

WOLKITE UNIVERSITY



SCHOOL OF LAW

EXAMING THE IMPLEMENTATION OF LEGAL PRECONDITION
OF EXPROPRIATION UNDER THE ETHIOPIAN LEGAL SYSTEM:
THE CASE OF SNNPR GURAGHE ZONE GUBREYE TOWN

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DECLARATION

I, Dawit Gelgele, hereby declare that this paper is my original work which have not submitted to other institutions and take full responsibility for any failure to observe the conventional rules of citation. The works of others included in this paper are properly cited to my knowledge.

Declared by: Dawit Gelgele

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ACRONYMS AND ABBREVIATIONS

ACHPR	African Charter on Human and Peoples Right
ACHR	American Convention on Human Rights
Art	Article
ECHR	European Convention on Human Rights
FDRE	Federal Democratic Republic of Ethiopia
Mr	Mister
Mrs	Misters
No	Number
UDHR	Universal Declaration of Human Rights

ABSTRACT

This study examines and analysis the expropriation laws and practice in Gubreyeye town. The objective of this research is to analysis and describes the legal procedure and preconditions in the implementation of land expropriation and its impacts on the livelihood of the community in Gubreyeye town. The study is made in line with the laws which provide the basic land right and the nature, details of expropriation and legal procedures and preconditions in the action of expropriation and against the practical activities of expropriation. The basic argument made in this research is that even if the FDRE Constitution and other laws of the legal procedures and preconditions and payment of just compensation in the action of land expropriation, this right has not fully realized in terms of applicability. The reasons either the non-clarity of the laws or the problem of maladministration when they implement by public officials or authority. There are also other reasons which are related to the law or its practical applicability, such as valuation process which reduces the amount of the compensation. Following the implementation and legal precondition of the expropriation and payment of compensation are factors for securing property right and hence sustainable development. To ensure the legal procedure and preconditions in the event of expropriation, a legal procedure is necessary to address and resolve the existing problems. Furthermore to harmonize the laws and practice is important to reduce the problem as to the application of the legal procedure and precondition in today's expropriation procedure in Gubreyeye town.

Keywords: land rights, expropriation, urban, legal procedures and preconditions, compensation.

CHAPTER ONE

INTRODUCTION

1.1 Background of the Study

Expropriation is a compulsory taking of land by the state for public purpose activities and upon advance payment of fair compensation.¹ Expropriation is an inherent power of the state that stems from the very existence of the state, and hence it is argued that the constitutions only give recognition to it instead of authorization².

The mere fact, Land holding is the biggest share in the income generation of a given society. It is the primary source of economic generation whereby the people can afford to obtain food, education and healthcare. Likewise, land has a significant role in the lives of Ethiopian nations, nationalities and peoples. As stated under the FDRE Constitution, land is a common property of the “state and the peoples” and hence, it is not subject to sale, exchange or mortgage.³

Rural farmers and pastoralists are guaranteed a plot of land free of charge while urban residents can secure the same through ground lease arrangements. In urban areas, its dwellers may obtain land on 15-99 years lease arrangements depending on the purpose for which the land is needed and such right may be freely transferable. To secure such rights, the constitution prohibits eviction of holders of the land without just cause and payment of compensation.⁴

The rapid growth of urbanization and modernization of infrastructures in most towns and cities in Ethiopia has been expanding twice their size within the past ten years⁵. As a result, a large area of land is required for private and public investment, for the expansion of urban areas and for construction of roads and other types of infrastructure in all areas of the region. Urbanization and urban growth are considered as a modern way of life manifesting economic growth and development.⁶

¹ Abebaw Abebe Belay, EXPROPRIATION, VALUATION AND PAYMENT OF COMPENSATION; THE LAW AND THE PRACTICE IN ADDIS ABABA CITY, ETHIOPIA, P 24

² Daniel Weldegebriel Ambaye, History of Expropriation in Ethiopian Law published in *Mizan Law Review Volume 7(2013)284*

³ Art 40(3) of FDRE constitution.

⁴ Daniel Weldegebriel Ambaye, *land valuation for expropriation in Ethiopia*; Valuation methods and Adequacy of compensation 7th FIG personal conference, spatial data serving people: land governance and the environment-building the capacity Hanoi, Vietnam, October 2009 p.2

⁵ Ibid

⁶ Ibid, p.3

Thus, presently large tracts of land are being taken by way of expropriation for roads, streets, real estate development and massive infrastructure developments in the region, specifically, in Gubreye town, which shows that the right of urban land and use of property is affected by the action of urban land expropriation.⁷

This research will be used which are the currently enforce documents such as, FDRE Constitution, Civil Code of the Ethiopia, expropriation of land holding, payment of compensation and replacement of displaced people, proclamation No. 1161/2019, payment of compensation for property expropriated for public purpose regulation No.135/2007, and federal land lease proclamation No.721/2005.

Even if the regional government and the city administration implement proclamations, different rules and directives as to the requirement of legal procedures and pre-conditions for urban land expropriation, there are still problems which might affect the project, the land holders and the public partially or as whole.

Hence, in order to avert the possible danger that could arise due to urban land expropriation to the land holding and enjoyment of property right, certain requirements of managing the action of urban land expropriation will be put in place with a manner they cannot inflict harm to the people which are subject to expropriation. The concerned urban land administration will prove whether the action really goes within the fulfillment of the legal procedures and pre-conditions and benefiting the public more than it is benefiting an individual holder, before allowing the transfer of land right from a private landholder to an investor or other.

Expropriation, basically, refers to Expropriation proceedings whereby the competent authorities compel an owner to surrender the ownership of an immovable property required by such authorities for public purposes.⁸ In this definition, the idea of taking of a private land by the state or authorities without the consent of the owner for public purposes is clearly envisage, and the phrase "Expropriation proceeding" is employed here instead of the word "Expropriation" because of a translation error from the original French version.⁹

⁷ Ibid, p.3

⁸Art 1460 of 1960, Civil Code of the Empire of Ethiopia.

⁹ Daniel Weldegebriel Ambaye, *land valuation for expropriation in Ethiopia*; Valuation methods and Adequacy of compensation 7th FIG personal conference, spatial data serving people: land governance and the environment-building the capacity Hanoi, Vietnam, October 2009 p.4

FDRE Constitution also envisages that; without prejudice to the right of private property, the government may expropriate private property for public purposes subject to payment in advance of compensation commensurate to the value of the property.¹⁰

The most authoritative legal dictionary, Black's law dictionary, uses the word expropriation as "eminent domain" and defines as "the power to take private property for public use by the state, municipalities and private persons or corporations authorized to exercise functions of public character."¹¹ so, as we prefer from the above definitions or illustrations, given for expropriation, they try to limit the power of the government in case of expropriation, by imposing some requirements as of 'public purposes' and 'subject to payment or compensation' even if the two requirements is given different names in different countries legislation as to their concept.¹²

In general, effective expropriation management involves structurally organized effort by a given government organ empowered to do so by law. As such, some significant requirements have to be fulfilled with a view to certain the possible impacts of expropriation over the right of land holding and enjoyment of property up on a given society.

Gubreye town, being a town where by a relatively big size of nation and nationality and urban expansion exist, the issue of expropriation management system is a big issue. Owing to the large size of urban expansion and infrastructure, currently, urban land expropriation is becoming a dominant issue in the town, to execute these activities.

Expropriation, in fact, can be taken in the forms of rural land expropriation or urban land expropriation. In connection with this, government organs which are mandated with the power and responsibility of enforcing laws related to expropriation activity in general and the implementation of urban land expropriation management schemes in particular, are expected to manifest the required commitment. Generally, this study is conducted to describe the only mechanism of land acquisition left for the public purpose and private developers is the use of expropriation procedure and concept of compensation and the assessment (the valuation methods) of compensation followed

¹⁰ Art 40(8) of FDRE constitution.

¹¹ BLACK, H. C. 1991. Black's Law Dictionary. 6th ed. St, Paul, Minn.: West Group.

¹² Daniel Weldegebriel Ambaye, *land rights and expropriation in Ethiopia Stockholm* 2013 p.188

in case of expropriation of urban landholder and to assess the adequacy of amount of compensation paid in case of expropriation particularly in Gubreye town.

1.2, Statement of the problem

In Gubreye town, social and economic infrastructures are developing rapidly. The need for suitable property unity formation, the question of housing and other real estate construction for high population pressure, the need to solve development and investment questions and other public interests need the intervention of the government using the power of eminent domain.¹³

Expropriation is an inherent power of the state that stems from the very existence of the state, and hence it is argued that the constitutions do give only recognition to it instead of authorization.¹⁴ But, using urban land expropriation activity, the concerned body is not doing well on the procedures and requirements that have to be fulfilled during the activity. And this brings direct and indirect impact on the communities which are subject to expropriation.

There is also, the lack of lawful or adequate compensation standard for loss of land right, failure to consider the legal procedure and pre-conditions in using of urban land expropriation activity.

Therefore, by considering these issues the researcher will find the hindrance problem of adequate compensation standard to the communities based on the relevant laws of Ethiopia which are currently in force.

1.3, Objective of the Study

1.3.1, General objective

The main objective of this research is, to examine the general applicable laws and the particular, the implementation of the urban land expropriation management schemes regarding to the implementation of legal precondition of expropriation under the Ethiopian legal system and its impacts on the livelihood of the community in Gubreye town.

¹³ Belachew, Yirsaw, Alemu, *expropriation, valuation and compensation in Amhara Regional State* p.4

¹⁴ Supranote 22, P. 7 see also in Land Rights and Expropriation in Ethiopia PhD thesis written by Daniel Woldegerbeal

1.3.2, Specific objectives the Study

Apart from the general objectives enumerated above, this study is designed to address the following specific objectives:

- ❖ To examine how expropriation procedures are implemented when privately held land and attached properties are taken for public purpose.
- ❖ To assesses the fairness of amount of compensation paid in the event of expropriation
- ❖ To explore whether the expropriation procedure are strictly practiced by public officials and courts.

1.4, Research question

- What are the main problems hindering the proportional payment of compensation?
- What are the private property rights and limitations associated by Ethiopian laws?
- What methods are carried out by the state or by the appropriate body to evaluate compensation?

1.5, Scope of the study

This research work focuses only on analyzing the legal precondition of expropriation of private property and its implementation. It further give emphasis on the federal expropriation proclamation and compensation law, FDRE constitution, land lease regulation, federal land and property laws, legislation's and etc. if any.

1.6, Significance of the study

This research work will try to solve most problems related to expropriation, valuation and compensation of individual's properties. Thus, the study is important for a number of reasons. First, this study is important for policymakers and international origination to know the individuals property rights, and the way of compensation at the time of the expropriation. Secondly, the government's agencies, NGOS and private investors require land through expropriation procedure and it will ensure the laws and practice. Thirdly, the study will be important for academics, lawyers and judges. Finally, the findings in this study will be another contribution into existing

stock of knowledge in the areas of expropriation and compensation under the Ethiopian legal system.

1.7, Methodology of the study

1.7.1 Research Design

Doctrinal and non Doctrinal Research Design

The research has been carried out by using both of legal doctrine methodology.

Doctrinal: through analysis of statutory provisions and cases by the application of power of reasoning. It gives emphasis on analysis of legal rules, principles or doctrines of relevant on the expropriation.

Non Doctrinal: gives prominence to relationship of law with people, social values and social institutions.

1.7.2, Data collection techniques

In conducting this research both primary and secondary source of data have been employed. From the primary sources, the researcher collects data directly from the society. The way data collection is by direct interview and observation of the field.

1.7.2.1, Primary source of data

The researcher collected the primary source of data through the following methods.

Interview: The researcher has made an interview with two municipality administrative officials and one judge.

Observations: The researcher has observed the area which is subject to expropriation activity and investigated the problems in this area.

1.7.2.2, Secondary source of data

The researcher gathered secondary sources of data from several legislations and literature reviews, such as journals, articles, websites, other related thesis, property law teaching materials and other references, related with the subject matter.

Documents: The researcher will be use the following documents such as, FDRE Constitution, Civil Code of the Ethiopia, expropriation of land holding, payment of compensation and replacement of displaced people, proclamation No. 1161/2019,

payment of compensation for property expropriated for public purpose regulation No.135/2007, and federal land lease proclamation No.721/2005.

1.8, Methods of data analysis

Depending on the nature of data collected the information was collected (grouped) in qualitative data and compared together. Then the qualitative data will be interpreted in light to validate the constitutional principle guaranteeing of individual of urban landholding with regard to protect the public interest at large.

1.8.1, Organization of the Study

This research paper has been organized into four chapters. The first chapter deals with the general overview of the study (proposal) and consists of, introduction, background of the study, statement of the problem, objective of the study, research questions, and significance of the study, scope, research methodology, and organization of the paper itself. The second chapter has been concerned with literature review and different related materials will be reviewed properly. Chapter three, deals with the main concepts of expropriation under the Ethiopian laws. Such as Expropriation, compensation and valuation of expropriation under the Ethiopia legal system will be critically analyzed. The last chapter had been concerned with conclusion and recommendation. In this chapter, the researcher has displayed his investigation and provides the recommendation for the concerned body.

CHAPTER TWO

LITERATURE REVIEW OF INTERNATIONAL AND OTHER COMPARATIVE LAWS ON EXPROPRIATION

INTRODUCTION

2.1. Definition

Black's Law Dictionary defines eminent domain as "the power to take private property for public use by the state, municipalities, and private persons or corporations authorized to exercise functions of public character."¹⁵ Expropriation is also described as, the power of the sovereign state or agencies delegated by it to compulsorily take land for public use purposes by paying compensation.¹⁶ The overall understanding of expropriation or eminent domain in the above definition is in relation to the power of the government to take private property. In this regard, these definitions are limited in scope, on the fact that it does not take into account the legal procedures and preconditions which are important for the validity of exercising such power.

Some the basic regimes to define expropriation under Ethiopian laws are, the FDRE Constitution, the 1960 civil code, compensation and valuation regulation No. 455/2005, and Expropriation of land holdings for public process, payments of compensation and resettlement of displaced people proclamation No 1161/2019, which most of the federal and regional governments effectively use to expropriate properties.

Under Article 40(8) of the constitution without prejudice to the right to private property, the government may expropriate private property for public purposes subject to payment in advance of compensation commensurate to the value of the property.¹⁷ The Constitution does not say anything as to what constitutes a public purpose. So, we can find the constituent elements of public purpose in the other subordinate legislation of the Federal Government or other regional laws.

¹⁵ BLACK, H. C. 1991. Black's Law Dictionary. 6th ed. St, Paul, Minn.: West Group.

¹⁶ Daniel Weldegebriel Ambaye *land rights and expropriation in Ethiopia Stockholm* 2013 p.188

¹⁷Article 40(8) of the FDRE constitution

Under the Civil Code of Ethiopia, expropriation proceedings are proceedings whereby the competent authorities compel an owner to surrender the ownership of an immovable property required by such authorities for public purposes.¹⁸ In this definition, the idea of the taking of private land by the state or authorities without the consent of the owner for public purpose is clearly envisaged.

Thus, expropriation involves issues concerning land need for public purpose, the right to private property, and tenure security that a balance among these is necessary. Having said this about the definition, we will see about the justification for the implementation of expropriation.

2.2. Justification of Expropriation Power in Ethiopia

The justification for expropriation in today's Ethiopia as the preamble of the expropriation proclamation, envisages that, expropriation is necessary because land is needed for development activities carried out in both urban and rural areas and the demand for land has been increasing from time to time because of the massive construction undertaken by the federal and regional governments both in urban and rural areas, and also been, a steady demand of land for infrastructural development including roads, sewerage systems, electricity, telecommunication, in urban areas and for construction of big dams for electric power and irrigation, horticulture and flower industry, etc. In rural areas, and which also Private investments both in urban and rural areas also require huge hectares of land.¹⁹

Generally, the justifications show that, the developmental activities which benefit the public/society rather than that of the individual plays a great role for the implementation of expropriation. In doing so, this project (which benefits the public at large), takes place through the use of different types of expropriation, which we will see under.

¹⁸Article 1460 of 1960 civil code of the Empire of Ethiopia

¹⁹Expropriation Proclamation No.455/2005 preamble

2.3. Types of Expropriation

Expropriation for adequate compensation can be divided into three categories, the first category is called the Classical type of expropriation and shall comply with the conditions (public use, compensation is paid and fair process is followed), and the just compensation shall be calculated. So, the expropriated person can put himself into the same situation as before.²⁰

The second one is Expropriation by “requisition ” is when adequate compensation cannot be paid in advance and the land is needed for urgent needs, and this Requisition has often been used for defense purposes or a method for a nation to safeguard economic life.²¹

The third type of expropriation is “nationalization” and is often an act of a national political program to strengthen the industry using existing companies or a nationally controlled industry, and the term “nationalization” can have the same juridical characteristics as “socialization” of an industry when they can be connected either to classical expropriation or a requisition.²² Even if this project takes place through different mechanisms, they have to fulfill the pre-requirements/procedures, as much as possible, to protect the rights of the individual (victim) which are recognized under international and national laws.

2.4. International laws on Expropriation

International experiences in expropriation practices vary greatly. Although, most of the government practice contains some form of expropriation, and the different practices adopted have also resulted from the land policy context of each country which is part of their individual historical and political development.²³ Various international laws reflect the concern for protection of property rights and the payment of compensation when people are displaced and/ or expropriated. The right to own property is recognized as a fundamental right of the individual under international law. This right can be found in most constitutions and international conventions.

²⁰ Wortley, 1959 (Id), Johan Faust, HenricHandeland, *Analysis of the Ethiopian expropriation process, in rural areas in the Amhara Region*, P.44

²¹ Ibid, p.45

²² Ibid, p.47

²³ BelachewYirsawAlemu: *Expropriation, Valuation, and Compensation in Ethiopia* Stockholm, Sweden, 2013 p.31

The Universal Declaration of Human Rights Article 17 provides that “everyone has the right to own property alone as well as in association with others” and that no one shall be arbitrarily deprived of his property.²⁴ The American Convention on Human Rights adopted at the Inter-American Specialized conference on Human Rights, San Jose, Costa Rica, 1969 Article 21 Right to Property: “Everyone has the right to the use and enjoyment of his property. The law may subordinate such use and enjoyment to the interest of society. No one shall be deprived of his property except upon payment of just compensation, for reasons of public utility or social interest, and in the cases and according to the forms established by law”.²⁵

The African Charter on Human and Peoples Rights 1986, Article 14 stated that the right to property shall be guaranteed. It may only be encroached upon in the interest of public need or in the general interest of the community and in accordance with the provisions of appropriate laws.²⁶

The European Convention on Human Rights and Fundamental Freedoms, 1950 Article 8, first protocol: “Every natural or legal person is entitled to the peaceful enjoyment of his possessions .No one shall be deprived of his possession except in the public interest and subject to the conditions provided for by law and by the general principles of international law.²⁷ The preceding provisions shall not, however, in any way impair the right of a state to enforce such laws as it deems necessary to the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties”.

As we have seen above, the implementation of expropriation on the right of private property as well as land holding right should be in accordance with international laws and domestic laws which are in line with these international principles. So to implement expropriation projects, domestic laws should fully fulfill some requirements to protect the rights of individuals. Let’s see some domestic laws comparatively with international laws.

²⁴ The Universal Declaration of Human Rights Art17

²⁵ The American Convention on Human Rights adopted at the Inter-American Specialized conference on Human Rights, San Jose, Costa Rica, 1969 Article 21 (FAO,No,10,201)

²⁶ The African Charter on Human and Peoples ‘Rights, 1986, Article 14

²⁷ The European Convention on Human Rights and Fundamental Freedoms, 1950 Article 8, first protocol

2.5, The History of Expropriation in Ethiopian law

It is difficult to trace the historical genesis and application of expropriation in pre-twentieth century of Ethiopian history because either it was intentionally neglected by historians as land was not extensively used for public works or because of a deep-rooted assumption of ownership of land by the king.²⁸ During the 15thc with initiation of Christian morality, the rule was incorporated in fetha nagast (the law of kings). There is a provision inserted in the fetha-negest that was influenced by the biblical story of king Ahab.²⁹ “Do not take wealth of any one by violence, and do not buy from him by force, neither openly nor by trick, in order not to be afflicted by God in this world and in the future.” Even if not directly addressed the expropriation it provided about compensation for expropriation. Also emperor fasilides took the land from farmers and then established the capital city in Gondar.³⁰ Emperor Suseyonas also took land from the church of debre libanos. We find a similar story, in a later age, when emperor Tewdros II (1855-1868) wanted to reform the land tenure and the church itself.

2.6. Expropriation laws in Ethiopia

Ethiopia, to lay a legal foundation of expropriation, they enacted laws and regulations that deal with expropriation valuation and compensation. The Federal Constitution of 1995, Article 40, Expropriation of landholdings for public purposes, and payment of compensation, Proclamation No. 455/2005, and later repealed by Proclamation No.1161/2019. The Rural Land Administration and Land Use Proclamation, No. 456 /2005 and the Council of Ministers regulation No.135/2007 are enacted to justify and undertake expropriation for public purpose.

The major binding document for all other derivative national and regional laws and regulations is the 1995 Constitution of Ethiopia. It has several provisions about expropriation and related issues. Article 44(2) of the same constitution indicates that interventions for public purposes that cause the displacement of people or adversely affect the livelihood of the local population shall give the right to “commensurate” monetary or other means of compensation including relocation (resettlement) with

²⁸ The civil code of the empire of Ethiopia, 1960, proclamation No. 165, Neg. Gazz, year 19, no.2 Art 1460

²⁹ Land acquisition in developing countries: policies and procedures of the public sectors Boston, oelgeschlager, Gunn and Hain, publishers, Inc.

³⁰ During his stay in Ethiopia in the 16th century, the Portuguese priest, Francisco Alvarez, testifies that the power of the king is absolute (Alvarez, F.1970 (originally translated by John Stanely in 1881).

adequate state assistance.³¹ The provisions in the constitution clearly states government's obligation not only to compensate for the works on land created by the labor and capital of land users but also to compensate for the lost land through resettling the affected individuals/communities by the state programs with adequate assistance.

The right to own and dispose of property was given legal recognition in several articles of the civil code of Ethiopia; the government had eminent power to expropriate private property for public purpose. The 1960's Civil Code of Ethiopia Article 1460 reads:

Expropriation proceedings are proceedings whereby the competent authorities compel an owner to surrender the ownership of immovable properties required by such authorities for public purposes.³² The 1960 civil code of Ethiopia introduced the mandatory legal procedures to assure participatory and transparent process of expropriation and compensation.

The Federal expropriation and payment of compensation law, Proclamation No. 455/2005, Article 3 (1) reads: The power to expropriate land holdings means "the power to expropriate rural or urban land holdings by a Woreda or an Urban Administration for public purpose paying compensation in advance where it believes that it should be used for a better development project to be carried out by public entities, private investors, cooperative societies or other organs, or where such expropriation has been decided by the appropriate higher regional or federal government organ for the same purpose".³³

Although the Federal rural land administration law (Proclamation No. 456/2005) mentions expropriation and compensation matters peripherally, its Article 7 sub Article 3, states that "A rural landholder who is evicted for purposes of public use shall be given compensation proportional to the development he has made on the land and the property acquired or shall be given substitute land thereon."³⁴

³¹Article 44(2) of the FDRE constitution

³²Article 1460 of the 1960 civil code of the Empire of the Ethiopia

³³ Article 3 (1) of Federal expropriation and payment of compensation law, Proclamation No. 456/2005

³⁴ Ethiopian rural land administration proclamation, No.456/2005 Art(7)and(3)

The land administration and utilization proclamations of regions, for instance, Amhara, Tigray, Oromia, and SNNPR have been enacted after the advent of Federal proclamation No.455/2005 and, therefore, contain provisions that take account of this Proclamation.³⁵

Laws relating to expropriation for public purpose under the power of eminent domain are generally considered to be distinct bodies of law in their own right rather than being dispersed into other types of legislation even in terms of rural and urban land administration. Furthermore, the basic laws governing expropriation and compensation, a right enshrined in the Federal Constitution, should be governed by Federal and regional laws in such a way that citizens of the country should be treated equally.

2.7, Expropriation Procedures

Expropriation procedure, also known as condemnation, is the process of implementing the taking of private property under the government expropriation power while respecting due process of law through following some procedural steps. In other words, to follow the procedure is in accord with some legal right or requirement of justice, and the process starts when an interested party takes initiative to expropriate land, "Public entities, private investors, cooperative societies or other organs, or where such expropriation has been decided by the appropriate higher regional or federal government organ..." have the right to be initiators to an expropriation process and In order to prevent disorder during the expropriation process, an authority is required to approve and issues expropriation permissions.³⁶

The main procedure to be followed in accordance with Expropriation Proclamation No. 1161/2019 is that expropriation order must be notified to the landholder, Accordingly, where a woreda or an urban administration decides to expropriate a landholding, it must notify the landholder, in writing, indicating the time when the land has to be vacated and the amount of compensation to be paid, and the land holder must get ready to vacate the land on the specified time and will be paid the specified amount of compensation.³⁷

³⁵ BelachewYirsawAlemu: *Expropriation, Valuation, and Compensation in Ethiopia* Stockholm, Sweden, p.81

³⁶ Ibid, p.49

³⁷ Expropriation of land holdings for public purposes, payment of compensation and resettlement of people Proclamation No. 1161/2019

2.7.1, Procedural Steps in general

Where a woreda or an urban administration decides to expropriate a landholding it shall notify the landholder, in writing, indicating the time when the land has to be vacated and the amount of compensation to be paid.³⁸ Expropriation under the proclamation requires the following basic steps. The relevant authority shall make the following inquiries:

Ensuring Eligibilit

Ensuring that the applicant who requests the expropriation is a legally permitted person or organ is the first thing to be made, in other words, this is to say that it must be certain that the applicant is one of the eligible organs. For example, an expropriation request for personal use, such as building one's house on the land, may not be accepted, for individuals other than investors are not mentioned in the law.³⁹

Approving Public Purpose:

The woreda or urban administration or another higher body that decides about expropriation must approve the public purpose aspect of the project, even if the proclamation may not help much in this respect since it is general, But, regions came up with lists of projects considered as public purpose activities, and besides, the land requested should not be related to protected or forbidden areas, such as natural, cultural and historical reserved areas, national parks, and natural forests.⁴⁰

Public Discussion:

Whenever the administration decides on expropriation, the woreda or municipality calls a public meeting to explain the purpose, which is provides an opportunity for people to learn more about the project, to receive answers to their questions about the process and the procedures, to voice their concerns and enables the government to appreciate the concern of the people and to create smooth environment for the project's undertaking.⁴¹

³⁸Ibid

³⁹ Daniel Weldegebriel Ambayeland rights and expropriation in Ethiopia Stockholm 2013 p.173

⁴⁰ Ibid.p.174

⁴¹ Ibid, p.174

The purpose of public discussion should be to try to persuade the public to accept the project and cede its land peacefully for the concerned body, and from good governance and security perspectives as well, it enables the government to hear concerns of the public in abid to give answers and to avoid tensions.⁴²

Otherwise, it cannot be considered as a democratic meeting, wherein the people are supposed to accept or reject the project, even if Expropriation by its nature does not demand the consent of the owner, and demanding consent of owners will be a contradiction in terms.⁴³

Inventory of Assets:

A critical stage in an expropriation process in Ethiopia is one that involves the inventory and counting of assets, which is identification and designation of the land to be expropriated and the counting of assets thereon, and identification refers to locating the land on a map and certifying the owner thereof; whereas designation of the land means measuring and determining the land area necessary for the project, and the assets on the land such as, buildings, plants and other fixtures must also be counted for assessment purpose, besides identifying and designating the land.⁴⁴

Valuation of Properties:

Once data about owners, land, and property on it is collected and refined, it will be given to the valuation committee, and this committee will be designated by the woreda or municipality and members must have some relevant expertise or knowledge.⁴⁵

Notification:

Notice, is one of the procedural requirements explicitly dictated in the proclamation, which reads that, Notice has to be made in writing, indicating the time when the land has to be vacated and the amount of compensation to be paid.⁴⁶

⁴² Ibid, p.175

⁴³ Ibid,p.176

⁴⁴ Ibid, p.176

⁴⁵ Ibid, p.178

⁴⁶ Article 4(1) Expropriation of landholding for public purposes and payment of compensation proclamation no.455/2005

Thus, in theory, notice must contain every information about the amount of land to be taken (all or part), the time frame within which the holder is expected to move, and most importantly, the amount of compensation the implementing agency is ready to pay and all this requirements shows that, notice is something that comes after the valuation of the property and that is why notice differ from public discussion.⁴⁷

According to Article 4 of the expropriation proclamation, the period of notification, the time between the service of notice and clearance of land, should be determined by each region, provided that it is not less than 90 days, and In any case, even though regions may come up with more days to give notice, the holder of land “shall hand over the land...90 days from the date of payment of compensation”.⁴⁸

Payment of Compensation, Appeal and Appropriation of Land:

In Ethiopia, compensation is decided by the land administration body, and If the owner or holder has a grievance on the amount of the compensation, he/she may petition to the Complaint hearing body established within the regional states, Addis Ababa and Dire dawa City. Compensation grievance hearing committee, after investigating the matter may either affirm the amount or order re-evaluation of assets. If the person is dissatisfied with the decision of the Complaint hearing committee, he may Appeal to the Hearing council within 30 days from the date of the decision. If also dissatisfied by decision of hearing council may file appeal to the regional high court and in case of Addis Ababa and Dire Dawa city, to the federal first instance court within 30 (thirty) days of the receipt of the decision in writing.⁴⁹

Resettlement Program:

“Resettlement” means to settle or cause to settle displaced people in a new or different place. Whether or not resettlement program is a mandatory phase in the expropriation process in Ethiopia is not clear, and Government organs that expropriate land do not consider the program as obligatory, since it is not clearly envisaged in the expropriation proclamation apart from one general provision in the Constitution, which in turn makes the program difficult to execute, in the absence of specific and clear state level policy and legislative mechanisms.⁵⁰

The nature and existence of resettlement program in Ethiopia can be inferred from what is envisaged in the FDRE Constitution, Article 44, as follows:

⁴⁷ Ibid. Art 4(2)

⁴⁸ Ibid, Art 4(3)

⁴⁹ Article 19(1) cum art 20(2) proclamation no. 1161/2019

⁵⁰ Belachew Yirsaw Alemu: Expropriation, Valuation and Compensation in Ethiopia Stockholm, Sweden, p.82

All persons who have been displaced or whose livelihoods have been adversely affected as a result of State programs have the right to commensurate monetary or alternative means of compensation, including relocation with adequate State assistance.⁵¹

Now, the question is whether this provision applies during expropriation as well? Does displacement of people as a result of state programs also refer to expropriation? What makes us uncertain about this provision is that all expropriations are not necessarily related to state programs; expropriation may also be made for private programs/investments or In other words, if a certain land is transferred to a private investor, neither the investor nor the government is duty bound to resettle or pay the cost of resettlement for the people, except the usual compensation, of course.⁵²

What seems to us is, though, this principle of rehabilitation applies in selected displacement/expropriation cases, where the government moves people, en masse, from one place for a certain huge program that affects the livelihood of many people, and In such cases, payment of compensation may not be enough for the people are numerous in number and the effect of the damage is too big to ignore, the government, besides payment of compensation, may prepare a program to resettle them and help them to regain their capacity.⁵³

Besides, in some projects which are public in nature and big in size, For example, currently large tracts of land are being expropriated from farmers to build sugar and fertilizer factories, to put dams, and to construct highways and railways, the government conducts both resettlement and rehabilitation programs, Because of the largeness of the number of people displaced from the expropriated area, the government usually prepares some resettlement program provided land is available in the area.⁵⁴

Generally, these steps or requirements try to imply how the power of the authority is limited or that the authority should base his power on some pre-conditions, even if, has the power to take the land or private property without the consent of people(victim) for public purposes. On the next topic, we will try to see these procedures specifically under the civil code and Expropriation of landholdings for

⁵¹ Art 44 of FDRE constitution

⁵² Supra note p.183

⁵³ Ibid.

⁵⁴ Ibid, p.184

public purposes and payment of compensation and resettlement of displaced people proclamation No.1161/2019.

2.7.2 Expropriation Procedures under the Civil Code

The first step in the expropriation procedure under the civil code is to determine as to whether the proposed project serves a public purpose or not as we have seen in the preceding section. The competent authorities that are authorized by law to expropriate private property make the determination or declaration of public purpose, and they may hold, where it appears necessary, a public inquiry as to whether the proposed project serves public purpose.⁵⁵

According to Article 1466, after the declaration of public interest, the competent authority shall determine the land required for the implementation of the project, and personal notice shall be given to the owners, bare owners, usufructuaries of the immovable he intended expropriation, and they are entitled to express their views on the necessity of such expropriation within a reasonable period of time, and Where there is no opposition or the opposition is not accepted, the competent authorities shall make or issue the expropriation order, which shall transfer the ownership and other rights on the immovable, free of any charge or encumbrances, to the competent authority concerned, and this Expropriation orders, issued by the competent authorities, must be served on the owner of the immovable and other persons, if any, whose rights on the immovable are entered in the register of the immovable to be expropriated, i.e., the dominant owners who have servitude rights over the immovable, the usufructuary, the mortgagee, lessee...etc.⁵⁶

The person whose property right is affected by the expropriation shall notify the competent authority the amount of compensation he claims for such rights within a period of one month from the date of service of the order.⁵⁷ However, any interested person, such as a creditor, may object to the amount of compensation fixed below a certain amount or may oppose the payment of compensation in fraud of his rights and This opposition or objection shall be made within the period of one month from the date of service of the order.⁵⁸

⁵⁵ Art 1463 and 1465 of the 1960 civil code of the Empire of Ethiopia.

⁵⁶ Ibid, Art 1466-1468

⁵⁷ Ibid, Art 1470

⁵⁸ Ibid, Art 1471

If the competent authority does not agree with the amount of compensation claimed by the person entitled, the amount to be paid shall be fixed by the Arbitration Appraisal Committee, which shall be constituted according to rules to be enacted.⁵⁹

The committee will have the duty to fix the amounts of compensation but it cannot decide on disputes regarding the right giving rise to compensation. The amount of compensation or the value of replacement land shall be equal to the actual damage, which shall be assessed on the day when it makes the decision.⁶⁰

The committee shall take in to account, in fixing the amount of compensation or the value of the land to be given replacement of the expropriated land, the claim or statement made by interested parties regarding the value of the properties or rights to be expropriated, and the increase of the value of the property as a result of construction of public works in the area. However, the committee shall not take into consideration any improvement or buildings on the land, which are made after the service of the expropriation order and any speculation of, increase in the value of the immovable property resulting from the proposed public work.⁶¹

The competent authority or/and the person who is entitled to payment of compensation may appeal to a court, within a period of three months from date of service of the decision of the committee, against such decision.⁶²

The authority shall take possession of the land only after paying the compensation and In case of appeal by the person entitled to the compensation against the amount fixed by the committee; it shall take possession of the immovable property only after it has paid the fixed amount to the owner.⁶³ The court may not reduce the amount of compensation fixed by the committee. Where the court increases the amount of compensation, the competent authorities shall pay the additional amount.⁶⁴

Where the expropriated person is to be given a replacement land, with or without monetary compensation, the competent authority shall take possession of the land only after it hands over such land to the person. Where the appeal is lodged by the authority, the owner shall remain in possession of the land until the court gives the decision.

⁵⁹ Ibid, Art 1472 and 1473(1)

⁶⁰Ibid, Art 1473-1474

⁶¹ Ibid, Art 1475 and 1476

⁶²Ibid, Art 1477

⁶³Ibid, Art 1478(1)and(2)

⁶⁴Id, Art 1478(3)

If the decision is not given within a period of one year from the date of appeal and compensation is not paid, the expropriation order shall be invalid and the owner is not required to comply with it.⁶⁵

The court may increase the amount of compensation or order payment of additional compensation, in cash in case the owner was given replacement land and such additional payment has to be made within a period of one month from the date of judgment.⁶⁶

2.7.3, Expropriation Procedures under Proclamation No. 1161/2019

Art 6 of the proclamation provides that only a woreda administration, where the land to be expropriated is situated in rural areas, and a city administration, where the land to be expropriated is situated in urban areas, shall have the power to expropriate land. Generally, a land holding may be expropriated only where the project for the implementation of which the land is required serves public purpose.⁶⁷

The woreda or city administration, which decided to expropriate a land holding accordingly, shall notify, in writing, the landholder of the expropriation order. The notice must indicate the time when the holder must vacate the land and the amount of compensation to be paid to him. The period within which the holder must vacate the land may not be less than 30 days. The landholder who has been given notice of the expropriation shall vacate his land within 30 days of the date of payment in cash or in kind compensation or after the cash is deposited in the bank. The expropriating body may use police force to vacate and take possession of the land within 120 (one hundred twenty) days of the payment in cash or in kind compensation or after the cash are deposited in the bank.⁶⁸

⁶⁵ Id, Art 1478(4)

⁶⁶Id, Art 1478-1479

⁶⁷Art 6 of Expropriation of landholdings for public purposes, payment of compensation, and resettlement of displaced people Proclamation No. 1161/2019

⁶⁸Ibid, Art 8

The implementing agency, which may be a federal or state organ or public enterprise, private investor, cooperative or any other organ intending to implement the project must prepare data relating to the land required for its use, its exact location and send to the woreda or city administration at least one year before commencement of the project and obtain the permission to use the land. It shall also pay compensation to the person whose landholding is expropriated.

However, where the land expropriated is under illegal occupation, the occupant shall evacuate without claim for compensation within 30 (thirty) days of notice.⁶⁹

Where utility lines, such as water, sewerage, telephone, electric or gas lines cross over or under the land required for the project, the implementing agency shall request, in writing, the owner of the lines to remove them. The request must indicate the exact location of the lines. The owner of the lines who received the request must determine the cost of removal and reinstallation of the lines and send details of its evaluation to the implementing agency within a period of 30 days. The agency shall pay the compensation within a period of 30 days from the date of receipt of valuation. The owner of the lines shall remove the lines and vacate the land within 60 days of receipt of compensation.⁷⁰

Generally, landholders may file objections on the public purpose decision where their land is expropriated in the absence of the fulfilment of these requirements.⁷¹

⁶⁹Ibid, Art 9

⁷⁰ Ibid, Art 10

⁷¹ Ibid, Art 5(4)

CHAPTER THREE

THE ANALYSIS ON ASSESSMENT OF EXPROPRIATION, COMPENSATION AND VALUATION OF COMPENSATION; THE LAW AND PRACTICE IN GUBREYE TOWN.

3.1, Valuation method of compensation

There are three common valuation methods: the sales comparison approach, the income capitalization approach and the cost approach.⁷² In this part it is better to investigate whether they all can be applied in Ethiopia or not. The valuation method followed in Ethiopia for the purpose of estimating the amount of compensation is the “cost approach”.⁷³ In this approach, value is estimated as what it would cost to replace the structure. Structure or building can be valued by applying either comparable sales approach or income capitalization approach. The sale comparison is the main method for determining the value of family homes. However, if the structures primarily stand for investment or income producing purposes, then, the income approach is used. But, if market data is insufficient and property does not generate income, the preferred valuation method for structures is usually the replacement cost method. However, in Ethiopia the laws clearly stipulate that regardless of the type of property expropriated, the amount of compensation shall be determined only on the basis of replacement cost of the property. This implies that unlike appraisers elsewhere, who are at liberty to follow one or more valuation methods, in Ethiopia, the replacement cost approach is the only method to be adhered to.⁷⁴ Comparative sales approach or income capitalization are unknown by property appraisers in Ethiopia. This may be ascribed to the fact that, property valuation process for compensation purposes only requires estimation of costs of the structure of the building. Estimating the value of the land or site is not needed. Land is common property of the state and public and has no value to the holder.⁷⁵

⁷² Supra note at 52

⁷³ Expropriation of landholdings for public purposes, payments of compensation and resettlement of displaced people, proclamation No.1161/2019 Art 12(2).

⁷⁴ Ibid

⁷⁵ FDRE constitution Art 40(3)

In Ethiopia, the value of property cannot be estimated by looking at how much the market prices are similar or comparable with actual property values. This is due to, Absence of modern real property registration and non-transparency of the real property market system, and absence of systematically organized data makes the work difficult for the appraisers in general and in Gubreye town in particular.

3.2, The procedure of valuation of compensation

In the law of expropriation, after the right of compensation is recognized as a constitutional right, the method of fixing the amount of compensation, the time and the mode of payment are the next crucial issues to be addressed. In other words, mere recognition of the right to compensation cannot bear fruits unless it is effectively applied by practice. Accordingly, the law is expected to lay down the mechanisms and methods that facilitate the enforcement of constitutional right to compensation when it recognizes the expropriation of private property.

Under the FDRE constitution of 1995, Expropriation of landholdings for public purposes, payment of compensation and resettlement of displaced people proclamation No.1161/2019 and regulation No.135/2007, both the federal and regional governments have the right to expropriate property which is owned by individual person.

Expropriation of landholdings for public purposes, payment of compensation and resettlement of displaced people proclamation No. 1161/2019, article 8, provides that, government agent such as a woreda or an urban administration decides to expropriate a land holding for public purpose, it should notify the land holder in writing indicating the time when the land has to be vacated and the amount of compensation to be paid. The period of notification should not by any means be less than thirty (30) days.⁷⁶

Any “landholder who has been served with an expropriation order” should hand over the land to the woreda or urban administration within (30) days from the date of payment of compensation. According to this provision, if there is no crop, perennial-crop or other on the expropriated land, the landholder should hand over the land to the woreda or urban administration within 30 days from the date of receipt of the expropriation order.⁷⁷

⁷⁶ Expropriation Of landholdings for public purposes, payments of compensation and resettlement of displaced people proclamation No.1161/2019. Art 8(1) (e).

⁷⁷ Ibid Art 8(7)

Where a land holder who has been served with an expropriation order refuses to hand over the land within the period specified, the woreda or urban administration may use police force to take over the land.⁷⁸ Despite that the Expropriation Proclamation No. 1161/2019 and regulation No. 135/2007, stated clearly the procedure of expropriation and compensation. But the practice undertaken on the ground is extremely different from the rules.

Expropriation procedures under urban land lease proclamation No.721/2011, “the appropriated body shall have the power, where it is in the public interest, to clear and take over urban land upon payment of commensurate compensation, in advance, for properties to be removed from the land.”⁷⁹ From this provision, we can understand two most important points that private property may be taken for public purpose activities and urban payment of commensurate amounts of compensation. Urban centers may take urban land and any property there on, if the land is needed for public purpose activities.

During such takings, the government is required to pay compensation commensurate to the loss of property on that land. This includes the replacement cost of buildings of any sort on the land and the market value of any other fixtures such as trees and fruits.

The valuation and assessment of such properties shall be made based on the expropriation proclamation 1161/2019 and regulation 135/2007. The first procedure in the process of expropriation is giving notice to the holder of the land. According to article 27(1) of the urban land lease proclamation, the possessor of the land shall be served with a written clearing order stating the time the land has to be vacated, the amount of compensation to be paid and the size and locality of the substitute plot of land to be availed.⁸⁰ And this notice should be served upon the possessor of the land in not less than (90) ninety days before the appropriation of the land by the city administration.

Any person who believes that his interest is infringed as a result of the notice has the right to submit a grievance within (30) days to the appropriate body. This person may be the owner of the property who has grievances on the amount of compensation or another third party who may claim ownership of land. The appropriate body (most probably the administrative body itself) may give its decisions after considering the

⁷⁸ Ibid Art 8(9)

⁷⁹ Federal land lease proclamation No.721/2011,Art 12

⁸⁰ Ibid Art 27(1)

application and evidence.⁸¹ The proclamation further provides an opportunity for aggrieved person to make an appeal if he was not satisfied by the decision of the appropriate body. The appeal would be made to an appellate tribunal which shall “be established by government or city administrations”. Thus, this body is outside the hierarchy of regular courts and is rather affiliated to the administration. Since its accountability is to the region or urban center, as per Art 20 of proclamation No 1161/2019.⁸²

3.3, Modes of Assessment of compensation

The valuation process whereby compensation was fixed according to law is generally the most difficult problem, because, there is no independent and developed valuation system, as well as professionals in the field of land valuation in Ethiopia. The federal land holding expropriation proclamation provides that, the valuation of property situated in land to be expropriated shall be carried out by certified private or public institutions or individual consultants on the basis of valuation formula adopted at the national level.⁸³ Provisionally, the ministry of federal affairs has been authorized to develop the capacity of the valuation committee, in collaboration with appropriate federal and regional government organs, until valuation experts and a nationally adopted uniform formula for valuation of property come into existence in the country. Thus, the valuation should be carried out by committees composed of different experts who have the relevant qualifications, in accordance with law. The FDRE constitution, and federal expropriation proclamation No. 1161/2019 allows regional governments to issue laws and regulations to administer land in accordance with federal laws.⁸⁴ The urban administration and municipality is given the power to designate members of a committee to evaluate the property.

⁸¹ Expropriation Of landholdings for public purposes, payments of compensation and resettlement of displaced people proclamation No.1161/2019. Art 19.

⁸² Ibid Art 20

⁸³ Ibid Art 17

⁸⁴ Art 52(2) (d) of FDRE constitution.

3.4, Bases of compensation for urban land holding

Compensation is paid to those property rights affected by expropriation and those qualified for compensation. Article 12(5) of federal expropriation proclamation No.1161/2019 provides, the compensable interests of an individual such as, property situated on the land, loss of land, expenses and costs relocation of property and lost income, in case of temporary loss of land.⁸⁵

To further elaborate these interests, it is better to divide them into two groups: Loss of private property and relocation of properties incurred for transportation and erection.

Article 12(1) of the expropriation proclamation, No, 1161/2019 provides, a land holder whose holding has been expropriated shall be entitled to payment of compensation for his property situated on the land and for permanent improvements he made to such land.⁸⁶ While property situated on the land refers to building, structure or plants of any kind that have value, improvements to the land refers to any work made on the land that increases the value, productivity, or fertility of the land. In urban areas, properties situated on the land include buildings (commercial, industrial and residential), fence, utility lines, religious buildings, burial structures, tree plants, and other structures improvement on land refers facilities (water, sewerage, streets, and etc) and areas of beautification may be considered as improvements to the land in the urban areas.

3.5, Determination of compensation in urban area

The determination of compensation in Gubreye town is implemented in light of the FDRE constitution, Expropriation of landholdings for public purposes, payment of compensation and resettlement of displaced people proclamation No 1161/2019 and regulation No 135/2007. Those kinds of properties found in urban areas are buildings, utilities, and plants (trees, permanent plants, crops and grass). Generally, we can say that the amount of compensation for property situated on the land should be determined on the basis of replacement of costs. However, for those unique properties which cannot be replaced, such as trees, crops and grass, the valuation regulation provides one time market value prices.⁸⁷

⁸⁵ Expropriation of land holdings for public purposes, payments of compensation and Resettlement of displaced people proclamation No.1161/2019. Art 12(5).

⁸⁶ Ibid Art12(1)

⁸⁷ Ibid Art 12(6)

On the other hand, Compensations for permanent improvement to the land are calculated based on the amount of capital and cost for labor expended.⁸⁸ Therefore, an urban resident who loses his house because of expropriation at least she/he should get the following types of compensation: cost of construction, compensation for improvements to the land, compensation for plants, replacement of land, one year's house rent and cost of relocation.

3.6, Cost of construction, improvements and relocation

The federal compensation regulation No.135/2007, under article 3 states that, the compensation for buildings shall be determined on the bases of the current cost per square méter or unit for constructing comparable buildings. In estimating the amount of compensation of buildings, appraisers should consider the building or house itself, floor tiles of the compound. Besides, the appraisers are required to estimate cost for demolishing, lifting, reconstructing, installing and connecting utility lines of the building.⁸⁹

Relocation compensation refers to the cost of demolition, transferring and installing the property from the expropriated land to another replacement land. Article13 (5) of regulation No. 135/2007 provides that the cost of demolition, transferring and installing compensation shall be paid.⁹⁰

Based up on this legal provisions, the government and the investor should be obliged for the costs of demolition, transferring, and installing the property from the expropriated land to another replacement land.

3.7, Compensation for plants

In considering the compensation for plants grown on the land, the law recognizes the following as compensable types of plants, annual crops, trees and grass. Compensation for annual crops grown on expropriated land is assessed based on the amount of current market price of the crop which would have been collected from the land. Unlike annual crops, perennial crops are crops that give fruit once or twice a year for many years such as mango, Avocado, chat and the like.

⁸⁸ Ibid Art 12(4)

⁸⁹ Federal compensation regulation No. 135/2007 Art 3

⁹⁰ Ibid Art 3(5)

The determination of value for these fruits was stipulated under article 6, of the regulation.⁹¹ Compensation for plants in cases was assessed based on “type and level of growth of the tree and the current local price per square métier or per unit” but if the owner chooses, an alternative is given for the owner to cut and collect the woods in lieu of compensation. The other compensable plant is grass. Grass is used as forage for animals and for construction of houses. The value of grass is assessed based on the market value of grass collected from a given land. The same law allows owners to collect the grass in lieu of receiving compensation.

3.8, Compensation and valuation problems

There are some points in the proclamation and regulation that are not properly treated. But the main problems that prevailed in Gubreye town are the inadequate implementation of the rules and regulation on the ground. Since the valuation committee members are assigned by government organs and they are not professionals, the value they assigned to the expropriated property is low.

The valuation committee was appointed by urban administration which is not qualified enough for the task of assessment. In other words, in countries like Ethiopia where the property market is thin and inactive, and where there are no independent professional property values, valuation using the fair market value standard is unthinkable. The valuation of land and its attached properties for compensation purpose have been undertaken by a committee whose members are assigned by the local woreda and urban administration, which is political organ.

The expropriated have not given any opportunity to participate either in the process of expropriation or in the valuation of land in practice and attached property to be compensated fairly. There was also problem which affect the assessment of fair amount of compensation which does not consider the value location for expropriated property, income produced by the property is not considered during valuation and partial taking is not compensated.

As I interviewed administrator of Gubreye town municipality head officer mr, misma jema, told me that the compensation paid to the displaced people was not adequate enough to construct the new house most of the affected people do not know properly

⁹¹ Ibid Art 6.

the expropriation rules and laws because authority was not informed about the procedure of expropriation and the method of valuation.

Different compensation rate by federal and regional valorous, lack of follow-up and co-ordination, In allocation of compensated amount of money due to lack of advice and training home to allocate the money.

3.9, Interview Party

Q1. Is there effective implementation of legal procedures and preconditions in the action of expropriation?

Then, the researcher, unfortunately made Interview with Mr. Yimran Emam, Land Development and Administration work process coordinator at Gubreye Municipal Service, he responded that, sometimes this problems are arise in the action of expropriation because of different reasons, (like corruption, lack of expertise, maladministration etc.). But, they respond that the problem is not said by the victims. Means, the problem is not considerable this much even if there is a problem.⁹²

Q2. What is the impact of expropriation on the enjoyment of land holding rights?

While the Researcher made an interview with mr Yimran Emam, he replied that expropriation somehow affects the enjoyment of land holding rights. Although, expropriation is only for the public purpose, therefore, it affects the individual right to enjoy on the land, as it is made without the consent of the victims, which in turn creates uncertainty on the individual to enjoy his right freely. Besides, the lack of considering the pre-requirements in the process of expropriation, affects the individual right to enjoy on the land which is constitutionally guaranteed.⁹³

Q3. What are the follow up methods up on the expropriated lands whether they are used for needed purposes or not?

The interview with Mr. Misma Jemal, Manager of Municipal Service, replied that, there are some problems on the side of investors, that sometimes they don't use the land for the needed purposes. But, the municipal Service has its own follow up methods to know whether they used the land for the needed purposes or not. This follow up method is prepared manually and consists of name of the land owner or investor, identification number of the place, granted date of the land, the rank or

⁹² Interview made with Mr. Yimran Emam, Land Development and Administrative Work Process Coordinator January 18/ 2015 E.C, at 4:00AM local time.

⁹³ Ibid

degree of infrastructure build on the land, size of the land, name of the project and the place where the land or project found.

So, from the interview made and the observation made at the place where some of this projects found, there is somehow dalliance to finish the projects within the specified period of time and using of the land for other purposes rather than for the public, but, there are follow up methods from the side of municipal, even if they are not effective as wanted.⁹⁴

Q4. What are the challenges while applying urban expropriation by the municipalities?

When expropriation takes place, there might be different problems which arise from the side of the victims or the concerned body itself which are a tackle to the action or which enables the action not to take place accordingly. As stated on the table by the victims, unjust compensation are the general problems that hinder expropriation not to make effectively. Apart from this, the researcher made an interview with Mr. Misma Jemal Manager of Municipal Service; he replied that, there are challenges while applying expropriation from the side of the victims, administrative officials and the law itself.

As stated by Mr. Misma from the side of victims, even if they get compensation and substituted land, they sell the substitute land and later they become homeless. Contrary to this, from the side of officials, because of the load of work, they fail to work effectively, to perform the activities in accordance with law; it also lacks clarity, especially regarding the compensation system.

Q5. How is the compensation system supported by legal expertise?

The researcher made an interview with Mr. Misma, and he responded that there is not much problem, as dictated by the victim because, the compensation mechanism is supported by legal expertise and has its own process. That is, when land is taken from the farmers and they have a house, compensation would be payable for the house and they would be given a substitute land. But, if the farmer has no house and only crops, by multiplying the income of the agricultural product of one year by ten, compensation would be given.⁹⁵

⁹⁴ Interview made with Misma Jemal, Manager of Municipal Service January 18/2015 E.C at 4:30 AM local time.

⁹⁵ Ibid

Q6. What are the remedies used by municipalities to resolve the problem?

The researcher made interview with Mr. Misma, and he response that, some problems has been happened in the action of expropriation, then, remedies has been taken by municipalities like, building of cost minimized houses, leasing houses for victims and etc. The municipal have to work with victims cooperatively, implement continuous follow up methods after the expropriation takes place and by considering or taking into account the current situation and the future fate of the victims, the municipal have to take remedies or solutions to resolve the problem sustainably.⁹⁶

Q7. How courts effectively entertain problems regarding urban land expropriation?

With regarding the problem of expropriation, more specifically regarding compensation, court is one concerned body which victims bring their petition. So, the researcher made interview with Ms. Birkenesh Wolde, Judges at Wolkite town First instance court, responded that petitions regarding the problem of expropriation are not appealed as much as other issues. But, sometimes, they appear, specifically on the proportionality of compensation. The judge raise that, the law by itself is not clear as to payment of compensation and when the experts made calculation or analysis; they take depreciation into consideration, which is mostly the reason to the dispute and affects the victims. So, most of the time the court uses discretionary power and entertains the case without consideration of depreciation, which somehow closes the gap on proportionality of the compensation and as much as possible the court tries to give a solution within reasonable time.⁹⁷

⁹⁶ Interview made with Misma Jemal, Manager of Municipal January18/ 2015 E.C, at 4:00AM local time

⁹⁷ Interview made with Ms. Birkenesh wolde, Judges at wolkite town first instance court, January 8/2015 E.C, at 8:40AM local time.

CHAPTER FOUR

CONCLUSION AND RECOMMENDATION

4.1, Conclusion

Land is lifeblood of the peoples in agrarian countries like Ethiopia. Currently, in Ethiopia land is owned by the state, and private ownership is prohibited by the FDRE Constitution and other subsidiary laws. The urban land holder are also given a 99 years use rights over their holdings and they would not be dispossessed from the same except in cases of expiry of this period, or expropriation for genuine of achieving public interests subject to the payment of the compensation.

Both the Federal and the SNNP regional state Constitution explicitly provided that, the amount of compensation must be “commensurate” to the values of the private property in our country.

The FDRE Constitution provide that, the amount of compensation to be paid for the expropriation of private property situated on the land and permanent improvement made to the land is owned by the state. Then, the individuals have only use right on the land. This does not entails that landholder has no claim or right over such land. During expropriation, the majority of the respondents have no knowledge about the law which permits expropriation. Lack of this knowledge about the law affected the victims. They may not aware of weather the legal procedures and preconditions are fulfilled when the action takes place on the land or property.

Generally, the action of expropriation adversely affects the community which expropriation take place on their land or property through different ways. Expropriation was employed for the public purpose, it affects the individual right to enjoy his right freely. Therefore, to eliminate this problems, there are some activities taken by the municipality to give remedies for this problems such as, building of houses, leasing houses for the victims, and etc.

4.2, Recommendation

- Before the implementation of expropriation process the affected people should be informed about the rules and the regulation of the expropriation and the compensation. if they need to claim about the process they have to be supported in advising and appealing process.

- The government out to be reforms the existing laws to take in to account the value of relocation and income that could be produced by property expropriated.
- The roles of valuation committee either woreda or an urban administration committee must be clearly understand to the society. Because, it is important that the committees should be carried out the given responsibilities in order to avoid confusion and to establish accountability.
- The scope of public purpose is unknown. Since the power of expropriation given to the state is a broader one. This creates insecurity on all urban and rural landholders. Therefore, the only effective means to delimit the state expropriation power is through legislative revision and inclusion of limiting factors.
- Generally, this study gives more awareness to property owners who are affected by miss implementation of appropriate laws and regulations by government organs.

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