

Intended for

Bugesera Airport Company Limited

Document type

Post-Resettlement Audit Report

Date

29 September 2017

Project Number

UK11-24483

NEW BUGESERA INTERNATIONAL AIRPORT POST-RESETTLEMENT AUDIT REPORT

NEW BUGESERA INTERNATIONAL AIRPORT POST-RESETTLEMENT AUDIT REPORT

Project No. **UK11-24483**
Issue No. **4**
Date **29/09/2017**
Made by **Ron Bisset**
Checked by **Brent Holme**
Approved by **Denise Wright**

Made by: Ron Bisset

Checked by: Brent Holme

Approved by:



This report has been prepared by Ramboll Environ with all reasonable skill, care and diligence, and taking account of the Services and the Terms agreed between Ramboll Environ and the Client. This report is confidential to the Client, and Ramboll Environ accepts no responsibility whatsoever to third parties to whom this report, or any part thereof, is made known, unless formally agreed by Ramboll Environ beforehand. Any such party relies upon the report at their own risk.

Ramboll Environ disclaims any responsibility to the Client and others in respect of any matters outside the agreed scope of the Services.

Version Control Log

Revision	Date	Made by	Checked by	Approved by	Description
4	29/09/2017	RB	BH	DW	Final Post-Resettlement Audit Report

CONTENTS

ACRONYMS AND ABBREVIATIONS	1
1. INTRODUCTION	2
2. APPROACH	3
3. SUMMARY OF EXPROPRIATION IMPLEMENTATION	4
3.1 Draft 2010 RAP	4
3.2 Valuation Report	5
3.3 MININFRA Account of the Expropriation Process	5
4. GAP ANALYSIS	8
4.1 Introduction	8
4.2 Draft 2010 RAP	8
4.3 Valuation Reports	9
4.4 Rwandan 2007 Expropriation Law (Law N° 18/2007)	10
4.5 MININFRA Account of the Expropriation Process	11
5. CONCLUSIONS	13

LIST OF FIGURES

Figure 3.1: Houses in Kingaju Village (also kitchen gardens adjacent to houses).....7

APPENDICES

Appendix 1

List of interviewees/contacted persons and documents reviewed

ACRONYMS AND ABBREVIATIONS

Acronym/Abbreviation	Definition
AoI	Area of Influence
BAC	Bugesera Airport Company Limited
ESIA	Environmental and Social Impact Assessment
ESMP	Environmental and Social Management Plan
Frw	Rwandan Francs
GOR	Government of Rwanda
IFC	International Finance Corporation
IFC PSs	International Finance Corporation's Performance Standards (1-8)
Km (or km)	Kilometres
MININFRA	Ministry of Infrastructure
Mota-Engil	Mota-Engil Engenharia e Construção
PAP	Project-Affected Person
PS	Performance Standard
Ramboll Environ	Ramboll Environ UK Limited
RAP	Resettlement Action Plan
RCAA	Rwanda Civil Aviation Authority
REMA	Rwanda Environment Management Authority
RTDA	Rwanda Transport Development Agency

1. INTRODUCTION

The Bugesera Airport Company Limited (BAC or “the Company”) intends to develop a new international airport within the Bugesera District in the Eastern Province of Rwanda. BAC is a joint venture between Mota-Engil Engenharia e Construção Africa S.A. (Mota-Engil) and the Government of Rwanda (GOR). The Proposed Project will be financed by BAC as well as International Lenders.

In 2010, a Draft Environmental and Social Impact Assessment (ESIA) Report and a Draft Resettlement Action Plan (RAP)¹ were prepared by TPS and GIBB Africa in relation to a previously proposed project for the development of a new international airport on the same site. A RAP was needed to manage the land acquisition and resettlement process with respect to the land, required by the Ministry of Infrastructure (MININFRA), for leasing to BAC for the new airport (an area of approximately 25.5 km²).

The Draft ESIA Report (2010) was prepared in line with Rwandan regulatory requirements, with some consideration of the World Bank’s requirements for infrastructure projects and the International Finance Corporation’s (IFC) Environmental Health and Safety Guidelines for Infrastructure Projects. The Draft RAP was guided by the World Bank (WB) Safeguard Policies with a focus on involuntary resettlement (OP 4.12), the African Development Bank (AfDB) guidelines on involuntary resettlement and the Japan Bank for International Cooperation (JBIC) guidelines. The RAP was submitted to the relevant Rwandan statutory authorities. This project did not, however, proceed as originally envisaged and these two documents were not completed.

This Post-Resettlement Compliance Audit Report presents a summary of the land acquisition and resettlement process that was undertaken for the previously proposed international airport along with a gap analysis of this process against IFC PS5 on Land Acquisition and Involuntary Resettlement (2012 version).

The audit had two main aims. The first aim was to summarise the actions implemented to date to acquire the land to be leased for the airport and to compensate the land owners and users. The second aim was to compare these actions with the requirements of IFC PS5. Essentially, the comparison was against the 2012 version of IFC PS5; however, as the expropriation was based on the *Organic Law No 18/2007 of 19/04/2007 on Expropriation in the Public Interest*, a comparison of this law against the 2006 version of IFC PS5 was also undertaken. In this report, all references to IFC PS5 refer to the 2012 version unless the 2006 version is specified.

¹ Draft Environmental and Social Impact Assessment, 2010 and the Draft Resettlement Action Plan (Volumes 1 and 2), 2010.

2. APPROACH

The approach that was adopted was two-fold:

- Requesting and then undertaking interviews, based on a semi-structured questionnaire, with key governmental personnel involved in the managing and implementing the expropriation procedure (See Appendix 1); and
- Desk-based analysis of reports such as Valuation Reports and Progress Reports prepared during, and at the end, of the expropriation procedure (See Appendix 1).

During one of the interviews, it was stated that the Draft 2010 RAP was not updated nor implemented and that the expropriation procedure followed the existing Rwandan law at the time when the expropriation procedure was initiated (the *Organic Law No 18/2007 of 19/04/2007 on Expropriation in the Public Interest*). Thus, a gap analysis of this law against IFC PS5 (both 2006 and 2012 versions) was also undertaken.

This Draft Post-Resettlement Audit Report is based on the results from all these actions.

3. SUMMARY OF EXPROPRIATION IMPLEMENTATION

3.1 Draft 2010 RAP

As stated above, the Draft 2010 RAP was prepared primarily in accordance with the Rwandan legal framework on use and management of land (*Law No 08/2005 of 14/07/2005 Determining the Use and Management of Land in Rwanda* and *Organic Law No 18/2007 of 19/04/2007 on Expropriation in the Public Interest*) and guided by the WB OP 4,12 on Involuntary Resettlement and AfDB and JBIC guidelines. In addition, it is stated that guidance/requirements of other international organisations (essentially, the African Development Bank and the Japanese International Cooperation Agency) were taken into account. The requirements of OP 4.10 are similar though not identical to those of IFC PS5.

The Draft 2010 RAP focuses only on permanent land take, for the area (approximately 25.5 km²) to be acquired by the GOR, for development of the new airport². Twenty-five (25) villages were identified as being wholly or partially located in this area (from the cells of Ntarama, Kimaranzara and Karera). The planned land take would affect:

- 2,079 Households amounting to 7,444 people (all were physically displaced probably most were economically displaced);
- 402 Households located outside the area, but with land within the area (economically displaced only) – giving a total number of 2,481 affected households. The number of people, affected by economic displacement is not provided, but it may be estimated as being approximately 1,500 (based on the average household size);
- Several business enterprises (to be removed); and
- Communal social infrastructure such as schools, churches, health posts/clinics (to be removed).³

Just over 90% of all the affected Households were considered to be practising subsistence agriculture with the remainder being employed in the public sector (such as teachers and civil servants) and private sector (small shops and other business enterprises including transport provision). During the preparation of the Draft ESIA Report (2010), stakeholder engagement was undertaken with a range of stakeholders including the 25 villages mentioned above; focus groups of 'opinion leaders' at Cell level; group discussions with Sector Officials and opinion leaders in Rilima and Juru Sectors; and 'separate discussions' with women and youths at Sector level. The results of the consultations are presented in a dedicated chapter in the Draft 2010 ESIA Report. In a summary of the 'public' consultation results it is stated that:

"Owing to NBIA being a government project, the people within the project area did not have any other choice but to consent to the project. However, the major concern is the issue of relocation and compensation that needs to be addressed carefully so that the livelihood of the people is not adversely impacted upon."

The detailed presentation of the results of the 'public' consultations, especially those involving villages and focus groups of local people, gives many examples of concern about relocation and compensation including complaints that the 'ban' on any kind of economic development in the proposed airport site area was harmful to the interests of the villagers as they were in a kind of limbo as they were not able to invest/expand their economic activities whilst the same time not being sure as to when they might be relocated and receive compensation. For example:

- *"Property, especially land should be given the right value;*
- *Compensation should be handled carefully and in a transparent manner;*

² Subsequently, this area was leased, in 2017, by the Government of Rwanda to the Bugesera Airport Company.

³ It is not clear from the RAP as to the extent to which these business and community assets would be relocated to new locations.

- *People should be given adequate time to prepare for relocation;*
- *Young men are no longer marrying since they are not allowed to build new houses in the project proposed area.*
- *Deteriorating economic conditions due to the fact that people are not allowed to undertake any long-term investment.”*

The account of the issues/concerns of people from the 25 villages indicates that expropriation was underway by early 2010 (consultations as part of the Draft 2010 RAP preparation occurred in February, 2010) and, by inference, a cut-off date already had been set.

3.2 Valuation Report

In 2013, RCAA, on behalf of the Government of Rwanda, commissioned three companies to undertake asset valuations to calculate compensation amounts for structures, land and crops. These companies, and the cells in which they undertook the asset valuations, are as follows:

- Landmark Limited (2103): Karera Cell;
- Brightlly and URBCON Consultancy: Ntarama Cell; and
- Siruis Ltd: Kimaranzara Cell.

All 25 villages to be expropriated were in these three cells.

Ramboll Environ UK Ltd has acquired the Valuation Reports (both dated 2013) prepared by Landmark Ltd and Siruis Ltd. The scope of work done and timing are similar except for the location of the work (different cells). An account of Landmark Ltd's work is provided below and differences between the two reports are highlighted, as appropriate. The Landmark Ltd asset valuation work covered eight villages of Karera Cell; namely: Akamahoro, Mutarama, Rwankomati, Gatare, Rwavuningoma, Gakurazo, Ruyenzi, and Rwimirama⁴; whereas Siruis Ltd covered six villages in Kimaranzara Cell. These villages, which no longer exist at their (then) sites⁴, occupied an area of 10.97 km² (excluding roads in the Cell); the 'Siruis' villages occupied approximately 500 ha.

Data collection and verification occurred during the period May 2012 to April 2013. The total number of the land owners which were expropriated was 2812. Twenty-six (26) land owners did not sign the necessary documents (reasons are presented in the Landmark Ltd Report). The asset valuation was based on the procedure presented in Organic Law (Bill) N^o. 08/2005 of 14 July 2005. No mention is made of Ministerial Order N^o002/16.01 of 26/04/2010 Determining the Reference Land Price outside Kigali City or to any government approved list of compensation prices for assets such as crops [The Siruis Ltd report makes no reference to any Law or Ministerial Order]. There is no reference to any other law dealing with expropriation and compensation. The asset valuation led to the calculation and then payment of compensation amounts to each land-owner. Appendices 1-8 of the report detail the payments to each land-owner, by village, and, also, record those who signed and did not sign the necessary documents.

3.3 MININFRA Account of the Expropriation Process

Expropriation was initiated by RCAA, in early 2010, and later RCAA was joined by MININFRA, beginning in 2014⁵, with the aim of providing a site for the airport that was free of land occupiers and users.

During an interview with Bugesera Airport Expropriation and Resettlement Project Manager (Frank Kobukyeye of MININFRA), held on Thursday, 10 August 2017, it was revealed that the Draft 2010 RAP was not implemented at any time, nor was it revised/updated. All expropriation work was done in accordance with Rwandan law namely the *Organic Law N^o 18/2007 of 19/04/2007 on*

⁴ They no longer exist as all inhabitants have been physically relocated.

⁷ MININFRA has been preparing a series of Progress Reports regarding these activities and the final Report was due at the end June 2017.

Expropriation in the Public Interest; however, compensation calculations were made according to the procedure enshrined in *Organic Law (Bill) N° .08/2005 of 14/07/2005*.

The Bugesera Airport Expropriation and Resettlement Project Manager has produced several Progress Reports regarding the expropriation process. The most recent Progress Report, viewed by Ramboll Environ, is dated 15 June 2017⁶. In this Progress Report, it is stated that the total number of Households affected is 2078. However, later in the Progress Report it is stated that the number of property owners compensated was 5,972. Also, it is stated that, by 15 June 2017, 99.9% of the compensation payments had been disbursed (12,295,303,327 Frw out of a total of 12,306,956,946 Frw). Disbursements began in 2014. The balance of compensation amounts, to be paid, consisted of 34 case files. Of these 14 were in the payment process and 20 cases were held up due to incomplete documentation provided by the PAPs. There is no mention of livelihood restoration measures such as training in setting up a business and easier access to microcredit facilities being provided to any PAPs.

During the verification process, three property owners filed complaints that their assets had not been valued. The complaints have been passed to Rilima Sector so that Cell and Imidugudu⁷ leaders can verify the authenticity of the claims. The results of this additional verification were expected by the first week of June 2017.

Apart from 62⁸ Households that were relocated to Kingaju Village in Musovu Cell in Juru Sector, all other Households accepted compensation money and relocated themselves, "*....to nearby places*" as, it appears though it is not explicitly stated, that the Households and government considered that their compensation amounts were sufficient for them to buy the land they needed and to build a house. A brief account of the relocated 62 Households is provided with the following information:

- Most of these families were vulnerable, with insufficient compensation amounts to afford them another plot for farming plus a house and garden;
- The Households were allocated ¼ ha plots of farming land, by Bugesera District Administration, in the Rurambi marshland and cultivation has begun. Crops have been harvested from both the plots and kitchen gardens. Also, each Household was given a cow (from 62 cows provided, 1 per Household, 19 of them have produced calves, 2 have died and 14 calves have been aborted); and
- The Household 'living conditions' are described in the Progress Report as being 'average'.

Houses and certain utility services were provided (water, but not electricity). Houses are provided in blocks of two (two houses per dwelling structure) (see Photo 1). There is no mention of security of tenure for the 62 relocated Households.

⁶ A final Progress Report is due to be issued soon after the end of June 2017. As of 08 September 2107, this final report had not been received.

⁷ *Imidugudu* are planned or clustered villages. Encouraging rural residents to live in such government-sponsored villages is a key component of the Rwandan Human Settlement Policy.

⁸ In some documentation/interviews the number is given as 64 Households



Figure 3.1: Houses in Kingaju Village (also kitchen gardens adjacent to houses)

The Bugesera Airport Expropriation and Resettlement Project Manager stated that the requirements of the *Organic Law N° 18/2007 of 19/04/2007 on Expropriation in the Public Interest* were followed strictly: PAPs were notified on the public meetings about the Project and need for expropriation, as well as about forthcoming valuation activities. Then, valuers visited each Household and performed the asset valuation and issued files to each PAP with the results. This document had to be signed by the PAP, a local government representative and a valuer. In case a PAP refused to sign, he/she could commission their own valuer, to provide a second valuation. Then, as necessary, two valuers, from both sides, tried to reach a consensus and agreement could not be reached then the PAP had the right to take the case to a court.

Each PAP was offered two options: to accept compensation for all assets to be lost/damaged or to be relocated in a new location with house and land provided by the State. Almost all PAPs wished to take the money apart from 62 PAP Households that desired relocation.

The PAPs were provided with a period of 120 days to prepare for relocation. Also, the procedure whereby PAPs could challenge valuations as prescribed in the Law was followed.

No follow-up monitoring of PAPs has been undertaken and the current location of the many PAPs who accepted compensation is not known. Finally, there is no mention of the communal and business assets (the latter may be considered together with those only having assets such as land, crops and structures).

4. GAP ANALYSIS

4.1 Introduction

The Proposed Project will be financed by the Project Sponsor, BAC, as well as international financial institutions (Lenders). Due to the potential involvement of Lenders, the Equator Principles III (2013) apply to the Proposed Project. To ensure alignment with the Equator Principles, the Proposed Project is being developed in accordance with the IFC's 2012 set of 8 PSs. A new ESIA Report is being prepared by Ramboll Environ which follows the PS requirements.

IFC PS5 states the following requirement with respect to land acquisition by governments (the case of the airport site area):

"Where land acquisition and resettlement are the responsibility of the government, the client⁹ will collaborate with the responsible government agency, to the extent permitted by the agency, to achieve outcomes that are consistent with this Performance Standard. In addition, where government capacity is limited, the client will play an active role during resettlement planning, implementation, and monitoring, as described below."

As mentioned above, expropriation was initiated by RCAA in early 2010, and later RCAA was joined by MININFRA, beginning in 2014¹⁰, with the aim of providing a site for the airport that was free of land occupiers and users. Therefore, in this context BAC is not able to, *".....collaborate with the responsible government agency, to the extent permitted by the agency, to achieve outcomes that are consistent with this Performance Standard"* since the process was concluded before BAC signed the Concession Agreement with the Government of Rwanda in May 2017.

In such a context, IFC PS5 also states that:

"In the case of acquisition of land rights or access to land through compulsory means or negotiated settlements involving physical displacement, the client will identify and describe government resettlement measures. If these measures do not meet the relevant requirements of this Performance Standard, the client will prepare a Supplemental Resettlement Plan that, together with the documents prepared by the responsible government agency, will address the relevant requirements of this Performance Standard."

With the above in mind, a gap analysis of the land acquisition and resettlement process against IFC PS5 was undertaken and the results are presented below.

4.2 Draft 2010 RAP

The Gap Analysis of the contents of the Draft 2010 RAP against IFC's IFC PS5 revealed the following key gaps:

Scope: It does not include access roads and other infrastructure facilities required to service the airport. Thus, the Draft 2010 RAP only partially deals with expropriation implications of the airport and Associated Facilities¹¹. PS 1 states that environmental and social risks and impacts are to be determined within the context of the Project's Area of Influence (AoI). Involuntary resettlement is one of these risks and impacts and the AoI includes Associated Facilities.

There is also a focus on land and insufficient attention paid to access to other resources (some are mentioned, such as water supply); however, there is no mention of forest/wetland resources and

¹¹ Such as the upgrade of quarry access roads, water supply pipeline during construction, and permanent water and power supply to the airport site.

severance issues (restrictions on movement of PAPs) to their unaffected land/s, social infrastructure, other family members and to markets;

Avoidance and Minimisation Of Involuntary Resettlement: IFC PS5 requires that efforts are made to avoid or minimise involuntary resettlement. The Draft 2010 RAP makes no mention of any such efforts¹²;

Compensation and Benefits for Project-Affected Persons: The Draft 2010 RAP contains an Entitlements Matrix, and it is preceded by a considerable number of recommendations in terms of compensation for different categories of Project-Affected Persons (PAPs).

The RAP acknowledges the need to use replacement value and not market price (the Rwandan legal requirements, applicable in 2010, focused on market price) in terms of calculating most types of compensation. Arising from consultations with PAPs, The RAP states that most PAPs wanted cash compensation instead of compensation 'in-kind' such as land-for-land; however, there is no clear account that states that the 'in-kind' option (considered to be more appropriate for land-based livelihoods than cash by IFC PS5) was offered to the PAPs in a manner that considered the pros and cons of both options in balanced manner;

Stakeholder Engagement: A considerable amount of information is presented on this topic, but not in a systematic way. It is not clear how/when vulnerable people were consulted or when/how the Draft 2010 RAP (or indeed earlier versions) was disclosed. No information is presented on the type of information disclosed about the expropriation process, compensation, and potential livelihood restoration measures. It is also not clear how the consultations affected the Draft 2010 RAP preparation process. The accompanying Grievance Mechanism is inadequate in terms of IFC PS5 and PS 1 requirements;

Physical Relocation: Considerable physical relocation was required. No attention is paid to planning this relocation although the names of four villages are given as being potential sites for relocation (presumably on the basis that most PAPs will obtain cash compensation and then use it to buy alternative land and buy/construct a house in a location chosen by themselves);

Economic Displacement and Livelihood Restoration Measures: There is no account of measures to restore livelihoods (presumably on the basis that most PAPs will obtain cash compensation and then can fend for themselves); and

Institutional Arrangements and Budget: Preliminary information only is provided on a possible institutional set-up to manage the expropriation process. There is no budget provided.

Certain elements of the Draft 2010 RAP were implemented. Stakeholder engagement activities are mentioned above; in addition, a socio-economic survey and an asset inventory were undertaken. No asset valuation work was done as this was expected to be implemented by the appropriate local government entity/ies.

To summarise, the number and nature of the gaps identified and described above means that the Draft 2010 RAP was not compliant with IFC PS5.

4.3 Valuation Reports

As stated above, in 2013 RCAA, on behalf of the Government of Rwanda, commissioned three companies to undertake asset valuations to calculate compensation amounts for structures, land and crops.

The gap analysis of the Landmark Ltd asset valuation procedure against IFC's IFC PS5 revealed the following key gaps:

¹² The 25.5 km² is required for the airport, 'safety' protection zone, and land needed for construction purpose such as spoil areas and borrow pits)

Scope: Although compensation amounts are provided for each of structures, land and crops for each land-owner, by village, no information is provided on how crops were valued. This is not aligned with IFC PS5 requirements. Also, no account is taken of natural resource assets (such as freshwater habitats or 'communal' grazing areas, that may have been contributing to livelihoods), and which would either be lost or be subject to access restrictions. IFC PS5 requires that such assets must be taken into account; and

Compensation Amounts: Both market value and replacement cost were used for calculating compensation amounts for structures, depending upon the existence of a viable market for the specific type of asset, whereas IFC PS5 states that replacement cost only should be used. Also, when replacement cost was used, depreciation was applied to the cost to provide a surrogate for market value. IFC PS5 does not allow depreciation to be applied to the original, calculated replacement cost.

To summarise, the number and nature of the gaps identified and described above means that the compensation process presented in the Landmark and Siruis reports was not compliant with IFC PS5 (it may be reasonably assumed that the compensation process described in the Brightlly and URBCON Consultancy valuation report is also not compliant).

4.4 Rwandan 2007 Expropriation Law (Law N° 18/2007)

As mentioned above RCAA/MININFRA expropriation was undertaken in accordance with this law. This section compares Law N° 18/2007 of 19/04/2007 'Relating to Expropriation in the Public Interest' and IFC PS5.

There are key gaps between this Law and IFC PS5 and they are as follows:

Scope: Law N° 18/2007 focuses on expropriation leading to physical displacement of the expropriated person/s. There are no provisions that deal explicitly with those people who lose a proportion of their assets, but who do not need to relocate. IFC PS5 gives equal weight to both types of displacement with specific requirements being allocated to each type of displacement;

Avoid/Minimise Physical And Economic Displacement: According to IFC PS5, physical and economic displacement should be avoided, and where avoidance is not possible, it should be minimised to the extent feasible. Law N° 18/2007 does not contain this requirement.

Types of Compensation: Apart from Article 23 which states that,

"Through agreement between the person to expropriate and the one to be expropriated, the just compensation may be monetary or an alternative land and a building equivalent to the determination of just monetary compensation",

All other articles are written in a manner that implies that the default position is that compensation will be monetary.

Irrespective of whether compensation is provided as monetary payments or 'in kind', Law N° 18/2007 does not include any provisions for livelihood restoration measures. By contrast, IFC PS5 requires that livelihood restoration measures must be in place to supplement compensation payments – with the aim that the combination of compensation (money or 'in kind' as in the case of replacement land for lost land) will ensure that, at minimum, livelihoods will not be adversely affected and may be enhanced. IFC PS5 states that, in specific situations particularly where livelihoods are land-based, 'in kind' compensation is to be preferred over monetary compensation. Such a situation pertains to most of those displaced by the proposed airport who were subsistence farmers (90% of the population), as shown by the results of the socio-economic survey undertaken for the Draft 2010 RAP;

Compensation and Timing of Displacement: Law N° 18/2007 (article 24 paragraph 3) requires that property must be handed over in a period not exceeding 90 days after compensation has been paid. IFC PS5 requires that displacement must not occur before compensation has been paid and livelihood restoration measures are in place;

Valuation of Compensation Amounts: Law N° 18/2007, and valuation laws, provide for 'just' compensation, which is defined in Law N° 18/2007, as an indemnity equivalent to the value of land and the activities performed thereon given to the expropriated person and calculated in consideration of market prices. IFC PS5 states that compensation should be based on replacement cost (market value of the assets plus transaction costs) and, also, that the application of this method of valuation should not involve the depreciation of structures and assets;

Consultation: IFC PS5 requires that persons to be displaced should be meaningfully consulted and should have opportunity to participate in planning and design of resettlement action plans/livelihood restoration plans. Law N° 18/2007 only stipulates that affected people be fully informed of expropriation issues and contains an 'open-ended' prohibition on opposition to expropriation if it is considered to arise from the specific interests of those opposing expropriation. This prohibition may be a significant disincentive to the expression of views that are contrary to those who wish to expropriate assets and thus are unlikely to be conducive to ensuring meaningful consultations.

There is no provision for a Grievance Mechanism, to manage complaints about the expropriation process, in Law N° 18/2007. IFC PS5 requires include the establishment of a Grievance Mechanism;

Eligibility Determination: Law N° 18/2007 states that compensation is due only to land owners. IFC PS5 applies to a range of land owners and users, including those with no recognizable title to land that they occupy /use; and

Monitoring: Monitoring measures are required by Law N° 18/2007; however, the focus is compliance with procedures, for example, checking that all compensation amounts have been paid by a certain time. IFC PS5 requires both procedural compliance monitoring but also provision of monitoring data to help make a judgement that livelihoods have been restored, improved or have declined.

To summarise, the number and nature of the gaps identified and described above means that Law N° 18/2007 was not compliant with IFC PS5.

The Draft 2010 RAP and the initiation of the expropriation process all occurred before the 2012 version of P 5 became operational. At that time, it was the 2006 version of IFC PS5 that was in force.

Thus, a compliance check of Law N° 18/2007 against the 2006 version of IFC PS5 was undertaken. It was found that the 2007 law was not compliant with the 2006 version of IFC PS5. Essentially, the differences between the two IFC PS5 versions refer, mainly, to topics that were not relevant to the expropriation undertaken for the airport site area. The extent of non-compliance with the 2006 IFC PS5 is slightly less when compared to the IFC PS5 of 2012 because the IFC PS5 of 2012 has a more extensive scope than the 2006 IFC PS5 in certain areas, such as not only covering loss of assets, but also restrictions on access to assets; while at the same time not reducing the 2006 IFC PS5 scope.

4.5 MININFRA Account of the Expropriation Process

Based on information received to date, there appears to have been no effort to monitor PAP outcomes. RCAA and MININFRA databases focus on compensation issues alone: Identity of property owner; name of property owner; and amount of compensation paid). Ramboll Environ has not seen any data on the current location of those who have been relocated; apart for the 62

Households in Kingaju Village where Household 'living conditions' are described as 'average'. It appears that these Households are the only ones to have been resettled by government.

There is however evidence that many PAPs have settled near their previous locations. For example, the MININFRA Progress Report (May, 2017) states that many PAPs have relocated themselves, "*....to nearby places*". Also, recently a Lender staff member visited a village and there met PAPs who had relocated from the airport site area. Finally, it is stated, in a recent Rwandan RAP for an unrelated Project, "*.....that physically displaced people cannot choose where they wish to relocate. They must move to the nearest Imidugudu (grouped settlement), mostly along the roadside*".¹³

Due the lack of information on PAP location post-expropriation, no conclusion could be reached on the extent to which the expropriation results were aligned with the outcome expectations of IFC PS5 (2012). As such a post-resettlement outcomes audit is recommended to complement this post-resettlement compliance audit.

To summarise, the account presented in the Progress Report does not provide any evidence that indicates that the expropriation process was compliant with IFC PS5 (both versions).

¹³ NELSAP (undated) Resettlement Action Plan Summary: Rusumo Hydro Power Plant: Transmission Lines Component: Part A – Annex

5. CONCLUSIONS

The expropriation process undertaken for the airport site area (approximately, 25.5 km²) was implemented in accordance with Law N° 18/2007; however, as this law is not compliant with either the 2006 or 2012 versions of IFC PS5, the expropriation process is not compliant with the key components of IFC PS5. Given this situation, the presumption is that there is a high probability that outcomes of the expropriation process would not be in accordance with IFC PS5 requirements. However, only a focused and systematic study on outcomes will be able to demonstrate whether this is correct.

An outcomes study will face two key challenges:

- Locating PAPs (apart from those living in Kingaju village). There are no easily available and accessible data sources on the location of PAPs after relocation; and
- The only socio-economic baseline data, on the PAPs, is from 2010 with limited data on livelihoods and incomes.

Despite the practical difficulties, a post-resettlement outcomes audit will be undertaken. It will comprise the following tasks:

- Identifying the location of PAPs: both those physically and economically displaced (apart from the 62 Households living in Kingaju Village) and those only economically displaced¹⁴. This will be achieved by undertaking the following actions:
 - Determining the number of PAPs living in the 17 villages known, from the primary data collection work undertaken for the ESIA Report, to contain PAPs. This will be done by interviewing the village leaders;
 - Consulting leaders of other villages not included in the primary data collection work about the presence and number of PAPs; and
 - Consulting the MININFRA archived files.
 - ;
 -
- Identifying representative samples for the three main types of PAP types (physically and economically displaced, but not resettled by government; physically and economically displaced and resettled by government (Kingaju Households); and economically displaced. This may require a sample size of ~100 individuals;
- Devising a structured questionnaire for the PAP interviews to determine socio-economic status and any changes since expropriation;
- Interviewing the PAPs;
- Analysing the results using software such as Statistical Package for the Social Sciences (SPSS);
- Comparison of results with a pre-expropriation baseline. The only social baseline data for the PAPs are those data presented in the Draft 2010 RAP. These are data obtained at least seven years before expropriation was completed. Alternatively, or complementarily, an analysis comparing the PAPs with non-PAPs in in 2017 might provide useful insights into determination of the scope and extent of livelihood changes for PAPs and non-PAPs; and
- Reaching a conclusion on livelihood outcomes/changes in livelihood status.

¹⁴ In an email exchange with Frank Kobukyeye (Bugesera Airport Expropriation and Resettlement Project Manager/MININFRA) he states that, "It's not easy to know exactly the number of people who lived outside expropriated area but owned properties within the area. When necessary, one can tell this through their individual physical files, although at this stage they have been archived"

Following the results of the post-resettlement outcomes audit, a Supplemental Resettlement Plan (SRP) may need to be prepared. If prepared, this SRP would require key implementation decisions to be made on identifying and locating PAPs to be the recipients of the supplemental measures to achieve the PS requirements. This will be a challenge given the likelihood that the location of all PAPs will not be known. It may have to be accepted that any delivery of supplemental measures may be partial in terms of PAP 'coverage'.

To avoid the 'resettlement' situation that has occurred in relation to the airport, expropriation planning for the Expressway needs to begin with the clear intention that it will be planned and implemented according to IFC PS5 requirements. Under Rwandan law the responsible entity for expropriation is RTDA. In terms of IFC PS 5, BAC has an obligation to work with RTDA to ensure that RTDA's expropriation actions meet IFC PS 5 compliance and outcome requirements/objectives.

Ramboll Environ has recommended to BAC that it requests RTDA to prepare an IFCPS 5-compliant RAP or LRP and provide a draft for BAC to review to ensure that it is compliant. If not, then discussions could be held to resolve the outstanding issues and the final version is then prepared and approved by RTDA (following a second review by BAC). RTDA would then proceed to implement the RAP or LRP. At the same time, agreement would be reached, perhaps in the form of a joint supervision plan, on the role of BAC in implementation to enable BAC to ensure that it is meeting its IFC PS5 obligations during expropriation and, also, after expropriation is completed (monitoring and eventual completion audit). Other approaches are feasible. BAC will select the option that enables it to meet its IFC PS5 obligations the most effectively.

APPENDIX 1

LIST OF INTERVIEWEES/CONTACTED PERSONS AND DOCUMENTS REVIEWED

Interviewees or persons contacted to provide information/data and/or report:

- Frank K Kobukyeye: Bugesera Airport Expropriation and Resettlement Project Manager
- Jules Ndenga: MININFRA
- Juru Sector: Representative of Land Section
- Jean Maurice Mutoni: Rwanda Civil Aviation Authority

Documents Reviewed:

- Government of Rwanda (2007) Law N° 18/2007 Of 19/04/2007 Relating to Expropriation in the Public Interest
- IFC (2006) Performance Standard 5 Land Acquisition and Involuntary Resettlement
- IFC (2012) Performance Standard 5 Land Acquisition and Involuntary Resettlement
- Landmark Limited (2013) Valuation Report on Land required for Construction of the New Bugesera International Airport and Related Facilities: Final Verified Report. Kigali: Landmark Limited
- Ndangiza, Madina; Masengo, Fidele; Murekatete, Christine; Knox, Anna (2013) Rwanda: Assessment of the Legal Framework Governing Gender and Property Rights in Rwanda. Kigali, Rwanda: USAID LAND Project.
- NELSAP (undated) Resettlement Action Plan Summary: Rusumo Hydro Power Plant: Transmission Lines Component: Part A – Annex
- MININFRA (2017) Progress Report for the New Bugesera International Airport (NBIA) Project Expropriation Status: 30 May 2017
- MININFRA (2017) Progress Report for the New Bugesera International Airport (NBIA) Project Expropriation Status: 15 June 2017
- Siruis Ltd (2103) Rapport Final sur l'Évaluation des Biens Immobiliers pour le Terrain Réservé à la Construction de l'Aéroport International de Bugesera
- TPS and Gibb Africa (2010) Resettlement Action Plan (RAP): Draft Report