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DRAFT PRIME MINISTER ORDER ON MODALITIES FOR THE USE, DEVELOPMENT, AND MANAGEMENT OF SWAMP LAND IN RWANDA

June 2014

This report is made possible by the support of the American People through the United States Agency for International Development (USAID)

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Contract No. AID=696-C-12-00002
Chemonics International

Recommended Citation: Nielsen, Robin. 2014. *Draft Prime Minister Order on Use, Development, and Management of Swamp Land in Rwanda*. Kigali, Rwanda: USAID | LAND Project.

The author's views expressed in this publication do not necessarily reflect the views of the United States Agency for International Development or the United States Government.

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DRAFT

EXECUTIVE SUMMARY

This report presents an initial Draft Presidential Order on the (Draft Order) and related commentary. The Draft Order is prepared by the USAID-Rwanda LAND Project at the request of the Rwanda Natural Resources Authority (RNRA) and is prepared under the authority of Law No. 43/2013 of 16/06/2013 Governing Land in Rwanda (2013 Land Law).

In preparing the Draft Order, the authors considered Rwanda's legal framework for land and the environment and comparable law of other African and non-African countries. The authors also reviewed Rwanda's policy framework, including the policy on the intensification of agriculture and secondary materials on legislation governing environmentally sensitive land. The Draft Order was aided by discussions held with RNRA leadership and staff and representatives of REMA, MINAGRI, and RDB between June 16 and June 20, 2014.

How a country manages its natural resources is often a significant indication of how the country envisions its future. Rwanda has an opportunity to manage its economically and environmentally valuable swamp land to advance its vision of economic and social growth and environmental protection to benefit all of its people, now and in generations to come.

The objectives of the Draft Order are to support:

1. Swamp land use, development, and protection consistent with principles of economic growth, alleviation of poverty, sustainable land use, and environmental protection;
2. Investment in swamp land-based projects by making the process and procedures for accessing conditional use and unconditional use swamp land efficient, predictable, and transparent; and
3. Community engagement in development and implementation of swamp land-based projects through application of international best practices.

The Draft Order creates a system for managing the sustainable use and conservation of swamp land that uses a combination of regulation, tools, and contracts. The primary elements of the proposed swamp land management system are:

1. Management of Protected Swamp Land by the central government body with authority over the environment. Rwanda's Protected Swamp Land is in the public domain of the State because of its rich biodiversity, ecological importance, environmental sensitivity, and public heritage. This category of swamp land is protected from uses that are inconsistent with the unique nature of the land and its related natural resources and appropriately managed by the central government body with authority over the environment.

2. Management of Conditional Use Swamp Land and Unconditional Use Swamp Land by the central government body with authority over land. Swamp land classified as available for use subject to specific conditions or use without specific conditions is in the private domain of the State. The central government body with authority over land is responsible for the transfer and use of State land and is the appropriate body to have overall authority over the management of swamp land in these two categories. Other government entities, such as the bodies with authority for the

environment, investment and development, and agriculture, have primary and shared authority for various tasks under the Draft Order, with the government body for land serving in a coordinating and oversight role.

3. Swamp land selection for development and use based on combination of land use plans, national priorities, and other factors. The Draft Order requires use of several tools and consideration of various factors in the selection of suitably-classified swamp land for projects, including national and district-level land use plans, national and regional priorities, other projects and planned projects for swamp land nationwide, and any special conditions.

4. Use of letters of intent. Under the Draft Law, the government body with responsibility for land issues project promoters letters of intent as soon as they approve the application and select land. The use of letters of intent is designed to attract project promoters by providing provisional rights to use appropriate swamp land for projects quickly and before the project promoter has to expend significant time and money.

5. Constructive attention to social impact of projects. The process for swamp land project development requires a social impact assessment conducted prior to execution of the agreement for swamp land use. Under the Draft Order the social impact assessment continues to be part of the environmental assessment but receives increased attention, consistent with international best practice.

6. Public and CSO engagement in ESIA process. Consistent with international best practice, the Environmental and Social Impact Assessment (ESIA) process requires a public comment period and integration of public comments into the final ESIA. In addition, the EISA presents an opportunity for engagement of other government sectors and decentralized bodies, and qualified civil society organizations with experience working with local communities to help oversee the Environmental and Social Impact Assessment (ESIA) process. Such government bodies and other organizations can help provide technical support (including compliance monitoring), to help ensure that the assessment is appropriately tailored to local conditions, help facilitate interactions between the project promoter and local communities potentially affected by the project, and for community-driven projects, provide technical support for productive and sustainable land use.

7. Requirement of site-specific business plans. Under the Draft Law, the process for obtaining a use agreement for swamp land requires the project promoter to submit a comprehensive Business Plan, which informs the terms of the agreement with the GOR for use of swamp land and can be incorporated by reference in the swamp land use agreement. The Business Plan, which includes a description of the project and management and operational information, must reflect consideration of the findings of the ESIA and conditions specific to the swamp land area and any public comments received on the prospective project.

8. Use of authorization system (permit/license). The Draft Law includes a placeholder for use of an authorization system, such as licensing or permitting. Such a system can bring more land under productive use when land has two uses that are potentially conflicting, such as agriculture and environmental conservation. In such circumstances, the governing body with authority over the environment may require a permit to control the agricultural activities so that they are consistent with the environmental conservation goals.

9. Use of economic tools. Under the Draft Law, the swamp land use agreement can use a variety of economic tools, including rent and fees, and subsidies and incentives. In addition to standard contractual terms addressing the rights and responsibilities of the parties relating to the use of the land, the GOR can use incentives, subsidies, and application of favorable rates for rent to encourage desired behavior. Examples of activities that may be incentivized include support for restoration of degraded land, environmental protection, community-based and community-driven swamp land projects, and components designed to benefit local communities adversely impacted by the project.

10. Comprehensive use agreement, including land transfer. The Draft Order suggests using a single agreement for the transfer of use of swamp land for a project and the terms governing the transfer and use. Core provisions, such as the rights and obligations of the parties, can be contained in a template along with the transfer of the use rights to the swamp land. Other provisions, such as special conditions of use, permit requirements, incentives, and any particular agreements regarding compliance that are negotiated can be prepared as optional drop-ins for ease of use. Alternatively, two documents can be used (one the “title” document for the land use rights and one to set out the terms and conditions of land use) without too much additional effort.

11. Mandatory monitoring and reporting. The Draft Order sets a requirement of mandatory monitoring on a quarterly basis for the first year of the project, followed by semi-annual monitoring and reporting thereafter, assuming that the project was in compliance during the first year. The frequency of monitoring increases in the event that a project is found to be out of compliance. The government body responsible for monitoring can delegate monitoring tasks to competent local governmental and nongovernmental bodies.

12. Compliance incentives and penalties. Under the Draft Order, the GOR can reward compliance with incentives such as an extended use agreement and financial incentives. Noncompliance is classified as either material or *de minimus*; incidents or issues of material noncompliance can constitute breach of the use agreement and subject the project promoter to penalties, including potential termination of the use agreement and compensatory damages.

The Draft Order suggests time frames for GOR action at various stages. The total amount of time needed for the GOR to complete its steps is roughly 20 days.

The Draft Order balances rapid review and approval procedures designed to encourage investment with a strengthened process for environmental and social impact assessment that meets international best practice standards. Effective management of sustainable and productive use of Conditional Use Swamp Land and Unconditional Use Swamp Land under the Draft Order depends on the leadership of the governing body with authority over land and the active engagement of the environmental, investment, and agricultural sectors. The process also allows for the potential for targeted use of decentralized government bodies and civil society organizations to handle tasks within their competencies. The governance structure supports the conservation of the shared heritage in Rwanda’s swamp lands, and the economic and legal tools supporting sustainable use of the land will help ensure that the country’s heritage survives.

1.0 INTRODUCTION

The five-year Rwanda LAND Project seeks to strengthen the resilience of Rwandan citizens, communities, and institutions and their ability to adapt to land-related economic, environmental, and social change. The project has two main components:

1. Increased capacity of local Rwandan institutions to generate high-quality evidence-based research on land related issues and Government of Rwanda (GOR) laws and policies; and
2. Increased understanding of land laws, policies, regulations, and legal judgments on land-related issues by GOR officials, local civil society organizations, research institutes, and citizens.

During the second year of operations, the project's GOR counterpart prioritized reviewing key pieces of land legislation. During a meeting between the project and the Rwanda Natural Resources Authority (RNRA), the parties agreed to divide the activity into two tasks: 1) reviewing land-related draft laws and regulations to address their legal soundness and implications; and 2) drafting new regulations provided for in the 2013 Land Law. The first task is complete. The second task includes drafting the following proposed orders:

1. Presidential Order determining procedures to be followed in land allocation and land leasing;
2. Prime Minister Order determining the list of swamp land, their classification, boundaries, and modalities for use, development, and management for the sustainable benefit of all Rwandans; and
3. Ministerial Order determining the conditions and modalities for assignment of land.

This report is the second in the series, a draft Prime Minister Order on the modalities for use, development, and management of swamp land. In conducting the work, the authors reviewed:

- Rwandan legal framework for land and administrative procedure, with particular attention to Law No. 43/2013 of 16/06/2013 governing Land in Rwanda (2013 Land Law) and Organic Law No. 4/005 of 08/04/2005 determining the Modalities of Protection, Conservation and Promotion of the Environment in Rwanda (2005 Environmental Law);
- Legislation, policy statements, and strategy and planning documents relating to land use in Rwanda, including the: National Land Policy, 2004; National Land Use Development Master Plan; Economic Development and Poverty Reduction Strategy, 2013-2018 (EDPRS II); Rwanda Vision 2020; and Draft Law relating to Land Use and Development Planning in Rwanda;
- Draft legislation prepared by Rwanda Environmental Management Authority (REMA) governing marshland (swamp land);

- Comparable law and regulations relating to systems of protected land management and sustainable use in other African countries, including Ghana, Kenya, Tanzania, Botswana, Namibia, and Zambia;
- Regional and global policy statements, including the Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries, and Forests in the Context of National Food Security, 2012; and Framework and Guidelines on Land Policy in Africa, 2010; and
- Secondary materials regarding systems for the sustainable use and conservation of protected areas generally and wetlands in particular and published reports of swamp land projects in Rwanda.¹

In addition to the desk research and analysis conducted, the authors also held meetings with stakeholders in Rwanda between June 16 and 20, 2014.²

Section 2 of the report provides an overview of the objectives of the Draft Order and its contents. Section 3 sets out the Draft Order, with comments provided in footnotes. Section 4 sets out a chart of the process for entering into an agreement for the use of swamp land, with estimated time frames. A conclusion follows in Section 5.

2.0 OVERVIEW OF THE DRAFT ORDER

The objectives of the Draft Order are to support:

1. Swamp land use, development, and protection consistent with principles of economic growth, alleviation of poverty, sustainable land use, and environmental protection;
2. Investment in swamp land-based projects by making the process and procedures for accessing conditional use and unconditional use swamp land efficient, predictable, and transparent; and
3. Community engagement in development and implementation of swamp land-based projects through international best practices, including: application of national priorities to swamp land management and decision-making; inclusion of meaningful social impact assessment in environmental impact assessments; providing opportunity for public comment; and incentivizing projects that include components designed to benefit local community members through elements

¹ The most useful sources consulted include: Clare Shine and Cyrille de Klemm. 1999. *Wetlands, Water and the Law: Using the law to advance wetland conservation and wise use*. Cambridge, UK: IUCN-World Conservation Union; and Barbara Lausche. 2011. *Guidelines for Protected Area Legislation*. IUCN Environmental Policy and Law Paper No. 81. Gland, Switzerland: IUCN. In addition, the following publication, while focused on coastal land management, includes good general information and commentary about legal frameworks for environmentally sensitive land. FAO. 2006. *Integrated Coastal Management Law: establishing and strengthening national legal frameworks for integrated coastal management*. Rome: FAO. Studies of swamp land projects include IFAD. 2008. *Kirehe Community-Based Watershed Management Project (KWAMP) Project Design report*; RCN Justice & Democratie, CIRAD, and ILC. 2011. *Socio-economic impact of commercial exploitation of Rwandan Marshes: a Case Study of Sugar Cane Production in Rural Kigali*; N. L. Nabahungu. 2012. *Problems and Opportunities of Wetland Management in Rwanda*. Wageningen, NL: Wageningen University.

² Stakeholders included representatives from Rwanda Natural Resources Authority (RNRA), Rwanda Environmental Management Authority (REMA), Rwanda's Ministry of Agriculture and Animal Resources (MINIAGRI), and the Rwanda Development Board (RDB).

such as employment opportunities, infrastructure development, and support for small businesses.³

In preparing the Draft Order, the authors were aware of issues relating to swamp land use in Rwanda, as reported in published studies of projects. The authors were also aware of some of the issues challenging the current process for land selection and allocation, including lack of well-defined roles for various government stakeholders and coordination among stakeholders, the absence of established criteria for decision-making and limited review of investor capacity. The challenges described relate to land in the private domain of the State and other governmental bodies that is not classified as swamp land, but they appear equally relevant to swamp land management. The Draft Order is designed to fill the gaps in processes in addition to helping further the overall objectives.

The Draft Order creates a system for managing swamp land that uses a combination of regulation, tools, and contracts. The legislated processes and procedures create a foundation for efficient action and decision-making and predictable results—all of which provide the certainty that can assist in encouraging investment. Planning tools, such as master and district land use plans, help guide land selection, and authorization tools like permits and licenses are available to regulate development activities in environmentally sensitive areas. Contractual instruments, including letters of intent and swamp land transfer and use agreements, make use of uniform terms while also allowing for negotiation of selected provisions on a case-by-case basis.

The primary elements of the proposed swamp land management system in the Draft Order are:

- 1. Management of Protected Swamp Land by the central government body with authority over the environment.** Rwanda's Protected Swamp Land is in the public domain of the State because of its rich biodiversity, ecological importance, environmental sensitivity, and public heritage. This category of swamp land is protected from uses inconsistent with these qualities and is appropriately managed by the central government body with authority over the environment.
- 2. Management of Conditional Use Swamp Land and Unconditional Use Swamp Land by the central government body with authority over land.** In most cases, responsibility for swamp land management can be effectively handled either by an existing governance body or by a new governance body. Stakeholders in Rwanda voiced a strong preference for using an existing governance body to manage the process. Stakeholders also noted that because multiple bodies will likely be involved helping support most swamp land projects, one government body should be designated as lead. This kind of structure is consistent with good international practice.⁴

Swamp land classified as available for use subject to specific conditions or use without specific conditions is in the private domain of the State. The central government body with authority over land is responsible for the transfer and use of State land. Accordingly, that government body is best placed to manage these two classifications of swamp land. Other government entities, such as the bodies with authority for the environment,

³ Objectives informing the Draft Order were drawn from Rwanda's legal and policy framework, including the Constitution, 2003; National Land Policy, 2004; EDPRS II, 2013 Land Law; 2005 Environmental Law; and the Framework and Guidelines for Land Policy in Africa.

⁴ Lausche 2011.

investment and development, and agriculture also have authority for various tasks under the Draft Order, with the central government body for land serving in a coordinating and oversight role.

The use of a central government body as a lead authority over the Conditional Use Swamp Land and Unconditional Use Swamp Land may help ensure that GOR land is managed consistently, efficiently, and with a national perspective. Operationally, the body might consider creating an internal committee so that the responsibility for swamp land management is shared by an identified group. Based on discussions with stakeholders, the authors suggest creation of a three- to six-person committee within RNRA. The number of committee members is based on theories of efficient operation: the group should have a sufficient number of members so that work can proceed when one or two members are unavailable but should not have so many members as to impede the group's functioning. Committee members can be selected based on position or specific expertise, with a goal of creating diversity of perspective and sharing work load among different departments, if possible. The authors recommend that decisions of the committee (and decisions that are shared with other government bodies such as RDB, REMA, and MINAGRI) be by consensus as opposed to majority rule. Consensus decision-making, especially by small groups, tends to promote discussion, information sharing, and ownership of the decision reached by all members.⁵ For committee decision-making, stakeholders suggested that the Registrar serve as a final arbiter in the event of impasse.

Principles of efficiency, good management practice, and capacity building would be well served if the committee's responsibilities also extended to management and oversight of land administration functions related to:

1. Land allocation and leasing land in the private domain of the State, local authorities, public institutions, and parastatals;
2. Assignment of land; and
3. Land expropriation.

The responsibilities of the central government body with authority over land in these three additional areas are quite similar, and similar to the responsibilities for swamp land. Creating a locus for execution of the responsibilities, coordination with other sectors, and oversight within the central government body with responsibility for land would help ensure an organized approach. In addition, the use of a single committee will promote development of deep experience and expertise among committee members and will likely allow for decentralization of some tasks sooner.

2. Swamp land selection for development and use based on combination of land use plans, national priorities, and other factors. Under the Draft Order, the governing body with authority over land (potentially acting through the proposed committee) is responsible for the selection of suitable options for land for a project. The Draft Order suggests consideration of several tools and factors in the selection of swamp land for projects, including national and district-level land use plans, national and regional priorities, other projects and planned projects for swamp land nationwide, and any special conditions. See Section 3, Article 24. The process for selection is, therefore, a combination of application of existing information (such as land use plans) and judgment regarding national priorities and special conditions. This kind of mixed basis decision-making tends to result in the most informed decisions and is often best

⁵ See full discussion in relation to Article 27 of the Draft Order.

done by a small group as opposed to a single person,⁶ which is an additional reason to contemplate use of a small committee.

3. Use letters of intent. Under the Draft Law, the government body with responsibility for land issues letters of intent to project promoters as soon as they approve the application and select land. The issuance of the letters is designed to attract project promoters by providing provisional rights to use swamp land for projects quickly and before the project promoter has to expend significant time and money.

4. Constructive attention to social impact of projects. The process for swamp land project development requires an environmental and social impact assessment (ESIA), conducted prior to execution of the agreement for swamp land use. Stakeholders reported that the EIA form currently used by REMA and RDB includes a social impact section. However, the section is not emphasized and often receives limited attention. In some cases, those conducting the EIA prepare the social assessment section without having any contact with the communities that will be impacted by the proposed project. In addition, recommendations for mitigation of adverse impacts from a project rarely include suggestions for mitigating the impact of the project on local communities.

As suggested by stakeholders, the Draft Order titles the required assessment an environmental and social impact assessment (ESIA). Numerous countries, including Western Australia, Cameroon, Tanzania, Uganda, and Zambia,⁷ use the term, ESIA, as opposed to EIA. In addition, multilaterals such as the African Development Bank, European Bank for Reconstruction and Development, and the World Bank require ESIA's.⁸ Using the term promotes Rwanda's attention to good social responsibility practices, in addition to good environmental practices. While changing a title alone does not, of course, ensure a change in practice, the new title is one step toward helping to ensure that social impact section of the assessment receives appropriate attention.

The authors also suggest that the criteria for the social impact assessment of the ESIA be reviewed and analysis conducted of how the criteria have been applied in representative cases and the resulting findings and recommendations. Based on this review and analysis, if necessary, the criteria for the social impact assessment should be strengthened to ensure that the assessment is comprehensive and calculated to yield specific, constructive information that can usefully inform project development.⁹

The Draft Order suggests that the government body with responsibility for the environment lead the ESIA process, including providing the analytical structure for the assessment, approving the ESIA service provider, facilitating the assessment, reviewing

⁶ See e.g., Frederick C. Miner, Jr. 1984. Group versus Individual Decision-Making: An Investigation of Performance Measures, Decision Strategies and Process Losses/gains. *Organizational Behavior and Human Performance*. 33:1, 112-124.

⁷ Natural resource Governance Institute. 2013. *Governance Index*; Government of Uganda. 1998. *National Environment Act and National Environment Impact Regulations*.

⁸ See e.g., AfDB. 2014. *Rwanda: Transport Sector Support Project EISA Summary*. Nairobi: African Development Bank; AfDB. 2013. *Environmental and Social Impact Assessment Summary: Rusumo Hydro Power Plant*. Nairobi: African Development Bank; The World Bank. 2014. *Operational Policy 4.01*.

⁹ Like all studies, social impact assessments have the potential to be an excuse for broad information-gathering and wide-ranging comment that is not tied to the proposed project or particular interests at issue. Carefully drafted instructions for the assessment, recommended time frames, and oversight will help keep the process disciplined and help ensure that the ultimate results are constructive and useful for project development and implementation. The European Bank for Reconstruction and Development (EBRD) has a number of useful ESIA tools, including assessment guidelines and forms. See <http://www.ebrd.com/environment/e-manual/r00cont.html>. See also the resources listed in footnote 11.

and approving or rejecting the results, and monitoring compliance. The Draft Order also allows the government body with responsibility for the environment the option to conduct the selection process for the ESIA service provider, if it so elects. This provision is intended as a protection against the possibility that project promoter will use either unqualified or biased service providers.

5. Public and CSO engagement in ESIA process. The Draft Order references opportunities for other government sectors and decentralized governmental bodies and civil society organizations in the ESIA process. In many if not most cases, ESIA's will likely be conducted by private entities, some of whom may have little if any experience with Rwanda or Rwanda's swamp lands. This is especially true for projects advanced by foreign investors, who often use international consulting firms to conduct ESIA's. Under the Draft Order, the government body responsible for overseeing the ESIA process can help ensure that the assessment is appropriately tailored to local conditions by using governmental bodies and civil society organizations with experience working in the local area to provide technical support for the ESIA (including providing compliance monitoring), facilitate the assessment process, help conduct any public meetings, facilitate interactions between the project promoter, and local communities potentially affected by the project.¹⁰

The ESIA process also requires a public comment period and integration of public comments into the final ESIA. The public comment period and requirement that the final ESIA reflect recognition of the comments made is part of best international practice governing ESIA's and required by numerous countries.¹¹

6. Requirement of site-specific business plans. Under the Draft Law, the process for obtaining a use agreement for swamp land requires the project promoter to submit a comprehensive Business Plan, which informs the terms of the agreement for use of swamp land. The Business Plan, which includes a description of the project and management and operational information, must reflect consideration of the findings of the ESIA and conditions specific to the swamp land area and any public comments received on the prospective project. This requirement is designed to prevent acceptance of projects without adequate information about the project promoter's plan for implementation. In addition, the contents of the Business Plan will assist in negotiations for the terms of the agreement between the GOR and the project promoter for the use of swamp land.

7. Use of authorization system (permit/license). The Draft Law includes a placeholder for use of an authorization system, such as licensing or permitting, if desired by the GOR. Such a system can help put more land subject to potentially conflicting uses (such as agricultural uses and environmental conservation) under productive use. The governing body with authority over the environment can set certain threshold standards for agricultural activities in environmentally sensitive areas and require permits for such activities. As noted in the comments to the Draft Law relating to the section on authorization systems, it will be most efficient if relevant government bodies,

¹⁰ As an example, see the services offered by the Southern African Institute for Environmental Assessment at <http://www.saiea.com>.

¹¹ International Association of Impact Assessment (IAIA) and Institute of Environmental Assessment, UK. 1999. Principles of Environmental Assessment: Best Practices. Fargo, ND: IAIA; EBRD 2013. Finance of Investment Project: ESIA public consultation. <http://www.ebrd.com/environment/e-manual/r16eia.htm>; UNECE. 2001. Aarhus Convention on Access to Information: Public Participation in Decision-Making and Access to Justice in Environmental Matters. <https://treaties.un.org/doc/source/RecentTexts/27-13eng.htm>. Participation in the Aarhus Convention has been limited to western countries, creating a potential leadership opportunity for countries that join from other regions.

such as REMA and MINAGRI, agree to definitions of permissible and prohibited activities,¹² which can then be set out in instructions governing permits for various activities. With that foundation, most permits will likely require little or no special negotiation and can be issued quickly. Permitting offers other positive features, including a separate revenue stream, which can pay for monitoring, and the ability of the government body with authority for the environment to enforce the terms of the permit independent of the term of the swamp land use agreement.

8. Use of economic tools. The agreement for the use of swamp land may include a variety of financial terms and economic tools, including rent and fees, and subsidies and incentives. It is relatively common practice, for example, for countries to offer incentives for projects that rehabilitate degraded land, restore ecosystems, or to encourage certain technical practices or operational techniques that minimize environmental impact.¹³ Many European countries use contractual incentives rather than permitting to support environmentally friendly agriculture and other agri-environment measures in environmentally sensitive areas.¹⁴

The GOR can use incentives, subsidies, and application of favorable rates for rent as a method to support community-based and community-driven swamp land projects. The GOR can also use incentives to encourage external project promoters to include components designed to benefit local communities adversely impacted by the project. Common agreements include promises of a certain number of employment positions or use of locally sourced materials. Tying these kinds of promises to payments allows for easy enforcement: in the event of noncompliance with the condition, the GOR simply withholds the incentive, avoiding the need for a potentially undesirable finding of breach of the overall use agreement.

As that example suggests, attaching various financial terms to separate components of an agreement can potentially help reduce enforcement costs. However, negotiation of each component requires time, and, if an agreement is separated into too many different components, the parties run the risk of diluting the consideration for the overall agreement to the point where core terms and conditions of the agreement have no teeth. Separate financial components should, therefore, be used judiciously.

9. Comprehensive use agreement, including land transfer. The Draft Order suggests using a single agreement for the transfer of use of swamp land for a project and the terms governing the transfer and use. Core provisions, such as the rights and obligations of the parties, can be contained in a template along with the transfer of the use rights to the swamp land. Other provisions, such as special conditions of use, permit requirements, incentives, and any particular agreements regarding compliance that are negotiated can be optional drop-ins.

Alternatively, as referenced in the notes to the Draft Order, two documents can be used (one the documentation of the land rights (“title” document) that will be transferred, and one to set out the terms and conditions of land use) without too much additional effort. Separate documents are advisable, for example, if the project promoter or user of the

¹² It is more effective and gives the GOR the most control over activities impacting the swamp land environment if all project activities are subject to the regulatory scheme and very few activities, if any, are exempt.

¹³ See general discussion and examples in Shine and de Klemm, 1999 and Lausche, 2011.

¹⁴ The EU and individual countries finance the incentives. For a general overview of the issues and sample programs, see D. Baldock and K. Mitchell. 1995. Cross-compliance within the Common Agricultural Policy: A Review of Options for Landscape and Nature Conservation. London: Institute for European Environmental Policy.

swamp land has the right to assign the use rights to a third party (i.e., a standard type of assignment of land).¹⁵ In that event, it will be useful to have a separate “title” document that can be assigned to the third party. The project promoter will remain bound by the use agreement with the State, and can set the terms and conditions for the assignment as desired and agreed to by the assignee.

10. Mandatory monitoring and reporting. Monitoring is an essential component of the system for managing swamp land use and achieving the objectives of supporting projects that meet the standards of sustainable use.¹⁶ The Draft Order sets a requirement of mandatory monitoring on a quarterly basis for the first year of the project, followed by semi-annual monitoring and reporting thereafter, assuming that the project was in compliance during the first year. The frequency of monitoring increases in the event that a project is found to be out of compliance. The government body responsible for monitoring (currently, REMA), can delegate monitoring tasks to competent local governmental and nongovernmental bodies so long as it oversees the performance of the delegate.

11. Compliance incentives and penalties. The Draft Order includes placeholder provisions that allow the government body to reward compliance with incentives such as an extended use agreement and a more limited monitoring and reporting schedule. Noncompliance is classified as either material or *de minimus*; incidents or issues of material noncompliance can constitute breach of the use agreement and subject the project promoter to penalties, including potential termination of the use agreement and compensatory damages.

3.0 DRAFT ORDER

DRAFT PRIME MINISTER ORDER NO. _____ OF _____ ESTABLISHING MODALITIES FOR THE USE, DEVELOPMENT, AND MANAGEMENT OF SWAMP LAND

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¹⁶ Shine and de Klemm, 1999; Lausche, 2011.

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PREAMBLE

Pursuant to the Constitution of the Republic of Rwanda of June 4, 2003, as amended to date, especially articles 11, 29, 30, 31, 49, and 118;

Pursuant to Law No. 43/2013 of 16/06/2013 governing Land in Rwanda, especially articles 3, 4, 11, 12, 14, 19, 28, and 37;

Pursuant to Organic Law No. 04/2005 of 08/04/2005 determining the Modalities of protection, Conservation and Promotion of Environment in Rwanda, especially articles 7, 9, 19, 45, 52, 60-61, 63, 65-69, 74-80, 94-96, and 103;

Pursuant to Ministerial Order No. 8/16/2010 of 13/10/2010 establishing the List of Swamps and Their Limits and Regulating Their Management and Use;

With recognition of the International Convention on Biodiversity and its Habitat signed in Rio de Janeiro, Brazil on 5 June 1992, as approved by Presidential Order No. 017/01 of 18 March 1995;¹⁷

With consideration of the United Nations Framework Convention on Climate Change, signed in Rio de Janeiro, Brazil, 5 June 1992, as approved by Presidential Order No. 021/01 of 30 May 1995;

With consideration of the Rotterdam International Convention on the establishment of international procedures agreed by states on commercial transactions of agricultural pesticides and other poisonous products, signed in Rotterdam on 11 September 1998 and New York from 12 November 1998 to 10 September 1999, as approved by Presidential Order No. 28/01 of 24 August 2003 approving membership of Rwanda;

¹⁷ The list of environmental agreements ratified is necessary because the Order addresses use and protection of environmentally-sensitive swamp land.

With consideration of the Basel Convention on the control of transboundary movements of hazardous wastes and their disposal as adopted at Basel on 22 March 1989 and approved by Presidential Order No. 29/01 of 24 August 2003 approving membership of Rwanda;

With consideration of Cartagena protocol on biosafety to the convention of Biological Biodiversity signed in Nairobi from May 15 to 26, 2000 and New York from June 5, 2000 to June 4, 2001, as authorized to be ratified by Law No. 38/2003 of 29 December 2003;

With consideration of the Kyoto Protocol to the Framework Convention on Climate Change adopted at Kyoto on March 6, 1998 as authorized to be ratified by Law No. 36/2003 of 29 December 2003;

With regard to the Ramsar International Convention on February 2, 1971 on Wetlands of International Importance, as authorized to be ratified by Law No. 37/2003 of 29 December 2003; and

With regard to the Bonn Convention opened for signature on June 23, 1979 on conservation of migratory species of wild animals as authorized to be ratified by Law No. 35/2003 of 29 December 2003.

After consideration and adoption by the Cabinet in its meeting of _____,

_____ hereby orders:

CHAPTER I: GENERAL PROVISIONS

Article 1: Purpose of the Order

The purpose of this Order is to:

1. Identify Rwanda's swamp land and its boundaries and classification;¹⁸ and
2. Establish the processes and procedures governing the use, development, and management of the swamp land.

Article 2: Scope of the Order

This Order applies to all swamp land in Rwanda.

Article 3: Definitions

The following definitions shall apply to the terms listed below:

Business Plan: a written document that sets out a detailed description of the objectives and design for a planned project and the project's anticipated operational, management, and financial structure and forecast.

¹⁸ The Draft Order follows the format of the existing Order by including the identification of swamp land, including classification, within the scope but limiting the title of the Draft Order to the second component: modalities for the use, development and management of swamp land. A more accurate title, if desired, could be: *Prime Minister Order Identifying and Classifying Swampland and determining the modalities for its use, development, and management.*

Environmental and social impact assessment (ESIA)¹⁹: an evaluation that identifies effects that may be caused by planned human activities or a project. An ESIA is equivalent to an environmental impact assessment (EIA) that includes the required social impact assessment section.

Local community: a group of individuals who interact within their immediate environment, including sharing natural resources and information, and forming social, economic, and political relationships.

Marshland: for purposes of this Order, “marshland” shall be synonymous with “swamp land.”²⁰

Project implementer: An individual or group, or a representative of an entity or group implementing a project. Project implementers include commercial investors, private corporations, public-private partnerships, civil society organizations, individuals, families and other groups, associations, and cooperatives. Project implementers may be the same as project promoters or separate individuals, entities, or groups.

Project promoter: An individual or group, or a representative of an entity or group planning a project who facilitates or leads the development, organization, and implementation of the project. Project promoters include commercial investors, private corporations, public-private partnerships, civil society organizations, individuals, families and other groups, associations, and cooperatives.

Sustainable use: use of components of biological diversity in a way and at a rate that maintains its potential to meet the needs and aspirations of present and future generations and does not lead to the long-term decline of biological diversity.

Swamp: a flat²¹ area between hills or mountains with water and biodiversity and where papyrus, carex, or plants of their species grow.

Swamp Land Transfer and Use Agreement (SLTUA):²² a document that sets out the terms and conditions of planned use of swamp land and transfer of the use rights to the swamp, which is agreed to and signed by the authorized representative of the governmental body with authority over land and the project promoter or swamp land user.

¹⁹ See discussion in Section 2. The term Environmental and Social Impact Assessment (ESIA) is a revised term for the Environmental Impact Assessment currently in use in Rwanda and referenced in the 2005 Environmental Law.

²⁰ Rwanda’s current legislative framework uses the terms, “marshland” and “swamp,” somewhat interchangeably. During the meeting on the Draft Order on June 17, 2014, representatives from REMA suggested that for purposes of the order, a common term should be used. They suggested confirming that marshland and swamp land are synonymous. The 2010 Draft Law determining the Use and Management of Marshlands in Rwanda, which was prepared by REMA, states that the two terms are synonymous. Article 2.1(10).

²¹ This definition clarifies the English translation of the French phrase, “*surface plane*,” using the word “flat” rather than “plane,” which is ambiguous (and often and naturally confused with plain).

²² This title is one option; another option is Swamp Land Concession Agreement. Note that the agreement will include a transfer of land use rights under the terms set forth in the agreement. The certificate of registration could be appended to the agreement. Alternatively RNRA may wish to have two separate documents: an overall agreement for the use of the land and a lease. The lease could be annexed to the agreement. The benefits of handling the agreement in a single document are: 1) tying the land transfer to the agreement regarding use of the land, which can assist in enforcement of the terms of the agreement because the two legal agreements (land transfer and land use) cannot be easily bifurcated; and 2) some efficiencies as there is one less document to prepare and maintain. However, the single document might be confusing to some people and it will introduce a new format for transferring use rights to land. If RNRA wishes to use an agreement with an annexed lease (which would be useful if assignments are permitted), both documents can be drafted to protect against bifurcation.

Transboundary area: an area that spans the boundaries of more than one country.

Watershed: an area of land that drains into a common waterway or water body.

CHAPTER II: GUIDING PRINCIPLES

Article 4: Guiding principles generally

The guiding principles set forth in this chapter are drawn from the informing legislation. The processes and procedures set forth in this Order shall be executed in a manner that supports and furthers the guiding principles.

Article 5: Sustainable use, conservation, and protection

Swamp land shall be managed in a manner that supports its sustainable and rational use, conservation, and protection for the benefit of current and future generations of Rwandans.²³

Article 6: Strengthen swamp land ecosystems

Swamp land shall be managed in a manner that strengthens swamp land ecosystems in the face of climate change and allows for adaptive management to accommodate change.²⁴

Article 7: Support economic and social development

Swamp land shall be managed in a manner that supports the economic and social development of local communities and the reduction of poverty.²⁵

CHAPTER III: LIST AND CLASSIFICATION OF SWAMP LAND

Article 8: List of swamp land

A list of Rwanda's swamp land is appended to this Order as Annex 1. Each area of swamp land listed is identified by its boundaries and is classified using the categories set forth in this Chapter.

Article 9: Classification of swamp land

All swamp land is classified as within one of the following categories:

1. Full protection (Protected Swamp Land).
2. Use under specific conditions (Conditional Use Swamp Land).
3. Use without specific conditions (Unconditional Use Swamp Land).²⁶

²³ This principle is drawn from the 2005 Environmental Law and the Draft Law on Land Use and Development Planning. In addition, the principle fulfills the obligation of "wise use" under the Ramsar Convention, which Rwanda ratified in 2003.

²⁴ This principle is drawn from the 2005 Environmental Law and the Kyoto Protocol on climate change, which Rwanda ratified in 2003.

²⁵ This principle is drawn from the Draft Law on Land Use and Development and the 2013 Land Law. The principle is also consistent with the Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries, and Forests in the Context of National Food Security (2012) and Framework and Guidelines on Land Policy in Africa (2010).

Classification of swamp land shall be made with reference to standards agreed to by the government body with authority over land and the government body with authority over the environment.²⁷

Article 10: Protected Swamp Land

Protected Swamp Land is State land in the public domain.

Protected Swamp Land can only be transferred to the private domain of the State by law.²⁸

Article 11: Conditional Use and Unconditional Use Swamp Land

Conditional Use Swamp Land and Unconditional Use Swamp Land are within the private domain of the State.

An order of the Prime Minister is required to change the classification of Conditional Use Swamp Land and Unconditional Use Swamp Land.²⁹

CHAPTER IV: GOVERNANCE OF SWAMP LAND

Article 12: Governance of Protected Swamp Land

The central governing body with authority over the environment shall have general governance authority over the use, management, and protection of Protected Swamp Land.

In exercising its authority, the central governing body for the environment shall recognize the authority of the central government body with responsibility for land for other classifications of swamp land.

All governing bodies must cooperate with each other in the exercise of their authority and responsibilities under this Order.

The central governing body with authority over Protected Swamp Land under this Order may, in its discretion, delegate tasks relating to the management of swamp land to competent government and nongovernment bodies. The central governing body shall retain oversight authority over the execution of the tasks by the delegates and responsibility for performance of the delegated duties.³⁰

²⁶ The article introduces new terminology for the different classes of swamp land. Other options for alternative terminology are: restricted use/unrestricted use swamp land and unprotected, restricted/unprotected, unrestricted swamp land.

²⁷ Classification of swamp land using agreed standards was ongoing at the time that this draft was prepared. If the standards for classification are not already part of the regulatory framework, they can be annexed to this Order or to legislation promulgated by REMA.

²⁸ 2013 Land Law Articles 12 and 14.

²⁹ 2013 Land Law Article 12.

³⁰ This statement regarding delegation allows government bodies to delegate authority and responsibility to local government bodies such as district administration and nongovernmental bodies in its discretion. Swamp land is within the public or private domain of the State and not within the private domain of local governmental bodies, public institutions, and parastatals. Accordingly, it is appropriate for the government body with authority for land, in collaboration with the government body with authority for the environment, to determine the circumstances under which district authorities (and CSOs) can assist in managing swamp land.

Article 13: Management of Protected Swamp Land

Management of Protected Swamp Land shall include the following activities:

1. Monitor status of the swamp land ecosystem;
2. Take actions necessary to preserve and maintain the swamp land ecosystem and the larger watershed and river basin ecosystems in which the swamp land is located;
3. Enforce the protected status of the swamp land;
4. Authorize uses consistent with the status of the land as protected swamp land in the public domain of the State;³¹ and
5. Other activities jointly agreed to by the governing body with authority over the environment and the governing body with authority over land.³²

Article 14: Governance of Conditional Use Swamp Land and Unconditional Use Swamp Land

The central governing body with authority over land shall have general governance authority over the use, management, and protection of 1) Conditional Use Swamp Land; and 2) Unconditional Use Swamp Land.³³

In exercising its authority, the central governing body for land shall recognize the authority of the following governmental bodies within the areas of their competencies and mandates:

1. Central governing body with authority over the environment;
2. The central body responsible for promotion of investment and development; and
3. Any other central governing body with authority relating to the planned use and development of swamp land.³⁴

Specific management activities may be the responsibility of one or more additional governing bodies, as set forth in this Order. The governing body with authority over land shall serve as the lead government body and coordinate the activities and inputs of the various governing bodies.

All governing bodies must cooperate with each other in the exercise of their authority and responsibilities under this Order.

³¹ For example, such activities might include scientific studies, ecosystem monitoring, interventions required to preserve the ecosystem, educational activities, and, where feasible, public access for recreation and uses compatible with the status of the swamp land.

³² This undefined management activity is designed to provide some flexibility to engage in other appropriate activities, as agreed to by both government bodies.

³³ As discussed more thoroughly in Section 2 (Overview of Draft Order), the Draft Order puts RNRA (or any successor entity) in the lead governance position for swamp land management. Many of the administrative and management tasks will be properly handled by another body, such as the government body with authority for investment assisting a project promoter through the process of obtaining a Swamp Land Use Agreement and the government body with authority for the environment leading the ESIA process. In addition, some tasks may be shared by several bodies (such as the current RNRA, RDB, REMA, and MINAGRI reviewing an ESIA and Business Plan). However, one body should be the lead authority in order to help ensure that all appropriate stakeholders are included in the process, the process is executed in a manner that supports national goals, and appropriate rights and obligation attach to the transfer of the right to use swamp land.

³⁴ The main bodies will be those with responsibility for agriculture and investment. Other bodies might include those with authority for energy, infrastructure, and social welfare.

The central governing bodies with authority over Conditional Use Swamp Land and Unconditional Use Swamp Land and authority over any uses of swamp land under this Order may, in their discretion, delegate tasks relating to the management of swamp land to competent government and nongovernment bodies. The central governing body shall retain oversight authority over the execution of the tasks by the delegates and responsibility for performance of the delegated duties.³⁵

Article 15: Management of Conditional Use Swamp Land and Unconditional Use Swamp Land

In coordination with other relevant government bodies, the governing body with authority for land shall:

1. Promote uses of the swamp land that are consistent with their classification and consistent with the principles governing swamp land;
2. Maintain an inventory of swamp land that includes the identity of users and uses;
3. Assist in linking project promoters with suitable, available swamp land for projects;³⁶
4. Identify the relevant government bodies with authority related to proposed swamp land projects and coordinate their involvement in the process of project approval;³⁷
5. Review and decision-making on applications for swamp land development and use;
6. Review and in coordination with the government body with responsibility for the environment, approve or reject ESIA's and any subordinate studies or agreements required for swamp land development and use;
7. Review and decision-making on Business Plans;
8. Negotiate, draft, and execute Swamp Land Transfer and Use Agreements;³⁸
9. Monitor and enforce the terms of Swamp Land Transfer and Use Agreements;
10. Provide input into transboundary agreements that include Rwandan swamp land; and

³⁵ This statement regarding delegation allows government bodies to delegate authority and responsibility to local government bodies such as district administration and nongovernmental bodies in its discretion. Swamp land is within the public or private domain of the State and not within the private domain of local governmental bodies, public institutions, and parastatals. Accordingly, it is appropriate for the government body with authority for land, in collaboration with the government body with authority for agriculture, to determine the circumstances under which district authorities (and CSOs) can assist in managing swamp land.

³⁶ This task is more focused than the classification of swamp land and extends beyond the simple application of national and District Land Use Plans. The task draws on the knowledge and expertise of the government body with authority for land staff and recognition of national priorities in working with sector authorities and project promoters to identify the best option(s) for a particular project.

³⁷ Ideally, the government body with authority for investment should assist the project promoter through the process. However, it is unclear whether RDB is accessible to CSOs, local groups, individuals and families who seek land for a project. If the government body with authority for land holds joint responsibility with the government body with authority for investment for assisting applicants, it can delegate the responsibility to local authorities, who are potentially more accessible to such potential swamp land users.

³⁸ Swamp Land Transfer and Use Agreement is one option for the title of the agreement between the GOR and the user. Another possibility is Swamp Land Concession Agreement. As set forth in Article 31, the Swamp Land Transfer and Use Agreement (or Concession Agreement) includes the transfer of land rights and terms and conditions governing the transfer and attaches the permit or license (if applicable), the approved Business Plan, the approved ESIA, and any other agreements. Another option is to have two separate agreements: one that transfers the right to use the land, and one that sets out all the terms and conditions relevant to the land use and the project.

11. Other activities consistent with the authority and competencies of the governing body with authority over land and the principles governing the sustainable use and protection of swamp land.

The governing body with authority over land shall create a working committee³⁹ of up to five (5) members⁴⁰ to perform the responsibilities of the governing body with authority for land under this Order.

Article 16: Responsibilities of investment authority with regard to Conditional Use and Unconditional Use Swamp Land

In coordination with relevant governing authorities as provided for in this Order, the central governing body with responsibility for promoting investment and development shall:

1. Promote the availability of swamp land to prospective project promoters and actively manage Rwanda's reputation for sustainable use of and productive investment in State land;
2. Assist project promoters through the process of applying for use of swamp land;⁴¹
3. Review and decision-making on applications and Business Plans for development and use of Conditional Use Swamp Land and Unconditional Use Swamp Land, in coordination with other relevant government bodies with authority over swamp land;
4. Review and have input into the approval or rejection of ESIA's and any other required studies and agreements;
5. Provide input into terms of Swamp Land Transfer and Use Agreements; and
6. Manage the GOR's global reputation for productive, environmentally sensitive investment in and use of swamp lands.⁴²

Article 17: Responsibilities of environmental authority with regard to Conditional Use and Unconditional Use Swamp Land

In coordination with other relevant governing bodies, the central governing body with responsibility for the environment shall:

1. Set the criteria, standards, process, and other technical and procedural requirements for ESIA's;
2. In its discretion, conduct the process of selecting ESIA providers;
3. Make decisions on selection of ESIA providers;
4. Facilitate ESIA provider work;

³⁹ This idea is discussed further in Section 2 (Overview of Draft Order).

⁴⁰ The committee should be small enough that it can operate by consensus, if possible, but large enough that it can function when one or two members cannot attend a meeting or assist in particular tasks. During stakeholder meetings in July 2014, RNRA staff suggested that the committee not include the Registrar, who can then act as arbitrator and tie-breaker in the event that the committee reaches impasse on a decision.

⁴¹ Ideally, RDB (or successor entity) will provide accessible support for commercial investors and local organizations and other potentially less sophisticated entities alike. If RDB does not have that capacity, options include developing an institutional framework for dedicated support within RDB or the government body with authority for land, or linking with another governmental or nongovernmental body that is oriented toward supporting local groups and can provide local access.

⁴² This responsibility is critical to the success of the program for swamp land use and should be undertaken proactively as part of the overall promotion of the country's investment framework. Capacity may need to be developed within RDB (or successor entity) to undertake this role effectively.

5. Review and decision-making on ESIA's and any subordinate studies or agreements relating to use and development of swamp land;
6. Review and decision-making on Business Plans;
7. Set any permit requirements, as warranted;
8. Issue or deny any required permits;
9. Provide input into the terms of Swamp Land Transfer and Use Agreements;
10. Monitor compliance with the environmental and social⁴³ components of the Swamp Land Transfer and Use Agreements and provide reporting as required by this Order; and
11. Provide input into transboundary agreements that include Rwandan swamp land.

Article 18: Responsibilities of other central authorities with regard to Conditional Use and Unconditional Use Swamp Land

In coordination with relevant governing bodies, other central governing bodies with authority over the development and use of swamp land within their competencies shall have input and provide technical support related to swamp land management tasks set forth in this Order.⁴⁴

The government body with authority over land shall be responsible to identify relevant government bodies and coordinate their engagement in the process.

Article 19: Assignment and delegation of responsibilities to other entities⁴⁵

A central governing body with responsibility for the management of Conditional Use Swamp Land and Unconditional Use Swamp Land under this Order may assign and delegate the following tasks to a governmental body, quasi-governmental body, or decentralized governmental body, consistent with the scope of their mandates and capacity:

1. Assist in maintaining the inventory of swamp land and its users and uses;
2. Assist in identification of suitable swamp land for projects;
3. Assist project promoters through the process of applying for use of swamp land;
4. Review of applications of project promoters for use of swamp land and provide input into decisions on application;⁴⁶
5. Review of Business Plans and input into decisions on Business Plans;
6. Facilitation of preparation of ESIA's and any related studies and agreements;

⁴³ For purposes of the Draft Order, the responsibility is located with the government body with authority for the environment based on the authors' understanding that the current body, REMA, has capacity to conduct the social impact assessments and thus should also have capacity for monitoring compliance with any social issues. As stated in the Overview in Section 2, if properly managed, use of civil society organizations and local government bodies can help ensure the process is as efficient and useful as possible.

⁴⁴ Other government bodies might include those currently identified as MINAGRI, MININFRA, and MINALOC, depending upon the issues presented by a particular project and swamp land area.

⁴⁵ This article allows delegation of some administrative and management tasks to other competent bodies, including decentralized government bodies and nongovernmental organizations. CSOs, in addition to private entities, are often used for preparation of ESIA's. In addition, CSOs (and particularly NGOs) are often best positioned and have the largest capacity to conduct information gathering and facilitate communications with local communities, especially in combination with local authorities. The lists of delegable tasks do not include "catch-all" provisions, which would allow for other duties to be delegated. The authors did not include that option because there does not appear to be an efficient way to have more than one central government body check the advisability of the delegation.

⁴⁶ The authors suggest that, at least initially, decentralized bodies have input into the decision but not decision-making authority.

7. Facilitation of communications with local communities regarding proposed swamp land use and projects; and
8. Monitoring of land use and compliance with Swamp Land Transfer and Use Agreement.

A central governing body with responsibilities for the management of swamp land under this Order may assign and delegate the following tasks to a competent civil society organization or other nongovernmental entity:

1. Facilitation of preparation of ESIA's and any related studies and agreements;
2. Input into ESIA's and any related studies and agreements;
3. Preparation of ESIA's and any related studies;
4. Facilitation of communications with local communities regarding proposed swamp land use and development;
5. Monitoring of land use and compliance with Swamp Land Transfer and Use Agreements.

The central government body assigning and delegating responsibilities shall be responsible for overseeing the performance of the delegate and the results.

CHAPTER V: SWAMP LAND TRANSFER AND USE AGREEMENT PROCESS

Article 20: Overview of Swamp Land Transfer and Use Agreement Process⁴⁷

The process for entering into a Swamp Land Transfer and Use Agreement has the following steps and time limits:

1. **Initial contact.** A project promoter shall contact the government body with authority for investment and development, or the government body with authority for land regarding a potential project that may be suitable for use of swamp land.⁴⁸ Other government bodies receiving inquiries about land for potential projects shall direct the project promoter to the government body with authority for investment, or the government body with authority over land.
2. **Process summary and requirements.** At the time of initial contact, the government body shall provide the project promoter with a summary of the process to obtain Swamp Land Transfer and Use Agreement, the application form, requirements for the Swamp Land Transfer and Use Agreement, and information on any available incentives, required permits, and other details.⁴⁹
3. **Application.** The project promoter shall submit an application for swamp land transfer and use.
4. **GOR review and approval or rejection of application.** The central body with authority for land shall coordinate the review of the application with the central body with responsibility for investment and any other relevant government body.

⁴⁷ The process outlined is more detailed than usually included in an order and some aspects may ultimately be best relegated to instructions or internal procedures, or eliminated altogether. The authors included the detailed steps in this initial draft to check the accuracy of the authors' understanding of the steps, make sure there are no gaps that need filling, and to help orient the reviewers to the various procedures that follow.

⁴⁸ As a practical matter, project promoters may be seeking any suitable land, not necessarily swamp land. If the selected land is in the private domain of the State or other government bodies and not swamp land, the Order on Land Allocation and Leasing will govern the procedures.

⁴⁹ The communication of the process, with the time frame for GOR action, and the communication of any incentives available should be done early to encourage investors and other project promoters. Much of the information might also be made available online, for increased accessibility and promotion of the country's opportunities.

- The central government body with authority for land shall issue the decision on the application within five (5) working days of receipt of the application.⁵⁰
5. **GOR identification of available land.** If the application is approved, the central government body with responsibility for land shall confer with other relevant government bodies to identify appropriate swamp land for the project. If the project promoter identifies desired swamp land at the time of application, the government body shall consider the suitability of that identified land along with any other options.
 6. **Communication with promoter regarding land options.** The central government body with responsibility for land shall provide the project promoter with options for appropriate land within four (4) working days⁵¹ of the approval of the application.
 7. **Promoter review and selection of land.** The project promoter shall meet with relevant government bodies to confer regarding issues related to the land selection, and the proposed land use and project, and shall select the land.
 8. **GOR Letter of Intent.** Within three (3) working days of the land selection, the central government body with responsibility for land shall execute a letter of intent to the project promoter based on the tentative agreement of the parties regarding the project.⁵²
 9. **ESIA selection.** The ESIA provider shall be selected by either the government body with responsibility for the environment or by the project promoter, subject to the approval of the government body with authority for the environment.
 10. **ESIA preparation.** The ESIA is conducted in accordance with the standards set by the government body with responsibility for the environment. A draft ESIA is published for public comment, and final ESIA prepared after consideration of any comments.⁵³
 11. **Approval of ESIA.** Upon receipt of the final ESIA, the central government body with responsibility for the environment, the central government body with responsibility for land, and any other relevant central government body shall review the ESIA and either: a) approve the ESIA; or b) reject the ESIA, noting deficiencies in the process or substance of the assessment and allowing an opportunity to correct the deficiencies. The approval or rejection shall be issued within five (5) working days of receipt of the ESIA.
 12. **Business Plan.** If the ESIA is approved, the project promoter prepares a Business Plan based on the approved ESIA.⁵⁴

⁵⁰ As described in Article 22, the review of the application should be relatively easy but requires some research. Checking the project promoter's information on comparable projects and financial status will likely take the most time. However, most experienced investors will provide financial references and their experience with similar projects will be relatively easily checked. Likewise, the resources and experience for local entities can likely be easily confirmed. Most difficult to vet will be the prospective foreign investor with limited experience and ambiguous financial information. However, assuming the government body with authority for investment has experience researching various entities, most information can be provided within three days and usually much sooner.

⁵² The letter of intent, which can be issued as soon as the project promoter has selected the desired land, is a practice that can be useful in attracting investors. The letter of intent serves as a conditional agreement, intended to provide the project promoter with reasonable likelihood of an ultimate agreement. With a letter of intent in hand, a project promoter will potentially be more likely to invest an appropriate amount of time and money in the ESIA.

⁵³ As noted in Section 2, international best practice regarding environmental impact assessments provides for public review and comment of the draft assessment. The final assessment should take into consideration the public comments made. See citations in footnote 11.

⁵⁴ The Business Plan is created after the selection of land and after the final ESIA is approved, which is a change from how investors currently prepare and submit business plans to the government body with authority for investment. The order of preparation is important because the nature of the land and findings and recommendations of the ESIA should inform the content of the Business Plan. Project promoters may provide draft business plans as part of the application process, but the final Business Plan submitted for approval must reflect the specifics of the land selected, the findings and recommendations of the ESIA, applicable permit requirements, planned mitigation measures, any local community agreements, etc.

13. **Review and approval of Business Plan.** The central government body with responsibility for investment and development, land, the central government body with responsibility for the environment, any other central government body with authority over the planned land use and development, and the district authority where the land is located shall review the Business Plan and either approve it or require revisions. The central government body with authority for land shall issue the decision and a written statement of required revisions, if applicable, within five (5) working days of receipt of the Business Plan.
14. **Provision of Permit (if required).** The central government body with authority for the environment or other government body with permitting requirements related to the planned land use shall issue any permit for the planned activities, if required. The permit shall be issued within three (3) working days of the approval of the Business Plan.
15. **Preparation and negotiation of Agreement.** The central government body with authority for land shall prepare the Swamp Land Transfer and Use Agreement within three (3) working days of the approval of the Business Plan.
16. **Execution of Agreement.** When the terms of the Swamp Land Transfer and Use Agreement are agreed by the parties, the central government body with authority for land and the project promoter shall execute the agreement.
17. **Registration.** After execution of the Agreement, the Registrar shall register the transfer of land use rights.

Article 21: Content of Application

An application for swamp land use shall require the following information:

1. The identity of the project promoter and project implementers, if separate, including their registration as an entity authorized to do business in Rwanda, if required.⁵⁵
2. The qualifications of the project promoter and project implementers, including references from other comparable projects.
3. A list of comparable projects implemented by the project promoter.
4. The project promoter's financial status.
5. A description of the planned project, including project objectives and planned outputs.
6. The size and type of land required.
7. The timeframe for the project.
8. The anticipated financial structure for the project.

Article 22: Review of the application

The central government body with authority for investment and development shall check the veracity of the information submitted by the project promoter and shall research the project promoter's comparable projects and experience with project development and implementation. Within three (3) business days of the receipt of the application, the body with authority for investment shall report the findings of the research in writing and attach it to the application for review by the other central government bodies tasked with review and decision-making on applications.

⁵⁵ In cases such as when an individual or family is contracting for use of swamp land, it may not be necessary for them to be registered as a business entity.

In making a determination on the application, the government bodies responsible for reviewing and decision-making on applications shall determine whether the project promoter is likely to be a productive and responsible user of swamp land based on an evaluation of the:

1. Project promoter's experience with comparable projects, including the extent to which the project promoter met its obligations under the contract, achieved its objectives, and addressed anticipated negative social and environmental impacts;
2. Soundness of the promoter's financial status;
3. Suitability of the project to the available swamp land and the surrounding social, economic, and ecological environment;
4. Reasonableness of the project's financial structure; and
5. Extent to which the project meets the GOR's priorities for land use.

In their consideration of the financial status of local groups, cooperatives, and associations, the government bodies reviewing applications shall consider not only existing assets but guarantees, contractual obligations, commitments from donors, and other types of evidence of financial status.

Article 23: Decision on application⁵⁶

The government bodies responsible for reviewing applications shall reach a decision whether the project promoter is likely to be a productive and responsible user of swamp land by consensus.⁵⁷ The government bodies shall approve the application, reject it, or request that the project promoter provide additional information.

The government bodies shall issue their decision within five (5) days of receipt of the application.⁵⁸

⁵⁶ RDB and RNRA (or their successor bodies) should ensure that their review of applications is comprehensive and their approval or rejection of a project promoter's application is well-considered and deliberate. This is the stage at which investors with poor (or no) reputations should be rejected, along with those that have questionable financial foundation. At this stage, neither side has much invested in the process and rejection is most easily given and accepted. If GOR has any hesitations about the project promoter or the project, it should articulate them to the project promoter early and in writing. They can be stated in the Letter of Intent, for example, and serve as notice of conditions for a use agreement. Once the ESIA is completed and the Business Plan prepared, GOR still has the power to reject the project, and should certainly do so if conditions warrant that decision. However, at that point it would be advantageous to Rwanda's business environment to be in a position to require the project promoter to do more project design work as opposed to rejecting the project. If potential investors hear that Rwanda has a practice of rejecting project after significant expenditure of time and money by a project promoter, its reputation will likely suffer.

⁵⁷ Consensus decision-making is useful in situations where a limited and changing number of bodies will be required to reach a single decision and cross-sector cooperation is a goal. As opposed to majority rule, consensus requires participation of all group members and ideally, encourages a sharing of information, airing of all opinions and perspectives, and discussion of anticipated problems, resulting in an increase in the group's understanding of issues. Consensus decision-making can create a strong sense of joint responsibility for the process and the decision reached and create a forum for identifying potential issues and obstacles and developing solutions as a group. Consensus decision-making can also help prevent domination of decision-making by the most powerful members of a group, assuming less powerful members are able to present and defend their positions freely. Consensus decision-making is often more time consuming than majority rule, which is generally favored when dealing with decision-making by large groups. However, in a small group such as contemplated in the Draft Order, as experience with the process grows, consensus decision-making should require roughly the same amount of time as a majority vote system. Consensus can also dilute responsibility for follow-through and may result in impasse. Given the nature of the decision-making in this case (i.e., approval or rejection of an ESIA or Business Plan), the clear delineation of responsibility, and the designation of a single body with primary and lead authority for the process, these risks are likely minimal in relation to the potential benefits of high-quality input and commitment to the decision reached gained from a consensus process. See e.g., E. Paul Hare. 1980. Consensus versus majority vote: A Laboratory experiment. Institute of Educational Studies. ERIC. Small Group Research. Vol. 11 No. 2, 131-143; Bruce Wilson. 2005. When to Use Consensus for Decision-making. Wilson Strategies; Lani Guinier. 1995. The Tyranny of the Majority. New York: Free Press.

⁵⁸ The time frame allows three business days for research and two business days for decision-making.

Article 24: Selection of land

The government body with authority over land shall use the following criteria in determining which parcels of swamp land are suitable for the proposed project:

1. Master Land Use Plan;
2. District Land Use Plan;
3. ESIA, if already prepared for the subject swamp land;
4. GOR priorities for land use and development activities;
5. Other projects and planned projects for swamp land nationwide;
6. Regional priorities and interests;
7. Specific conditions of the subject swamp land, including potential environmental and social impacts; and
8. Current uses and users of the subject swamp land.

Article 25: Content of Business Plan

The Business Plan submitted in support of the Swamp Land Transfer and Use Agreement shall have the following components:

1. A summary of the project, its objectives, and timeline.
2. A plan for the development and use of the land for the project.
3. A statement of how the planned land use is consistent or inconsistent with the findings of the ESIA and a plan for how the project will incorporate the environmental and social recommendations set out in the ESIA and any other actions that the project will take to mitigate environmental and social risk or create positive environmental and social impact.
4. A summary operations plan.
5. A statement regarding the management and organization of the project.
6. A statement of the financial structure for the project including financing required and sources of finance.
7. Identification of risks and plans to address the risks.
8. Other information identified as relevant to the specific site or project.

The ESIA shall be appended to the Business Plan.

Article 26: Requirement of ESIA

Under Organic Law No. 04/2005 of 08/04/2005 determining the modalities for protection, conservation and promotion of the environment in Rwanda, all swamp land projects require an ESIA because swamp land is environmentally important and the project may affect the swamp land environment.⁵⁹

Article 27: ESIA process and content

The process for conducting the ESIA and the content of the ESIA shall be governed by Organic Law No. 04/2005 of 08/04/2005, especially Chapter IV, any superseding

⁵⁹ This mandatory requirement appears to be required by the 2005 Environmental Law. However, it is not explicitly stated and it is possible that the GOR might intend that projects using swamp land classified as having no conditions placed on use do not require ESIA's.

legislation, related legal instruments and instructions, processes and procedures of the government body with authority for the environment, and this Order.⁶⁰

The ESIA process for applications for use of Conditional Use Swamp Land and Unconditional Use Swamp Land shall include a process for public comment on the draft ESIA.⁶¹ The process shall include:

1. Notice of availability of the draft ESIA for review by interested parties, including stakeholders, civil society organizations, and local community members in the area where the proposed project will be sited.
2. A reasonable opportunity for interested parties to provide comments on the draft ESIA, in writing or in a public meeting held for that purpose. The period for public comments submitted in writing shall be no less than 10 business days following publication of the draft ESIA.
3. A sufficient number of public meetings to ensure that stakeholders had a reasonable opportunity to be heard on the subject of the proposed project;⁶²
4. Recording of any public meeting, including comments made and responses of the GOR and project promoter.
5. The final ESIA shall summarize or attach the comments received and identify the manner in which the final ESIA responded to the comments received. The final ESIA is prepared by the ESIA provider.

The government body with authority for the environment shall be responsible for managing the process for giving notice of the draft ESIA, collecting comments, holding the public meeting(s), and recording the proceedings of the public meeting(s).⁶³ The government body may delegate any specific activities under the terms of this Order.

Notice shall be given in accordance with the procedures set forth in Section VII of this Order.

Article 28: Review and approval of the ESIA

The government bodies responsible for reviewing the ESIA shall evaluate whether the ESIA:

1. Met the requirements for ESIA process and content set forth in the applicable legislation and any supporting instructions and procedures;
2. Provided the information and analysis necessary to determine whether the project is suitable for the location under environmental and social measures;
3. Provided the public with a meaningful opportunity to review and comment on the draft ESIA;

⁶⁰ The Draft Order extends the EIA requirements by emphasizing the social impact assessment and requiring an opportunity for the public to comment on the draft ESIA. As noted in the Overview of the Draft Order (Section 2), both of these requirements are consistent with best international practice and are part of the framework for environmental assessments in a number of African countries.

⁶¹ As noted in the Overview to the Draft Order (Section 2), public notice and comment is best practice for ESIA's and was included in the Draft Ministerial Order on Review and Approval Procedures for Marshland Management Agreements, proposed by REMA in 2010. See citations in footnote 11.

⁶² In most cases, one or possibly two public meetings will likely be sufficient, unless the project is quite large or will be implemented in more than one location. The standard is whether the public had a reasonable opportunity to be heard. For many stakeholders, the ability to present written comments will be sufficient. However, a public meeting will likely be needed to gather comments from local community members.

⁶³ As stated in Article 19, the government body can delegate these duties to a civil society organization or decentralized government body.

4. Provided constructive recommendations for addressing environmental and social factors at the project site and for mitigating specific risks; and
5. Addressed any public comments made.

The central government bodies responsible for approving or rejecting the ESIA must reach consensus on the decision on the ESIA.

Article 29: Permit [or license]⁶⁴

The central body with authority over the environment or other sectors impacted by the project⁶⁵ may require the project promoter to obtain a permit or license for planned activities in accordance with that government body's regulations. The issuing body may require that the project promoter pay any permit or license fee directly to the issuing body.

Any permit or license obtained shall be appended to the Swamp Land Transfer and Use Agreement and registered with the transfer of land use rights.

Article 30: Review and approval of the Business Plan

The government bodies responsible for reviewing Business Plans shall evaluate the Business Plan and any attachments with relation to the following:

1. The GOR's priorities for land use;
2. Current status and nature of swamp land use countrywide;
3. Project promoter's planned land use and project development;
4. Anticipated impact of the project on the environment;
5. The project promoter's plan to address any adverse environmental impacts or create positive environmental outcomes;
6. Anticipated impact of the project on the local community;
7. Project promoter's plans to address any adverse impacts on the local community or engage with the local community or create positive social outcomes;
8. Project promoter and, if applicable, project implementer's experience with comparable projects, including any environmental and social issues;
9. Soundness of the financial structure of the project;
10. Reasonableness of the timeframe for the project;
11. Support of the District Administration for the project;
12. Other potential benefits from the project; and
13. Other potential adverse impacts from the project and options for mitigation.

The central government bodies responsible for decision-making on a Business Plan must reach consensus on their decision. The governmental bodies may reach

⁶⁴ As discussed in Section 2, a permit (or license) is one kind of authorization system tool that can help countries extend development activities to sensitive areas by regulating particular uses. Specifically, permits are a common tool countries use to handle dual use areas, such as land used for both agricultural activities and environmental conservation. A permit system regulates the agricultural uses in a manner that allows for environmental conservation objectives to be met. A permit system also provides the governmental body with authority for the environment a basis on which to require compliance that is separate from the Swamp Land Transfer and Use Agreement and, as important, a basis on which to generate revenue to cover research monitoring, and enforcement costs incurred by the government body.

⁶⁵ Most permits in this context are issued by the government body with responsibility for the environment. However, depending on the circumstances, other GOR bodies, such as those responsible for water and sanitation, export and trade, etc. might require permits for certain activities.

consensus on one of the following decisions on a Business Plan: 1) approve; 2) reject; or 3) conditional approval, with requirements for revision and supplementation.

CHAPTER VI: SWAMP LAND TRANSFER AND USE AGREEMENTS

Article 31: Contents of Swamp Land Transfer and Use Agreement

The Swamp Land Transfer and Use Agreement shall contain the following provisions:

1. Identity of the parties;
2. Duration of the agreement;
3. Right to renewal;
4. Description of land transfer;
5. Rights and obligations of the project promoter, including any permit requirements;
6. Rights and obligations of the GOR;
7. Rights and obligations of any third parties regarding the swamp land and swamp land resources;
8. Rent or fee;
9. Subsidies and incentives;⁶⁶
10. Compliance, breach of the agreement, and consequences; and
11. Termination of the agreement.

The approved Business Plan and its appendices shall be attached to the agreement and incorporated by reference.

A template is appended as Annex 2.

Article 32: Incentives

The government bodies with authority over the management of swamp land under this Order shall have the power to provide project promoters with incentives for the following activities:

1. Protection of the environment through use of low impact technology and other environmentally friendly tools and techniques in project operations;
2. Rehabilitation of degraded land and restoration of ecosystems when the damages were not caused by the project promoter or project implementer;
3. Engagement of the local community in project activities or implementation of benefit-sharing programs with local communities adversely impacted by the project; and
4. Other activities agreed to by the government bodies as appropriate to incentivize in order to achieve GOR objectives.

The decision whether to grant incentives for any of the activities shall be at the discretion of the government bodies. If the government bodies elect to offer an incentive program, they shall make the program available to all similarly situated projects.

⁶⁶ For example, The Organic Law No. 04/2005 of 08/04/2005 determining the modalities for protection, conservation and promotion of the environment notes that some incentives may be available under the National Fund for the Environment (Articles 71-73).

Incentives shall be set forth in the Swamp Land Transfer and Use Agreement. No incentive shall be earned, regardless of activity or performance, if the provision for incentives is not included in the Swamp Land Transfer and Use Agreement.

Incentives may take the form of renewed or extended contracts, forgiveness of some or all of a financial obligation or payment, or a monetary or nonmonetary award, or other consideration. The structure, nature, and amount of any incentive shall be as agreed to by the government bodies with authority over the management of swamp land under this Order.

Incentives, performance relative to incentives, and receipt of incentives shall be subject to transparency and disclosure requirements applicable to the Swamp Land Transfer and Use Agreement and government contracting.

Article 33: Subsidies

The government bodies with authority over the management of swamp land under this Order shall have the power to provide project promoters with subsidies to the extent they qualify under a GOR program or opportunity.

CHAPTER VII: COMPLIANCE AND ENFORCEMENT

Article 34: Non compliance

Project noncompliance may be classified as *de minimus* or material. Project noncompliance is *de minimus* when the lack of compliance relates to a trivial or minor requirement that does not adversely impact the achievement of the purpose of the Swamp Land Transfer and Use Agreement or any substantive term of the agreement. Noncompliance is material when the lack of compliance goes to the heart of the Swamp Land Transfer and Use Agreement or some term of the agreement or may adversely impact the achievement of anticipated outcomes.

A project is required to correct an issue of *de minimus* noncompliance within thirty (30) days. If a *de minimus* issue of noncompliance extends past thirty (30) days, or if a project has more than three (3) issues of *de minimus* noncompliance in a 12-month period, the noncompliance shall be classified as material.

In the event of an issue of material noncompliance, the government body responsible for monitoring the project shall provide the project manager with a written statement of material noncompliance within ten (10) business days of discovery of the noncompliance. The government body and the project manager shall discuss how the project will remedy the issue and agree on a deadline for correction. If no deadline is agreed, the government body shall assign a deadline and give written notice of the deadline to the project manager within 20 business days of discovery of the issue of noncompliance.

If the project fails to correct an issue of material noncompliance within the stated time frame without reasonable cause, the material noncompliance shall be considered a material breach of the Swamp Land Transfer and Use Agreement.

Article 35: Monitoring and reporting

The central government body with authority for land shall have primary authority for monitoring the project's overall compliance with the Swamp Land Transfer and Use Agreement.

The central government body with authority for the environment shall be responsible to monitor the project with respect to environmental and social impacts in accordance with its regulatory standards and procedures and any permit issued.

The central government bodies with responsibility for monitoring may delegate routine monitoring tasks to another competent government or non-governmental body. The central government body shall oversee the performance of the delegate and shall continue to be responsible for the results.

Entities monitoring the project shall provide a written report of the project's activities and compliance in accordance with its contractual and regulatory obligations on a quarterly basis. If a project has four consecutive quarterly reports of full compliance, monitoring and reporting shall be done on a semi-annual basis. In the event that a project has had an incident of material noncompliance, monitoring reports shall be conducted on a monthly basis until the project comes back into compliance and has three (3) consecutive months of material compliance. Monitoring shall be quarterly thereafter.

Article 36: Enforcement of agreement and remedies

In the event of breach of the Swamp Land Transfer and Use Agreement, the parties shall have all remedies provided by contract and common law and the legislative framework, including modification of the agreement, the assessment of penalties and sanctions, revocation and termination of the agreement, damages, eviction, and any equitable remedies, if available.

CHAPTER VIII: MISCELLANEOUS, TRANSITIONAL AND FINAL PROVISIONS

Section One: Miscellaneous provisions

Article 37: Serving notices to individuals

Government notices that are served on individuals pursuant to this Order shall be delivered to the individual by hand, or sent to the individual at the address of record. If the governmental body has reasonable cause to know that these methods have not been successful, notice shall be made by affixing a copy of the notice in a conspicuous place at the District, sector, and cell offices where the swamp land is located.

Article 38: Serving of notices to the general public

Where a notice or other information is to be published or given such publicity as will bring it to the attention of all persons likely to be affected by it, the governmental body responsible from issuing the notice shall:

1. Draft the notice in Kinyarwanda and English, and any other language that is used by the population to whom the notice is directed;
2. Affix the notice in a conspicuous position at the sector and cell offices of the sector and cell in which the swamp land is located and in such other public places in any cell or village as the sector executive secretary shall direct; and

3. Summarize the notice and communicate it orally to the people living and working in the area where the swamp land is located at such meetings as may be convened by the sector or cell executive secretary for that purpose.

Article 39: Right of review

Any person adversely impacted by the actions of a governmental body under this Order with relation to swamp land use may seek review of the action by the governmental body. The request for review shall be made in writing and shall be supported by any relevant documents or information. The governmental body shall review the matter in accordance with its procedures and any administrative procedures governing the internal review of governmental actions. The governmental body shall render a decision in writing within fifteen (15) days from the date of receipt of the request for review.

If the petitioner is not satisfied or no reply was given within the time specified in paragraph one of this article, the petitioner can refer the matter for review by the central government body with authority for land. The request for review must be made within fifteen (15) days from the date of notification of the decision of the lower authority, or the expiration of the period for review. The government body with authority for land shall review the matter in accordance with its procedures for review and in accordance with any administrative procedures governing procedures for the internal review of government actions. The central body with authority for land shall render a decision within thirty (30) days of receipt.

Article 40: Right of appeal

If the petitioner is not satisfied by the decision of the central body with authority for land, he or she may refer the matter to the competent court of law. The procedures governing such review, including timelines, shall be as set forth by the court and any relevant laws of administrative procedure.

Section Two: Transitional and final provisions

Article 41: Abrogation of contrary provisions

All previous regulations contrary to this Order are hereby repealed.

Article 42: Coming into force of this Order

This Order comes into force on the day of its publication in the Official Gazette of the Republic of Rwanda.

4.0 CHART OF PROCESS AND TIMEFRAME FOR ENTERING INTO USE AGREEMENT FOR SWAMP LAND

No.	Action	Responsible party	Estimated time (days)
1	Initial contact. A project promoter contacts the government body with authority for investment and development, or the government body with authority for land regarding a potential swamp land project.	Project promoter	
2	Process summary and requirements. GOR gives project promoter a summary of the process to obtain Swamp Land Transfer and Use Agreement, the application form, requirements for the Swamp Land Transfer and Use Agreement, and information on any available incentives, required permits, and other details.	GOR body for investment (or land)	Same day as initial contact
3	Application. The project promoter submits application for swamp land transfer and use.	Project promoter	
4	GOR review and approval or rejection of application. GOR review/research and approval or rejection of application.	GOR body for land, investment, and any other relevant bodies	5
5	GOR identification of available land. GOR confers internally to identify appropriate swamp land for the project.	GOR body for land, other GOR bodies depending on project, district authorities	3
6	Communication with promoter regarding land options. GOR suggests one or more options for appropriate land for project	Government body for land	
7	Promoter review and selection of land. The project promoter meets with relevant government bodies to confer regarding issues related to the land selection, and the proposed land use and project. Project promoter selects or accepts land.	Project promoter	
8	GOR Letter of Intent. GOR executes a letter of intent to the project promoter.	GOR body for land	1
9	ESIA preparation. In coordination with the central body with authority for the environment, the project promoter arranges for an ESIA, or update of an existing ESIA. A draft ESIA is published for public comment, and final ESIA prepared after consideration of any comments.	Project promoter and GOR body with authority for the environment	
10	Approval of ESIA. Upon receipt of the final ESIA, GOR reviews the ESIA and enters a decision on the ESIA	GOR body with authority for the environment, GOR	3

		body with authority for land and others	
11	Business Plan. The project promoter prepares a Business Plan based on the approved ESIA.	Project promoter	
12	Review and approval of Business Plan. GOR reviews the Business Plan and approves it, rejects it, or requires revisions.	GOR body for land, environment, investment, and any other relevant bodies	2
13	Provision of permit (if required). GOR issues any permit required for the planned activities	GOR body for environment or other body	1
14	Preparation and negotiation of agreement. GOR prepares the Swamp Land Use Agreement	GOR body for land	3
15	Execution of Agreement. When the terms of the Swamp Land Transfer and Use Agreement are agreed by the parties, GOR and project promoter shall execute the agreement.	GOR for land and project promoter	1
16	Registration. After execution of the Agreement, the Registrar registers the transfer of land use rights.	GOR for land	Upon execution of agreement
Total GOR days			19

5.0 CONCLUSION

How a country manages its natural resources is often a significant indication of how the country envisions its future. Rwanda has an opportunity to manage its economically and environmentally valuable swamp land to advance its vision of economic and social growth and protection of the swamp land's unique biodiversity and ecologically important natural resources to benefit all of its people, now and in generations to come.

The Draft Order balances rapid review and approval procedures designed to encourage investment with a strengthened process for environmental and social impact assessment that meets international best practice standards. Effective management under the Draft Order depends on the leadership of the governing body with authority over land and the governing body with authority for the environment and the active engagement of the investment and agricultural sectors. The process also allows for productive, targeted use of decentralized government bodies and civil society organizations to handle tasks within their competencies. The governance structure reflects the shared heritage of Rwanda's swamp lands. The economic and legal tools supporting sustainable use of the swamp land will help ensure that the country's heritage survives.