



USAID | **RWANDA**
FROM THE AMERICAN PEOPLE

REVIEW OF THE DRAFT MINISTERIAL ORDER RELATING TO LAND REGISTRATION IN RWANDA

April 2014

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

CONTACT INFORMATION:

Anna Knox

Chief of Party

LAND Project

Nyarutarama, Kigali

Tel: +250 786 689 685

aknox@land-project.org

REVIEW OF THE DRAFT MINISTERIAL ORDER RELATING TO LAND REGISTRATION IN RWANDA

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

Recommended Citation: Nielsen, Robin. 2014. *Review of the Draft Ministerial Order Relating to Land Registration 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.

CONTENTS

Executive Summary.....	6
1.0 INTRODUCTION	6
2.0. OBJECTIVES AND PRINCIPLES GOVERNING REVIEW.....	8
3.0 OVERVIEW OF DRAFT ORDER AND SUGGESTED REVISIONS.....	8
4.0 REVIEW OF DRAFT ORDER	10
4.1 INTRODUCTORY SECTION/PREAMBLE.....	10
4.2 CHAPTER I: GENERAL PROVISIONS.....	11
4.3 CHAPTER II: REGISTRATION OF LAND TITLES	17
4.4 CHAPTER III: LAND REGISTRATION ORGANS AND SYSTEMS AND THEIR ROLES AND FUNCTIONS	22
4.5 CHAPTER IV: REGISTRATION PROCESS AND PROCEDURES	25
4.6 CHAPTER V: REGISTRATION OF TRANSFERS AND CHANGES IN LAND REGISTER.....	29
4.7 CHAPTER Vi: OBJECTIONS AND CHANGES IN REGISTRATION.....	32
4.8 CHAPTER Vii: RIGHT TO REVIEW.....	36
4.9 CHAPTER VIII: PENALTIES	37
4.10 CHAPTER IX: MISCELLANEOUS, TRANSITIONAL, AND FINAL PROVISIONS.....	37
5.0 SUMMARY AND CONCLUSION	37
5.1 SNAPSHOT OF PROPOSED RESTRUCTURING	37
5.2 SUMMARY TABLE OF RECOMMENDED REVISIONS	41
5.3 CONCLUSION.....	42
APPENDIX I: CLEAN COPY OF SUGGESTED REVISED SECTION OF DRAFT ORDER	43

EXECUTIVE SUMMARY

This report reviews Rwanda's draft Ministerial Order determining modalities and procedures for land registration and cancellation of land registration (Draft Order). The report is prepared by the USAID-Rwanda LAND Project at the request of the Rwanda Natural Resources Authority (RNRA). In conducting the review and drafting proposed revisions, the authors considered Rwanda's legal framework for land and administrative procedure, comparable law of other African and non-African countries, and secondary materials on land registration.

The Draft Order streamlines the content of the existing 2008 Order governing land registration, eliminating provisions that are no longer necessary and trimming lengthy procedures. There is some ambiguity in the Draft Order regarding the desired effect of registration. In one section, registration warrants a presumption of land rights while elsewhere, the order instructs that the content of the Land Register must be accepted as true. Considering the Draft Order as a whole, it appears to adopt a standard of "compelling evidence" for the effect of registration, joining many countries with systems that support a strong presumption of indefeasibility of registered interests, with some limited opportunity to raise objections. That standard often reflects a legislative effort to balance the interests of efficient land registration and land alienation with the protection of the existing land interests of those who might be disposed of by fraud or inadvertence. Regardless of which standard is selected, objectives of tenure security will be aided by clarification of the intended standard in the final order.

The Draft Order will also benefit from clarification on the way in which subordinate land interests will be reflected on the various types of Certificates of Registration and on the manner in which information on land uses will be provided to the Registrar for recording.

The suggested revisions to the Draft Order build on its solid content, with recommendations to:

1. Set out the objectives supporting further development of an efficient and accessible land administration system to guide implementation of the Order and development of complementary legislation and forms;
2. Further strengthen the articulation of the Order's desired principles regarding the effect of registration;
3. Broaden and deepen the role of Registrar with new opportunities to exercise discretion based on established criteria;
4. Help protect the rights of all holders of land interests with rights of review of administrative actions;
5. Clarify terminology; and
6. Restructure the Draft Order to improve clarity and accessibility, especially for less sophisticated users.

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 includes review of the following drafts:

1. Law on expropriation;
2. Law organizing land surveying and demarcation profession and modalities of its practice; and
3. Ministerial Order determining modalities and procedures for land registration and cancellation of land registration.

This report is the third in the series, focusing on the draft Ministerial Order on land registration. In conducting the work, the authors reviewed:

- Draft Ministerial Order of 2013 determining modalities of land registration, its procedures and modalities of cancellation of land registration (Draft Order);
- Ministerial Order No. 002/2008 of 01/04/2008 Determining Modalities of Land Registration (2008 Order);
- Rwandan legal framework for land and administrative procedure, including Law No. 43/2013 of 16/06/2013 Governing Land in Rwanda, Ministerial Order No. 009/16.01 of 23/08/2011 Determining the Procedure to Obtain a Freehold Land Title, and the draft Presidential Order Determining the Functioning and Powers of the Registrar of Land Titles;
- Comparable law and regulations relating to systems of land administration in other African countries, including Kenya, Uganda, Ghana, and Tanzania;
- Comparable law of other non-African countries, including Australia, New Zealand, Canada, Austria, Belgium, Germany, the Netherlands, Switzerland, France, and Indonesia; and
- Secondary materials regarding land registration systems.

The report is organized as follows: Section II provides a brief overview of principles of legislative drafting applied in the review. Section III gives an overview of the Draft Order and the comments and suggestions made, and Section IV discusses the Draft Law by

chapter and article. Section V has two tables: 1) a table comparing the structure of the Draft Order and a version of the Draft Order that is restructured according to the comments made; and 2) a table summarizing the proposed revisions. The section also has a brief conclusion. A clean copy of a revised Draft Order, with redlined revisions accepted, is attached as Appendix 1.

2.0. OBJECTIVES AND PRINCIPLES GOVERNING REVIEW

The overall goal of this review is to determine if, as drafted, the proposed legislation effectively and efficiently accomplishes its legislative purpose. To that end, the review considers the:

- Substantive content of the legislation in relation to its objectives;
- Conformity of the legislation with Rwanda’s legal framework and other informing sources and institutions;
- Possible primary and secondary effects of the legislation;
- Alternatives and options for additions to the legislation;
- Clarity of the terminology, language, and syntax used; and
- Structure and organization of the Draft Order.

In conducting the review, the authors considered examples of law and experience from other East and West African countries (Kenya, Uganda, Tanzania, and Ghana) and, to the extent useful, law and experience from non-African jurisdictions, especially countries with title registration systems or hybrid title and deed registration systems, including New Zealand, Australia, Austria, Germany, France, and some Canadian provinces.¹

The analysis and suggestions regarding terminology, language, and syntax relate to the English version of the Draft Order, with some reference to the French version. The authors recognize that in many cases, ambiguity and issues with syntax in the English version may not exist in the Kinyarwanda and French versions. Likewise, the recommendations for revisions to the English version may have more limited application to the other versions.

3.0 OVERVIEW OF DRAFT ORDER AND SUGGESTED REVISIONS

Some of the objectives of a well-functioning system of land registration are to:

- Increase tenure security by providing certainty and predictability in land records, land transactions, and enforcement of land rights;
- Improve land access with clear and accessible systems of land administration and a functioning land market;

¹ Some of the secondary sources consulted for the review include: S. Row ton Simpson. 1976. *Land Law and Registration* New York: Cambridge University Press; W. Stoebeck et al. 2000. *The Law of Property*. New York: West Publishing; T. Hanstad. 1998. *Designing Land Registration Systems for Developing Counties*. *American University Law Review* , Vol. 13 (3), 647-703; and Jaap Zevenbergen. 2002. *Systems of Land Registration*. Delft, Netherlands: Netherlands Geodetic Commission.

- Support land use planning and development of land consistent with principles of economic growth and alleviation of poverty; and
- Provide an efficient system for revenue collection.²

Rwanda's rapid progress in establishing a legal framework for land administration and supporting nationwide land registration has created a solid foundation for the achievement of these objectives. The extent to which the content of the Draft Order has been able to evolve from the content of the 2008 Order reflects the pace and extent of the country's progress in land administration.

The Draft Order is organized into four chapters, a structure that reflects some reorganization from the 2008 Order. The Draft Order also made a number of substantive changes from the 2008 Order. Most significantly, the Draft Order alters the effect of registration: in the 2008 Order, registration and the Certificate of Registration were "full evidence"³ of the identified land interests; the Order precluded third parties from challenging those rights. The 2008 Order provided for an insurance fund to cover damages due to errors, whether intentional or unintentional. In contrast, in the Draft Order, registration is "compelling evidence" of land interests and the Draft Order omits reference to any insurance fund to compensate victims of errors in the Land Register.⁴

The standard selected for the Draft Order is relatively common; for example, New Zealand, Austria, France, Germany, and some Australian states have similar systems.⁵ The systems, most of which are classified as a form of title registration, support the indefeasibility of title with limited judicial discretion to alter registered interest in some circumstances, especially where the rigidity of indefeasibility has the potential to create unfairness. Slightly less favored is a system of indefeasibility with limited statutory exceptions. In either case, there is a strong presumption of indefeasibility with some opportunity to raise objections.⁶ Comparative studies of the impact of various systems conclude that countries adopting the "strong presumption" or "compelling evidence" standard suffer no measurable loss of tenure security, assuming functioning land administration and judicial systems. Rather, the standard can increase tenure security because existing interest holders are protected from fraudulent transfers. However, in order to maintain the high level of certainty and predictability that supports tenure security, statements regarding the effect of registration and the right to seek remedies should be clear. The review in the following section discusses areas for potential strengthening of the language to support the achievement of the objectives of the land registration system.

The Draft Order also reduces the amount of content contained in the 2008 Order. The Draft Order removes references to initial registration processes and simplifies lengthy procedures. The Draft Order makes some revisions to the registered interests and documentation of registration, which are discussed in Section 4. In general, however, the

² Simpson, 1976; Stoebeck et al., 2000.

³ The standard described in the 2008 Order is often described as a "conclusive evidence" standard. See, e.g., New Zealand Law Commission. 2010. *A New Land Transfer Act*. Wellington, New Zealand: NZ Law Commission.

⁴ A fund or other system for compensating victims of errors may exist but not be referenced in the Draft Order.

⁵ European University Institute. 2005. *Real Property Law and Procedure in the European Union*. Florence: EU Private Law; Zevenbergen. 2002. *Systems of Land Registration*. Delft, Netherlands: Netherlands Geodetic Commission.

⁶ An excellent discussion of the various options and comparative experience was done by New Zealand's Law Commission. See the 2010 publication, *A New Land Transfer Act*, published by the Law Commission as Report No. 116, Wellington, New Zealand, and related publications. Also useful is the comparative information in Zevenbergen, 2002.

Draft Law is much simpler and focuses on streamlining the process of registration and providing for the efficient operation of the Land Register.

The review suggests some further clarification of: 1) the land interests subject to registration; 2) the recoding of subordinate interests on Certificates of Registration; and 3) use of potentially confusing terminology, such as the broadly-defined term, "title." Because the Draft Order authorizes GOR action that impacts property rights, the review also recommends consideration of additional notice provisions and statements of the right to administrative review of GOR action.

Even well-drafted provisions can become ambiguous simply by their placement within a legal instrument. The review recommends restructuring the Draft Order to follow a standard legislative framework: setting out the substantive provisions relating to rights and responsibilities together and in a position near to the beginning of the instrument, followed by introduction of governmental actors and their roles and functions, followed by processes and procedures. The Draft Order has some of this structure in place already, but some articles and provisions also appear more randomly organized. The review suggests a reorganization to help support accessible and efficient use of the contents of the Draft Order in the operation of the land registration system.

4.0 REVIEW OF DRAFT ORDER

This section reviews the Draft Order by provision, noting where revisions have been made from the 2008 Order and making suggestions to the structure and language as appropriate to accomplish the overall objectives of the order. Because the review includes proposed restructuring, in order to increase readability, the review deleted (rather than redlined) content that was moved to different locations in the Draft Order. In addition, a clean copy of the proposed restructured Draft Order is found at Appendix 1.

4.1 INTRODUCTORY SECTION/PREAMBLE

In its introductory section, the Draft Order references the order's foundational instruments: constitutional provisions of nondiscrimination, property rights, authorization for ministerial orders, and the authority of such orders. The preamble also references Article 20 of the 2013 Land Law, which states the obligation to register land and the requirement for a ministerial order governing the registration process, and the draft presidential order regarding the Office of the Registrar of Land Titles.

The instruments and legislation referenced are appropriate for a ministerial order. The section is complete and its provisions clearly presented. The review does not have any proposed revisions to the section.

Establishment of a cross-sector process for administrative review. At a future date, Rwanda may wish to amend its administrative procedure law (or create another instrument) to introduce a general procedure for review of administrative actions across sectors. Such a law could establish and support standards of due process that would serve the interests of the GOR and its implementing organs and officials, in addition to its citizens, corporate interests, investors and other third parties. In the context of property rights, such as those impacted by this Draft Order, an established and functioning administrative review procedure would help promote certainty and predictability in property rights and tenure security. A functioning, standardized administrative review process can help protect against arbitrary and capricious government action by ensuring that interests in land are not lost without adequate notice,

an opportunity to be heard, and a right to appeal government action in the formal court system. If such legislation is adopted, orders such as this Draft Order and other legislation impacting property rights can use that framework for review of government action and include reference to the administrative procedure in their preambles.

4.2 CHAPTER I: GENERAL PROVISIONS

Article 1: Purpose of this Order

Despite this article's title, the article's content focuses on the scope of the Draft Order as opposed to its purpose. This review suggests that the initial article add a statement of purpose to the statement of scope. A statement of purpose is an opportunity to set out the goals of land registration in a manner that is visible to government officials, professionals engaged in land transactions and investment, and landholders using the registration system. A purpose statement can:

- Help officials implementing the order interpret the provisions with reference to the Order's overall purpose;
- Guide judicial review by articulating the Order's legislative intent;
- Aid drafters of complementary legislation and procedures; and
- Help ensure that the overall legal framework is consistent and crafted with reference to applicable, agreed objectives.

The statement of the scope of the Draft Order should mirror the title of the Draft Order. The purpose statement can either precede or follow the statement regarding the content of the Draft Order. An example of how the provision might be drafted consistent with these comments is as follows:

Article 1: Scope and Purpose of this Order

This Order ~~determines~~ establishes the procedures and modalities of land registration and the, its procedures and modalities of cancellation of land registration.

The purpose of this Order is to:

- 1. Promote accessible, efficient, and cost effective registration of interests in land;*
- 2. Help ensure the accuracy and ready availability of information on interests in land and land use;*
- 3. Support an efficient and dynamic land market; and*
- 4. Promote land tenure security.*

Article 2: Categories of land concerned by this order

The review suggests that in the English translation, the heading for the title of this article and the single sentence provision be revised slightly for clarity in meaning and syntactical structure. The revision also makes reference to the Order uniform:

Article 2: Categories of land within the scope of concerned by this eOrder

This eOrder ~~concerns~~applies to state land and to individual land.

Article 3: Definitions

This section does a good job of identifying many of the unique terms in the Draft Order that require definition. This review makes five categories of suggestions for revision of this article: 1) revisions for clarity; 2) possible revisions to meaning; 3) candidates for possible deletion; 4) suggestions for additional defined terms; and 5) revision for coherent structure.

In a few cases, the definitions listed in the Draft Law include definitions from the 2013 Land Law and other legislation, such as *Ministerial Order No. 009/16.01 of 23/08/2011 Determining the Procedure to Obtain a Freehold Land Title*. RNRA will want to decide how it wishes to address possible revisions to those definitions. In some cases, revisions can be made without altering the underlying definition. In other cases, RNRA may plan on amending the definitions used throughout the framework at regular intervals until the framework is more established. Alternatively, RNRA may prefer to retain the existing definitions until one or more instruments are scheduled for revision and continue to use the existing definitions in drafting new legislation.⁷

As noted at the beginning of Appendix 1, which is a clean copy of the Draft Law with the proposed revisions accepted, we did not include the Definitions section in the clean copy. The decisions as to the language used for definitions will be influenced by many factors, including how RNRA would like to handle any desired updating of definitions throughout the legal framework.

1. Revisions for clarity. For the following definitions, the suggestions are offered to increase the clarity of the definitions and adopt a single format and structure throughout the provision:

Individual land: ~~is land composed of land that is owned by individual persons.~~
Ownership of individual land is based on customary law or formal, written laws.

- The revisions above suggest removing the defined word (“individual”) from the definition, in favour of “person,” which is defined separately and commonly used in legislation to include individuals and entities with legal status. The revised version also adds the word “formal-” to the description of non-customary law because customary law may be written.

State land: ~~is land composed by land that is in public or private domain of the State, including local authorities, quasi-governmental bodies, and para-statal institutions, and that of local authorities.~~

Freehold: type of land tenure granting with full and perpetual~~indefinite~~⁸ rights over the land;

⁷ Note that this latter option can create a situation where definitions that are or have become ambiguous or inaccurate are never revised because of the number of different instruments using the terms.

⁸ The word, “indefinite,” carries a connotation of unknown or ambiguous, so we recommend the use of the word, “perpetual” in the English version.

- The definition of “freehold” is included in the 2013 Land Law, as drafted above (without the proposed revisions) and other subordinate instruments. In this case, the proposed revisions do not alter the meaning of the term, but simply clarify it. RNRA can decide whether to leave such definitions as they are, or make clarifying changes as it drafts new instruments.

Emphyteutic lease: *a long term contract between the State and a person to exploit State land in exchange for payment of a periodic agreed fee payment.*

- This is a term ~~that is also~~ used in the 2013 Land Law. As with “freehold,” the recommended revisions do not alter the meaning of the term but, simply clarify it. As with the term, “freehold,” RNRA may wish to retain the definition as drafted or adopt the revisions.

Person: *an individual, a group of individuals ~~co-owning land~~, a ~~business-legally-recognized~~ company, or an organisation or association with legal personality.*

- The definition of “person” is contained in the 2013 Land Law. This review notes issues with the current definition in the event that RNRA contemplates review and revision of the definition at some point. In general, good drafting practice suggests refraining from using some kinds of qualifying phrases because they limit the ability to use the term or assign a common word an uncommon meaning. In this case, the revision above suggests removing the qualifying phrase, “co-owning land,” from the description of a “group of individuals” because “person” may include a group that seeks land ownership or other interest in land, such as a leasehold, but has not yet obtained that land interest. In order to retain as much flexibility in drafting as possible, and to avoid confusion, drafters use this type of qualifying phrase in the text of legislation rather than in a definition.

Land Register: *~~is register which a digital or analogue information system that contains all comprehensive information about~~ ever land holdings and the holders of those with land rights over land. The register can be in digital or analogue format.*

2. Revisions to meaning.

“Encumbrance”: *means a land right held by a third party that limits ~~the proprietor the full enjoyment of his/her land~~ rights of the landowner. Examples of encumbrances are: mortgages, easements, leaseholds, and servitudes.*

- The review suggests removing the phrase, “which is registered against the title,” from the definition of “encumbrance.” The term, “encumbrance,” should be applicable to a variety of interests in land, regardless whether the interest is registered. The Draft Order uses the term in this broader and more common fashion. Various provisions, for example, require encumbrances to be registered. The proposed definition would create confusion and eliminate the ability to easily distinguish between the common use of the term and the use in the Order. Other recommended revisions to the definition are suggested for clarity.

Title: any document that establishes a right that may be subject to registration under this Order.

- This broad use of the term, “title,” is consistent with the definition of “title” used in the 2013 Land Law. When RNRA is in a position to review the use of the terminology of the legal framework for land, it may wish to consider looking at alternatives to this definition. The use of the term to cover all documented interests in land, including those that are not ownership interests, is not standard usage and may create confusion in the English version of the Order. A document evidencing a long-term leasehold or mortgage or easement, for example, is generally not referred to as a “title.” Note also that the use of the term in the text of the various instruments tends to be in reference to ownership only, thereby reinforcing the more common use of the term even as it is defined differently. The authors suggest restricting the use of the term, “title,” for documentation of ownership interests, and using a phrase such as “documentation of other land interests” or “documentation of non-ownership interests in land,” to cover the remainder of the documents. These sample phrases are more cumbersome but using them (or another term) may help avoid ambiguity.

~~**19° Land:** the *material of the surface of surface of the earth identified by specific boundaries, including the airspace above and that portion of surface, the subsurface below for indefinite distance, and most fixed natural resources associated with the land (e.g., trees, water, minerals), the minerals beneath it, and surrounding biodiversity, erections and developments on that surface. In legal terms, it is an immovable and permanent asset inclusive of rights associated with the surface of the earth from the centre to the infinite sky;*~~

- The definition used in the Draft Order is the same as used in the 2013 Land Law. When RNRA is in a position to consider revisions to the definition, the proposed definition is one of the most commonly used for those instruments that define land. The definition removes reference to “erections and developments” on the land’s surface because such items are often subject to separate rights and interests and are not generally considered to be part of the land.

~~**Registered L|and-owner:** *means a person who is registered identified in the |Land rRegister as the landownerholder of land title. If land is owned by more than one person, they are all registered in the land register as owners and they are qualified as co-owners.*~~

- The proposed revision to change the phrase to “registered landowner” reflects the nature of the rights referenced in the Draft Order. The Draft Order states that the Certificate of Registration is “compelling evidence” of land ownership, implying that it is not conclusive proof of landownership. The Draft Order also allows individuals to contest various aspects of land registration and for the Registrar to correct mistakes. Given this legal framework, the Order should not define landowners as only those who are registered as owners. The authors suggest using the term, “registered landowner,” instead of “landowner” so

that the Draft Order can refer to both categories of rights—ownership supported by title and a Certificate of Registration, and ownership that is not, for some potentially legitimate reason, supported by title and a Certificate of Registration.

- The authors recommend moving the final sentence from the definition because it is a substantive statement of rights that should be placed in the section on the rights and responsibilities of those with interests in land. The review moved the sentence to Chapter II, Article 6.

~~**“Parcel”:** means a piece of land with clear boundaries, mainly which is used for residential, commercial, social affairs or cultural, research or industrial activities.~~

- The authors suggest revision of this term (and deletion of the term “farm” from the Definitions) to omit reference to the land use as a defining characteristic of the term. “Parcel” is commonly used to describe a plot of land, regardless of the land use.⁹ Using separate terms that are dependent on land use can be problematic because land uses within a plot may be mixed, ambiguous, or in transition. The review suggests that to the extent that the Order distinguishes between different land uses, the appropriate adjectives can be inserted, e.g., “urban parcel.” Note, however, if the Order is intended to be limited in application to non-agricultural, non-forest land, that limitation should be included in the title of the Order and definitions adjusted accordingly.

3. Candidates for deletion from the Definitions

Transfer of land rights: based on transaction that is completed, it is a sale, an inheritance, a partition, a gift, an exchange, a sub-lease, an assignment, a mortgage, a servitude, or any other form of transfer of land rights or part of them in respect with provisions of the laws and regulations.

- The review suggests deleting this phrase from the Definitions because it is a phrase that commonly describes both a process and an outcome, and the definition both limits the phrase to referencing an outcome. The Draft Order has numerous provisions dealing with registration in the context of a transfer of a land interest and uses the phrase both as a process and an outcome within the Order. It would, therefore, be inaccurate and unhelpful to assign a definition to all uses of the phrase throughout the Draft Order. The substantive content of the definition—that the land interest passes with registration—is included in Chapter II.

Farm, is a piece of land with clear boundaries mainly used for agricultural, livestock or forestry activities.

- The review recommends this term for deletion because: 1) as described above, the distinction between “parcel” and “farm” based on land use has limited usefulness and may cause unnecessary confusion when land uses are ambiguous, mixed, or in transition; and 2) the term is not used in this Draft Order so appears to be unnecessary. As noted above, if the intent of this Order is to apply only to non-agricultural, non-forest land,

⁹ Black’s Law Dictionary. 1979. 5th ed. St. Paul, Minn: West Publishing Co.

that limitation should be noted in the title, and the language throughout the Order should be reviewed for consistency with that intent.

4. Suggestions for additional terms

Disposal Agreement: *An agreement to alienate a land interest, including a contract of sale.*

- The authors suggest this addition because the term is somewhat unfamiliar and potentially carries more limited (and negative) connotations than intended. In English, the term “disposal,” is often used in the context of getting rid of something that is unwanted. The French phrase, *le contract d'aliénation*, has a broader, neutral connotation. The 2008 Land Registration Order used the term “contract of alienation,” and the change to “disposal agreement” in the Draft Order suggests the latter term is more common or otherwise favored. A definition may nonetheless be useful, especially for foreign investors and other individuals less familiar with locally recognized terms.

Family Council: *[Insert definition]*

- The authors recommend this addition because the role of the Family Council is critical to the Registrar’s receipt of accurate information regarding testamentary transfers.

Registrar: *The Chief Registrar of Land Titles, Deputy Registrar of Land Titles, and Registrars of Land Titles who are designated by Presidential Order to manage the registration of land titles and documentation of other land interests subject to registration.*

- This addition is recommended to give flexibility to the Registrar roles contemplated in the draft *Presidential Order Determining the Functioning of the Powers of the Registrar of Land Titles*, and to allow for the addition of registrars at regional zone or district levels. As noted above, using the term, “title,” as a term of art to cover all interests in land is potentially confusing, and we would, therefore, suggest changing the terms used for these roles to another option, such as “Chief Land Registrar,” and “Land Registrar.” There is potential for confusion with the Land Register, but since one is a person and position and the other is a system, the confusion would likely be short-lived.
- The definition in the 2013 Land Law used for “Registrar” is also adequate: “a public officer responsible for keeping and updating the land register.”
- We have not made the change from “Registrar of Land Titles” to “Land Registrar” in proposed revised draft order because the current term is used in other recent land legislation.

Res judicata: *a matter that has been fully adjudged by a competent court and a final judgment on the merits entered, with rights of appeal exhausted or extinguished. Res judicata is a legal doctrine that prohibits the adjudication of matters that have been fully heard and a final judgment entered.*

This term is not well-known outside legal circles and should, therefore, be defined.

5. Revision for coherent structure. Once the definitions are finalized, they should be placed in alphabetical order depending on the drafting language.

4.3 CHAPTER II: REGISTRATION OF LAND TITLES

As it is currently structured, this chapter includes: statements of rights and responsibilities of landholders regarding registration; some procedures relating to registration; and the establishment of the Land Registry. Subsequent chapters also have a mix of substantive and procedural content. As noted above, in general, legislation should be structured to address substantive matters before procedural matters. In addition, any institutional structure or body necessary to performing any processes and procedures (such as the Land Register) should be established before the relevant procedures are described.¹⁰ Legislation governing land registration in countries such as Tanzania, New Zealand, and Australia (Queensland) follow these organizational principles of legislative drafting. Other countries, such as Kenya and Ghana, begin with description of the governing bodies, followed by their roles. The substantive principles, such as the obligation to register land and the effect of registration, are found in subsequent sections. The authors have a preference for the proposed structure, which leads with the substantive principles, because lay people accessing legislation are most often looking for statements of their rights and responsibilities. Using the proposed structure makes the legislation more accessible to those potential users.

In order to adjust the structure of the Draft Order to these principles, the content of Chapter II would be confined to the rights and obligations of the GOR, landowners, and holders of other land interests (e.g., leases, mortgages). The content of the chapter includes the legal effect of the registration of those interests in land. Other current content of Chapter II addressing procedures and institutions would be moved to subsequent chapters.

The revisions below follow this proposed restructuring. The content of those provisions that is moved to subsequent chapters is discussed in their revised locations (as opposed to the order of their appearance in the Draft Order).

Returning to the discussion of Chapter II, the authors recommend replacing the use of the term, “title” as a phrase intended to cover all land interests subject to registration. As noted in the discussion of the Definitions section, “title” is almost exclusively used to refer to a document of ownership rights to property. The term is only rarely applied to other interests in land, such as a leasehold. For clarity, the authors suggest modification of the phrase “land title” with “land title and documentation of other interests.” Other options include dropping the term, “title,” and just using “documentation of land interests,” which is used in a proposed revised title below:

CHAPTER II: REGISTRATION OF DOCUMENTATION OF LAND INTERESTS AND THE EFFECT OF REGISTRATION

We recommend deleting the reference to “Section one” because there is only one section in the revised chapter:

¹⁰ Lawrence Filson and Sandra Strokoff. 2008. *The Legislative Drafter’s Desk Reference*, 2d. Washington DC: CQ Press.

Section one: General provisions

The following proposed new article includes provisions from the Draft Order, Chapter II (Registration of Land Interests) and Chapter III (Maintenance of the Land Register):

Article 4: Mandatory requirement of registration of land interests

All landowners and holders of certain subordinate interests in land must register their land interests in the Land Register in accordance with the terms of this Order.

The Minister in charge of lands may order the registration of an unregistered interest in land where such registration is in the public interest.

Registration shall be mandatory for unregistered land that is expropriated or confiscated by a public authority legally entitled to take such action.

With regard to the registration of subordinate interests, the Draft Order requires registration of all emphyteutic leases and sub-emphyteutic leases with terms of five years or longer. The Draft Order contains contradictory statements about the requirement to register easements: Article 5 of the Draft Order implies that easements are not included in the interests that must be registered; Article 19 states that easements must be registered. This review suggests easements be included in the interests that must be registered because: easements limit a landowner's uninhibited use of his or her land; easements impact the value of the land to the landowner and any purchaser; and requiring registration of easements will assist in identifying land uses. Land registration legislation from a majority of the countries reviewed, including South Africa, Kenya, Tanzania, New Zealand, Queensland (Australia), and selected Canadian provinces, require registration of easements. The following revised article regarding registration of subordinate interests in land includes easements.

Article 5: Mandatory registration of subordinate interests in land.

The subordinate interests in land that must be registered are:

1. Mortgage;
2. Servitude;
3. Emphyteutic lease for a term of five (5) years or longer;
4. Sub-emphyteutic lease for a term of five (5) years or longer; and
5. Easements.

The following proposed new Article 6 addresses co-ownership. The content is moved from the Definitions section and extended to holders of subordinate interests in addition to owners:

Article 6: Registration of co-ownership and shared interests in land.

If land is owned by more than one person, all owners must be registered in the Land Register as co-owners. If a subordinate interest in land that is subject to registration is held by more than one person, all persons holding such subordinate interest shall be identified as co-interest holders in the Land Register.

Revised Article 7 below identifies the various types of transfers of land interests subject to registration in a single provision. This proposed article includes recognition of the phrase, “transfer in land interests,” as a process and as an outcome, as discussed more completely in the discussion of the Definitions section above. The effect of the registration is stated in the following article (Article 8).

Article 57: Validity of transactions based on their registration—Mandatory registration of transfers in land interests

All transfers of registered land interests, or land interests that are subject to registration, must be registered. Transfers of land interests that must be registered are:

- a. Purchases and sales;
- b. Inter vivos and testamentary transfers;
- c. Gifts, exchanges, and assignments
- d. Mortgages and servitudes;
- e. Leases subject to registration; and
- c. Any transaction or agreement that transfers a land interest that is subject to registration from one person to another.

32: Seizure of immovable property, bankruptcy and expropriation

Prerequisites for Requirements for the registration of transfers in case of seizure of immovable property, bankruptcy, and expropriation in the public interest shall be determined by relevant laws, orders, or other provisions.

- The revised version includes the content of Article 32 within Article 7 above.

The review suggests creating a revised article regarding the effect of registration on various rights for two reasons. First, provisions describing the probative value or effect of registration are currently found in several different parts of the Draft Order. Second, and more important, in some cases, the statements of the effect of registration (such as in Article 4 in Draft Order) are somewhat confusing and potentially contradictory in the English version. For example, Article 4 states that: “Freehold land and leasehold land are recognized legal by certificate of land registration,” suggesting that a Certificate of Registration is conclusive evidence of the land interest registered. However, Article 23 states that a Certificate of Registration is only “compelling evidence” of the land interest.

In addition, some statements are unclear as to the intent. For example, Article 15 of the Draft Order states that “[i]nformation contained in the Land Register shall be accepted as true by everyone.” It is unclear whether this statement supports a principle that registration and the Certificate of Registration is conclusive proof of a land interest, or whether the statement supports a “compelling evidence” standard because it states that everyone shall accept the information about a land interest as true (whether it is or not), as opposed to stating that the land interest stated in the information is, in fact, true. Further, elimination of the provision in the 2008 Land Registration Order that the GOR shall be liable for errors in the Land Register suggests that the Draft Order intended to adopt something less than the “conclusive evidence” standard of a guaranteed title registration system.

In this situation, we suggest bringing all the provisions addressing the effect of registration to a single place, deleting the various different provisions located in other sections of the Draft Order, and assimilating the content into a proposed new Article 8 titled: *Effect of registration of land interests and transfers in land interests*. As RNRA reviews the section on the effect of registration, it will be helpful to confirm what standard it wishes to apply to the effect of registration: conclusive evidence or compelling evidence? Once that standard is confirmed, the final draft of the order should be reviewed and revised to ensure that it supports the desired standard.

Article 8: Effect of registration of land interests and transfers in land interests. ~~Article 23: Probative value of the certificate of registration~~

Registration of land interests and transfers of land interests shall have the following effects:

1. ~~The certificate of~~ Registration of land interests in the Land Register, which is evidenced by a Certificate of Registration, shall constitute compelling evidence of the right of ownership, ~~emphyteutic lease~~ leasehold, ~~or property rights or real encumbrance, or other land interest registereds which are recorded in the Land Register.~~

2. There shall be a strong presumption of immediate indefeasibility upon registration, subject to modification in accordance with the limited circumstances set forth in this Order.

However, the Registrar of Land Titles may cancel the certificate of registration in accordance with the provisions of this Order.

3. No interest or encumbrance¹¹ that must be registered under this Order shall attach to an immovable property unless the encumbrance is registered in the Land Register.

4. Transfers of land interests that are subject to registration shall not be effective until they are registered.

5. The effect of transfers in case of seizure of immovable property, bankruptcy, and expropriation in the public interest shall be determined by relevant laws, orders, or other provisions.

The English translation of the Draft Order's Article 4 below suggests content that is either covered in the revised provision above or may be unnecessary. As above, this is an area where RNRA's review of the proposed revisions and decisions on the principles underlying registration will govern the preparation of final language.

Article 4: Land titles based on registration

~~Freehold land and leasehold land are recognised legal by certificate of land registration delivered by the state.~~

¹¹ The original provision in the Draft Order includes an exception for easements. The exception is inconsistent with the provision in the Draft Order requiring registration of easements. This suggested provision resolves the inconsistency in favor of requiring registration for an easement to have legal impact because the requirement supports notice of land interests and thus certainty in land rights that promotes tenure security.

~~Private ownership of a property that has become immovable by incorporation and other property rights such as emphyteusis considered as being separate from the land shall only be established by means of a certificate of land registration of the authentic title which serves as the basis therefor.~~

The review deleted the following article as unnecessary because the requirement is presumed when registration is mandatory:

~~**Article 6: Registration required to be done in compliance with the provisions of this Order**~~

~~Registration of land titles and other interests in land, transfers of immovable property and other land transactions shall be done in accordance with the provisions of this Order.~~

The remaining articles in Chapter II of the Draft Order relate to the process of registration. The authors suggest moving the provisions regarding the land registration offices and the establishment of the Land Register to the next chapter, followed by the procedures for registration in Chapter IV.

The proposed revision to Chapter II also includes moving some content from subsequent provisions in the Draft Law to this section. For example, Article 24, entitled, “Registration of land rights, easements and other encumbrances,” includes the requirement of registration, which is included in the revised Chapter II.

The remaining content of Chapter II relates to the timeframe for registration of a land interest or transfer of a land interest. The wording of the provision is problematic because it purports to include the entire process of registration from application to entry in the Land Register and does not identify who is responsible for ensuring that the entire process occurs within 60 days. No one person can have such responsibility: the processes involve the actions of different parties (e.g., landholder, Land Bureau, Registrar), who have no power over the speed with which any other party performs his or her responsibility. In other words, a landowner cannot be responsible for ensuring that the Registrar registers her right within 60 days because the landowner cannot control the performance of the Registrar.

In order to be enforceable, the specific timeframes for each step in the process should be stated (which this review has done in the procedures section); the provision below is revised to state the intent regarding the overall timeframe for registration, i.e., that registration occurs within 60 days of the triggering event. The authors recommend that this revised content be set out in a separate article, as below:

Article 9: Time limits

The time limits set by this Order are based on an intent that all formalities relating to the registration of land interests and updating of land-related information contained in the Land Register will be completed within a maximum period of sixty (60) calendar days from the date of the land transaction, commencement or discovery of the right or land-related information, or other event triggering the obligation to register a land interest or transfer of an interest.

4.4 CHAPTER III: LAND REGISTRATION ORGANS AND SYSTEMS AND THEIR ROLES AND FUNCTIONS

As a result of the continuing and rapid evolution of governmental bodies and institutions governing land in Rwanda, the Draft Law is ambiguous regarding the government body that will be responsible for land registration. In Article 7, the Draft Order refers to the role of the “branch of the Service of the place where the land is situated.” In other sections and other legislation, such as the proposed *Ministerial Order Determining the Responsibilities, Organisation, and Functioning of the District Land Bureau*, the Draft Order refers to actions of the district land offices. This review, including the proposed chapter below, identifies the responsible governmental entities as the designated district Land Bureaus and City of Kigali Land Bureau, as directed and overseen by the competent designated body within the designated ministry for land.¹² The Chief and Deputy Registrars direct and oversee the registration functions performed by these entities.¹³

The review recommends the restriction of Chapter III to identifying the entities and systems responsible for land registration. As noted above, the review assumes that RNRA intends for the Registrars to operate through designated district-level Land Bureaus and the City of Kigali Land Bureau. If a different organization structure is desired, the proposed revisions should be further revised. The following suggested Articles 10 – 13 set out the functions of the Land Bureaus and the Registrars.

Section I: Land Registration Organs and Their Roles and Functions

Article 10: Competent organs for land registration and their roles

Designated district Land Bureaus within land registration zones of the North, South, East, and West shall be the locus for land registration within their zone.

The City of Kigali Land Bureau shall be the locus for land registration within its jurisdiction.

Article 11: Registrars of Land Titles.

The Chief Registrar of Land Titles, Deputy Registrar of Land Titles, and Registrars of Land Titles, as those positions are designated by Presidential Order or other instrument, shall be responsible for land registration, maintenance of the Land Register, and issuance of Certificates of Registration within designated land registration zones.

Registrars shall work through and in cooperation with District and City of Kigali Land Bureaus as deemed appropriate and as indicated by Presidential Order or other instrument.

¹² In all cases, if RNRA plans on other entities to be engaged in the registration process, the Order should be revised accordingly.

¹³ Ideally, as discussed earlier, the position of Registrar of Land Titles (whether Chief, Deputy, or without designation), can be identified as something similar to: the Chief Land Registrar, Deputy Land Registrar, and Land Registrars. These titles are suggestions only, designed solely to avoid confusion regarding the use of the term, “title,” and to promote registration of subordinate land interests. However, because existing legislation refers to the Registrar of Land Titles, this review retains that designation.

Section II: Land Register

Article 12: Establishment of Land Register

A Land Register is established by this Order. The Land Register shall contain information relating to: 1) the holders of land interests in a parcel; and 2) the parcel.

Instructions of the Chief Registrar of Land Titles shall determine the structure of and modalities for keeping the Land Register, including requirements for updating.

Article 13: Matters to be entered in Land Register

Registrars must enter in the Land Register each instrument, transaction, or any other matter affecting land rights required or authorized to be registered under this Order or any other legal instrument.

The following proposed article, which is based on Article 22 of the Draft Law, addresses public access to information retained in the Land Register. The revisions add content that allows the Registrar to use his or her judgment to grant or deny access, within the parameters set out in the article. The provisions include proposed criteria to reach a judgment as to the legitimacy of a person's need for access.

Article 14: Access to information entered in the Land Register

Information entered in the Land Register must be maintained with the utmost care¹⁴ and protected from inappropriate disclosure and use.

The Registrar shall provide any registered holder of an interest in a registered land parcel with information on that parcel at any time upon request.

The Registrar shall also provide information on a registered parcel to other people who request information and who, in the judgment of the Registrar, have a legitimate reason for the requested information. Persons who may have a legitimate reason for access to the contents of the Land Register regarding a parcel are:

- a. Holders of a power of attorney signed by landowners or other interest holders;
- b. Public institutions;
- c. Bailiffs;
- d. Lawyers; and
- e. Any person who gives a legitimate reason, as defined by this article.

The Registrar is responsible for determining whether a person seeking access to the Land Register falls within the requirements of this Article. All persons seeking access shall complete a written request for access, stating the

¹⁴ The phrase, "with the utmost care," is taken from the Draft Order and is vague. Because the provision imposes a duty on the Registrar, the article should identify the duty and standard of care imposed clearly. For example, the provision can be revised to include language to require physical preservation of the information from loss or damage, in addition to protection against inappropriate disclosure.

information sought and the need for the information. All persons requesting information shall provide identification, including their affiliation with their business, if they seek information in the scope of their performance of duties for a business.

The criteria that the Registrar shall apply in assessing the justification of a reason for access to the Land Register under section (e) above are whether:

1. The person seeking access has a legitimate interest in the parcel, or reasonable expectation of an interest in the parcel;
2. The person seeking access has expressed a legitimate need for the information contained in the Land Register; and
3. The person seeking access attests to his or her planned use of the information sought.

The final section of this proposed chapter covers the basic information about the Certificate of Registration. The content is gathered from various provisions in the Draft Order and put in one section. Procedural matters relating to the Certificate are removed from this section and placed in the following chapter, which addresses the land registration process and related procedures.

Section III: Certificates of Registration

Article 15: Competent authority for issuing a Certificate of Registration

The Registrar shall have exclusive authority to issue Certificates of Registration in their respective jurisdictions.

Article 16: Responsibility of Registrar to Issue Certificates of Registration

The Registrar shall issue a Certificate of Registration to registered landowners and other holders of registered interests in land.

Article 17: Content of the Certificate of Registration

Each Certificate of Registration shall comprise two sections:

1. a section containing information on the parcel;
2. a section containing information on the parcel's owner and the holders of any subordinate interests.

The Certificate of Registration must be an exact copy of the Land Register and must include all the relevant information contained in the Land Register regarding a subject parcel.

Article 18 below tracks the language provided in the Draft Order. It appears from the content that RNRA contemplates issuing four different certificates as below (freehold, conditional, condominium, and emphyteutic lease). It is unclear how other kinds of interests will be evidenced in the Land Register and what type of certificate an interest holder will receive. For example, if there is a mortgage on a parcel, how will the bank's interest be identified? Will a Certificate of Registration of freehold interest also show that the parcel is subject to an easement? In the 2008 Registration Order, Article 15 states that the Certificate of Registration will have an annotation for a land subject to an

emphyteutic lease. Will that practice continue under this Draft Order? In other words, will Certificates of Registration of freehold interests be issued for private State land and will they indicate that the parcel is subject to an emphyteutic lease? The answers to these questions will help drafters tighten up the provisions for the final Order.

Article 18: Types of Certificates of Registration

The Registrar may issue Certificates of Registration for individual land and private State land, including private State land held by the City of Kigali, a local authority, or a public institution.

Registrars may issue the following types of Certificates of Registration in accordance with the relevant registered land interests and applicable requirements:

1. Certificate of registration of freehold;
2. Certificate of conditional registration of land ownership;
3. Certificate of registration of condominiums;
4. Certificate of registration of emphyteutic lease.

A template for the Certificate of Registration of Emphyteutic Lease is provided in Appendix 1 to this Order. Templates for other certificates of land registration shall be established by the relevant office.

4.5 CHAPTER IV: REGISTRATION PROCESS AND PROCEDURES

This proposed new chapter focuses on the process for registering interests in land and applicable procedures. The proposed chapter includes the procedural information located in various sections of the Draft Law. The chapter also includes some additional directives and clarifying provisions implied by the content in the Draft Order and other parts of the legal framework. As noted previously, the review assumes that the Head of designated Land Bureaus will handle the initial intake of applications for registration; if another process is planned, the Order should be revised.

The content of the chapter is based on the following steps and components to the registration process:

1. Submission of application for registration;
2. Determination of Head of Land Bureau on application;
3. Determination of Registrar on application;
4. For successful applications, entry of details of land interest in Land Register; and
5. Issuance of Certificate of Registration.

The initial articles in the chapter focus on the application process.

Section II: ~~Processing of registration applications~~Rights and obligations of holders of land interests: applications for land registration

Article 8: People who can apply for land registration

The content of this article in the Draft Order (“Registration of land property shall be mandatory.”) does not appear to fall within the scope of the article, at least according to its title. The mandatory nature of registration is addressed in Chapter II, and the provision is deleted from this chapter.

The following is a revised title for the article and suggested language for a description of who can submit an application for registration:

Article 19: People who can apply to for register land interests and transfers registration

The following persons can submit applications for registration of land interests and transfers of land interests:

1. Holders of land interests (e.g., landowners, lessees, mortgage holders);
2. Authorized agents of holders of land interests;
3. Parties to the transfer of land interests; and
4. Authorized agents of parties to transfers of land interests.

Any person who claims to have acquired a land right by court decision, whether by operation of a statute of limitations or other grounds, shall apply for registration of his or her interest in accordance with this Order and any Instructions of the Registrar.

This last provision includes the circumstance of Article 31 in the Draft Order. The content is included in the new Article 18 above and worded more generally because there are multiple circumstances in which a person might seek registration of a land interest obtained through court action other than by operation of a statute of limitation. Additional language from Article 31 relating to the effect of registration on a prior land interest is contained in the revised Chapter II.

Article 20: Registrar’s discretion to require evidence of consent of other interest holders to the application.

The Registrar may, in his or her discretion, require a person presenting an application for registration to provide evidence of the consent of other persons with an interest in the parcel. Such evidence may include requirements of physical presence and attestation before the Registrar and other forms of evidence, at the discretion of the Registrar.

Article 21: ~~Registration with branches~~ Place of registration

Applications for registration of land interests and transfers of land interests shall be submitted to the Head of the Land Bureau in the district or regional zone where the land is situated, or the Head of the Land Bureau for the City of Kigali for land within the City boundaries. ~~land-related transactions and other matters required or authorized to be registered under this Order must be registered with the branch of the Service of the place where the land is situated.~~¹⁵

¹⁵ As noted in the section on organs responsible for land registration, the review assumes that “the branch of the service of the place where the land is located” is the District Land Office. However, the review has not made that change except in drafting new articles and provisions. Existing language, as in Article 7 of the Draft Order above, is retained.

~~Any All subsequent transactions and matters required or authorized inwith respect to such application and any of such eCertificates of tRegistration #e issued shall be conducted at the Land Bureau designated for such actions in the district or zones where must be registered with the branch of the Service of the place where the land is situated.~~

Article 22: Time limits on initiating registration process

~~Persons required to register any interest in land pursuant to this Order or other legal requirement, are required to submit their application for registration within _____ days of _____. [timeframe to be inserted by RNRA]~~

Article 23: Application form and supporting documents

~~Any land registration applicant shall fill out a form drawn up by theThe Registrar shall prepare the application form for registration of land interests. All applications must be submitted on the approved form.~~

~~Depending on the type of land-related transaction, tThe application nt must be supported by submit all requiredrelevant documents, as required for each type of land interest or transfer of land interest registered.;~~

The Draft Order had only one statement regarding fees for registration. The following proposed article serves primarily as a placeholder and reminder that separate Instructions can address the issue of fees.

Article 24: Fees

~~Application and registration fees shall be established by the GOR and published. Instructions of the Registrar shall govern how and when applicants shall pay any fees.~~

Article 27: Instruments submitted for registration purposes

~~Each ilstruments submitted for registration purposes must be original or a certified true copies of the original.~~

~~The Registrar or Deputy Registrar shall keep and register all documents and evidence submitted to the Service for the purpose of any entry made in the Land Register.~~

The next section sets out the steps for processing applications and assigns proposed time limits on each step in the process. The Order imposes time limits on the actions of the government offices. One issue for discussion relating to implementation is how the GOR would like to handle circumstances in which an official does not abide by the time limits.

Section II: Duties of the competent organs with respect to processing land registration applications

Article 25: Processing of applications by Land Bureau

Within ten (10) calendar days of receipt of an application, the Head of the Land Bureau shall make an initial determination as to the completeness of the application and the authenticity of the contents of the application and any supporting documents.

If the Head of the Land Bureau concludes that an application is incomplete, he or she shall return the application to the applicant with a written statement as to the areas of the application that are incomplete and instructions for resubmitting the completed application. The Head of the Land Bureau shall return incomplete applications with the written statement and instructions for resubmission to applicants within fifteen (15) calendar days of the date of submission of the application.

If the Head of the Land Bureau determines that an application is complete and the application and supporting documents are authentic, he or she must send complete application file to the Registrar within twenty (20) calendar days of the receipt of the complete application.

The Head of the Land Bureau shall keep a copy of all applications and supporting documents sent to the Registrar.

If the Registrar returns an application, within five (5) calendar days of receipt the Head of the Land Bureau shall inform the applicant in writing and provide written instructions for correcting and resubmitting the application.

Article 2612: Processing of applications by the Registrar

The Registrar shall evaluate the application for authenticity and completeness within ten (10) calendar days of receipt from the Head of the Land Bureau.

~~If When~~ the Registrar determines that the application and any supporting documents are authentic and complete, ~~the registration application is complete~~ within ten (10) calendar days of receipt of the application, the Registrar shall authorize registration of the land interest and the issuance of ~~at~~ the eCertificate of land rRegistration in a period not exceeding ten (10) calendar days.

If the Registrar determines that the application is incomplete, within ten (10) calendar days of receipt of the application, the Registrar shall return the incomplete application to the Head of the Land Bureau with a written statement as to the areas of the application that are incomplete.

The Registrar shall be responsible for maintaining the original application and supporting documentation of accepted applications for the purpose of entry made in the Register.

Section III: Process for Successful Applications

At various places in this section, the revisions suggest timeframes for certain actions. Some of the proposed time frames may appear be lengthy, such as giving an office five calendar days to notify an applicant of a decision. This kind of notification should, ideally, be delivered upon receipt of a decision. However, the time frames are longer to allow for the intervention of weekends and holidays and for offices to develop and implement effective procedures.

Article 27: Duties of the Registrar Registration of applications

When the Registrar determines that an application file is complete and it supports registration of the land interest, the Registrar shall arrange for:

- a. The entry of the relevant information in the Register; and, it shall be assigned a code number in the
- b. A Certificate of Registration issued to the interest holder. relevant register held at the Service of the Registrar of Land Titles.

Article 28: Notification of Registration

Within five (5) calendar days of decision of the Registrar on the registration of a land interest, the Registrar shall notify the Head of the Land Bureau.

The Head of the Land Bureau must inform the applicant of the outcome of his/her application within five (5) calendar days after receipt of the decision of the Registrar.

The application shall be issued with a document signed by the Registrar attesting to the registration of land interests, including easements and other encumbrances. The Registrar shall inform the owner of the land concerned that registration of easements and other encumbrances has been done in respect of his/her parcel.

Article 29: Registration units

Land registration shall be done with registration units. Registrations units and corresponding codes are provided in Appendix 2 to this Order.

Article 30: Unique parcel identification number

The Registrar shall assign all registered parcels a unique identification number consisting of both the code of registration unit and the parcel number.

If a parcel is divided into several parts or if adjacent parcels are merged to form a single parcel, the Registrar shall cancel old numbers and assign newly formed parcels new identification numbers.

Article 31: Modalities for entering information in the Land Register

Entries and information in the Land Register shall be preceded by an order number.

Where the same act gives rise to different entries, each entry shall be assigned a separate number.

4.6 CHAPTER V: REGISTRATION OF TRANSFERS AND CHANGES IN LAND REGISTER

Section II: Registration of transfers of land interests~~changes to property rights~~

The revisions to the article below provide some alternate language to describe agreements for the transfer of land interests. As discussed in the Definitions section, the term “disposal,” has a negative connotation in English that may limit recognition of the broader definition intended in the term, “disposal agreements.”

Article 2932: Transfer by way of disposal agreement or court action

A transfer of a land interest done under disposal subject to requirements of registration must be done by a written agreement that meets contractual standards for the transfer of an interest in land. ~~Agreements can be effective only when such agreements are made in the form of an authentic instrument.~~

Disposal agreements can be made before the notary competent in land matters or before the competent Registrar of Land Titles who establishes the record thereof before registration.

When the disposal agreement is made before a public officer in a foreign country, the original of the agreement or certified true copy thereof bearing the enforcement order of the competent judicial authority ~~shall~~must be submitted to the Registrar.

Transfer done by virtue of court decisions shall be effective only if such decisions have acquired the force of res judicata.

In the following two articles regarding transfers in the case of death of an interest holder and division of parcels, the authors suggest that the Order articulate the role of the Registrar to evaluate the application and evidence (e.g., the minutes of the Family Council) and reach a judgment on registration. In addition, the authors recommend that “Family Council” be included in the Definitions.

Article 3033: Transfer on death

Transfer on death of the holder of an interest in land shall be effective only on the basis of an application from designated heirs to a decedent’s estate accompanied by the minutes of the Family Council approved by the Executive Secretary of the Sector of the place where the land is situated. The minutes of the Family Council shall indicate the names of the heirs, their relationship with the deceased person and assets that form the part of the estate to be transferred to the heirs.

The minutes of the Family Council shall be published for a period of one month in at least two newspapers recognized in Rwanda. After this period, the Civil Registrar shall approve the minutes of the Family Council.

The Registrar of Land Titles shall make the judgment on registration of transferred land interests based on the application and ~~Based on~~ the minutes of the Family Council approved by the Civil Registrar. If the Registrar of Land Titles deems that registration of the transfer is warranted, the Registrar shall register the information in the Land Register in the names of the designated heirs and, the Registrar of Land Titles shall issue a Certificate of Re-registration in the name of the heirs.

If any disagreement arises between the heirs or any third party, the parties will be directed to the competent court and the Registrar shall register the transferred land interest according to transfer shall be done on the basis of a court order. of the judge of the competent court.

Section III: Registration of changes to parcels

Article 334: Division of parcels

In cases where ~~the~~ registered owner wishes to dispose of one or more portions of a parcel, ~~or in cases~~ where pursuant to an agreement or a decision of competent court the parcel is divided between two or more persons who are registered as joint owners, ~~or in case of where the~~ transfer of a land property right/interest on death requires division of a parcel, the interested parties must present an application for the division with the ~~on death,~~ the eCertificate of rRegistration to be replaced must be submitted to the Registrar.

The Registrar shall consider the application for division in accordance with applicable procedures. If the requested division is supported by the documentation, the Registrar shall cancel the existing Certificate and issue the parties new Certificates of Registration in accordance with the new interests.The Registrar of Land Titles shall issue. ~~the parties with as many new certificates of registration as there are new owners after canceling the previous certificate of registration.~~

Article 345: Merging of parcels

In the event adjacent parcels belong to the same registered owner and are subject to the same rights and obligations, the Registrar shall, upon request by the registered owner, merge the parcels. The Registrar shall cancel the existing Certificates of Registration and issue by replacing certificates of registration of the initial parcels with a single eCertificate of rRegistration for the new merged parcel. after canceling the initial certificates of registration.

Article 356: Change in land use

In case of change in land use, the Registrar of Land Titles shall update the Register by changing the section containing information on land use.

The Registrar shall take into account the authorization for change issued by the District in accordance with the development master plan.

Article 34 above requires some additional language stating how the Registrar will be informed about changes in land use. In addition the district-wide changes in land use noted in the article, do landowners have an obligation to report land use changes to the Registrar? As the article is currently worded, the Registrar has an obligation to act but it is not stated how he or she will receive the information on which to act. That obligation should be identified and included in an article preceding this one.

In addition, it is unclear in the second paragraph whether the provision means that the Registrar will make changes based on a change in the master plan. Are land uses identified in the Land Register based on the master plan or based on actual land use?

4.7 CHAPTER VI: OBJECTIONS AND CHANGES IN REGISTRATION

The revisions suggested in articles 37 – 40 are designed for clarification of the content.

Section I: Objections to transfers

Article 397: Persons entitled to raise an Registration of an objection to transfer of a land interest

~~Either of~~ The following ~~person~~ ~~people~~ may, ~~by way of an application made to the Registrar of Land Titles using the form set out in Appendix 3,~~ raise objection to the exercise by the owner or other interest holder registered in the Land Register of the right to dispose of the land or otherwise transfer a land interest, ~~perform any transaction.:~~

1. A secured creditor with a security interest over the ~~€Certificate of~~ ~~rRegistration;~~
2. A creditor in possession of an enforceable title or land interest;
3. A receiver in ~~case of~~ bankruptcy ;
4. ~~the~~ A ~~prior~~ ~~previous~~ owner or other interest holder exercising a having the reassignment right derived from grounds for terminating or voiding the agreement under which he/she disposed of the property;
5. Any person claiming ownership or other interest right ~~or proprietary right over their land, upon and having present a~~ ~~an~~ affidavit before the competent ~~notary with competence in land matters~~. The form of affidavit is provided in Appendix 4 to this Order; or
6. ~~the~~ A competent court.

Article 38: Process for raising and processing objections

Applicants shall submit objections through an application made to the Registrar using the form at Appendix 3,

The Registrar shall enter the objection in the Land Register and notify in writing ~~in written form~~ the owner and all other holders of registered interests in ~~of~~ the land that is the subject of in respect of which the objection is made. ~~The Registrar shall provide~~ ~~the applicant with a~~ ~~receives a~~ ~~€Certificate of Registration showing attesting to the registration recording of the objection signed by the Registrar of Land Titles.~~

Article 4039: Effect of an objection

The registration of an objection shall impede the owner or interest holder's right of alienation and disposal as long as ~~the~~ objection remains valid.

When the objection is raised by any other person claiming ownership ~~right~~ ~~or other interest in~~ the land and who makes an affidavit before a notary with competence in land matters, the objection shall have ~~effect for a period of~~ thirty (30) calendar days from the date of the registration of the objection ~~one month~~

~~only~~. The objection shall become null and void if the person raising it fails to institute legal proceedings within this 30-day period ~~of one month~~.

No interest in land on which an objection is registered shall be transferred intended for any reason whatsoever shall be done before the expiry prior to the expiration of the 30-day time period, or any subsequent time period set by judicial judgment having acquired the force of res judicata, of the statutory or judicial time limit unless the objection is removed in accordance with this Order. ~~objection is withdrawn by the person having raised it or by a court decision having acquired the force of res judicata.~~

Article 4041: Removal of the objection

Removal of the objection from the Land Register may occur in ~~either of the~~ following cases:

1. Upon request by the person having raised it;
2. Upon its ~~expiry~~ expiration; or
3. By ~~virtue of a final~~ court decision that has the force of res judicata.

~~In case of removal, the~~ The Registrar has authority to remove objections from the objection shall be removed from the Land Register. On the date of removal, the Registrar shall notify the person raising the objection and the holder of any interest in the land of the removal in writing by the Registrar of Land Titles who shall in turn inform both the person having raised it and the owner thereof.

Section VII: Changes to, rectification, and replacement of Certificate of Registration and replacement and loss of validity of land registration

Article 4142: Changes to the Certificate of Registration

The Registrar shall make changes to the Certificate of Registration only in the following circumstances:

1. The change is order by a court;
2. The change is required by law; or
3. On application of the landowner or other interest holder where the change is made to the Land Register in accordance with this Order.

~~Except in cases where the change to the certificate of registration is ordered by the Court or by specific laws, the change can be made only after the certificate of registration in respect of which the change is proposed is submitted to the Registrar of Land Titles. The Registrar of Land Titles shall authorize the change to be entered in the Land Register on the owner's application made in the form specified in Article 10 of this Order.~~

Article 4342: Rectification of Land Register of Titles

The Registrar may rectify the Land Register only in ~~either of the~~ following ~~circumstances~~ cases:

1. ~~o~~Occurrence of issues of formal nature¹⁶ –and errors or omissions that~~which~~ do not substantially affect the owner's interests;
2. ~~where and when a~~All interested parties consent to the rectification~~thereto;~~ when , during the re-demarcation of a parcel or an area of land, a dimension or surface area indicated in the Land Register is found to be incorrect, but in such a case , the Registrar of Land Titles must first inform and hear all parties that appear in the Land Register and may be interested or affected by its intention to rectify the Register;
3. ~~u~~Where: a) the minutes of cadastral officers indicate that the surface area or sketch of registered land is found to be inaccurate or incomplete; b) the rectification is not likely to adversely affect the neighbors' registered rights; and c) the registered owner requests that the Registrar prepare a new Certificate of Registration to replace the existing, erroneous Certificate;
4. During the re-demarcation of a parcel or an area of land a dimension or surface area indicated in the Land Register is found to be incorrect;
5. ~~hen it is found~~The Registrar concludes in a reasonable exercise of his or her judgment based on the relevant facts that errors were made during the land registration under circumstances that warrant rectification;
- 3.6. ~~or when~~The Registrar concludes in a reasonable exercise of his or her judgment based on the relevant facts that information on the basis of which the land registration takes~~ook~~ place is false under circumstances that warrant rectification; or
7. uUpon a court decision.

As part of consideration of any matter potentially leading to rectification under subsections 3 – 6 of this article, the Registrar must give all parties with registered interests in the land, or who may be otherwise affected by rectification, notice of the possibility of rectification and an opportunity to present their positions and any evidence relevant to the determination to the Registrar. Only after interest holders receive such notice and opportunity to be heard shall the Registrar render a decision on the rectification.

Once the Registrar has reached a determination on the rectification, he or she shall provide written notice of the decision to the interest holders and other interested parties of record. The form of the notices and hearing, and all timelines for action under this article shall comply with the rules of administrative procedure generally applicable to governmental administrative procedures or as set out in Instructions issued by the Registrar.

Article 43: Registrar rectification

When the Registrar concludes that rectification is warranted under Article 39 and all procedural requirements have been met, the Registrar shall:

1. Update the Land Register with the corrected information;
2. Cancel the erroneous Certificate of Registration; and
3. Issue a new Certificate of Registration with the corrected information.

¹⁶ The phrase, "issues of a formal nature," is unclear. We have made no suggestion for revision because the intent of the phrase is not known.

Article 44 below relating to an owner-instigated rectification process, is included in the revised Article 39 above.

Article 44: Rectification based on cadastral survey

~~When the minutes of cadastral officers indicate that the surface area or sketch of a registered immovable property are found to be inaccurate or incomplete and the rectification is not likely to adversely affect the neighbors' registered rights, the owner may request that a new certificate be drawn up to replace the previous one.~~

~~The Land Register shall be updated and the previous certificate of registration canceled and the new certificate of registration shall be different from the previous one with regard to inaccuracies or omissions identified by cadastral officers.~~

A determination of the invalidity of a Certificate of Registration that warrants cancellation of the certificate should be done in a manner consistent with good administrative or judicial procedure. The determination impacts property rights and, as such, the process should meet standards of due process, including the right of holders of land interests to notice and to be heard before their rights are extinguished. In addition, there should be a right to review, which is suggested in a new chapter below. The articles below limit the bodies that can render decisions that lead to cancellation of a certificate to courts and "other authoritative tribunals." The latter option allows for an administrative tribunal of some kind that can operate independent of the ministry or body responsible for land.¹⁷

Article 44: Determination of invalidity of Certificate of Registration

The Registrar may cancel the certificate of land registration only in the following circumstances:

1. There is a finding by a court or other authoritative tribunal that errors were made in the course of land registration under circumstances that warrant a finding of invalidity.
2. There is a finding by a court or other authoritative tribunal, including an administrative body, that information on the basis of which the land registration took place is false under circumstances that warrant a finding of invalidity.

The review recommends revising article 43 to require the Registrar to inform all interest holders in writing of a decision to cancel a Certificate of Registration and to provide basic instructions on how to seek review of the decision. The proposed revised article (and a similar article addressing cancellation of a secondary interest) is set forth below:

Article 45: Notice of cancellation of Certificate of Registration and right to review

When the Registrar cancels a Certificate of Registration, he or she shall inform all parties who hold an interest in the land subject to the Certificate of

¹⁷ At our meeting in Washington DC, we discussed the possibility of the establishment of an administrative body hearing matters that impact land rights, such as the cancellation of a certificate. A possible body would have high-level representatives from relevant government offices and an odd number of members.

Registration of the cancellation in writing. The notice of cancellation shall advise the parties of the right to seek review of the decision.

The Registrar shall post a decision to cancel a Certificate of Registration for 30 days in a publicly accessible place at the Land Bureau or other designated office in the place where the land is situated.

Article 46: Cancellation of secondary interest and notice of cancellation

Upon presentation of an affidavit or any other document attesting to the expiration or termination of a secondary interest in land, including an encumbrance, the Registrar must cancel the registration of the secondary interest, effective as of the date that the secondary interest was terminated, expired, or was extinguished.

When the Registrar cancels a Certificate of Registration, he or she shall inform all parties who hold an interest in the land subject to the Certificate of Registration of the cancellation in writing. The notice of cancellation shall advise the parties of the right to seek review of the decision.

Article 47: Replacement of lost or destroyed certificates

In case of loss or destruction of a eCertificate of rRegistration, the registered owner or registered holder of other interests in the parcel may apply to the Registrar of Land Titles for a new eCertificate of Registration. The Registrar shall provide an applicant with a new Certificate of Registration –if he/she meets the conditions specified in the Instructions of the Registrar of Land Titles.

The new eCertificate of Registration shall conform exactly to the former certificate as it appears in the Land Register.

4.8 CHAPTER VII: RIGHT TO REVIEW

The authors recommend creation of a separate chapter addressing the right to review of the GOR actions under this Draft Order, rather than including a provision in the final section, under “Miscellaneous.” Because the actions of officials can impact (including extinguish) property rights, the Order should provide a clear and visible right of review for persons aggrieved by GOR action. As discussed in the comments to the Preamble, this Draft Order will be assisted by an established administrative procedure that individuals and entities can use to request review of an action.

Article 48: ~~Right to review~~Appeal against the decisions of the Registrar of Land Titles

Any person who is aggrieved by or disputes a ~~The~~decisions or action of the Registrar or other GOR official operating pursuant to this Order can seek review of the action taken before an administrative body. ~~may be challenged by way of an appeal in accordance with procedural rules applied in administrative cases.~~

The basis for seeking review, the composition of the reviewing body, and the procedures for such review shall be as set by Instructions of the Registrar and in accordance with rules applied in administrative cases.

Article 49: Right to appeal

Any person who is aggrieved by the decision reached by the administrative body in a proceeding brought under Article 46 shall have the right to appeal the decision to the appropriate court. The procedures for such review shall be as established by the relevant court.

The articles remaining in this section are generally satisfactory as drafted. The exception is the penalty provision, which should be made more visible. One method of accomplishing that visibility is to create a new chapter called Penalties, with a single article, as below.

4.9 CHAPTER VIII: PENALTIES

Article 5250: Penalty for late registration of land transactions

Any person who fails to comply with the requirement to register any transaction related to or interests in land in accordance with the provisions of Article 24 of this Order, shall be liable to an administrative fine of a hundred Rwanda francs (Rwf 100) for each day of delay. Such administrative fine shall be paid into the treasury of the District of the place where the land is situated.

4.10 CHAPTER IX: MISCELLANEOUS, TRANSITIONAL, AND FINAL PROVISIONS

The remaining content of the final chapter are clear and well-presented. The list of those articles retained in this final chapter is:

- *Article 51: Forms*
- *Article 52: Additional regulation*
- *Article 53: Replacing existing certificates of registration with new certificates*
- *Article 54: De-registration of disputes registered during the systematic land registration*
- *Articles 55 and 56: Repealing provision and Commencement*

5.0 SUMMARY AND CONCLUSION

5.1 SNAPSHOT OF PROPOSED RESTRUCTURING

The Draft Order was designed with four chapters and 54 articles. This review suggests a restructuring into nine chapters and 56 articles. The two different structures are set out in the chart below.

No.	Original Draft Order	Revised Draft Order
	Chapter I: General Provisions	Chapter I: General Provisions
1	Purpose of order	Scope and purpose of this Order
2	Categories of land concerned by this	Categories of land within the scope of

No.	Original Draft Order	Revised Draft Order
	order	this Order
3	Definitions	Definitions
	Chapter II: Registration of Land Titles	Chapter II: Registration of Documentation of Land Interests and the Effect of Registration
4	Land titles based on registration	Mandatory registration of land interests
5	Validity of transaction based on their registration	Mandatory registration of subordinate interests
6	Registration required to be done in compliance with the provisions of this order	Registration of co-ownership and shared interests in land.
7	Registration with branches	Mandatory registration of transfers in land interests
8	People who can apply for land registration	Effect of registration of land interests and transfers in land interests.
9	Organs competent to receive applications	Time limits
		Chapter III: Land registration Organs and Systems and their Roles and Functions
10	Application form	Competent organs for land registration and their roles
11	Registration of applications	Registrars of Land Titles
12	Processing of applications	Establishment of Land Register
13	Competent authority for issuing a certificate of registration	Matters to be entered in Land Register
14	Establishment of the Land Register	Access to information entered in the Land Register
15	Probative value of the Land Register	Competent authority for issuing a Certificate of Registration
16	Types of certificates	Responsibility of Registrar to Issue Certificates of Registration
17	Details to be included in the certificate of registration	Content of the Certificate of Registration
18	People who can be issued with certificate of registration	Types of Certificates of Registration

No.	Original Draft Order	Revised Draft Order
		Chapter IV: Registration Process and Procedures
19	Registration of easements and other encumbrances	People who can apply to register land interests and transfers
20	Registration units	Registrar's discretion to require evidence of consent of other interest holders to the application.
21	Unique parcel identification number	Place of registration
22	Access to information entered in the Land Register	Time limit on initiating registration process
23	Probative value of the certificate of registration	Application form and supporting documents
	Chapter III: Maintenance of the Land Register	
24	Registration of land rights, easements and other encumbrances	Fees
25	Mandatory registration	Processing of applications by Land Bureau
26	Matters to be registrar	Processing of applications by the Registrar
27	Instruments submitted for registration purposes	Duties of the Registrar
28	Modalities for entering information	Notification of registration
29	Transfer by way of disposal agreement	Registration units
30	Transfer on death	Unique identification number
31	Registration of titles acquired on statute of limitation grounds	Modalities for entering information in the Land Register
		Chapter V: Registration of Transfers and Changes in Land Register
32	Foreclosure, bankruptcy and expropriation	Transfer by way of agreement for alienation or disposal or court action parcels
33	Division of parcels	Transfer on death
34	Merging of parcels	Division of parcels
35	Change in land use	Merging of parcels

No.	Original Draft Order	Revised Draft Order
36	Registration of sub-empyteutic lease	Change in land use
		Chapter VI: Objections and Changes in Registration
	Deregistration of the encumbrance due to the SE lease	Persons entitled to raise an objection to transfer of a land interest
38	Registration of easements and other encumbrances	Process for raising and processing objections
39	Registration of an objection	Effect of objection
40	Effect of an objection	Removal of objection
41	Removal of an objection	Changes to Certificate of Registration
42	Changes to the certificate of registration	Rectification of Land Register
43	Rectification of Register of Titles	Registrar rectification
44	Rectification based on cadastral survey	Determination of invalidity of Certificate of Registration
45	Replacement of lost or destroyed certificates	Notice of cancellation of Certificate of Registration and right to review
46	Loss of validity of the certificate of land registration	Cancellation of secondary interest and notice of cancellation
	Chapter IV: Miscellaneous, Transitional and Final Provisions	
47	Appeal against the decision of the Registrar of Land Titles	Replacement of lost or destroyed certificates
		Chapter VII: Right to Review
48	Forms	Right to review
49	Additional regulation	Right to appeal
		Chapter VIII: Penalties
50	Replacing the existing certificates of registration with new certificates	Penalty for late registration
		Chapter IX: Miscellaneous, Transitional, and Final Provisions

No.	Original Draft Order	Revised Draft Order
51	De-registration of disputes registered during the systematic land registration	Forms
52	Penalty for late registration of land transactions	Additional regulation
53	Repealing provision	Replacing existing certificates of registration with new certificates
54	Commencement	De-registration of disputes registered during the systematic land registration
55		Repealing provision
56		Commencement

5.2 SUMMARY TABLE OF RECOMMENDED REVISIONS

The revisions suggested in this report build on the structure of the Draft Law and comparable legal instruments of other jurisdictions. The proposed revisions are listed below, with relation to the revised structure, chapters, and articles.

Section	Title	Proposed revision
Introduction	Introductory Sections	Retained as drafted, with comment to consider advocating for an administrative procedure, applicable across sectors, that provides for a right of administrative review of governmental action
Chapter I	General Provisions	Suggested addition of statement of purpose to guide officials and other users of the Order and drafters of complementary instruments; recommended some revisions to Definitions for clarity, to include terms of art that are not defined, and to delete definitions that alter accepted usage.
Chapter II	Registration of Documentation of Land Interests and the Effect of Registration	Combined all provisions regarding the requirement of registration and the effect of registration in one chapter; removed process and procedural provisions and content to subsequent chapters; set out intended time limit on registration process
Chapter III	Land registration Organs and Systems and their Roles and Functions	Moved articles relating to Registrars, land bureaus, Land Certificates, and land register to one chapter. Added content to section on public access to Land register to allow Registrar to exercise judgment regarding access and to require those seeking access to provide identification and a written

Section	Title	Proposed revision
		statement of their need for and intended use of the information.
Chapter IV	Registration Process and Procedures	Clarified persons who can apply for registration, included articles as placeholders for fees and time limits for registration; added additional areas for Registrars to exercise judgment and criteria for such exercise; clarified process for transfer of applications from districts to registrars.
Chapter V	Registration of Transfers and Changes in Land Register	Clarified language and combined some articles; added areas for exercise of discretion of Registrar.
Chapter VI	Objections and Changes in Registration	Created additional notice requirements for changes to Certificates of Registration; referenced right to review
Chapter VII	Right to Review	Created separate chapter to highlight right to review of GOR action and appeal of result of any administrative procedure because property rights involved
Chapter VIII	Penalties	Created separate chapter to ensure penalties are visible
Chapter IX	Miscellaneous, Transitional, and Final Provisions	Retained as drafted with some content given visibility with separate chapter (penalties)

5.3 CONCLUSION

Rwanda's Draft Order governing land registration reflects the extraordinary progress the country has made in developing its land registration system and supporting the registration of land nationwide. The Draft Order makes a number of useful revisions to the 2008 Order, including adopting a 'compelling evidence" standard for judging the effect of registration of land interests. Assuming capacity for enforcement within the land administration bodies and the judicial system, the new standard strikes a useful balance between supporting efficient alienation of land while protecting the interests of those who would be disposed by fraud or inadvertence. Similarly, expanded authority for government officials to exercise their judgment within established criteria is balanced with new rights to notice and review of administrative decisions. With these kinds of well-considered and carefully tailored legislative efforts, the land sector is helping lead the country's development of a legal framework that encourages economic growth while helping protect the interests of all its landholders.

APPENDIX I: CLEAN COPY OF SUGGESTED REVISED SECTION OF DRAFT ORDER

This is a clean copy of the revised version of the Draft Order, with the proposed suggestions accepted. This version does not include the preamble of the final articles, neither of which had any revisions. Note also that the Definitions section is not included because of the nature of the decisions to be made as to how to handle the proposed revisions. This issue is discussed in the body of the report.

CHAPTER I: GENERAL PROVISIONS

Article 1: Scope and purpose of this Order

This Order establishes the procedures and modalities of land registration and the cancellation of land registration.

The purpose of this Order is to:

1. Promote accessible, efficient, and cost effective registration of interests in land;
2. Help ensure the accuracy and ready availability of information on interests in land and land use;
3. Support an efficient and dynamic land market; and Promote land tenure security.

Article 2: Categories of land concerned by this order

This Order applies to state land and to individual land.

Article 3: Definitions [see discussion in report]

CHAPTER II: REGISTRATION OF DOCUMENTATION OF LAND INTERESTS AND THE EFFECT OF REGISTRATION

Article 4: Mandatory requirement of registration of land interests

All landowners and holders of certain subordinate interests in land must register their rights in the Land Register in accordance with the terms of this Order.

The Minister in charge of lands may order the registration of an unregistered interest in land where such registration is in the public interest.

Registration shall be mandatory for unregistered land that is expropriated or confiscated by a public authority legally entitled to take such action.

Article 5: Mandatory registration of subordinate interests in land.

The subordinate interests in land that must be registered are:

1. Mortgage;
2. Servitude;
3. Emphyteutic lease for a term of five (5) years or longer;;
4. Sub-emphyteutic lease for a term of five (5) years or longer; and
5. Easement.

Article 6: Registration of co-ownership and shared interests in land.

If land is owned by more than one person, all owners must be registered in the Land Register as co-owners. If a subordinate interest in land that is subject to registration is held by more than one person, all persons holding such subordinate interest shall be identified as co-interest holders in the Land Register.

Article 7: Mandatory registration of transfers in land interests

All transfers of registered land interests, or land interests that are subject to registration, must be registered. Transfers of land interests that must be registered are:

1. Purchases and sales;
2. Inter vivos and testamentary transfers;
3. Gifts, exchanges, and assignments
4. Mortgages and servitudes;
5. Leases subject to registration; and
6. Any transaction or agreement that transfers a land interest that is subject to registration from one person to another.

Requirements for the registration of transfers in case of seizure of immovable property, bankruptcy, and expropriation in the public interest shall be determined by relevant laws, orders, or other provisions.

Article 8: Effect of registration of land interests and transfers in land interests.

Registration of land interests and transfers of land interests shall have the following effects:

1. Registration of land interests in the Land Register, which is evidenced by a Certificate of Registration, shall constitute compelling evidence of the right of ownership, leasehold, I encumbrance, or other land interest registered.
2. No interest or encumbrance that must be registered under this Order shall attach to an immovable property unless the encumbrance is registered in the Land Register.
3. Transfers of land interests that are subject to registration shall not be effective until they are registered.
4. The effect of transfers in case of seizure of immovable property, bankruptcy, and expropriation in the public interest shall be determined by relevant laws, orders, or other provisions.

Article 9: Time limits

The time limits set by this Order are based on an intent that all formalities relating to the registration of land interests and updating of land-related information contained in the Land Register will be completed within a maximum period of sixty (60) calendar days

from the date of land transaction, commencement or discovery of the right or land-related information, or other event triggering the obligation to register a land interest or transfer of an interest.

CHAPTER III: LAND REGISTRATION ORGANS AND SYSTEMS AND THEIR ROLES AND FUNCTIONS

Section I: Land Registration Organs and Their Roles and Functions

Article 10: Competent organs for land registration and their roles

Designated district Land Bureaus within land registration zones of the North, South, East, and West shall be the locus for land registration within their zone.

The City of Kigali Land Bureau shall be the locus for land registration within its jurisdiction.

Article 11: Registrars of Land Titles

The Chief Registrar of Land Titles, Deputy Registrar of Land Titles, and Registrars of Land Titles, as those positions are designated by Presidential Order or other instrument, shall be responsible for land registration, maintenance of the Land Register, and issuance of Certificates of Registration within designated land registration zones.

Registrars shall work through and in cooperation with District and City of Kigali Land Bureaus as deemed appropriate and as indicated by Presidential Order or other instrument.

Section II: Land Register

Article 12: Establishment of Land Register

There is hereby established a Land Register. The Land Register shall contain information relating to: 1) the holders of land interests in a parcel; and 2) the parcel.

Instructions of the Chief Registrar shall determine the structure of and modalities for keeping the Land Register, including requirements for updating.

Article 13: Matters to be entered in Land Register

The Registrars must enter in the Land Register each instrument, transaction, or any other matter affecting land rights required or authorized to be registered under this Order or any other legal instrument.

Article 14: Access to information entered in the Land Register

Information entered in the Land Register must be maintained with the utmost care and protected from inappropriate disclosure and use.

The Registrar shall provide any registered holder of an interest in a registered land parcel with information on that parcel at any time upon request.

The Registrar shall also provide information on a registered parcel to other people who request information and who, in the judgment of the Registrar, have a legitimate reason for the requested information. Persons who may have a justifiable reason for access to the contents of the Land Register regarding a parcel are:

1. Holders of a power of attorney signed by landowners or other interest holders;
2. Public institutions;
3. Bailiffs;
4. Lawyers; and
5. Any person who gives a legitimate reason, as defined by this article.

The Registrar is responsible for determining whether a person seeking access to the Land Register falls within the requirements of this Article. All persons seeking access shall complete a written request for access, stating the information sought and the need for the information. All persons requesting information shall provide identification, including their affiliation with their business, if they seek information in the scope of their performance of duties for a business.

The criteria that the Registrar shall apply in assessing the justification of a reason for access to the Land Register under section (e) above are whether:

1. The person seeking access has a legitimate interest in the parcel, or reasonable expectation of an interest in the parcel;
2. The person seeking access has expressed a legitimate need for the information contained in the Land Register; and
3. The person seeking access attests to his or her planned use of the information sought.

Section III: Certificates of Registration

Article 15: Competent authority for issuing a Certificate of Registration

The Registrar shall have exclusive authority to issue Certificates of Registration in their respective jurisdictions.

Article 16: Responsibility of Registrar to Issue Certificates of Registration

The Registrar shall issue a Certificate of Registration to registered landowners and other holders of registered interests in land.

Article 17: Content of the Certificate of Registration

Each Certificate of Registration shall comprise two sections:

1. A section containing information on the parcel; and
2. A section containing information on the parcel's owner and the holders of any subordinate interests.

The Certificate of Registration must be an exact copy of the Land Register and must include all the relevant information contained in the Land Register regarding a subject parcel.

Article 18: Types of Certificates of Registration

The Registrar may issue Certificates of Registration for individual land and private State land, including private State land held by the City of Kigali, a local authority, or a public institution.

Registrars may issue the following types of Certificates of Registration in accordance with the relevant registered land interests and applicable requirements:

1. Certificate of registration of freehold;
2. Certificate of conditional registration of land ownership;
3. Certificate of registration of condominiums;
4. Certificate of registration of emphyteutic lease.

A template for the Certificate of Registration of Emphyteutic Lease is provided in Appendix 1 to this Order. Templates for other certificates of land registration shall be established by the relevant office.

CHAPTER IV: REGISTRATION PROCESS AND PROCEDURES

Section I: Rights and obligations of holders of land interests: applications for land registration

Article 19: People who can apply to register land interests and transfers

The following persons can submit applications for registration of land interests and transfers of land interests:

1. Holders of land interests (e.g., landowners, lessees, mortgage holders);
2. Authorized agents of holders of land interests;
3. Parties to the transfer of land interests; and
4. Authorized agents of parties to transfers of land interests.

Any person who claims to have acquired a land right by court decision, whether by operation of a statute of limitations or other grounds, shall apply for registration of his or her interest in accordance with this Order and any Instructions of the Chief Registrar.

Article 20: Registrar's discretion to require evidence of consent of other interest holders to the application.

The Registrar may, in his or her discretion, require a person presenting an application for registration to provide evidence of the consent of other persons with an interest in the parcel. Such evidence may include requirements of physical presence and attestation before the Registrar and other forms of evidence, at the discretion of the Registrar.

Article 21: Place of registration

Applications for registration of land interests and transfers of land interests shall be submitted to the Head of the Land Bureau in the district or regional zone where the land is situated, or the Head of the Land Bureau for the City of Kigali for land within the City boundaries.

Any subsequent transactions and matters with respect to such application and any Certificates of Registration issued shall be conducted at the Land Bureau designated for such actions in the district or zones where the land is situated.

Article 22: Time limits on initiating registration process

Persons required to register any interest in land pursuant to this Order or other legal requirement, are required to submit their application for registration within ___ days of _____. [timeframe to be inserted by RNRA]

Article 23: Application form and supporting documents

The Registrar shall prepare the application form for registration of land interests. All applications must be submitted on the approved form.

The application must be supported by relevant documents, as required for each type of land interest or transfer of land interest registered.

Article 24: Fees

Application and registration fees shall be established by the GOR and published. Instructions of the Chief Registrar shall govern how and when applicants shall pay any fees.

Section II: Duties of the competent organs with respect to processing land registration applications

Article 25: Processing of applications by Land Bureau

Within ten (10) calendar days of receipt of an application, the Head of the Land Bureau shall make an initial determination as to the completeness of the application and the authenticity of the contents of the application and any supporting documents.

If the Head of the Land Bureau concludes that an application is incomplete, he or she shall return the application to the applicant with a written statement as to the areas of the application that are incomplete and instructions for resubmitting the completed application. The Head of the Land Bureau shall return incomplete applications with the written statement and instructions for resubmission to applicants within fifteen (15) calendar days of the date of submission of the application.

If the Head of the Land Bureau determines that an application is complete and the application and supporting documents are authentic, he or she must send complete application file to the Registrar within twenty (20) calendar days of the receipt of the complete application.

The Head of the Land Bureau shall keep a copy of all applications and supporting documents sent to the Registrar.

If the Registrar returns an application, within five (5) calendar days of receipt the Head of the Land Bureau shall inform the applicant in writing and provide written instructions for correcting and resubmitting the application.

Article 26: Processing of applications by the Registrar

The Registrar shall evaluate the application for authenticity and completeness within ten (10) calendar days of receipt from the Head of the Land Bureau.

If the Registrar determines that the application and any supporting documents are authentic and complete, within ten (10) calendar days of receipt of the application, the Registrar shall authorize registration of the land interest and the issuance of a Certificate of Registration.

If the Registrar determines that the application is incomplete, within ten (10) calendar days of receipt of the application, the Registrar shall return the incomplete application to the Head of the Land Bureau with a written statement as to the areas of the application that are incomplete.

The Registrar shall be responsible for maintaining the original application and supporting documentation of accepted applications for the purpose of entry made in the Land Register.

Section III: Process for Successful Applications

Article 27: Duties of the Registrar

When the Registrar determines that an application file is complete and it supports registration of the land interest, the Registrar shall arrange for:

1. The entry of the relevant information in the Land Register; and
2. A Certificate of Registration issued to the interest holder.

Article 28: Notification of Registration

Within five (5) calendar days of decision of the Registrar on the registration of a land interest, the Registrar shall notify the Head of the Land Bureau.

The Head of the Land Bureau must inform the applicant of the outcome of his/her application within five (5) calendar days after receipt of the decision of the Registrar.

The application shall be issued with a document signed by the Registrar attesting to the registration of easements and other encumbrances. The Registrar shall inform the owner of the land concerned that registration of easements and other encumbrances has been done in respect of his/her parcel.

Article 29: Registration units

Land registration shall be done with registration units. Registrations units and corresponding codes are provided in Appendix 2 to this Order.

Article 30: Unique identification number

All registered parcels shall be assigned a unique identification number consisting of both the code of registration unit and the parcel number.

If a parcel is divided into several parts or if adjacent parcels are merged to form a single parcel, the old numbers shall be canceled and newly formed parcels shall be assigned new identification numbers.

Article 31: Modalities for entering information in the Land Register

Entries and information in the Land Register shall be preceded by an order number.

Where the same act gives rise to different entries, each entry shall be assigned a separate number.

CHAPTER V: REGISTRATION OF TRANSFERS AND CHANGES IN LAND REGISTER

Section I: Registration of transfers of land interests

Article 32: Transfer by way of agreement for alienation or disposal or court action

A transfer of a land interest subject to requirements of registration must be done by a written agreement that meets contractual standards for the transfer of an interest in land.

Disposal agreements can be made before the notary competent in land matters or before the competent Registrar who establishes the record thereof before registration.

When the disposal agreement is made before a public officer in a foreign country, the original of the agreement or certified true copy thereof bearing the enforcement order of the competent judicial authority must be submitted to the Registrar.

Transfer done by virtue of court decisions shall be effective only if such decisions have acquired the force of *res judicata*.

Article 33: Transfer on death

Transfer on death of the holder of an interest in land shall be effective only on the basis of an application from designated heirs to a decedent's estate accompanied by the minutes of the Family Council approved by the Executive Secretary of the Sector of the place where the land is situated. The minutes of the Family Council shall indicate the names of the heirs, their relationship with the deceased person and assets that form the part of the estate to be transferred to the heirs.

The minutes of the Family Council shall be published for a period of one month in at least two newspapers recognized in Rwanda. After this period, the Civil Registrar shall approve the minutes of the Family Council.

The Registrar shall make the judgment on registration of transferred land interests based on the application and the minutes of the Family Council approved by the Civil Registrar. If the Registrar that registration of the transfer is warranted, the Registrar shall register the information in the Land Register in the names of the designated heirs and issue a Certificate of Registration.

If any disagreement arises between the heirs or any third party, the parties will be directed to the competent court and the Registrar shall register the transferred land

interest according to court order.

Section II: Registration of changes to parcels

Article 34: Division of parcels

In cases where a registered owner wishes to dispose of one or more portions of a parcel, or where pursuant to an agreement or a decision of competent court the parcel is divided between two or more persons who are registered as joint owners, or where the transfer of a land interest on death requires division of a parcel, the interested parties must present an application for the division with the Certificate of Registration to be replaced to the Registrar.

The Registrar shall consider the application for division in accordance with applicable procedures. If the requested division is supported by the documentation, the Registrar shall cancel the existing Certificate and issue the parties new Certificates of Registration in accordance with the new interests.

Article 35: Merging of parcels

In the event adjacent parcels belong to the same registered owner and are subject to the same rights and obligations, the Registrar shall, upon request by the registered owner, merge the parcels. The Registrar shall cancel the existing Certificates of Registration and issue a single Certificate of Registration for the merged parcel.

Article 36: Change in land use

In case of change in land use, the Registrar of Land Titles shall update the Land Register by changing the section containing information on land use.

The Registrar of Land Titles shall take into account the authorization for change issued by the District in accordance with the development master plan.

CHAPTER VI: OBJECTIONS AND CHANGES IN REGISTRATION

Section I: Objections to transfers

Article 37: Persons entitled to raise an objection to transfer of a land interest

The following persons may raise objection to the exercise by the owner or other interest holder registered in the Land Register of the right to dispose of the land or otherwise transfer a land interest:

1. A secured creditor with a security interest over the Certificate of Registration;
2. A creditor in possession of an enforceable title or land interest;
3. A receiver in bankruptcy;
4. A prior owner or other interest holder exercising a reassignment right derived from grounds for terminating or voiding the agreement under which he/she disposed of the property;
5. Any person claiming ownership or other interest in land, upon presentation of an affidavit before a competent notary. The form of affidavit is provided in Appendix 4 to this Order; or
6. A competent court.

Article 38: Process for raising and processing objections

Applicants shall submit objections through an application made to the Registrar using the form at Appendix 3,

The Registrar shall enter the objection in the Land Register and notify in writing the owner and all other holders of registered interests in the land that is the subject of the objection. The Registrar shall provide the applicant with a Certificate of Registration showing the recording of the objection.

Article 39: Effect of an objection

The registration of an objection shall impede the owner or interest holder's right of alienation and disposal as long as the objection remains valid.

When the objection is raised by any other person claiming ownership or other interest in the land and who makes an affidavit before a notary with competence in land matters, the objection shall have effect for a period of thirty (30) calendar days from the date of the registration of the objection. The objection shall become null and void if the person raising it fails to institute legal proceedings within this 30-day period.

No interest in land on which an objection is registered shall be transferred for any reason prior to the expiration of the 30-day time period, or any subsequent time period set by judicial judgment having acquired the force of res judicata, unless the objection is removed in accordance with this Order.

Article 40: Removal of the objection

Removal of the objection from the Land Register may occur in the following cases:

1. Upon request by the person having raised it;
2. Upon its expiration; or
3. By final court decision that has the force of res judicata.

The Registrar has authority to remove objections from the Land Register. On the date of removal, the Registrar shall notify the person raising the objection and the holder of any interest in the land of the removal in writing.

Section II: Changes to, rectification, and replacement of Certificate of Registration

Article 41: Changes to the Certificate of Registration

The Registrar shall make changes to the Certificate of Registration only in the following circumstances:

1. The change is order by a court;
2. The change is required by law; or
3. On application of the landowner or other interest holder where the change is made to the Land Register in accordance with this Order.

Article 42: Rectification of Land Register

The Registrar may rectify the Land Register only in the following circumstances:

1. Occurrence of issues of formal nature¹⁸ and errors or omissions that do not substantially affect the owner's interests;
2. All interested parties consent to the rectification;
3. The minutes of cadastral officers indicate that the surface area or sketch of registered land is found to be inaccurate or incomplete and the rectification is not likely to adversely affect the neighbors' registered rights, and the registered owner requests that the Registrar prepare a new Certificate of Registration to replace the existing, erroneous Certificate;
4. During the re-demarcation of a parcel or an area of land a dimension or surface area indicated in the Land Register is found to be incorrect;
5. The Registrar concludes in a reasonable exercise of his or her judgment based on the relevant facts that errors were made during the land registration under circumstances that warrant rectification;
6. The Registrar concludes in a reasonable exercise of his or her judgment based on the relevant facts that information on the land registration took place is false under circumstances that warrant rectification; or
7. Upon a court decision.

As part of consideration of any matter potentially leading to rectification under subsections 3 – 6 of this article, the Registrar must give all parties with registered interests in the land, or who may be otherwise affected by rectification, notice of the possibility of rectification and an opportunity to present their positions and any evidence relevant to the determination to the Registrar. Only after interest holders receive such notice and opportunity to be heard shall the Registrar render a decision on the rectification.

Once the Registrar has reached a determination on the rectification, he or she shall provide written notice of the decision to the interest holders and other interested parties of record. The form of the notices and hearing, and all timelines for action under this article shall comply with the rules of administrative procedure generally applicable to governmental administrative procedures or as set out in Instructions issued by the Chief Registrar.

Article 43: Registrar rectification

When the Registrar concludes that rectification is warranted under Article 39 and all procedural requirements have been met, the Registrar shall:

Update the Land Register with the corrected information;
Cancel the erroneous Certificate of Registration; and
Issue a new Certificate of Registration with the corrected information.

Article 44: Determination of invalidity of Certificate of Registration

The Registrar may cancel the certificate of land registration only in the following circumstances:

¹⁸ The phrase, "issues of a formal nature," is unclear. We have made no suggestion for revision because the intent of the phrase is not known.

1. There is a finding by a court or other authoritative tribunal that errors were made in the course of land registration under circumstances that warrant a finding of invalidity.
2. There is a finding by a court or other authoritative tribunal, including an administrative body, that information on the basis of which the land registration took place is false under circumstances that warrant a finding of invalidity.

Article 45: Notice of cancellation of Certificate of Registration and right to review

When the Registrar cancels a Certificate of Registration, he or she shall inform all parties who hold an interest in the land subject to the Certificate of Registration of the cancellation in writing. The notice of cancellation shall advise the parties of the right to seek review of the decision.

The Registrar shall post a decision to cancel a Certificate of Registration for 30 days in a publicly accessible place at the Land Bureau or other designated office in the place where the land is situated.

Article 46: Cancellation of secondary interest and notice of cancellation

Upon presentation of an affidavit or any other document attesting to the expiration or termination of a secondary interest in land, including an encumbrance, the Registrar must cancel the registration of the secondary interest, effective as of the date that the secondary interest was terminated, expired, or was extinguished.

When the Registrar cancels a Certificate of Registration, he or she shall inform all parties who hold an interest in the land subject to the Certificate of Registration of the cancellation in writing. The notice of cancellation shall advise the parties of the right to seek review of the decision.

Article 47: Replacement of lost or destroyed certificates

In case of loss or destruction of a Certificate of Registration, the registered owner or registered holder of other interests in the parcel may apply to the Registrar of Land Titles and Other Interests for a new Certification of Registration. The Registrar shall provide an applicant with a new Certificate of Registration if he/she meets the conditions specified in the Instructions of the Registrar of Land Titles.

The new Certificate of Registration shall conform exactly to the former certificate as it appears in the Land Register.

CHAPTER VII: RIGHT TO REVIEW

Article 48: Right to review

Any person who is aggrieved by or disputes a decision or action of the Registrar or other GOR official operating pursuant to this Order can seek review of the action taken before an administrative body.

The basis for seeking review, the composition of the reviewing body, and the procedures for such review shall be as set by Instructions of the Chief Registrar and in accordance with rules applied in administrative cases.

Article 49: Right to appeal

Any person who is aggrieved by the decision reached by the administrative body in a proceeding brought under Article 46 shall have the right to appeal the decision to the appropriate court.

CHAPTER VIII: PENALTIES

Article 50: Penalty for late registration of land transactions

Any person who fails to comply with the requirement to register any transaction related to or interests in land in accordance with the provisions of Article 24 of this Order, shall be liable to an administrative fine of a hundred Rwanda francs (Rwf 100) for each day of delay. Such administrative fine shall be paid into the treasury of the District of the place where the land is situated.

CHAPTER IX: MISCELLANEOUS, TRANSITIONAL, AND FINAL PROVISIONS

[The content of the following articles is unchanged, although the article number has changed.]

Article 51: Forms

Article 52: Additional regulation

Article 53: Replacing existing certificates of registration with new certificates

Article 54: De-registration of disputes registered during the systematic land registration

Articles 55 and 56: Repealing provision and Commencement