. This is a commendable step of proactivity on the Court's part by giving effect to human rights considerations. Following this precedent, it is possible to enforce human rights at the EACJ.⁹⁷ It should be noted the East African court of Justice has not yet had occasion to adjudicate any case on property rights. However it remains a potential forum in which claims with a bearing of property may be adjudicate.

⁹⁶ Article 27 of the EAC Treaty.

⁹⁷ Sarone Solomon (March 4, 2012). *The Human Rights Brief*. Centre for Human Rights and Humanitarian Law. Available at: <http://hrbrief.org/2012/03/the-east-african-court-of-justice-asserts-its-jurisdiction-to-hear-the-independent-medical-legal-unit%E2%80%99s-reference-against-the-kenyan-government/> (accessed 15 may 2013).

2.5 Conclusion

Chapter 2 has discussed international and regional protection of property rights. Under international framework property rights are protected under the UDHR but not included under ICCPR and ICESCR. However, this does not imply that property rights do not form party of human rights law. In fact they are included in CEDAW and CERD and there are mechanisms instituted for enforcement of property rights. UN human rights treaties mainly utilize reporting mechanisms, individual complaints, interstate complaints and investigatory mechanisms to enforce and monitor human rights. The UN also utilizes Special Procedures (thematic and country specific procedures) as well as the Human Rights Council whose mandate to address gross systematic violations of human rights.

Property rights under African Human Rights System are expressly protected under African Charter. The African Charter established African Commission that is charged with the mandate of enforcing, promoting and disseminating the rights contained in the Charter. The Commission is empowered to receive interstate complaints, state party report and individual complaints subject to the conditions in the Charter. The protocol the African Charter establishes the African Court on Human and Peoples' Rights that has complimentary mandate to the African Commission. The difference between the two is that while the African Commission gives recommendations, the African Court pronounces legally binding judgments on the other hand. However, state must ratify the protocol as well as make the Article 34(6) declaration granting the Court jurisdiction. These two avenues have been instrumental in the monitoring and enforcement of property rights in Africa and Rwanda in particular which has both ratified and made the Article 34(6) declaration.

The East African sub-region has also been proactive in the enforcement of human rights that Rwanda is now a member of. The EAC adopted the East African Bill of Rights that provides for property rights. The East African Treaty also establishes the East African Court of Justice that is a potential avenue for the enforcement of property rights in Africa and Rwanda in particular. Having discussed the international and regional protection of human rights, the next chapter will examine Rwanda's law and policy on expropriation in relation to its urbanization policy.

Chapter three

3 Rwanda's law and policy on expropriation of property

This chapter will examine the laws and policies undertaken by Rwanda that have enabled the State to carry out expropriation of property. The chapter will also analyse whether Rwandese officials have complied with the requirements of such enabling laws and policies by examining past and present practices of expropriation. Cases that have arisen out of expropriation disputes and particularly from the Kigali Conceptual Master Plan will be extensively discussed and analysed.

3.1 Expropriation in Rwanda

The concept of expropriation has been defined in various ways. However, there are certain elements that are common to all expropriation definitions. These elements are that there is compulsory acquisition of private property;⁹⁸ the acquisition must be done by the State or its sanctioned authority in strict accordance with the law; the acquisition must be subject to adequate compensation; and, such acquisition must be done in the interest of the public.⁹⁹ Property rights essentially confer exclusive rights and privileges upon the owner to decide how property may be used or disposed. The provisions of the laws on expropriation may therefore be invoked by a state to lawfully enable the acquisition of property rights.¹⁰⁰

As is in the case of Rwanda, the state embarked on an urbanization campaign which necessitated the re-planning of Kigali city in order to achieve the objectives of the Kigali Conceptual Master Plan.¹⁰¹ In order to put the plan to action, there was a need to acquire the land that was largely in the hands of sub-urban subsistence farmers. The government invoked its powers of expropriation under *Law no. 18/2007 of 19/04/2007 relating to Expropriation in the public interest* which empowered the state to acquire private property in the interest of the public subject to “just

⁹⁸ Otubu A. “Private Property Rights and Compulsory Acquisition Process in Nigeria: The Past Present and Future.” (2012) 8 *Acta Universitatis Danubius. Juridica*, 3, pp 25-42.

⁹⁹ Marguerite V. *Encyclopedie Juridique*. Paris, Dalloz, 1983, 93 (unofficial translation by Prof. Fernandes M.J.); Melville J.B., *What is Expropriation*. Ontario, 1989,p,153

¹⁰⁰ Otubu (2012) *Ibid*.

¹⁰¹ The Kigali Conceptual Master Plan (KCMP). Available at: http://www.rdb.rw/uploads/media/KIGALI_CONCEPTUAL_Master_Plan.pdf (accessed on 06 November 2013).

compensation.”¹⁰² The true meaning of the elements of expropriation has been debated by various stakeholders and varies from one legal system to another. While it is generally agreed that the compulsory acquisition must be carried out by the State sanctioned by law, stakeholders differ on the issue of public interest and just compensation. The next sub-chapters will discuss the elements of public interest and just compensation.

3.1.1 Public interest

A compulsory acquisition of property by the State will only be deemed in the public interest if such acquisition is motivated by legitimate reasons that will benefit all of part of the community.¹⁰³ Baobin defines public interest as a consideration that is intricately connected to the continued survival and welfare of a community or group of persons.¹⁰⁴ Based on this definition, public interest supposes a situation by which the rights and privileges of one individual or group of persons are subjugated to the interests of the community. This implies that any expropriation that is pursued for personal gain or any other reason that is not public centered would be unlawful. The Law of Rwanda on expropriation lists acts that may invoke expropriation.¹⁰⁵ These include:

“... roads and railway lines; water canals and reservoirs; water sewage and treatment plants; water dams; rainwater canals built alongside the roads; waste treatment sites; electric lines; gas, oil, pipelines and tanks; communication lines; airports and airfields; motor car parks, train stations and ports; biodiversity, cultural and historical reserved areas; acts meant for security and national sovereignty; hospitals, health centers, dispensaries and other public health related buildings; schools and other related buildings; Government administrative buildings and their parastatals, international organizations and embassies; public entertainment playgrounds and buildings; markets; cemeteries; genocide memorial sites; activities to implement master plans of the organization and management of cities and the national land in general; valuable minerals and other natural resources in the public domain; basic infrastructure and any other activities aimed at public interest which are not indicated on this list that are approved by an Order of the Minister in charge of expropriation, at own initiative or upon request by other concerned persons.”¹⁰⁶

¹⁰² See Art 2 of the Law no. 18/2007 of 19/04/2007 Relating to Expropriation in the Public Interest.

¹⁰³ Art 2(1) of the Law relating to Expropriation in the Public Interest. (Law no. 18/2007 of 19/04/2007).

¹⁰⁴ Baobin M. “*Public Interests and Public Contrary.*” *Jiangsu Social Sciences*. 2002-01.

¹⁰⁵ See: Chapter II of the Law relating to Expropriation in the Public interest. (Law no. 18/2007 of 19/04/2007).

¹⁰⁶ See: Art 5 of the Law relating to Expropriation in the Public Interest. (Law no. 18/2007 of 19/04/2007).

The provisions of Article 5 are extensive as to cover as many acts as possible that would constitute public interest. However, it must be noted that it was a commendable step for the draftsmen of the expropriation laws to expressly spell out which acts constitute public interest. This helps to prevent abuse of the power of expropriation that may be occasioned by the unreasonable interpretations of the law by those in power. In the case of Rwanda, the Kigali Conceptual Master Plan seeks to re-plan the capital city in an effort to improve infrastructure, create employment and conserve the environment amongst other initiatives. This includes the construction of roads, schools, hospitals, residential areas as well as parks. It is no doubt that this initiative is undertaken with the interests of the community in the center of it all. It is therefore concluded that any expropriation carried out in furtherance of the KCMP is indeed done in the public interest. Having discussed the element of public interest, the next sub-chapter will examine the issue of compensation.

3.1.2 Just compensation

It must be noted that a bulk of disputes in cases of expropriation arise out of the question of just compensation. The issue of just compensation varies from one jurisdiction to another and must be understood in the context of a particular legal system which will usually provide for methods of computation of compensation. It must be noted that the Constitution of Rwanda provides for the payment of fair and prior compensation in the event of expropriation.¹⁰⁷ While it is clear that the compensation must be paid before the property is taken, the Constitution does not elaborate on the meaning of “fair compensation” or how it may be computed.

Be it as it may, the issue of award of just compensation is extensively dealt with under Law concerning expropriation in the public interest.¹⁰⁸ According to the expropriation law, an award for just compensation begins with valuation of the property in question. The valuation must take into account the value of the land, activities that were carried out thereon and any developments made on the land.¹⁰⁹ All factors that affect the value of land for instance its size, location, nature and

¹⁰⁷ Art 29 of the Constitution of Rwanda.

¹⁰⁸ See: Chapter IV of the Law concerning expropriation in the public interest. (Law no. 18/2007 of 19/04/2007).

¹⁰⁹ Art 21 of the Law concerning expropriation in the public interest. (Law no. 18/2007 of 19/04/2007).

prevailing market prices must be taken into account when carrying out the valuation of the property to be expropriated.¹¹⁰ The Law provides that compensation may be effected in monetary terms or the provision of an alternative property based on an agreement between the parties. However, if the value of the expropriated property exceeds that of the alternative property, the difference shall be due to the expropriated person(s) before relocation.¹¹¹ However, the Law does not address a situation where the alternative property to be given to the displaced person has a greater value than the expropriated property.

Once compensation is approved by the Land Commission, the appropriate amount or delivery of the alternative property must be effectuated within a period of four months. Failure to comply with this time requirement renders the expropriation unlawful at the instance of the expropriated party. However, if payment has been promptly made, the expropriated party is given three months to vacate the property.¹¹² If compensation is paid out in monetary form, the money shall be deposited into the expropriated party's bank or financial institution account and country of choice.¹¹³ Should any dispute arise as to the value of the property, the expropriated party shall be requested in writing to hire an expert at his/her own cost to obtain an alternative valuation. If the Commission rejects the alternative valuation, the expropriated party shall appeal to the Commission at an immediate superior level within fifteen working days. If the expropriated party is still dissatisfied with the decision of the Land Commission, an appeal may be filed with a competent court.¹¹⁴

The extensiveness of avenues for appealing decisions on valuations is testament to the fact that more often than not, there is a disagreement in regard to the value of the property. As such, there is a need to protect individuals who often find themselves against a formidable Executive that has several resources at its disposal. These appeal avenues double up as checks and balances to help prevent abuse of power. Despite these provisions and safeguards, there are still irregularities in expropriation which will now be examined.

¹¹⁰ Art 22 of the Law concerning expropriation in the public interest. (Law no. 18/2007 of 19/04/2007).

¹¹¹ Art 23 of the Law concerning expropriation in the public interest. (Law no. 18/2007 of 19/04/2007).

¹¹² Art 24 of the Law concerning expropriation in the public interest. (Law no. 18/2007 of 19/04/2007).

¹¹³ Art 25 of the Law concerning expropriation in the public interest. (Law no. 18/2007 of 19/04/2007).

¹¹⁴ Art 26 of the Law concerning expropriation in the public interest. (Law no. 18/2007 of 19/04/2007).

3.2 Irregularities in Rwanda's expropriation

There are a number of factors that a State has to consider when carrying out an expropriation. Failure to meticulously think and plan out an expropriation can easily yield catastrophic results. This can be attributed to the fact that land is considered to be the most valuable asset by most people. People also tend to develop sentimental attachment and value to certain places over time and sudden deprivation will naturally instigate retaliation. Some of these factors can be foreseen and averted through the adoption of a transparent system of expropriation. However, what is inexcusable is the fact that some states have contravened the laws of expropriation in one way or another.¹¹⁵ The next subsection will examine some irregularities in Rwanda's case of expropriation.

3.2.1 Inadequate compensation

The practice of expropriation of land is not a recent phenomenon in Rwanda. The State has invoked its expropriation power in the past in order to improve the livelihoods of its citizens and to redress its past social problems for instance genocide.¹¹⁶ However, in recent times, land has been expropriated to better the economy through the construction of infrastructure, housing and communication networks amongst many other initiatives.¹¹⁷ In all these instances of expropriation, it is required by law that the State justly compensates the landowner. As has been discussed in the preceding sub-chapters, the term "just compensation" has been held to mean a payment that is equivalent to the market value of the property. Such payment must also take into account all factors that influence the price of the property for instance its location and any developments effectuated on the property.¹¹⁸ In light of these considerations, compensation will only be considered just and fair if it is done in strict compliance with the law.

¹¹⁵ Expropriation: A Sequel. UNCTAD Series on International Investment Agreements II. Available at: http://unctad.org/en/docs/unctaddiaeia2011d7_en.pdf (accessed on 07 November 2013).

¹¹⁶ Pottier J., "Land Reform for Peace? Rwanda's 2005 Land Law in Context." (2006) *Journal of Agrarian Change*. Volume 6, Issue 4, pages 509–537.

¹¹⁷ Relating Rwanda's Investment Climate Reform Programme to the PFI. Paper Presented by Mr. Edward Kasumba. Expert on Corporate Governance & Economic Management NEPAD Secretariat Rwanda. Available at: <http://www.oecd.org/investment/investmentfordevelopment/37986823.pdf> (accessed 07 November 2013).

¹¹⁸ Art 2(3) of the Law concerning expropriation in the public interest. (Law no. 18/2007 of 19/04/2007).

Despite the position of the law, there have been cases in which the State has expropriated property and paid inadequate compensation. Amnesty International notes that a number of residents in Kigali complained about inadequate compensation following expropriation of their land for the expansion of the city.¹¹⁹ The Human Rights Watch also noted that in addition to inadequate compensation, the expropriation policies targeted the poor parts of the city. Such residents were given little to no choice in either taking the inadequate compensation or being relocated to far away settlements. It is disturbing to note that people who were relocated to more valuable settlements became indebted to the government for the difference.¹²⁰

It must be noted that the *Law on Expropriation in the Public Interest* is silent on what should happen in the event that the value of the alternative property is higher than the expropriated property. Nonetheless, the people the government sought to relocate were predominantly poor subsistence farmers surviving on minimal incomes. It is unfair to plunge their lives into debts which they may not recover from. However, the payment of inadequate compensation in its entirety is against the law and human rights which cannot be tolerated.

3.2.2 Delayed payment of compensation

According to the law of Rwanda, compensation pursuant to any act of expropriation by the State must be paid before the expropriated party vacates the property.¹²¹ Such compensation should also be paid to the expropriated party within four months of its approval by the Land Commission. Rwandese law also allows for compensation through the provision of an alternative property to the expropriated party provided that if the alternative property has a lower value than the expropriated property, the difference shall be paid by the State before the expropriated property is vacated.¹²² However, there have been several cases of delayed payment of compensation in Rwanda which will now be examined.

¹¹⁹ Amnesty International. Human Rights Republic of Rwanda. Available at: <http://www.amnesty.org/en/region/rwanda/report-2009> (accessed 08 November 2013).

¹²⁰ World Report 2010: Rwanda. Human Rights Watch. Available at: http://www.hrw.org/sites/default/files/related_material/rwanda_0.pdf (accessed 08 2013).

¹²¹ Art 23 of the Law concerning expropriation in the public interest. (Law no. 18/2007 of 19/04/2007).

¹²² Art 24 of the Law concerning expropriation in the public interest. (Law no. 18/2007 of 19/04/2007).

The Rwandese government embarked on a project to construct an international airport. Acting on this plan, the State expropriated farmland from the Ririma Sector in Bugesera District in the Eastern Province in 2012. Over 2000 residents were affected by the expropriation but some residents had not been compensated one year after they had been stopped from carrying out farming activities on the expropriated land. The land that was expropriated was predominantly used by residents for farming which directly affected their livelihoods. Pascasie Nyiragahinda who is one of the affected residents lamented on the impending risk of food insecurity. The crops grown on this farmland was a source of food and income that improved their livelihoods. Not only did the residents use the land for farming but it provided the much needed collateral in the event of borrowing money from financial institutions.

The Ministry of Infrastructure acknowledged the irregularity in the expropriation process and claimed that they were striving to resolve the issue. It was alleged that a team had been constituted to speed up the compensation process. This is a big project and the expropriation compensation is estimated at thirteen billion Rwandan Francs.¹²³

Such delays in payment of compensation undoubtedly disrupt the normal life of residents affected by any expropriation process. In addition, a number of human rights are violated with such delays for instance the right to food, work, education and shelter. It is argued that before a government embarks on any expropriation, funds which are within their disposal must be set aside to compensate those affected. It is the reason why the law sets regulations to guide the process of expropriation and any breaches of such laws should not be entertained.

Such breaches do not only affect the persons whose property is expropriated but also sets a bad precedent for governance. It is indeed an undesirable situation when those who are charged with the mandate of making and protecting the law become the very ones disregarding it when it favors them. The question to be examined is whether there are avenues and mechanisms that can be exploited by affected individuals to redress any injustice that they may have suffered during expropriation.

¹²³ Habimana S. (18 August 2013) *Rwanda: Bugesera Airport - Residents Decry Delayed Compensation*. AllAfrica.com. Available at: <http://allafrica.com/stories/201308190281.html> (accessed 07 November 2013).

3.3 Redressing injustice arising from expropriation

In every democratic throughout the world, there are mechanisms placed by law to redress any injustice that may be suffered arising from distinct situations. One of the most used avenues is the court system by which individuals can bring their complaints to be adjudicated by an independent judge. As such, the court system is one avenue that may be exploited to remedy injustice arising from expropriation. As such, the paper will examine how such an action may be sustained. On the other hand, expropriation affects many facets of an individual's life which may include his property, culture and work to mention but a few. This clearly affects the human rights of an individual and the human rights regime also employs specialized avenues for their enforcement. The most instrumental specialized human rights enforcement avenue in Rwanda is the Human Rights Commission which will be examined in detail.

3.3.1 The court system

Rwanda's court system is established under Chapter V of the Constitution which provides for the judicial arm of government. Court decisions are binding upon all parties affected by a particular matter regardless of whether they are individuals or public authorities.¹²⁴ Such decisions may not be challenged except through appeal mechanisms prescribed by law. It must also be noted that the principle of equality before the law is adhered to in the courts of law and all persons are entitled to protection by the law without regard to any discriminatory criteria.¹²⁵

In terms of the *Law of Expropriation in the Interest of the Public*, individuals have access to the courts of law to challenge a decision made during an expropriation exercise. However, there are mechanisms prescribed in the Act which an individual must exhaust before he/she can have *locus standi*¹²⁶ to bring a matter before court. The law stipulates that if a dispute arises as to the value of the land, the Land Commission may request the expropriated party to hire an expert at his/her own cost to obtain an alternative valuation. Should the Commission reject the alternative

¹²⁴ Art 140 of the Constitution of the Republic of Rwanda.

¹²⁵ For further reading on the Principle of Equality before the Law, see: Miguel A.R. "Equality before the Law and Precedent." (1997) 10 *Ratio Juris* 4, pp. 372–91.

¹²⁶ *Locus standi* is a Latin maxim that refers to the competence of an individual to bring a matter before a particular forum.

valuation, the expropriated party shall appeal to the immediate superior level within the Commission. Only when the expropriated party is still dissatisfied with the decision from the appeal at superior level may he/she have access to the courts of law.¹²⁷ The availability of various appeal mechanisms is to give the Commission an opportunity to review its decision.

When a matter goes before the Court, there a number of reliefs it can grant the complainant if she pleaded the case successfully. It must be noted that the power of the Court to adjudicate over matters that are entrusted to the Executive is derived from the doctrine of separation of powers. Courts are charged with the onerous mandate of protecting the rights of individuals as well as the state. The doctrine of separation of powers does not aim to create autonomous arms that operate independent of each other.¹²⁸ It rather supposes a relationship by which departments that primarily perform distinct duties act as a check and balance on each other.¹²⁹ It is concluded that the Court plays a pivotal role in as far as ensuring that individuals' rights are not trampled upon by the Executive when carrying out an exercise of expropriation. The Court system is also complemented by the Human Rights Commission which will now be discussed.

3.3.2 Human Rights Commission

The Human Rights Commission is a constitutionally established institution that is charged with the mandate of protecting and promoting human rights.¹³⁰ The Commission carries out its mandate through cooperation with other agencies and departments whose mandates are relevant to the subject of human rights. The Commission is clothed with surveillance and investigatory powers through which it monitors the human rights situation in the country. The Commission is therefore under a duty to investigate any allegations of human rights violations in the country and issue recommendations to the relevant stakeholders.¹³¹ This implies that the Commission acts in a quasi-judicial mandate when dealing with breaches of human rights.

¹²⁷ Art 26 of the Law concerning expropriation in the public interest. (Law no. 18/2007 of 19/04/2007).

¹²⁸ See: *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579, 635 (1952).

¹²⁹ Persson T. Roland G. and Tabellini G. "Separation of Powers and Political Accountability."(1997) *112 Quarterly Journal of Economics* 4.

¹³⁰ Art 177 of the Constitution of the Republic of Rwanda.

¹³¹ Art 177(3) of the Constitution of the Republic of Rwanda.

This deduction is motivated by the mandate of the Human Rights Commission as contained in the Law establishing the Human Rights Commission.¹³² Under this law, the Commission is empowered to receive complaints of human rights violations and investigate them. In order to facilitate investigation, the Commission officials have the power to visit any premise or place where a violation is alleged to have taken place, access information and other evidence. If the Commission establishes that a human rights violation has occurred, a request may be sent to a relevant organ to ensure justice for the victim. This may include a request to prosecute a culprit in the courts of law. Expropriation ultimately affects a number of human rights and any issues emanating from an expropriating exercise fall within the ambit of the Commission. In fact, the Commission has had occasion to handle some issues relating to expropriation.

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

Acting on this allegation, the Commission investigated and established that the authorities had indeed seized the complainant's land and destroyed the house which he had built. What was interesting was that there were other houses that were built similarly to the complainant's house but only his had since been destroyed. An Advisory Council that had sat on 22 May 2008 had resolved to return the property to the complainant together with ten iron sheets. This was despite the fact that the original house had been roofed with thirteen iron sheets. While the plot of land had been restored back to the complainant, the iron sheets had not been given. Based on its findings, the Commission urged the mayor in letter n° CNDP/APR/312/11 of 5 April 2011 to intervene and expedite the provision of the iron sheets to the complainant.

¹³² Law no 04/99 of 12 March 1999 establishing the National Human Rights Commission. Modified and completed by law no 37/2002 of 31 December 2002.

This shows the pivotal role the Human Rights Commission plays in the protection and promotion of human rights in Rwanda. The advantage of having the procedure of the Commission is that unlike the court system that is highly technical, the Commission is quite informal and simple to access. As was discussed earlier, access to the Court is limited until the appeal procedures in the Land Commission have been exhausted. Furthermore, bringing a matter before the Court is expensive and time consuming. A lot of funds have to be dedicated to legal fees and court proceedings are often shrouded in formalities that are not known to the untrained individual.

On the contrary, complaints to the Human Rights Commission are informal and may be readily accessible to even the poor. All it takes is an indication in form of a letter or some sort of communication to the Commission of the alleged breach and the Commission will act on it. This makes the Commission a cheap and friendly alternative of addressing human rights abuse. However, the advantage that the Court has over the Commission is that its decisions have binding effect on the parties concerned and its decisions are final.

NGOs also have pivotal role to play in the promotion, protection and monitoring of human rights and in particular, property right. One example of an organization that has played an important role in asserting property rights is the Ibuka Organization. In August 2009, the Ibuka Organization whose mandate is protecting the rights of the genocide survivors submitted a report to the Human Rights Commission. The report asserted claims of property that was forcefully taken away from genocide surviving orphans while they were still children without compensation. The total number of cases compiled by the Ibuka Organization in relation to this matter amounted to 194.¹³³

In conclusion, Rwanda has a solid property regime backed by law. Whereas most expropriation exercises have been carried out in accordance with the law, there have been some irregularities which mainly revolve around late payment on compensation and inadequate settlements. While it is commendable that such irregularities constitute the minority, it does not excuse the fact that the abuse of human rights of even one individual is a very serious issue to be ignored. Injustice caused in expropriation inevitably affects the livelihood and wellbeing of an individual and his/her family.

¹³³ Ibuka's Annually Activity Report, July 2010-June 2011. Available at: www.ibuka.net/rwanda.html (accessed 20 November 2013).

Not only does it set a bad precedent but it also compromises the trust of individuals in the government. As such, there is a need for the government to meticulously plan any exercise of expropriation so as to minimize and redress any injustices that might arise. There is a need to examine the law and policy of Rwanda in relation to other legal systems in a bid to identify good practices that could be emulated by the Rwandese government in order to better its approach to the issue of expropriation.

Chapter four

4 Expropriation in different legal systems and best practices

The previous chapter examined Rwanda's law and policy of expropriation. It highlighted the conditions under which an expropriation is sanctioned by law and examined how the State handled some cases of compulsory acquisition of land. The chapter also identified some irregularities in the expropriation process of Rwanda that need to be addressed. The present chapter is a comparative section which looks at the disparities between the approaches to property between the Civil and Common law legal system. These legal systems are selected because they are the most widely applicable systems of law in Africa. This chapter also examines some cases of expropriation from African countries that have run into the hurdle of expropriation in order to establish best practices. Such an inquiry can be informative to Rwanda's policy when dealing with cases of expropriation.

4.1 Property under the Civil law system

The development of the civil law system is attributed to Roman law that was marked by the publication of the Law of the Twelve Tables (*Leges Duodecim Tabularum*) in 449 BC.¹³⁴ The Law of the Twelve Tables was adopted to address the long standing class struggle between the Patricians and Plebeians. Later in the period between 529 and 534, Justinian the Roman Emperor ordered for the codification of Roman law into the Body of Civil Law also known as *Corpus Juris (Corpus Juris Civilis)*.¹³⁵ *Corpus Juris Civilis* was intended to provide a permanent solution to most legal issues in the Roman Empire and formed the basis of civil law.¹³⁶ However, *Corpus Juris Civilis* was neglected after the fall of the Roman Empire until the period of the Renaissance between the 14th and 16th Centuries.¹³⁷ This period led to the rise of awareness, philosophy and academic scholarship. This provided a platform for the study and development of *Corpus Juris Civilis* which later gave birth to the concept of the nation-state.

¹³⁴ Pennington K. "The Spirit of Legal History." (1997) 64 *University of Chicago Law Review* 3, pp. 1097-1116.

¹³⁵ Merryman J.H. and Perez-Perdomo R., (3rd ed. 2007) *The Civil Law Tradition: An Introduction to the Legal Systems of Europe and Latin America*. Stanford University Press.

¹³⁶ Merryman and Perez-Perdomo, *ibid* at 7.

¹³⁷ Merryman and Perez-Perdomo, *ibid* at 8.

One of the major issues that existed in Ancient Rome was the ownership and control of property. The extreme social segregation implied that certain persons could not own property. It is no wonder that substantial scholarship was dedicated to developing the subject of property in *Corpus Juris Civilis* to remedy the injustice. The *Corpus Juris Civilis* held that property consisted of an exclusive right to do with the “thing” anything possible that the owner wished.¹³⁸ Ownership was consequently defined as a “bundle of rights” which comprised of three subsumed rights.¹³⁹ These include the right to use (*usus*), dispose (*abusus*) and benefit from any proceeds arising out of the use of the property (*fructus*).¹⁴⁰ These rights were actionable against any individual who sought to unlawfully deprive the legitimate owner of his property. However, one of the reasonable limitations to ownership under the civil law tradition is expropriation. In order to understand the operation of expropriation under the civil law tradition, it is necessary to examine its historic foundations.

Civil law did not have rules that governed expropriation but the practice of taking land by the state existed historically. This can be explained by the fact that in ancient Rome, all property belonged to the crown and would be recalled when the need arose.¹⁴¹ Although this was the case, there were references to expropriation as early as 454 BC in which public property that was unlawfully occupied was taken back subject to compensation. Sextus Frontinus who was one of Rome’s esteemed aristocrats wrote a script in which he advocated for the payment of compensation for expropriated private property.¹⁴² The issue of price was as not as clear-cut as it is today. The market value equivalent that was used was the value at which the property could be sold by the owner. Later on, jurists like Grotius refined the concept of expropriation. He proposed that in order for an expropriation to be lawfully carried out, it must be done in the interest of the public and that compensation needed to be paid when possible. He based this reasoning on the presumption that expropriation is a social contract which disallowed the

¹³⁸ Aristi R.S. and Imbernon N.M., (2008) *International Encyclopaedia of Laws Property and Trust Law*. National Monographs. Spain.

¹³⁹ Herman S. “The Uses and Abuses of Roman Law Texts.” (1981) 29 *The American Journal of Comparative Law* 4, pp. 671-690.

¹⁴⁰ Herman (1981) 29 *American Journal of Comparative Law* 4, pp. 671-690.

¹⁴¹ Du Plesis W.J. (2009) “Compensation for Expropriation under the Constitution.” Unpublished PhD Thesis, University of Stellenbosch, at p.20.

¹⁴² Matthews N. “The Valuation of Property in the Roman Law.” (1920-21) 34 *Harvard Law Review* at p.229.

taking of property without consent. However, he was of the opinion that expropriation by the state takes place without consent and may only be validated by the payment of compensation. This formed the basis for the notion of compensation as it is understood in legal traditions today.

4.2 Property under the Common law system

The common law tradition on the other hand was distinct in a sense that it was “unwritten” and was based on judicial decisions handed down by courts.¹⁴³ The Common law was developed during the rule of Emperor William who was popularly known as the conqueror of Hastings. When Emperor William ascended to the throne, he decided to confiscate all the land to reward his loyal followers. England was a monarchy without a clear separation of power in which the king served as the executive, legislature and judiciary with the help of his advisors in council.¹⁴⁴ Although the king adjudicated over extraordinary matters, this form of governance led to a highly centralized system which revolved around the emperor and his council. However, the king could not entertain all matters in person and therefore delegated certain cases to the Royal Courts. This marked an important phase in the unification of common law.

With the influx of cases, there was a need for the diversification of the Royal Courts. This led to the establishment of three courts namely the King’s Bench, the Court of Common Pleas and the Court of Exchequer.¹⁴⁵ However, the King’s Bench became more independent of the king’s immediate control and eventually developed into an institution which acted as a check and balance on the crown’s power and authority. However, the writ system proved to be a major obstacle in the judicial system. A claim was only actionable before the courts where a writ sanctioned by the officials was available. Citing this limitation that barred several actions, the Statute of Westminster adopted new writs that were related to those already in existence.

¹⁴³ Baker J.H. (3rd ed. 1990) *An Introduction to English Legal History*. London: Butterworths Publishers.

¹⁴⁴ *Id.*

¹⁴⁵ Hogue A.R., (2010) *Origins of the Common Law*. Liberty Fund Inc. ISBN-10:0865970548. The King’s Bench predominantly dealt with issues that crown had a vested interest in while the Court of Common Pleas resolved disputes between the king’s subjects. The Court of Exchequer on the other hand handled matters which related to tax disputes. The King’s Bench was clothed with the discretion to issue writs of prohibition, habeas corpus, mandamus and certiorari.

However, the king's subjects felt that the writ system did not adequately address their grievances. During the reign of King John in 1215, the Barons with the support of disgruntled clergymen pushed for more comprehensive laws on property. The Magna Carta recognizing the "rights of man"¹⁴⁶ was adopted which gave rise to the concept of "equitable justice" that was popularized in the 15th Century. The Royal Courts during Emperor William's reign strictly observed the writ system in the absence of which, the plaintiff would not have a claim.

King John Austin commissioned the equity system through which the courts were able to respond to the problems of an ever progressing society.¹⁴⁷ Plaintiffs who lacked a writ at common law would petition the king and later his Chancellor for equitable relief. These petitions were founded on Canon and Roman law and proved to be popular. This resulted in the establishment of the Court of Chancery charged with the mandate of adjudicating pleas in equity. Pleas in equity proved instrumental not only in bringing actions that did not have writs, but for litigating property related matters. While the word "owner" was not popularly used by medieval lawyers, some of the aspects of ownership which are possession and dominion were exercised in relation to property (land). It was possible for real rights to be encumbered and alienated. However, property could be expropriated if the crown had a vested interest in it.

Under the Common law, the practice of expropriation was first articulated in the Great Charter of 1215 which upheld private freedoms. Later in 1541, a law was legislated to regulate the practice of expropriation in the interest of the public. Several other pieces of legislation were enacted to provide for the instances which constitute public interest. William Blackstone who was one of the most influential jurists in the 18th Century articulated the principle of expropriation in which he reasoned that the interests of one individual should yield to those of the community as a whole.¹⁴⁸ He further noted that in instances where an individual is disposed in the public interest, such an individual must be indemnified. However, the ideology that resonated through Blackstone's definition of expropriation was that of a forced sale of private property that brings about a sale relationship. In the event that there was no consensus on compensation, the value would be determined by an arbitrator. Later, the notion of a

¹⁴⁶ McLwain C.H. "Due Process of Law in Magna Carta." (1914) 14 *Colombia Law Review* 1, pp. 27-51.

¹⁴⁷ Adams G.B. "The Origin of English Equity." (1916) 16 *Colombia Law Review* 2, pp. 87-98.

¹⁴⁸ Blackstone W. (1827) *Commentaries on the Laws of England. Vol. I.* New York: Collins & Co Publishers.

forced sale was rejected by British Courts¹⁴⁹ in favor of a more comprehensive Act.¹⁵⁰ The statute codified the principles of expropriation and became the basis for expropriation legislation in most common wealth countries.

4.3 Comparison between the Civil and Common law systems

The discussion above shows that the approaches of the two legal systems are strikingly similar. They both entail the compulsory acquisition of property by the state in the interest of the public. In the Civil Law system, the sovereign derives power to compulsorily acquire property by virtue of right (*dominium eminens*).¹⁵¹ The right described in *dominium eminens* represents the highest form of lordship in which the state may exercise sovereignty over private property. This power must be exercised in the interest of the public subject to compensation.¹⁵²

On the other hand, the power to expropriate property under the common law is sanctioned by an Act of law.¹⁵³ Unlike under civil law where the power to expropriate the property and the compensation to be paid is at the discretion of the state, in common law every aspect of the acquisition is governed by statute. The circumstances under which the property may be expropriated; the formalities to be followed; the determination, calculation of compensation and time of payment of compensation are prescribed by the statute. However, expropriation in recent times is governed by most constitutions of in the world regardless of their legal system.

4.4 Synopsis of Rwanda's colonial legacy.

All African States to the exclusion of Ethiopia¹⁵⁴ were colonized by the then colonial masters during the fifteenth century who sought to expand their territories and influences beyond their borders.¹⁵⁵ Colonization in Africa was particularly proliferated in the 80's and 90's and this period came to be known as the "scramble for Africa." The major participants in the

¹⁴⁹ *Kirkness v John Hudson & Co.* 1955 AC 696, 709.

¹⁵⁰ Land Clauses Consolidation Act, 1845.

¹⁵¹ Grotius H. (1583-1645) *De Jure Beli ac Pacis* 2. p.7.

¹⁵² Mann F. "Outlines of a History of Expropriation." (1959) *75 Law Quarterly Review* 188, pp.200.

¹⁵³ *Id.*

¹⁵⁴ Ethiopia: A Country Education Profile (Fact Sheet). Available at: www.bibl.u-szeged.hu (accessed 4 May 2013).

¹⁵⁵ Stuchtey B., "Colonialism and Imperialism, 1450-1950." *European History Online*. Available at: <http://www.ieg-ego.eu/en/threads/backgrounds/colonialism-and-imperialism/benedikt-stuchtey-colonialism-and-imperialism-1450-1950> (accessed 15 November 2013).

colonization of Africa included Britain, Germany and France who were later followed by Belgium, Portugal, Italy and Spain.¹⁵⁶ The legacies of colonialism can be seen today in the way of life, dressing, food, language and most of all, legal systems.¹⁵⁷

Rwanda, just like most African States was colonised although in reality Rwanda was a mandated territory.¹⁵⁸ Nonetheless, Rwanda inherited a hybrid civil legal system based on customary law, Belgian law and German law. However, the concept of expropriation was not covered by traditional law and was therefore governed by civil law. While public property may be held in individual or collective basis, the right may be lawfully interfered with by the State in the interest of the public subject to prior compensation.¹⁵⁹ Over above the civil law, Rwanda ratified the African Charter without reservation to Article 14 on the right to property. Article 14 was interpreted by the African Commission in the Endorois case¹⁶⁰ to include a duty on the state not to evict people without prior consent and compensation. This duty applies regardless over whether the land is held and modern or ancestral title.

4.5 Expropriation practices in other jurisdictions

In the previous chapters, it has been shown that there have been some irregularities in Rwanda's expropriation policy. It would be important to discuss the practices of other countries in order to determine whether there any practices that can inform Rwanda's law on expropriation. This part will discuss the expropriation laws and policies of South Africa and Uganda. South Africa is picked because its legal system is founded on the civil law legal system while Uganda is based on the common law. This examination will not only provide a best practices but a comparison between the practical applications of the two legal systems in practice.

¹⁵⁶ Boahen A.A. (1985) *"Africa under the Colonial Domination 1880-1935."* In UNESCO International Scientific Committee for the Drafting of a General History of Africa, An Overview of the General History of Africa. University of California Press. Reprinted in 2000.

¹⁵⁷ Olaniyan T. *"Africa: Varied Colonial Legacies."* In Schwarz H. & Ray S. (2000) *A Companion to Postcolonial Studies*. Oxford: Blackwell Publishing Ltd.

¹⁵⁸ Bragard V. & Planche S. "Museum Practices and the Belgian Colonial Past: Questioning the Memories of an Ambivalent Metropole." (2009) *2 African and Black Diaspora: An International Journal* 2, pp. 181-191.

¹⁵⁹ Article 29 of the Constitution of the Republic of Rwanda.

¹⁶⁰ Communication 276/2003.

4.5.1 South Africa's law on expropriation

It must be noted that just like Rwanda, the South African legal system is based on the civil legal system.¹⁶¹ In South Africa expropriation is governed by the Expropriation Act of 1975¹⁶² which empowers the State through the Minister of Public Works to expropriate private property for a public purpose. Under the Act, the Minister may expropriate immovable or immovable property subject to compensation. While this transaction may simulate a contract by which there is a transfer of private property to the state in exchange for compensation, it lacks the vital element consensus. South Africa's law on expropriation is enabled by Article 25 of the Constitution of South Africa¹⁶³ which guarantees the right to property. The said Article guarantees the right to property subject to the application of the law. Expropriation will only be deemed to be legal if it is carried out by the state; in the interest of the public; subject to compensation that must be just and equitable. Just and equitable compensation according to the Constitution will be deemed just and equitable if the time and amount takes into consideration: the use of the property; the history of the property; its market value; the developments thereupon; the use of the land; and, the public interest.¹⁶⁴

Whereas these characteristics of expropriation transcend most civil law systems, there are some elements that are somewhat peculiar to South Africa's law of expropriation. The definition of property is not limited to land but encompasses all sorts of assets. Such property may be expropriated in the interest of the public and not for a public purpose. This means that interests other than public use for instance public safety may suffice as reason enough to warrant an expropriation.¹⁶⁵ The other peculiar characteristic of South African law is that the Constitution does indicate the timeframe in which the compensation should be paid to the dispossessed individual. This is significantly different from Rwanda's law on expropriation which mandates the payment of just compensation prior to the taking of the possession of the

¹⁶¹ See: Wille G. (1963, 5th ed.) *Principles of South African Law: Being a Textbook of the Civil Law of the Republic*. Cape Town, South Africa.

¹⁶² Act 63 of 1975 of the Republic of South Africa.

¹⁶³ Constitution of the Republic of South Africa, No. 108 of 1996.

¹⁶⁴ Article 25(3) of the Constitution of South Africa.

¹⁶⁵ Article 25(4) of the Constitution of South Africa.

property. This undesirably leaves the timing of payment of compensation entirely at the discretion of the state.

On 15 March 2013, the Government of South Africa released a new draft Bill on expropriation for public review and it was accompanied by a complimentary Property Valuation Bill.¹⁶⁶ The PVA is a welcome development which provides an elaborate method of valuation of property to avoid an injustice that may be occasioned through undervaluation. The Bill proposes to create an independent department known as the Office of the Value-General that will handle the computation of compensation to be paid in matters of expropriation.¹⁶⁷ This effectively objectivizes the expropriation process in that while the decision to expropriate property is vested in the Minister of Public Works,¹⁶⁸ the question of compensation is determined by the Value-General. On the other hand, the draft Expropriation Bill does not introduce radical changes to its predecessor Act. This means that the timing of the payment of compensation still remains within the discretion of the State. This situation could be easily remedied by an amendment which lays down when compensation should be paid.

The South African law of expropriation in principle is nearly identical to Rwanda's law. However, when it comes to the timing of compensation, Rwanda's law is more desirable because it stipulates that it must be paid before eviction which protects members of the public from abuse. However, the Rwandese expropriation law stipulates that only the government has the power to expropriate property subject to prior and just compensation.¹⁶⁹ While several officials may initiate the expropriation process under the Act, the final decision on whether to expropriate or not rests with the relevant Land Commission.¹⁷⁰ After the Land Commission makes the decision to expropriate the property, it then has the power to determine the compensation to be paid to the individual.¹⁷¹

¹⁶⁶ Property Valuation Bill. Introduced in the National Assembly (proposed section 75); explanatory summary of Bill published in Government Gazette No. 36993 of 1 November 2013.

¹⁶⁷ Article 4 of the Property Valuation Bill of South Africa.

¹⁶⁸ Article 2 of the Expropriation Bill of South Africa.

¹⁶⁹ Article 3 of the Law of Rwanda Concerning Expropriation in the Interest of the Public.

¹⁷⁰ Article 12 of the Law of Rwanda Concerning Expropriation in the Interest of the Public.

¹⁷¹ Article 24 of the Law of Rwanda Concerning Expropriation in the Interest of the Public.

If an individual is not satisfied with the compensation to be paid, an appeal may be lodged with the same Land Commission¹⁷² before they can have access to the courts of law.¹⁷³ This process of expropriation shows a heavy reliance on the concerned Land Commission. Not only does the concerned Land Commission make the decision to expropriate the property, but it is also charged with the mandate to determine the amount of just compensation to be paid and any subsequent appeal before an individual has access to the court. For such an arrangement where all these duties or powers are concentrated in one body, there is a risk of abuse of discretion. It is recommended that there should be a separation between the entity that makes the decision to expropriate the property and the one that computes the compensation to be paid. This would emulate the South African model of expropriation to ensure the objectivity of the expropriation. The next sub-chapter will examine the expropriation laws of Uganda in comparison to Rwandese law.

4.5.2 Uganda's law on expropriation

The Republic of Uganda is located in East Africa and borders Rwanda to the north. Although the two States are situated in the same region and share a common border, Rwanda's legal system is based on civil law while Uganda's legal system is based on the common law system. Like all democratic States, Uganda's Constitution guarantees the right to property.¹⁷⁴ The said article protects individuals from arbitrary deprivation of property except in case of an expropriation sanctioned by law. Such taking at the instance of the state must be carried out for public use or in the interest of defense, public safety, order, morality or health.¹⁷⁵ The Article further makes a requirement for the prompt payment of fair and adequate compensation before the individual is dispossessed of ownership and possession.¹⁷⁶ While the Constitution provides for the expropriation of any kind of property, Uganda has a Land Acquisition Act¹⁷⁷ which provides for the compulsory acquisition of land by the State.

¹⁷² Article 26 of the Law of Rwanda Concerning Expropriation in the Interest of the Public.

¹⁷³ Article 19 of the Law of Rwanda Concerning Expropriation in the Interest of the Public.

¹⁷⁴ Article 26 of the 1995 Constitution of Uganda.

¹⁷⁵ Article 26(2) of the 1995 Constitution of Uganda.

¹⁷⁶ *Id.*

¹⁷⁷ Land Acquisition Act of Uganda, 1965.

Under the Land Acquisition Act of Uganda, the power to declare the expropriation of a particular property is vested in the Minister.¹⁷⁸ The Act then requires that the land to be expropriated should be surveyed and all persons who have an interest in it should be notified.¹⁷⁹ After such notice has been made, the compensation to be paid must be made by an independent “assessment officer” who is appointed by the Minister.¹⁸⁰ The computation of compensation must take into account the area of the land and other relevant factors. The assessment officer is also empowered to summon anyone and any documents that will assist him/her in carrying out his duty. If an individual disputes any aspect of the compensation to be paid under Article 6, he/she may appeal the matter directly to the High Court.¹⁸¹

There are two striking characteristics of Uganda’s laws of expropriation that stand out. Firstly, the Minister makes an assessment to determine whether a particular property should be expropriated and takes a final decision. However, when it comes to determining compensation, such power is vested in an independent assessment officer. This introduces an element of objectivity into the expropriation process by which there is a separation of duties to be carried out. This position is similar to the South African model by which compensation is determined by an independent “Valuer-General.” This practice is commendable and is highly recommended for Rwanda’s laws on expropriation.

Secondly, according to Ugandan law, once an individual disputes the amount of compensation determined by the assessment officer, such individual has direct access to the High Court to appeal such a decision. This is different from the Rwandan whereby an individual who is aggrieved by the compensation awarded by the Land Commission first has to appeal to the very Commission before he/she may appeal to the courts of law. This arrangement places onerous requirements on an individual which has the effect of delaying justice. It would be desirable for individuals to have unhindered access to the courts of law in order to defend their rights. Having several appeals to the same body not only delays justice but also puts a strain on individuals who often have limited finances and resources to engage in repetitive litigation. It

¹⁷⁸ Article 3 of the Land Acquisition Act of Uganda, 1965.

¹⁷⁹ Article 5 of the Land Acquisition Act of Uganda, 1965.

¹⁸⁰ Article 1 and 6 of the Land Acquisition Act of Uganda, 1965.

¹⁸¹ Article 13 of the Land Acquisition Act of Uganda, 1965.

would therefore be desirable for Rwanda to adopt these positive changes in her laws in order to improve the process of expropriation through the elimination of arbitrariness.

In conclusion, this chapter compared and contrasted the civil legal system from the common law. It presented a historical development of both legal systems in order to aid understanding and development. The chapter then discussed one example from each of the legal systems within Africa in order to determine best practices. The two major principles that were highlighted were that there should be a separation of duties between the expropriating body and the other that determines compensation. This separation aids in the elimination of arbitrariness by making the process more objective. The second principle was that access to courts to appeal any dispute emanating from the expropriation process should not be unnecessarily impeded. This would include situations like the Rwandese law that requires an individual to appeal to the same Land Commission which made the decision that is complained about. Such changes would greatly improve Rwanda's law of expropriation. Having discussed expropriation in the various legal systems, the next chapter will present the conclusions and recommendations.

Chapter five

5 Conclusion and recommendations

This study sought to examine the extent to which expropriation in Rwanda complies with international and national law. This was done by examining international and regional instruments on human rights and the protection of property rights. These included treaties under the U.N. system and the African region. A review of these instruments revealed that property rights were protected in most of them. Property rights are included in the Universal Declaration of Human Rights as well as the African Charter on Human and Peoples' Rights. However, they are excluded from the ICCPR and ICESCR due to lack of consensus as to the scope and extent of these rights during the drafting process. However, despite the non-inclusion in the ICCPR or ICESCR, property rights are protected in most constitutions of democratic societies of the world including Rwanda.

Due to the diversity of legal systems in the world; different countries protect property rights slightly differently from others. One of the factors that influence the scope and extent of the protection of property rights depended on the legal system of the particular country in question. It was therefore necessary to examine the two major legal traditions of the world these being, the civil legal tradition and the common law tradition. The historic developments were recounted in an endeavor to shed light and understanding on the progressive development of the law of expropriation in both legal traditions. The study then discussed one example from each of the legal systems within Africa in order to determine best practices.

It was understood that Rwanda's Constitution protects the right to property and also provides for legitimate expropriation subject to the provisions of the law. The Constitution is supplemented by the *Law on Expropriation in the Interest of the Public* which elaborates on the procedures to be followed during expropriation. The aforementioned law requires that in order for an act of expropriation to be deemed lawful, it must be carried out in the interest of the public subject to just and prior compensation. While the law on expropriation was found to be elaborate with various mechanisms put in place for its implementation, there were still cases in which irregularities were reported about. These irregularities mainly occurred through delayed payment

and inadequate compensation which are both prohibited by the law. Nonetheless, it does not take away from the fact that the law still stands and must be followed.

Most of the current cases of expropriation were found to be linked to Rwanda's new policy of urbanization. However, it was pointed out that there are avenues through which an individual may be able to defend his or her rights. The most instrumental are the court system and the human rights commission. While both systems are complementary and are equally available to the public subject to compliance with the rules of procedure, the human rights commission is more accessible, user friendly and does not require the complainant to comply with onerous requirements. However, the downside to the Commission is that it issues recommendations to the concerned body/agency which will then take up the issue. However, the court has the competence to issue binding decisions on the concerned agency which must implement its decision. The court may make orders of certiorari, mandamus, and damages and is also clothed with revisionary and supervisory jurisdiction over any bodies within the jurisdiction. The downside to the court system is that before an individual must first exhaust the mechanisms within the *Law on Expropriation in the Interest of the Public*. This involves an appeal to the same Land Commission whose decision is complained against before the affected party may have standing before the court.

However, there are other potential regional mechanisms which were discussed which an individual may exploit in order to redress an irregularity in the expropriation process. These include the African Commission on Human and Peoples' Rights and the African Court on Human and Peoples' Rights. Individual complaints against Rwanda may be sustained by both the African Commission and the Court. This is by virtue of the fact that Rwanda has ratified both the African Charter on Human and Peoples' Rights and has made the Article 34(6) declaration of the Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights permitting individuals and NGOs to directly access the Court.

It must be noted while these mechanisms have not been used in relation to property law in Rwanda; they remain potential mechanisms that may be utilized by an individual whose rights have been breached. The next section will present some recommendations that should be adopted by Rwanda to ensure formal and procedural fairness during the process of expropriation.

5.1 Recommendations

It was noted that there were a significant number of cases under which individuals complained of irregularities during the expropriation process. In order to make the process of expropriation more objective and procedurally fair, the following recommendations are proposed.

5.1.1 Separation of power to expropriate from determination of compensation

It is recommended that in order for expropriation to be procedurally and formally fair, there is a need to separate the power of the office that makes the final decision to expropriate property from the office that determines compensation. The current law of Rwanda stipulates that the Land Commission that makes the decision to expropriate the property is the same Commission that determines the amount of compensation to be paid. A number of facts come into play in the determination of compensation. These two duties require specialist assessment, but there is a likelihood of abuse of power if discretion to perform multiple duties is resident in one office.

This recommendation is inspired by the new South African Bill that proposes the creation of a new and independent office of the Valuer-General whose role under the new law will be solely to determine the amount of compensation to be paid to individuals whose properties have been expropriated. This development rules out any possibility of undue influence from the Minister who retains the power to determine which property may be expropriated in the public of the interest.

5.1.2 Removal of appeal to the Commission before having access to court

This point is argued on the basis of accessibility of courts. The principle of accessibility to courts is hinged upon a number of factors among which include onerous requirements to be met before one is granted standing. According to the law concerning expropriation in the interest of the public in Rwanda, if an individual is not satisfied with the compensation to be paid, an appeal may be lodged with the same Land Commission that took the decision to expropriate the property before they can have access to the courts of law. This discloses the fact that the Commission has the power to decide to expropriate the land, make an assessment of the compensation to be paid and then entertain an appeal for dissatisfaction over a decision which it has made.

This clearly shows the primacy which the Commission is accorded by the law particularly in respect to the appeals procedure. If an individual has not appealed to the same commission that has made a decision against him/her, that person will not have standing in the courts of law. The point of contention is that by making an appeal to the same commission compulsory before an individual can have standing before the courts; the law creates onerous requirements upon aggrieved parties which has the same effect of denying justice. By so doing, justice is delayed to individuals who are often limited by time and resources. As was pointed out earlier, a significant number of Rwandese are subsistence farmers with low literacy rates. For such individuals whose resources are limited, plural appeal procedures will undoubtedly have the effect of denying justice if access to courts is subject to a redundant appeal to the same commission. It is therefore recommended that Rwanda opens up access to courts by removing the requirement of first appealing to the Land Commission.

BIBLIOGRAPHY

CASES

Centre for Minority Rights Development (Kenya) and Minority Rights Group International on behalf of Endorois Welfare Council v Kenya, 276/2003.

Kirkness v John Hudson & Co. 1955 AC 696, 709.

Social and Economic Rights Action Centre & the Centre for Economic and Social Rights v Nigeria.
Communication No. 155/96.

Youngstown Sheet & Tube Co. v Sawyer, 343 U.S. 579, 635 (1952).

INTERNATIONAL INSTRUMENTS AND LEGISLATION

African Charter on Human and People's Rights adopted on 27/06/1981 and ratified by Rwanda

Constitution of the Republic of Rwanda, 2003.

Constitution of the Republic of South Africa, No. 108 of 1996.

Constitution of the Republic of Uganda, 1995.

EAC Treaty. Signed on 30 November 1999 and entered into force on 7 July 2000.

EAC Bill of Rights. Passed by the East African Legislative Authority on 25 April 2012.

Expropriation Act 63 of 1975 of the Republic of South Africa.

International Convention on Civil and Political Rights adopted in and ratified by Rwanda in 1975.

International Convention on Elimination of all forms of Racial Discrimination adopted on 21/12/1965, entered into force on 04/01/1969 and ratified by Rwanda on 1981.

Land Acquisition Act of Uganda, 1965.

Land Clauses Consolidation Act of Britain, 1845.

Law Establishing the National Human Rights Commission, no 04/99 of 12 March 1999. Modified and completed by law no 37/2002 of 31 December 2002 (Rwanda).

Law Relating to Expropriation in the Public Interest, no. 18/2007 of 19/04/2007 (Rwanda).

Plan of Action on Promotion and Protection of Human Rights in East Africa. EAC/CM 15/Decision 36 of 2009-09-04.

Property Valuation Bill of South Africa. Bill published in Government Gazette No. 36993 of 1 November 2013.

Universal Declaration of Human Rights. Adopted and proclaimed by General Assembly resolution 217 A (III) of 10 December 1948.

Vienna Declaration and Programme of Action. Adopted on 25 June 1993. A/CONF.157/23.

BOOKS AND JOURNAL ARTICLES

Adams G.B. "The Origin of English Equity." (1916) 16 *Colombia Law Review* 2, pp. 87-98.

Amnesty International. Human Rights Republic of Rwanda. Available at: <http://www.amnesty.org/en/region/rwanda/report-2009> (accessed 08 November 2013).

Aristi R.S. and Imbernon N.M., (2008) *International Encyclopaedia of Laws Property and Trust Law*. National Monographs. Spain.

Asiimwe B.R. (December 29, 2011) *Kimicanga expropriation kicks off*. The New Times Rwanda. Available at: www.newtimes.co.rw/news/index.php?i=14854&a=48571 (accessed 14 May 2013).

Baker J.H. (3rd ed. 1990) *An Introduction to English Legal History*. London: Butterworths Publishers.

Baobin M. “*Public Interests and Public Contrary*.” *Jiangsu Social Sciences*. 2002-01.

Blackstone W. (1827) *Commentaries on the Laws of England. Vol. I*. New York: Collins & Co Publishers.

Boahen A.A. (1985) “*Africa under the Colonial Domination 1880-1935*.” In UNESCO International Scientific Committee for the Drafting of a General History of Africa, An Overview of the General History of Africa. University of California Press. Reprinted in 2000.

Bragard V. & Planche S. “*Museum Practices and the Belgian Colonial Past: Questioning the Memories of an Ambivalent Metropole*.” (2009) 2 *African and Black Diaspora: An International Journal* 2, pp. 181-191.

Chirwa D.M. (2007) *Socio-Economic Rights in International Human Rights Law*. Available at: [http://www. communitylawcentre.org.za/projects/socio-economic-rights/](http://www.communitylawcentre.org.za/projects/socio-economic-rights/) (accessed 29 May 2013).

Cohen B. “*Urbanization in developing countries: Current trends, future projections, and key challenges for sustainability*.” (2006) 28 *Technology in Society* 1-2, pp. 63-80.

Donnelly J. “*The Relative Universality of Human Rights*.” (2007) 29 *Human Rights Quarterly* 2, pp. 281-306.

Du Plessis W.J. (2009) “*Compensation for Expropriation under the Constitution*.” Unpublished PhD Thesis, University of Stellenbosch.

Goodfellow T. (2013) *Kigali 2020: The Politics of Silence in the City of Shock*. Available at: <http://www.opendemocracy.net/opensecurity/thomas-goodfellow/kigali-2020-politics-of-silence-in-city-of-shock> (accessed 8 April 2013).

Grotius H. (1583-1645) *De Jure Beli ac Pacis* 2.

Gutter J. "Special Procedures and the Human Rights Council: Achievements and Challenges Ahead." (2007) 7 *Human Rights Law Review* 1, pp. 93-107.

Herman S. "The Uses and Abuses of Roman Law Texts." (1981) 29 *American Journal of Comparative Law* 4, pp. 671-690.

Hogue A.R. (2010) *Origins of the Common Law*. Liberty Fund Inc. ISBN-10:0865970548.

Ibuka's Annually Activity Report, July 2010-June 2011. Available at: www.ibuka.net/rwanda.html (accessed 20 November 2013).

Kasumba E. *Relating Rwanda's Investment Climate Reform Programme to the PFI*. Expert on Corporate Governance & Economic Management NEPAD Secretariat Rwanda. Available at: <http://www.oecd.org/investment/investmentfordevelopment/37986823.pdf> (accessed 07 November 2013).

Kimathi L. (2012) *The Endorios Community Case to the African Commission on Human and Peoples' Rights*. Available at: <http://africapeacepoint.net/Downloads/Endorois%20paper.pdf> (accessed 21 July 2014).

Krause C. and Alfredsson G. (1999) *Article 17* in Alfredsson G. and Eide A. (eds.) *The Universal Declaration of Human Rights*. Kluwer Law International, Netherlands.

Mann F. "Outlines of a History of Expropriation." (1959) 75 *Law Quarterly Review* 188, pp. 200.

Marguerite V. *Encyclopedie Juridique*. Paris, Dalloz, 1983, 93 (unofficial translation by Prof. Fernandes M.J.)

Matthews N. "The Valuation of Property in the Roman Law." (1920-21) 34 *Harvard Law Review*, p.229.

McLwain C.H. "Due Process of Law in Magna Carta." (1914) 14 *Columbia Law Review* 1, pp. 27-51.

Meron T. "On the Hierarchy of International Rights." (1986) 80 *American Journal of International Law* 1, pp. 1.

Merryman J.H. and Perez-Perdomo R., (3rd ed. 2007) *The Civil Law Tradition: An Introduction to the Legal Systems of Europe and Latin America*. Stanford University Press.

Merrill T.W. "Property and the Right to Exclude." (1998) 77 *Nebraska Law Review*, pp. 730.

Miguel A.R. "Equality before the Law and Precedent." (1997) 10 *Ratio Juris* 4, pp. 372–91.

Mitchell T.W. "The Land Crisis in Zimbabwe: Getting behind the Myopic Focus upon Black & White." (2001) 11 *Indiana International & Comparative Law Review* 3, pp. 587-603.

Niyonsenga D. (2013) *Urban planning and social inclusion, a study of Kigali city, Rwanda*. Paper prepared for presentation at the "Annual World Bank Conference on Land and Poverty" The World Bank - Washington DC, April 8-11.

Olaniyan T. "Africa: Varied Colonial Legacies" in Schwarz H. & Ray S. (2000) *A Companion to Postcolonial Studies*. Oxford: Blackwell Publishing Ltd.

Otubu A. "Private Property Rights and Compulsory Acquisition Process in Nigeria: The Past Present and Future." (2012) 8 *Acta Universitatis Danubius. Juridica*, 3, pp. 25-42.

Pennington K. "The Spirit of Legal History." (1997) 64 *University of Chicago Law Review* 3, pp. 1097-1116.

Persson T. Roland G. and Tabellini G. "Separation of Powers and Political Accountability." (1997) 112 *Quarterly Journal of Economics* pp. 4.

Pottier J., "Land Reform for Peace? Rwanda's 2005 Land Law in Context." (2006) 6 *Journal of Agrarian Change* 4, pp. 509–537.

Rousseau J.J. (1762) *The Social Contract. Book I, 7-The Sovereign, Paragraph 8. 1762.* Available at: http://www.constitution.org/jjr/socon_01.htm (accessed 29 May 2013).

Sjaastad E. and Bromley D.W. "The Prejudices of Property Rights: On Individualism, Specificity, and Security in Property Regimes." (2000) 18 *Development Policy Review* 4, pp. 365–389.

Snare F. "The Concept of Property." (1972) 9 *American Philosophical Quarterly* 2 at 200.

Stuchtey B., "Colonialism and Imperialism, 1450-1950." *European History Online.* Available at: <http://www.ieg-ego.eu/en/threads/backgrounds/colonialism-and-imperialism/benedikt-stuchtey-colonialism-and-imperialism-1450-1950> (accessed 15 November 2013).

Terlingen Y. "The Human Rights Council: A New Era in UN Human Rights Work?" (2007) 21 *Ethics & International Affairs* 2, pp. 167-178.

Wille G. (1963, 5th ed.) *Principles of South African Law: Being a Textbook of the Civil Law of the Republic.* Cape Town, South Africa.

INTERNET SOURCES

African Court on Human and Peoples' Rights Website. Available at: <http://www.african-court.org/en/index.php/news/press-releases-2/342-rwanda-deposits-the-article-34-6-declaration-allowing-individuals-and-ngos-direct-access-to-the-african-court> (accessed 28 May 2013).

East African Community website. Available at: <http://www.eac.int/> (accessed 28 May 2013).

Ethiopia: A Country Education Profile (Fact Sheet). Available at: www.bibl.u-szeged.hu (accessed 4 May 2013).

Expropriation: A Sequel. UNCTAD Series on International Investment Agreements II. Available at: http://unctad.org/en/docs/unctaddiaeia2011d7_en.pdf (accessed on 07 November 2013).

Hard Talk Kenya (21 March 2012) "Raila Odinga has Raw Blood of Innocent Kenyans on His Hands!" – George Charamba. Available at: <http://hardtalkkenya.wordpress.com/2012/03/21/raila-odinga-has-raw-blood-of-innocent-kenyans-on-his-hands-george-charamba-2/> (accessed 27 March 2013).

Habimana S. (18 August 2013) *Rwanda: Bugesera Airport - Residents Decry Delayed Compensation*. AllAfrica.com. Available at: <http://allafrica.com/stories/201308190281.html> (accessed 07 November 2013).

Habimana C. (2 May 2013) *Expropriation: Nduba Sector Residents Angry at Delayed Payments*. Available at: <http://en.igihe.com/news/expropriation-nduba-sector-residents-angry-at.html> (accessed 14 May 2013).

Human Rights Bodies-Complaints Procedures. Available at: <http://www2.ohchr.org/english/bodies/petitions/> (accessed 28 April 2013).

Sarone Solomon (March 4, 2012). *The Human Rights Brief*. Centre for Human Rights and Humanitarian Law. Available at: <http://hrbrief.org/2012/03/the-east-african-court-of-justice-asserts-its-jurisdiction-to-hear-the-independent-medical-legal-unit%E2%80%99s-reference-against-the-kenyan-government/> (accessed 15 May 2013).

Special Procedures of the Human Rights Council available at the Office of High Commissioner of Human Rights website. Available at: <http://www.ohchr.org/EN/HRBodies/SP/Pages/Welcomepage.aspx> (accessed 28 April 2013).

The Kigali Conceptual Master Plan (KCMP). Available at: http://www.rdb.rw/uploads/media/KIGALI_CONCEPTUAL_Master_Plan.pdf (accessed on 29 Oct 2012).

The United Nations Non-Governmental Liaison Service (NGLS). *The United Nations Human Rights System: How to make it Work for You*. UNCTAD/NGLS/2008/2. Palais des Nations, CH-1211 Geneva 10, Switzerland and Room DC1-1106, United Nations, New York NY 10017, United States. Available at: http://www.un-ngls.org/IMG/pdf/Final_logo.pdf (accessed 20 April 2013).

World Report 2010: Rwanda. Human Rights Watch. Available at: http://www.hrw.org/sites/default/files/related_material/rwanda_0.pdf (accessed 08 2013).