

ADDIS ABABA UNIVERSITY



COLLEGE OF LAW AND GOVERNANCE STUDIES

**ANALYSIS OF LEGAL AND INSTITUTIONAL FRAMEWORK FOR
EXPROPRIATION OF FARMLANDS AND PROPERTIES: A CASE
STUDY OF PER-URBAN AREAS OF MEKELLE CITY**

By

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(LL.M) in Business Law

DECLARATION

I, Kiros Haileselasie, hereby declare that this research paper represents my own original work and has not been presented or submitted before any institution. Further, I have duly acknowledged all sources used and have cited these in the reference.

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Abstract

Peri urban areas are places which are exposed to massive degree of development-induced expropriations. Urban expansion, construction of infrastructure and private investment constitute the main causes of land acquisition in those areas. In undertaking expropriation, mandatory requirements of modern day acquisition mainly public purpose and compensation are not adhered into by the state.

In Mekelle peri urban areas, large tracts of agricultural lands are taken away from local farmers and transferred to private developers which bring no benefit to the public in violation element of public purpose. The maximalist approach in interpreting public purpose contravenes the underlying land policy of public ownership.

With regards to the lands incorporated into urban areas through master plans, issues of compensation for residential properties paid to local population in forms of cash and substitute land suffer from discriminatory legislations and administrative practices. Such laws and practices undermine the constitutionally guaranteed right to property and rights emanating thereof mainly right to get commensurate compensation during expropriation.

Key words; Public purpose, Compensation

Chapter One

1. 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 authorization.² Expropriation assumes different names in different countries such as, compulsory purchase in the United Kingdom (UK), expropriation in Continental Europe and eminent domain in the United States (US). Ethiopia, predominantly follows the Civil Law legal system, and uses the word: expropriation. In this article, the term expropriation is employed with due regard to the possibility of using the other two terminologies as well whenever necessary.³ States take the land of private individuals with a view to putting it into socially useful utilities or centers such as public schools, highways airports and clinics. When individuals are dispossessed of their landholdings elements of expropriation are understandable that individuals who have their property expropriated must be awarded with adequate amount of compensation which covers the cost of the property or replacement cost or both as the case maybe. On the other hand, procedural elements of expropriation represent the due processes which are required to be adhered to while undertaking expropriation such as prior notice, acting within the prescribed period of time after serving of notice etc.

If properly formulated and implemented, the requirements of public purpose, of compensability and of procedural recourses would have the effect of disciplining government authorities since such procedures would force the state to carefully re-examine its projects, thereby serving as a

¹Abebaw 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 id

buffer zone for property holders and preventing overtaking without necessarily handcuffing such authorities.⁴

Although land is owned by the state and the Ethiopian people, rural farmers as well as urban residents are given the rights to use, lease/rent, or inherit the land and properties attached to it which are in their holding. Moreover, the Constitution guarantees their holding rights in that no land may be taken by way of expropriation without advance payment of “commensurate” amount of compensation.⁵ It is argued that commensurate means equal or just compensation. But, because of the backward type of valuation system, cost replacement method, compensation being paid is not adequate and this creates insecurity on their land holdings.⁶

Problems such as inadequacy of compensation, poor valuation and narrowness of the compensable interests covered by the Expropriation of Property for Public Purpose and Compensation Proclamation and other procedural problems faced by persons affected by expropriation have been discovered by several legal scholars. Many researchers supported the visible inadequacy of compensation by empirical findings. However, the proclamation is not the only culprit for those all problems associated with expropriation. The landholding system enshrined in the constitution which disallows private ownership over land has its own contribution by giving an impression that landholders who lack ownership right cannot claim compensation equivalent to its price as their right is confined only to use rights. In fact, it also submitted that even the use right over land is excluded from the purview of compensable interests during expropriation. This is because the Constitution seems to narrow down the scope of compensable property interests by adopting the labor theory. This means that individuals are entitled to have private property in property on land that is linked to their labor or capital or enterprise. The position reflected in the Constitution appears to be allowing compensation to the extent of labor or capital value added to lawfully possessed land that has been expropriated but not for the economic value of use rights over the land.⁷

⁴ Muradu Abdo, Reforming Ethiopia’s Expropriation Law, *Mizan Law Review* Vol.9 No 2 (2015)304

⁵, Daniel Weldegebriel AMBAYE, *Land Valuation for Expropriation in Ethiopia: Valuation Methods and Adequacy of Compensation*, (2009), p 12

⁶ id

⁷ Daniel Supranote 5 p 311

The drawbacks related to compensation are relevant to both urban and rural tenures systems followed in Ethiopia. The areas which exhibit worse problems, however, are peri-urban areas. This is true because of the breakneck rate of urbanization in Ethiopia as in other developing countries; the rising demand for urban land therefore tends to be met primarily by converting peri-urban agricultural land at the periphery of existing built-up areas. In order to facilitate this and satisfy the diverse interests existing in these areas, the only means that the state resorts to is expropriation. Therefore, peri-urban areas are the centers where massive expropriations for urbanization purposes are undertaken. As one of the areas where fast rate of urbanization and intensive expropriation is undertaken, Mekelle City which happens to be the Capital of National Regional State of Tigray, plethora of land right problems linked with expropriation are raised.

As of the time when this proposal was prepared, a draft proclamation which provides expropriation of landholding for public purpose and payment of compensation that repeals the existing proclamation No 455/2005 is anticipated to be put into effect in recent future. The significance of the new expropriation law and the reforms it has introduced is going to be explored in this research.

1.2. Statement of Problem

As indicated above, the rapid urbanization witnessed in Ethiopia is taking place by substantial expropriation of peri-urban farmlands which affect individuals who are engaged in agricultural activities to support their livelihood. Peri-urban areas, where there is a rising demand for land for non-agricultural or urban land uses, are at the receiving end of urbanization and thus form tenure hotspots.⁸ It is increasingly evident that peri-urban areas are becoming places where a lot of changes and activities occur due to rapid urbanization and population growth.⁹

Due to the bifurcated land tenure as rural and urban land tenure in Ethiopia, the peasants in peri-urban areas engaged in agricultural activities are affected by tenure insecurity caused by intensive expropriations undertaken for urbanization purposes. The FDRE constitution states that ownership of both urban and rural land vests in the nations, nationalities and peoples and the state.¹⁰ As a result, it further states that land and natural resources are not subject to sale and

⁸ Achamyelch Gashu Adam, Peri-urban Land Tenure in Ethiopia, (2014) 1

⁹ id

¹⁰ The FDRE Constitution, Article 40(3)

exchange. Individuals having landholding rights therefore cannot sell their farmland to others who want to use the same for urban residential, commercial or other purposes. Therefore, the termination of usufruct/holding rights exercised by local peri-urban communities through expropriation decisions and later reallocation of the expropriated land to the urbanities is the most important constituent of urbanization and urban development processes in Ethiopia.¹¹ Here the state plays a role of agent in the transfer of farmlands into urban use in accordance with master plans. This is done through the mechanism of expropriation which raises queries as to its congruence with the element of public purpose as most of the lands are given to private investors.

As one of the fastest growing urban centers in Ethiopia, farmers in Mekelle City peri urban areas are centerpiece of land related outcries emanating from the systemic failures in undertaking expropriation. The requirement of public purpose is abused in a way that allows illegal seizure of farmers' lands thereby transferring to hands of private commercial purposes. The prohibition imposed on landholders not to improve their land possessions in anticipation of expropriation is abused by administrative authorities in a manner which undermines property right of farmers. This problem is more or less peculiar to peri urban farmlands as the risk of eviction owing to contiguity to urban areas leave farmers at constant tenure insecurity. Apart from problems stemming from lack proper implementation of laws and adherence to substantive and procedural principles, the fact that those areas are treated in a way other remote rural farmlands are administrated raises queries as to its justness which needs systemic scrutiny.

As of the time when this proposal was prepared, a new proclamation which provides expropriation of landholding for public purpose and payment of compensation that repeals the existing proclamation No 455/2005 has been put into effect. The significance of the new law in as far as land administration in peri-urban areas is going to be explored in this research.

1.3. Research Objectives

The objective of this research is to contribute to the existing stock of practical knowledge regarding the notion of expropriation by examining the laws governing land tenure from different perspectives. Particularly, the fact that peri-urban areas are intermediate places between urban centers and rural areas dominated by agricultural activities require critical inquiry into

¹¹ Supranote 9

their administration in the context of dual land tenures followed in Ethiopia. In the end, it also aims at finding out better recommendations to systematically address or minimize the tenure insecurity faced by landholders observed in these areas. By bringing into light the widespread substantive and procedural malpractices in the course of undertaking expropriation in these areas, the research is intended to achieve the following specific objectives;

- To examine the legal and institutional frameworks governing expropriation and its practical implication in the context of peri-urban areas,
- Discussing the contemporary legal issues and arguments in relation to the understanding of the existing laws governing expropriation in Ethiopia,
- Discussing the expropriation cases which have important significance in boosting the ascertainment about major problems faced by peasants in peri-urban areas.
- To evaluate the impact of dual land tenure as rural and urban land tenures in landholders' security.
- To recommend best practices and solutions to minimize grievances associated with expropriations undertaken in peri-urban areas.

1.4. Significance of Study

The study is expected to contribute to the existing knowledge and cognizance about the issues of expropriation in Ethiopia. By making critical inquiry into the legal and institutional frameworks governing land administration in general and expropriation in particular, the study is hoped to inform stakeholders as to the major flaws in the area thereby inducing them to devise proper legal and institutional reforms to enhance it in a way that satisfies public demands. Most importantly, the study will come up with new insight by suggesting for special treatment of peri-urban farmlands due to their special economic importance. The other significance of the study is its contribution to the Ethiopian legal literature as a reference for educational institutions on land tenure and expropriation issues.

1.5. Methodology of the Study

The study will employ both primary and secondary sources. As an empirical work of case study, the predominant source of the research will be interview with affected landholders. In order to maintain veracity of the data collected by interviews with affected individuals, interviews with concerned administrative organs and legal practitioners mainly judges and other personnel will

be conducted to keep fair balance. Additionally, in order to enrich the work with theoretical conceptions, thorough investigation of literatures, laws and legal analyses are going to be employed. Hence, articles or books produced by Ethiopian and foreign scholars pertaining to the issue will be used in clarifying the concepts which underpin the work with thoughtful arguments. The necessity to deeply analyze laws and existing literatures according to which the actual problems are evaluated makes the research combination of doctrinal and empirical work.

1.6. Organization of the Study

The study comprises five chapters. The first chapter represents the introductory part of the research which comprises background of the study, statement of the problem, general and specific objectives of the research, significance of the work and methodology. The second chapter deals with literature review discussing the general conception of expropriation and guiding principles adhered to by states. The third chapter deals with the normative framework of expropriation in Ethiopia. It explores the historical and the present legal and institutional frameworks governing expropriation. The fourth chapter deals with the analyses of the main subject of the problems by contrasting with existing laws and literatures thereon. Chapter five which happens to be the last part of the paper is devoted to the conclusion and recommendations.

Chapter two

2. Conceptual Framework of Expropriation

2.1. Introduction

Expropriation is a compulsory taking of land by the state for public purpose activities and upon advance payment of fair compensation.¹² 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 authorization.¹³ Expropriation assumes different names in different countries such as, compulsory purchase in the United Kingdom (UK), expropriation in Continental Europe and eminent domain in the United States (US). It is also known as condemnation.

In China until reform in land administration was introduced in 2011, the term ‘demolition’ was employed to the notion of taking land of individuals by the state. This presupposed application of the concept only to urban landholders who privately own built-up properties to be demolished for better public use. This is because China upholds bifurcated land tenure system for urban and rural land similar to that of Ethiopia, however with different patterns in the rights exercised by individuals. In the past, while urban land-use rights have been commercially transferable, rural land has been locked and frozen.¹⁴ Rural land is owned by collectives and its transfer to individuals depends on two-third approval by the collectives.¹⁵ The Regulations for the Administration of the Demolition of Urban Buildings and Relocation (2001 Demolition Regulations) was the first statute in China to deal with expropriations (the exact wording used was “demolition and relocation”).¹⁶ Under the 2001 Demolition Regulations, local governments could exercise wide discretionary powers to tear down urban buildings in order to achieve the broadly defined

¹²Abebaw Supra note 1, P 24

¹³ Daniel Woldegebriel Ambaye, History of Expropriation in Ethiopian Law published in *Mizan Law Review Volume 7(2013)284*

¹⁴ LEI CHEN, Legal and Institutional Analysis of Land Expropriation in China, p 68

¹⁵ id

¹⁶ Id p 69

legislative intent of “preserving the smooth progress of construction and urban management.” By allowing unfettered power to local governments to evict peasants from their land, it is reported that it caused rampant land related deadly clashes. As a result, scholars have applied the term ‘accumulation by dispossession or dispossession to describe expropriation in China.’¹⁷ This regulation was criticized as repugnant to the legitimate property rights of individuals and in 2011 it was replaced with new regulation which utilizes the term ‘expropriations’ rather than ‘demolition’.

Ethiopia, predominantly follows the Civil Law legal system, and uses the word: expropriation. In this article, the term expropriation is employed with due regard to the possibility of using the other two terminologies as well whenever necessary.¹⁸ States take the land of private individuals with a view to allocating it into socially useful utilities or centers such as public schools, highways airports and clinics. In principle, taking private land to enrich individuals is not considered as expropriation. The expropriator (usually the State) and the expropriatees (the affected people) may come to an agreement with regards the amount of the compensation. The underlying principle of expropriation by a statutory power is generally not aimed at acquisition but rather to serve some or other public need.¹⁹ This is basically true in countries who adopt minimalist approach towards the concept of expropriation that the act is justified in restrictively defined concept of public purpose.

Expropriation is involuntary transaction. The power of eminent domain/expropriation is a sovereign power of the state to take private land without the consent of the owner. What makes expropriation different from other consensual types of land acquisition mechanisms is the complete absence of consent on the part of the property owner. As developmental agent tasked with an obligation of satisfying public interest, the state is supposed to own sovereign power to take private property without consent of property owners/holder. It is true that many public and

¹⁷ Shaohua Zhan, Accumulation by and without dispossession: Rural land use, land expropriation, and livelihood implications in China published by Journal of Agrarian Change, 2018, p .449

¹⁸ Supranote 14

¹⁹ Belachew Yirsaw, Expropriation, Valuation and Compensation in Ethiopia, 2013 p 13

private organs do also collect land through purchase and similar transactions which are based on the willingness of the person.²⁰

2.2. Reasons and Source of Power for Expropriation

2.2.1. Rationale of Expropriation

Apart from routine and major task of maintaining peace and order, states have duties to make available public utilities and other services important for general development. Especially in developing countries like Ethiopia which incorporate the realization of sustainable development as a policy and legal agenda,' the government's need of land is critical to make available public facilities and infrastructure that ensure safety and security, health and welfare, social and economic enhancement, and the protection and restoration of the natural environment.²¹ To discharge this duty, the required land may not be in the hands of the government or on the market. Thus, in order to obtain land where and when it is needed, the government resorts to the power of expropriation.²² In the absence of expropriation which authorizes states to take land of individuals against their consent, the latter would be reluctant to give up their land in a fair price based on principle of freedom of contract. Landholders may require exorbitant price which creates obstacles to expeditious delivery of public utilities by states. Knowledge of a landholder about importance of his holding may lead him to refuse to sell his property which in turn would increase the cost of completing a project, if not preventing it at all.²³ This is known as hold-up/holdout problem. This means knowledge confers significant monopoly power on land owners to hold out for prices substantially above their true valuations.²⁴ Fischel suggested that preventing time-consuming bargaining is an important justification for eminent domain/expropriation. Other scholars such as Buchanan and Yoon stated hold-up problems arise when subjective valuation exceeds objective valuation, so government expropriation is intended to overcome coordination breakdowns between numerous stakeholders.²⁵ From these assertions we can understand that empowering states to compulsorily take land of individuals is very

²⁰ Daniel Weldegebriel AMBAYE, Compensation for Expropriation in Ethiopia and the UK: A Comparative Analysis, 2014 p 5

²¹ Brightman Gebremichael, The Power of Land Expropriation in the Federation of Ethiopia; The Approach, Manner, Source and Implications published in Bahirdar University Journal of Law Volume 7, No 1 (2019) p.1

²² Id

²³ Daniel, Supra note 20, p.15

²⁴ Id

²⁵ Daniel L. Chen and Susan Yeh, GOVERNMENT EXPROPRIATION INCREASES ECONOMIC GROWTH AND RACIAL INEQUALITY: EVIDENCE FROM EMINENT DOMAIN, 2019, p. 11

important to do away with red-tapes in constructing utilities for public use. Without reasonable expropriation legislation, it would have been difficult to maintain the interests of both the expropriator and the expropriatees in the process of compulsory acquisition. Even when most public acquisitions are in fact negotiated, an effective expropriation law is necessary as a “back-up” possibility to prevent owners from demanding excessive prices (CESCR, 1997).²⁶

Another argument given to justify collective coercive power in compulsory acquisition is that it prevents a property owner from obtaining monopolistic profits by owning land which happens to occupy a strategic position. That of “reallocating” Wealth from seller to buyer, which as a rule means in favor of” the community” also justifies the use of compulsory acquisition in order to legitimate compulsory acquisition, the purpose with the purchase has to be “profitable” in the view of society, i.e. the value of the land-uses must exceed the value of the existing use.²⁷ We can see from this argument that expropriation is a mechanism of transferring a property from persons who make less use of it to others who use it in socially beneficial and optimal manner.

As a forceful deprivation of property right, it is recognized as a limit to any property right even in countries that have adopted individualistic and strongest property rights protection. However, unlike the universal recognition, necessity and presence of the notion in everywhere, it is the most debatable and contentious aspect of land tenure system among academics and policy makers.²⁸

2.2.2. Source of power of Expropriation

States power for expropriation is believed to be from various sources. Some argue that 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.²⁹ According to this theory, the power of land expropriation is "regarded as a power which inheres in the right of state to govern its polis - which is to say, inherent in its 'police power'³⁰ State power to expropriate private property is regarded as presumed power which doesn't need to be stipulated in national constitutions or subsidiary laws.

²⁶ Supranote 20, p.17

²⁷ Id p. 16

²⁸ Supranote 22

²⁹ Ibid

³⁰ Supranote 22, P. 7 see also in Land Rights and Expropriation in Ethiopia PhD thesis written by Daniel Woldegeriel, p.112

In the quest for the legal source of the state power of land expropriation three different perspectives may be identified.³¹ It may be regulated under the written constitutional law as a constitutional matter like in most constitutions of nations. This is with the assumption that since it is a matter of establishing and maintaining a system for the allocation (and reallocation) of power over wealth among individuals, group and state, constitutional law should be devoted to governing it.³² Alternatively, as a limit to the constitutional right to property it is supposed to emanate from the constitutional rules. In contrast, in states like Canada and New Zealand the power of land expropriation is not regarded as a constitutional matter since the constitution of such states do not incorporate the right to property. Here, the power of land expropriation is statutory but not constitutional.³³

As mentioned earlier, the current thoughts of constitutional democracy require stipulation of limitations of rights on national constitutions. As a result, many constitutions envisage expropriation as a legitimate restriction on property right made for purpose of public use. Constitutions take different modalities in providing expropriation. Some constitutions provide right to property and put expropriation as simple exception to it without laying down detail provisions dealing with procedures and conditions to be met during expropriations. Detail rules and requirements which must be fulfilled during carrying out of expropriation are left to the legislature or/and constitutional interpreter through constitutional deferral.³⁴ The revised constitution of Rwanda best illustrates this modality. It states: Private property, whether individual or collective, shall be inviolable. The right to property shall not be encroached upon except in public interest and in accordance with the provisions of the law.³⁵

The other modality of constitutional modality is requirementalist approach. This approach goes beyond mere recognition of expropriation as restriction on property right. Instead, constitutions mention general requirements that the state must adhere to for the conduct of lawful expropriation. The constitution enunciates the conditions and standards required to be observed and satisfied in expropriating such as due process of law, public use and just compensation.

³¹ Ibid p 6

³² Ibid

³³ Ibid

³⁴ Ibid p 9

³⁵ Ibid

The third approach of constitutional stipulation of expropriation is limitationist modality.³⁶ Under this approach, the constitutions provide the specific projects for which state can use its power of expropriation to deprive property rights.³⁷ The listing of the purposes in the constitutions has aimed to restrict further the state power of expropriation. The state does not have the power to expropriate property rights for purposes other than the ones listed in the constitutions or differing in nature. A good illustration for this approach is the constitution of Ghana. Ghana's constitution includes provisions detailing exactly what kinds of projects allow the government to use its power of compulsory acquisition and specifies that displaced inhabitants should be resettled on suitable alternative land.³⁸

2.3. Legal Requirements of Expropriation

As mentioned in the introduction part, striking a balance between public interest and individual property right needs fulfillment of conditions required by law for lawful expropriations. The formulations of the conditions differ between states. The conditions are generally categorized under substantive and procedural requirements which determine appropriateness and legality of expropriation. These general requirements can further be classified as public purpose, compensation and legal recourse. These three essential ingredients of expropriation which constitute several guiding principles and theories will be discussed hereunder.

2.3.1. Public Purpose

In principle takings of property rights to benefit private interests don't qualify as legitimate expropriation. If the property taken is used to exclusively benefit private persons, then the expropriation cannot be said to have been done for a public purpose.³⁹ This is especially true in states who adopt minimalist approach towards concept of public purpose. It is only whenever the public is entitled to enjoy the benefits of the land taken as of right that public purpose is met. On the other hand, the maximalist approach encourages takings of property as far as the measure has the effect of enlarging the benefits derived from property. Here what matters is not direct benefits derived from the property by the public but the transfer of the property into another

³⁶ ibid

³⁷ ibid

³⁸ Ibid p 10

³⁹ Murado Abdo, Reforming Ethiopia's Expropriation Law published in *Mizan Law Review Volume 9, No 2, 2015* p 305

person who utilizes it in more economically better use. The assumption under such view seems that such expropriations promote the general welfare and prosperity of the whole community.⁴⁰ In the United States, it is reported that court decisions pertaining to eminent domain underscore the definition of public purpose. The definition of public use has broadened over the twentieth century to include public purpose based on physical, aesthetic, and monetary benefits (*Berman v. Parker* (1954) held that eradication of blighted neighborhoods qualified as public purpose.⁴¹ Most US court decisions in expropriation cases subscribe to maximalist approach by recognizing expropriations undertaken with the view to achieving economic development as constituting element of public purpose. For example, in *Hawaii Housing Authority v. Midkiff* (1984) held that a state can take land that is owned by a small group of private landowners and redistribute it to a wide group of private residents so long as the public purpose be “conceivable”.⁴² In addition, in *Kelo v. City of New London* (2005) held that a transfer of private property to another private entity for the purpose of economic development satisfies the public use requirement.⁴³ If expropriation is permitted for such ‘economic development’, but laws do not establish proper limits to the government’s decision-making such as checks to ensure that the project generates jobs or economic growth for local populations, then expropriation may be used as a tool for transferring land to private companies.⁴⁴

In China where recurrent land related conflicts are reported to have occurred many times, the concept of public purpose is most contested issue. Up until land acquisition law was reformed with promulgation of Expropriation regulations in 2011, the concept of public purpose was so broad as to allow local governments to have unfettered power to determine how public interest is defined, and, consequently, the meaning of public interest expanded to include anything the local government conceived and desired.⁴⁵ The 2011 Expropriation Regulations, however, clearly demarcate the acceptable boundaries of “public interest.” Article 8 lists the situations in which the public interest requirement is fulfilled.⁴⁶ The local government, at the municipal or county

⁴⁰ Ibid p 306

⁴¹ Daniel L. Chen and Susan , Supra note 25, p 3

⁴² Ibid

⁴³ Ibid

⁴⁴ Björn Hoops and Nicholas K. Tagliarino, *The Legal Boundaries of ‘Public Purpose’ in India and South Africa: A Comparative Assessment in Light of the expropriation*, (2019) p 2

⁴⁵ Supranote 15 p. 75

⁴⁶ Ibid

level, shall make a decision to expropriate the private property only when it is necessary for: (1) national defense and foreign affairs; (2) the construction of energy, transportation, water, and other infrastructures initiated by the government; (3) such public utilities as science and technology, education, culture, health, sports, environment and resource protection, disaster prevention and mitigation, protection of cultural relics, social welfare or municipal utilities; (4) the construction of government-subsidized (social welfare) housing; (5) redeveloping a run-down urban neighborhood with dilapidated buildings; (6) any other public interest as prescribed by a law or administrative regulation.⁴⁷

In India, the Land Acquisition, Rehabilitation and Resettlement Act (LARR) enacted in 2013 provides a list of public purposes for which land can be expropriated. This list includes military/national defense projects, infrastructure projects including mining, agriculture, and industrial corridor projects, housing projects, urban development projects, and residential projects.⁴⁸ In addition, the legislation guarantees protection against abuse in its “urgency clause” under which expedited expropriations may be undertaken in case of emergency outbreaks such as national security and natural calamities.⁴⁹ Any other acquisitions except for purposes which fall under the law are legally unacceptable. However, the purposes depicted in the list cannot be considered as totally representing public use in strict sense of the term. For example, projects listed under Section 2(1) f which authorize acquisition of land for construction of residential houses for poor sections of people might be regarded as if taken for private interests. The legislation also provides projects which don’t qualify as public purposes such as private hospitals, private educational institutions and private hotels.⁵⁰

In South Africa, the courts defined ‘public purpose’ as all purposes that pertain to and benefit the public (in contradistinction to private individuals).⁵¹ This definition is very abstract and appears to cover an endless variety of purposes. Accordingly, the courts approved expropriations for the security and privacy of the Prime Minister, urban development, the maintenance of the national telecommunication system, the preservation of vegetation, and the maintenance of water

⁴⁷ Ibid

⁴⁸ Supranote 45 p. 5

⁴⁹ Ibid

⁵⁰ Section 2(1)b of India’s Land Acquisition, Rehabilitation and Resettlement(LARR)

⁵¹ Supranote 45 p. 11

quality.⁵² A project even served a public purpose if it only indirectly contributed to these purposes, for instance through the provision of housing for technicians who would then maintain the telecommunication system.⁵³ In the famous Van Streepen judgment, Smalberger JA held that also the ‘public interest’ could justify an expropriation and found that while it did not serve a public purpose, even the private supply of strategically important products served a public interest that could justify an expropriation.⁵⁴

The analysis shows that the courts have adopted the abstract definition of ‘public purpose’ from the pre-constitutional era and construe ‘public purpose’ and ‘public interest’ very broadly.⁵⁵ Even indirect economic benefits of private business projects may validly justify an expropriation. In eThekweni Municipality v Sotirios Spetsiotis, the KwaZulu-Natal High Court decided that an upgrade of the Durban beachfront for the 2010 soccer World Cup constituted a public purpose.⁵⁶ Urban development for a global sports event is thus a public purpose. While the upgrade could still directly benefit the public through the improvement of private infrastructure, Bartsch Consult (Pty) Limited v Mayoral Committee of the Maluti-A-Phofung Municipality concerned the construction of a private shopping complex.⁵⁷ Ebrahim J considered for the Free State High Court that it was the responsibility of the municipalities to ensure their economic viability and prevent rising unemployment and poverty. He found that the shopping complex would provide strategic economic advantages to the municipality in the form of greater financial returns, which would then result in a healthier and wealthier environment.⁵⁸ Therefore, Ebrahim J held the shopping complex to be in the public interest. The Supreme Court of Appeal has confirmed this broad interpretation of ‘public purpose’ and ‘public interest’ in the Offit case.⁵⁹

2.3.1.1. International Standards for “public purpose”

In most jurisdictions, expropriation is only permitted if the government shows the targeted property is needed for a ‘public purpose’. Yet the definition of ‘public purpose’ and the parameters by which governments decide what constitutes a ‘public purpose’ vary depending on

⁵² Ibid p. 12

⁵³ Ibid

⁵⁴ Ibid

⁵⁵ Ibid

⁵⁶ Ibid

⁵⁷ Ibid

⁵⁸ Ibid

⁵⁹ Ibid

the country and context. Without clarity around the concept of ‘public purpose’, governments may misuse or abuse expropriation power by arbitrarily justifying an expropriation decision under the pretext of a public purpose when the actual purpose will not serve public interests.⁶⁰

In order to get rid of such difficulties in relation to expropriation, various organizations have adopted international instruments on good governance of land tenure. The instrument with the most general scope of applicability is the Voluntary Guidelines. The Committee on World Food Security (CFS), which has 193 member countries, officially adopted the VGGT in 2012 after a thorough bottom-up consultation process in which stakeholders from all over the world participated.⁶¹ Guideline 16 is devoted to expropriation, compensation, and resettlement. Concerning the public purpose requirement, Guideline 16.1 of the Voluntary Guidelines recommends that: “States should expropriate only where rights to land, fisheries or forests are required for a public purpose. States should clearly define the concept of public purpose in law, in order to allow for judicial review.”⁶² The Voluntary Guidelines calls upon states that they only expropriate property for public purposes. The Guidelines, however, do not give a substantive definition of public purposes. What Guideline 16.1 does is that it assigns to the states the task to define the concept of public purpose in law. Accordingly, states are required to delineate the scope of public purpose by legislation or by allowing courts to have power to determine what it constitutes. While in civil law jurisdictions, such as jurisdictions in continental Europe, it is for the legislature to lay down the concept of ‘public purpose’ in law, common law and mixed jurisdictions, such as India and South Africa, it may be either for the courts or the legislature to do so⁶³.

The Food and Agricultural Organization of the United Nations (FAO) developed a guidance document in 2008, which calls for governments to provide clearly defined lists of public purposes in legislation provide an established inventory of permissible purposes beyond which the government may not expropriate land.⁶⁴ Such an inventory provides criteria that people can use to challenge proposed justification decisions in court. Laws with clear lists of public purposes (e.g., public infrastructure projects, national defense) provide courts with better

⁶⁰ Ibid p.4

⁶¹ Ibid

⁶² Ibid

⁶³ Ibid

⁶⁴ Ibid

guidance when ruling on expropriation cases and diminish the potential for conflicting court decisions.⁶⁵ The 1962 United Nations (UNs) General Assembly Resolution on Permanent Sovereignty over Natural Resources (GA Res. 1962: Paragraph 4) stated that expropriation “shall be based on grounds or reasons of public utility, security, or the national interest which are recognized as overriding purely individual or private interests, both domestic and foreign.”⁶⁶ This means that expropriation is prima facie lawful, provided that individual acts of expropriation meet the conditions established by international law (Treeger, 2004).⁶⁷ In certain cases, expropriations of privately owned land are intended to address “pressing security needs.” Other reasons also justify the need to expropriate land, such as when foreign nationals possess excessive land, landlords mistreat workers, etc. (USAID, 2005).⁶⁸

The FAO guidance document provides a list of commonly accepted public purposes based on a broad survey of developed and developing countries:⁶⁹

- Transportation uses including roads, canals, highways, railways, bridges, wharves, and airports
- Public buildings including schools, libraries, hospitals, factories, religious institutions, and public housing
- Public utilities for water, sewage, electricity, gas, communication, irrigation and drainage, dams, and reservoirs
- Public parks, playgrounds, gardens, sports facilities, and cemeteries
- National defense purposes.

2.3.2. Compensation

The second basic element of legitimate expropriation is compensation. Most constitutions of different countries prescribe payment of compensation during expropriation. For example, US constitution requires payment of “ just compensation” for taking of private property. The justification why compensation is paid is that it handcuffs governments from unduly

⁶⁵ Ibid

⁶⁶ Gashaw Tenna Alemu, Land Expropriation and Compensation Payment in Ethiopia, (2015) p. 94

⁶⁷ Ibid

⁶⁸ Ibid

⁶⁹ Supranote 45 , p.4

interference. Other reasons such as spread of cost of expropriation among the public rather than burdening on individual property holders and reinstating the expropriatee in the position where he were before expropriation explain why payment of compensation is mandatory.⁷⁰

The other reason compensation should be paid is justified on socio-political, as well as economic, theories.⁷¹ Compensation is a means to keep the balance of social justice by way of distributing burdens fairly among a society. It protects the rights of the politically under-represented groups, requiring the government to bear the inconveniences resulting from expropriation.⁷²

2.3.2.1. Theories of Compensation

With regard to valuation of compensation in cases of expropriation, constitutions and subsidiary legislations employ different terms to describe the amount of compensation which must be paid. Different countries use phrases like “just compensation,” “fair compensation,” “indemnification,” and so on.⁷³ Based on the diverse articulations on the amount of compensation, scholars have developed theories of compensation.

a. Indemnity Principle

According to this theory the amount of compensation must be equal as to enable the affected person is put in a position where he has been before expropriation. Compensation is to repay the affected people for the losses they suffered, and should be based on principles of equity and equivalence.⁷⁴ This theory is dominant in most western countries that compensation is determined not based on the monetary value of the property taken away, rather based on the loss incurred by the affected individual.⁷⁵ In the United States, court decisions show that the compensation to be paid to the owner is not measured by the value of the land to the property taker.⁷⁶ In France, as in the USA, compensation is determined based on just the loss incurred by the individual. In France, therefore, in addition to the market value of the deprived property, loss of rent, trading loss, moving expenses, dismissal benefits, severance damages, and the like are

⁷⁰ Supra note 20 p.21

⁷¹ Daniel ,Supra note 5, p. 8

⁷² Ibid

⁷³ Ibid

⁷⁴ Supra note 20, p.18

⁷⁵ Supra note 72

⁷⁶ Ibid

also payable as compensation.⁷⁷ Under this theory, the compensation is due not only in case of total taking of the property, but also when it is taken partially. This is known as compensation for injurious affection.⁷⁸

According to Keith (2007), even in developing countries where there is the financial resource limitation, less emphasis should be put on monetary compensation where resettlement or reinstatement are often the best means of putting the claimant back in the same position as if his/her land had not been taken from him /her.⁷⁹

b. Taker's Gain Theory

Under this theory, it holds that government must be obliged to pay only the price of what it takes.⁸⁰ This theory is justified by the argument that entitling affected persons to compensation which covers remote damages such as future damages, damages for movables and every and each fixture on the expropriated property would damage the treasury of governments.⁸¹ When the states expropriates movable and immovable improvements to the land with a view to getting land only, it is obliged to pay the price of land only because the state doesn't derive any benefit from the fixtures.

Valuation of Compensation

Valuation is the act of assessing the lost caused by expropriation to determine the amount of compensation due to expropriatees. The main rule for the assessment of compensation for the property expropriated is the market value.⁸² Property valuation is typically achieved through one or both of three approaches: comparable sales approach, capitalization or income approach and replacement cost approaches.

a. Comparable Sales Approach

The principle of comparison is based on the economic concept of substitution that a knowledgeable and prudent person would not pay more for a property than the cost of acquiring

⁷⁷ *ibid*

⁷⁸ *Supra* note 20, p.65

⁷⁹ *I bid*, p.18

⁸⁰ Daniel ,*Supra* note 20, p. 10

⁸¹ *Ibid*

⁸² *Ibid*,

an equally satisfactory substitute.⁸³ To achieve that comparable price the approach simply requires searching for similar properties that have been sold in the marketplace within a reasonable time period preceding the taking date, and then adjusting the sales price of those comparable properties to reflect differences between the comparable and the subject property.⁸⁴ The degree of similarity or difference between the subject property and the comparable sales is usually established on the following elements of comparison: property rights conveyed, financing terms, conditions of sale, expenditures made immediately after purchase, market conditions (time), location, physical characteristics, economic characteristics, use (zoning), and non-reality components of value.⁸⁵

b. The Income (Capitalization) Approach

This approach is applicable in respect of properties capable of generating rental income.⁸⁶ In applying the income method, a property valuator assumes that the investor ultimately seeks a total return greater than or equal to the amount invested.⁸⁷ Therefore, the investor's expected return consists of two components: full recovery of the amount invested, i.e., the return of capital and a reward for the assumption of risk, i.e., a return on invested capital.⁸⁸ The income capitalization approach is an accepted method for determining market value when there are no available comparable sales data, and the income is directly attributable to the land.⁸⁹

c. Replacement Cost Approach

The replacement cost method values the expropriated property by determining the replacement or reproduction cost of improvements, less depreciation, plus the market value of the land.⁹⁰ This approach is often used to value properties which don't have clear market price. The method involves assessing the value of the land in its existing use and adding the replacement cost of the building and other structures, adjusted for age and obsolescence.⁹¹

⁸³ Supranote 20, p. 54

⁸⁴ Daniel ,Supra note 5, p.9

⁸⁵ Supra note 20, p.55

⁸⁶ ibid

⁸⁷ ibid

⁸⁸ ibid

⁸⁹ Supra note 85

⁹⁰ Ibid

⁹¹ Belachew Yirsaw Alemu Supra note 20, p.60

2.4. Procedural Safeguards

The other crucial element of expropriation is procedural safeguards accorded to individuals affected by expropriation. Procedural safeguard implies respect for due process of law. Proper and effective procedural safeguards are believed to contribute to the protection of property rights for they have a restraining effect both on the executive and the legislature.⁹²

In China following the enactment of the 2011 Expropriation regulation, procedural safeguards which allow participation of public and judicial scrutiny has been introduced.⁹³ The first step is for the government authority to report its proposed expropriation and compensation plan to the city council after a cross-department examination.⁹⁴ The plan must be published so that the public has an opportunity to provide feedback.⁹⁵ The period for public feedback should not be less than thirty days. After this period has lapsed, the public's comments and the comments by the city council need to be incorporated into a revised plan. Interestingly, perhaps in view of avoiding vexing social unrest, the local government needs to be cautious and conduct a social stability risk assessment before it reaches a final decision on whether to go ahead with the expropriation.⁹⁶ In addition, courts are empowered to revisit the whole expropriation process and to determine whether it was legal, and in the public interest. If the court issues an enforcement order, it must notify both the government and the affected parties of its decision. It may even make recommendations to the government as to how it can ensure that the expropriation and compensation proceed smoothly.⁹⁷ Regarding to judicial review, the Chinese law requested that district courts be careful of issuing court eviction orders sought by developers if they were opposed by local residents, and to suspend expropriations if people resorted to radical protests.⁹⁸ The recent 2012 "Provisions of the Supreme Court of China on Several Issues Concerning Handling the Cases of Application for Enforcing Expropriation Compensation Decisions of Housing on the State-owned Lands by the People's Courts" (the "Enforcement Provisions") sets out the factors, which courts must take into account when deciding whether or not to issue an

⁹² Murado Abdo Supra note 40, p.323

⁹³ Lei Chan Supra note 15, p. 79

⁹⁴ Ibid

⁹⁵ Ibid

⁹⁶ Ibid

⁹⁷ Ibid , p. 81

⁹⁸ Ibid

enforcement order.⁹⁹ The court may refuse enforcement if it finds any of the following conditions to be clearly present: absence of a factual or legal basis for the expropriation, unfair compensation, violation of the owners' legitimate right, failure to guarantee owners' living or business conditions, administrative objectives and the public interest are harmed and whenever ultra vires found in exercising government's power.¹⁰⁰

Chapter Three

3. Normative Framework of Expropriation in Ethiopia

3.1. Historical background

In Ethiopia, the first law which provides for taking of private property for public purposes was introduced by Emperor Menilik in 1908.¹⁰¹ The growing importance of Addis Ababa as a center of foreign diplomacy and growing capital is said to have warranted the enactment of the first charter in 1908. The charter devoted independent article concerning expropriation which included the basic elements of the concept as are known in modern-day legislations.¹⁰² Particularly, the charter prescribed payment of compensation assessed by experts and the

⁹⁹ Ibid

¹⁰⁰ Ibid

¹⁰¹ Daniel, Supra note 13, p.290

¹⁰² Article 25 of the 1908 Addis Ababa Charter

requirement of showing public interest in case of expropriation. However, it doesn't mean there weren't cases of expropriation before this time. There are rare historical accounts which show that medieval kings undertook expropriation for construction of churches, palaces and other utilities against payment of compensation for private landholders.¹⁰³

Following the charter, the first modern constitution which was adopted in Ethiopia in 1931 by the imperial regime of Haile Selasse guaranteed protection of private property. The Constitution under Article 27 provided for possibility of expropriation when public necessity warrants. Besides, the unpublished supplements to the 1931 constitution contained provisions which guarantee property rights of royal family. However, Article 76 of the unpublished chapter eight of the constitution stipulated that member of aristocracy can be compelled to surrender their land possession when it is found necessary to construct public utilities as are enumerated under the provision.¹⁰⁴ The provision underscored the necessity of public purpose during such acquisition by emphatically prohibiting land takings of land for purpose of benefitting individuals. Unlike in the 1908 Addis Ababa Charter Article 27 of the constitution doesn't put payment of compensation as necessary precondition for expropriation. The supplementary provision Article 76, however, envisaged the enactment of detail laws which prescribes the price of land during expropriation.¹⁰⁵ Nevertheless, this didn't materialize up until the constitution was amended in 1955 except a single "Land Lease to foreigners Decree" which was promulgated just a couple of years following the adoption of the 1931 constitution. The decree under Article 8 clearly stated that land leased by foreigners can be taken by government for public services subject to payment of 'due compensation. The 1931 Constitution was revised in 1955 and the latter incorporated expropriation under Article 44.

The next major landmark case in the history of Ethiopian expropriation law was the adoption of the 1960 Civil Code which was part of the rampant codification pursued by the government during that period. The Civil Code devoted substantial articles for property rights and Articles from 1460 to 1488 particularly talk about expropriation.¹⁰⁶ The Civil Code employed the term

¹⁰³ Daniel supra note 102,

¹⁰⁴ Daniel Weldegabriel Ambaye, Land Rights and Expropriation in Ethiopia, Real Estate Planning and Land Law Department of Real Estate and Construction Management School of Architecture and the Built Environment Royal Institute of Technology (KTH) Stockholm, (2013) p. 137

¹⁰⁵ Ibid

¹⁰⁶ The 1960 Civil Code

‘expropriation proceeding’ instead of expropriation which is defined under Article 1460. The Civil Code enumerates some purposes for which immovable can be taken from individuals such as acquiring rights in rem like right to servitude, usufruct or others.¹⁰⁷ However, the code doesn’t define what the term ‘public purpose’ constitutes in clear manner. The code lays down a prohibition against undertaking expropriation for the sole purpose of obtaining financial benefits.¹⁰⁸ Regarding compensation, it has been said under Article 1474 that “the amount of compensation or the value of the land that may be given to replace the expropriated land shall be equal to the amount of the actual damage caused by expropriation;” and this compensation shall be one “which is assessed by the committee on the day when it makes its decision.”¹⁰⁹

After the military overthrow of the imperial regime, a Marxist military junta,(aka Derg) abolished application of the laws which provide for ownership of private property. As a result, the military regime nationalized all rural and urban lands in accordance with proclamations namely Public Ownership of Rural Lands Proclamation¹¹⁰ and Government Ownership of Urban Land and Extra Houses, Proclamation.¹¹¹ The two consecutive proclamations rendered expropriation meaningless as the lands were transferred to public ownership by nationalization without compensation. The laws represented the transformation of land tenure system from previously private land tenure to public ownership. Private individuals were prohibited from sale, lease or mortgage of land possession which in effect reduced the rights to mere usufruct. However, the two proclamations allocated special provisions which provide for expropriation. The Rural Land Proclamation No 31/75 embodied Article 17 which envisages expropriation of agricultural lands held by individuals for restrictively prescribed public purposes such as schools, hospital, offices and military bases and agricultural projects.¹¹² Similarly, the Government Ownership of Urban Land and Extra Houses Proclamation devoted a particular article which authorizes the state to take urban land for public purpose without elaborating as to what activities constitute public purpose.¹¹³

¹⁰⁷ Id, Article 1461

¹⁰⁸ Id ,Article 1464(1)

¹⁰⁹ Daniel Supra note 102, p.365

¹¹⁰ Public Ownership of Rural Lands Proclamation No.31/1975

¹¹¹ Government Ownership of Urban Land and Extra Houses, Proclamation No. 47/1975.

¹¹² Supra note 111 , Article 17

¹¹³ Supra note 112, Article 8

The downfall of Derg regime in 1991, after a transitional government of Ethiopia didn't introduce significant legislation which provides expropriation. In 1995, a new constitution was adopted which recognized private right to property.¹¹⁴ However, as regards to land, the public ownership tenure system of the defunct regime was retained by even making it constitutional.¹¹⁵ Individuals are entitled to the right to usufruct short of rights to sale, mortgage and other forms of exchange.¹¹⁶ Accordingly, peasants and pastoralists are accorded with rights to obtain land free of charge subject to the restrictions imposed thereupon.¹¹⁷ The constitution doesn't expressly recognize right that urban residents may have on land. Legal experts insist that right to use of urban land for investors recognized under Article 40(6) of the constitution arguably includes to urban residents. Within the context of bifurcated land tenure as urban and rural systems, the constitution stipulates that any property such as land be it urban or rural can be subjected to expropriation upon advance payment of commensurate compensation.¹¹⁸

3.2. Land Tenure and Expropriation in Current Ethiopia

In accordance with the constitutional federal arrangement, the power to “enact laws for the utilization and conservation of land and other natural resources, historical sites and objects” is provided to the Federal Government.¹¹⁹ Regional Governments are empowered “to administer land and other natural resources in accordance with Federal laws.”¹²⁰ Accordingly, the Federal Government has been enacting different laws regulating both rural and urban landholdings. The operative laws which are currently in force are the Federal Land Use and Administration Proclamation No 456/2005 and Urban Land lease Proclamation No 711/2011. The two federal land proclamations indicate that land tenure system in Ethiopia is dual/bifurcated that the manner land holding rights are as acquired, transferred and alienated are differently treated between urban and rural areas. These proclamations further delegate regional states to enact their respective implementing regulations regarding both rural and urban laws. Accordingly, many regional states have enacted their own land administration laws consistent with the federal proclamation and regulation.

¹¹⁴ The 1995 FDRE Constitution, Article 40

¹¹⁵ Id, Article 40(3)

¹¹⁶ Id

¹¹⁷ Id, Article 40(4) and (5)

¹¹⁸ Id, Article 40(8)

¹¹⁹ FDRE Constitution, Article 51(5)

¹²⁰ Id, Article 52(2)(d)

One of basic land laws which is enacted by taking into consideration the constitutional power arrangement in relation to land management is expropriation law which provides how private landholdings can be taken by the states in case there are found to be necessary for public purpose. The expropriation law takes into account the aforementioned constitutionally bifurcated land tenure system. Since the advent of FDRE Constitution, Ethiopia enacted three expropriation proclamations. The first proclamation was the Expropriation Proclamation No 401/2004. This proclamation was brief and contained only sixteen articles. This proclamation was criticized for its failure to envisage payment of compensation in its title which apparently runs counter to the FDRE Constitution. As a result, it was repealed by Expropriation of Landholdings for Public Purposes and Payment of Compensation Proclamation No. 455/2005. This proclamation has been in force up until it was recently replaced by Expropriation of Landholdings for Public Purposes, Payment of Compensation and Resettlement of Displaced People Proclamation No 1161/2019. Here, as the second proclamation has been applicable for long time now, it seems imperative to discuss the normative framework of expropriation based on making comparison with the new proclamation.

3.3. Features of Ethiopia's Expropriation Law

As repeatedly pointed out, the expropriation law of Ethiopia hinges on the type of land tenure system which is enshrined in the constitution. The basic elements of expropriation law namely existence of public purpose, payment of compensation and procedural safeguards are affected by the land tenure which vests land to public ownership by the constitution. Below, it is imperative to briefly discuss the three elements in light of the applicable law.

3.3.1. Public Purpose

The concept of public purpose in expropriation is duly recognized in different laws in Ethiopia. The Constitution stipulates that

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.

The constitution doesn't define as to what activities constitute public purpose. Hence, it delegated to the legislature and administrative bodies to determine what public purpose includes.

Specifically, the proclamation which has been in force Expropriation Proclamation No 455/2005 under Article 2(5) defined public purpose as *...the use of land defined as such by the decision of the appropriate body in conformity with urban structure plan or development plan in order to ensure the interest of the people to acquire direct or indirect benefits from the use of the land and to consolidate sustainable socio-economic development.*¹²¹

The appropriate body that decides the public purpose aspect of a project is either the rural Woreda administration or the urban municipality or a relevant higher federal or regional authority. In determining public purpose, the proclamation solely empowers the administrative organ without judicial involvement. The proclamation is believed to have vested unfettered power in administrative bodies to take private property whenever they regard as useful for public purpose at will. Unlike its predecessor proclamation issued in 2004 which provided nearly exhausted list of projects that qualify as public purpose; this proclamation confers on the government wider power to take private possession when it deems that it serves public purpose. The second definitional element of expropriation is that public interest is served when the public gets both direct and indirect benefit from the expropriated property. This indicates that the proclamation adopted expansive approach to the concept that taking of property can be accepted as far as it indirectly contributes for public utility. Other element included in the definition is that maximization of economic development is categorically recognized as to satisfy public purpose.

With regard to public purpose, the recently enacted proclamation which provides expropriation introduced some major reforms worth mentioning here. Article 2(1) of the Proclamation prescribed decision of public purpose by cabinets of regional state, Addis Ababa, DireDawa or other federal entity.¹²² The purpose of introducing such centralized decision on determining public purpose seems to avoid arbitrary takings and abuse committed by public organs which caused widespread public uproars. In addition, this helps to abolish the inconsistent decisions passed by different implementing agencies in respect of nature of public purpose. However, the cabinets empowered to undertake expropriation are allowed to delegate Woreda or City administration to decide on land expropriation for public purpose.¹²³ This seems self-defeating as

¹²¹ Article 2(5) of Proclamation 455/2005.

¹²² Article 2(1) of Expropriation of Landholdings for Public Purposes, Payment of Compensation and Resettlement of Displaced People Proclamation No 1161/2019

¹²³ Ibid Article 5(5)

it contradicts to the very purpose of changing the power to determine public purpose. Another change adopted by the new proclamation is that affected persons are empowered to file objection where their land is expropriated without fulfilling the public purpose element.¹²⁴

3.3.2. Compensation

Article 40 (8) of the FDRE constitution states that any sort of taking of private property is compensable. The Constitution is both broad and narrow when it comes to the determination of compensable property. It is broad because the combined reading of sub articles 2 and 8 of Article 40 of the Constitution sends the message that the expropriation of any sort of private property is compensable, regardless of whether it is movable or immovable or tangible or intangible.¹²⁵ However, since land belongs to public ownership, the Constitution seems to narrow the scope of compensable property interests by adopting the labor theory in the sense that individuals are entitled to have private property in land that is linked to their labor or capital or enterprise.¹²⁶ The attitude reflected in this Constitution appears to allow compensation only to the extent of loss of the labor or capital value that is added to lawfully possessed land that has been expropriated.

Following this principle, the three subsequent proclamations exclude land from the purview of compensable interests. It was also stated at the time that: “the law envisages the possibility of providing a substitute land to peasants who lost their land under expropriation where there is land available. But due to acute land scarcity in highland areas where most land expropriations would take place; a comparable substitute land is not feasible, which means resort to payment of meager amount of compensation that would not support the future livelihood of the victim of government taking.¹²⁷ Article 12(1) of Expropriation Proclamation emphatically states that a landholder whose land is expropriated shall be paid compensation for property on the land and permanent improvement on the land.¹²⁸ Generally, expropriation law does not consider loss of land use rights due to expropriation as compensable unless the administration is able and willing to give land in the form of displacement compensation to the affected person. In other words, the

¹²⁴ Ibid, Article 5(4)

¹²⁵ Elias N. Stebek, Muradu Abdo and Hailu Burayu, Property Rights Protection and Private Sector Development in Ethiopia,(2013) p 26

¹²⁶ Ibid

¹²⁷ Elias N, Stebek et al Supra note 125, p 28

¹²⁸ Expropriation of Landholdings for Public Purposes, Payment of Compensation and Resettlement of Displaced People Proclamation No 1161/2019

law in question does not view the taking of land from a landholder as an expropriation.¹²⁹ Thus, no compensation is payable (perhaps excepting displacement compensation) if, for example, the state requires land held by a landholder, and there is no property on or improvements to such land. This is because no expropriation is considered as having been undertaken in respect of such land. The expropriation law in question assumes that the State is merely retaking public land in this case, not taking private property, which is conceived as taking labor-related tangible immovable property belonging to the landholder situated on the land.¹³⁰

With regard to the amount of compensation, Article 12(2) which prescribes about property compensation, the proclamation says that compensation must cover the cost of property and other structures taken. When a house of an individual is demolished because expropriation, Regulation no. 135/2007, under Article 3, states that the amount of compensation for a building shall be determined on the basis of the current cost per square meter or unit for constructing a building comparable with the demolished one. The compensation for a house shall be based on the existing current cost of materials to build an equivalent house. Compensation for building also includes current cost of constructing floor tiles, septic tank and so on. This seems acceptable only if the demolished building had in the first place included such services. The same provision, under sub-article 2-b, says that compensation shall be paid for interrupted utility services. The amount of compensation for expropriated fixtures and developments follow similar principle in both urban and rural areas. This makes Ethiopia's compensation method like replacement cost approach even though it is criticized for it doesn't consider the value of location that the fixture rests.

The second type of compensation is displacement compensation. This type of compensation pertains only to rural landholders and displaced persons are entitled either to substitute land or monetary compensation for the loss they incur due to taking of their landholding. Landholders may be temporarily or permanently expropriated from their farmlands. Rural landholders permanently displaced are entitled to equivalent substitute land if available. If substitution is impossible, the proclamation stipulates payment of compensation equivalent to fifteen times the highest annual income generated during the preceding three years.¹³¹ In this regard, provision of

¹²⁹ Muadu Abdo, *Supra* note 4, p. 311

¹³⁰ *Ibd*

¹³¹ Article 13(1) (c) of Expropriation proclamation No 1161/2019

the new proclamation introduced some basic reforms from its predecessor proclamation for the following reasons. The prior proclamation allowed a compensation amounting only ten times the average income of preceding five years. Hence, this considerably increases the amount of compensation by five times increase. Secondly, the base for calculation for the compensation in the repealed proclamation was average income of the past five years. Now, the new proclamation replaced this by making the ‘highest income’ of three years preceding expropriation. This change has significant importance in responding to the inadequacy of compensation attributed to the ever increasing level of inflation in the price of produces subject of expropriation. It is commendable the new proclamation abolished the factor of calculation to determine compensation for temporarily and permanently expropriated people which considered the ‘average’ income of the past five years by making the ‘highest income’ three years preceding expropriation. However, the logic behind the selection of three and fifteen years to calculate compensation persists to offer no valid justification.¹³² Selection of such factor is believed to have been taken from Chinese Land Management Law (LAL) which prescribes displacement compensation based on six to ten times the average income of three years preceding expropriation.¹³³ However, Chinese law provision is justified by the fact that land use right in China is limited by time which stands at thirty years.¹³⁴ In the absence of limitation in rural land holding right in Ethiopia, selecting arbitrary number such as ten or fifteen year, remains unclear.

Other important reforms introduced by the new proclamation are inclusion of communal land as compensable, inclusion of other compensation packages such as displacement assistance, moral damage compensation and economic loss compensations.¹³⁵ During the prior laws, communal land especially those communally used by villagers for grazing or other uses were taken without compensation under the guise of misguided interpretation of concept of state ownership of land. For displaced urban residents, payment of compensation for moral and economic damages caused by loss of ties has also been introduced under the new expropriation proclamation.¹³⁶

¹³² Murado Abdo, *Supra* note 4, p. 315

¹³³ Lei Chen, *Legal and Institutional Analysis of Land Expropriation in China*, (2014), p. 78

¹³⁴ *Ibid*

¹³⁵ Article 13(3) of Expropriation Proclamation No 1161/2019

¹³⁶ *Ibid*, Article 13(4) (e)

3.3.3. Procedural Guarantees

In order to restrain the state from arbitrarily taking private property and protect property holders from adverse effects of appropriation, some necessary procedural steps must be taken. Such procedural steps are capable of handcuffing governments from abuse of legislative and administrative powers which undermine private property rights. Ethiopia's Expropriation regime is subjected to scholarly criticism for its failure to guarantee adequate procedural safeguards.

In developed jurisdictions, expropriation procedure involve various legally prescribed and clear steps such as approving the public purpose, conducting public inquiry, maintaining inventory of assets and notification etc. Expropriation Proclamation No 455/2005 failed to provide comprehensive and clear procedural steps which must be followed by appropriate bodies during expropriation. Under the Expropriation Proclamation, expropriation is crafted largely as a matter that involves reaching a decision by an executive organ followed by simple notification of such decision to the expropriated.¹³⁷ Other procedures though not clearly stated are inferred from different provisions such as initiation for expropriation by the implementing agency, ensuring eligibility and carrying out of evaluation etc.

The new proclamation came up with relatively more comprehensive procedures which were lacking in its predecessor proclamation. Article 8 of the proclamation enumerated the appropriate procedures which need to be met by City or Woreda Administration before and during undertaking of expropriation. The first procedure which the proclamation introduced is undertaking public consultation at least a year before appropriation of the property.¹³⁸ Open public discussion enables the government to appreciate the concern of the people and to create smooth environment for the project's undertaking. In the previous proclamation, the requirement for conducting of public discussion and inquiry was left to be determined by directives issued by regional governments or the city administration. The fact that this wasn't clearly envisaged in the proclamation obviously creates inconsistent compliance between states. Its inclusion in the new proclamation underscores its vitality for smooth undertaking of expropriation without public resistance. As per their logical sequence, collecting landholding rights and undertaking inventory for the purpose of determining compensable interests and amount of compensation due to the landholders is the next step which comes after public consultation provided in the

¹³⁷ Muradu Abdo, *Supra* note 127, p. 320

¹³⁸ Article 8(1)(a) of Expropriation Proclamation No 1161/2019

proclamation.¹³⁹ The next procedures prescribed in the proclamation happen to be notification to the land holder(s) to hand over the land expropriated and payment of compensation respectively.¹⁴⁰ The proclamation leaves other detail procedures be provided in a regulation which shall be issued by the Council of Ministers.

Chapter Four

4. Analysis of Legal and Institutional Framework for Expropriation of Farmlands and Properties; A Case Study of Peri-Urban Areas of Mekelle City

4.1. Introduction

Mekelle City, which happens to be the political capital of Tigray Regional state, is one of the fastest growing urban areas in Ethiopia. Mekelle city has experienced rapid population growth in the past three decades that ranges its population from 61,583 in 1984 to 480, 217 in 2017 that puts the city as the third populous city in Ethiopia next to Addis Abeba and Diredawa.¹⁴¹ Owing to the ever increasing population and the pace with which urbanization is growing, many rural villages have been incorporated into the city through the mechanism of massive expropriation. In addition, substantial amount of rural landholding possessed by individuals and the community are taken for purposes of construction of public services such as hospitals, universities, airport and manufacturing industries. As a result, large number of residents of peri urban areas of the city who previously made their livelihood in subsistence rural farming have been either displaced

¹³⁹ Ibid , Article 8(1) (c)

¹⁴⁰ Ibid, Articles 8(1) (e) and (g)

¹⁴¹ UN Habitat(2012)

or included into urban residence without adequate urban utilities are provided to them. This has led to widespread public complaints attributed to inadequate displacement compensation they receive for the loss of agricultural land holding. Especially, in the past five years, complaints relating to expropriation have spiraled to organized resistance which resulted in arrest of individuals who are supposed to have spearheaded the resistance. Some villagers who resisted inclusion of their villages into structural master plan without provision of public utilities had their elderly and villagers arrested.

Though the problems is manifested in several peri urban villages of the city, the researcher carefully selects three Kebelles(aka Tabyas) namely Aynalem, Romanat and Qelqel Deбри as case study areas. This was done because though their inclusion to urban administration as per the structural plan goes as far back as 1996 E.C this remains far from being effectively implemented as of today. This has caused for the residents to be excluded from both urban infrastructure and agricultural landholdings for over a decade so that these areas happen to be the hotspots for continuous aggravated complaints which need urgent response by the regional state. The simple fact that the peri urban areas are adjoining to the urban centers makes them tantalizing to not only for persons who need land for residential buildings but also for extensive private commercial purposes under the guise of investment.

Generally, as a result of urbanization and under the guise of investments, farmers are deprived of their rural landholding without due regard to legal requirements of expropriation such as fulfillment of public purpose, compensation and adherence to legally prescribed expropriation procedures and effective participation. As basic normative elements of legitimate way of taking private property, the case study assesses the practical implication of the requirements by analyzing their technical meanings and actual deviant practices common in the case study areas.

4.2. Abuse of Public Purpose Requirement

As discussed several times, the most controversial issue in expropriation is that expropriation must be in the public interest. In Ethiopia in general, the abuses of this requirement by interpreting and applying the expropriation procedures to serve purely private interest have been rampant. The fact that the legitimate purposes for which private property including land can be taken aren't exhaustively listed and absence of judicial scrutiny in relation to availability of public purpose during takings of private land are generally considered as providing fertile ground

for authorities to abuse their power of expropriation in a way that undermines the constitutionally guaranteed property right. Municipal and rural administrations are given an unfettered power to determine how public interest is defined, and, consequently, the meaning of public interest expanded to include anything the authorities conceived and desired. As a result, the municipal administrations of Mekelle City have engaged in transferring large tract of agricultural landmasses situated in peri urban villages which are exclusively allocated for private commercial purposes. The usual tactic to disguise the defect in relation to public purpose elements seems persuading landholders to handover their landholding on their volition thereby diverting the responsibility for their eviction to them. For Example, one among contentious expropriation cases which sparked violent arrest of landholders is construction of special private school planted in peri urban area known as Aynalem which was incorporated into urban administration as per structural development plan issued by the municipality. The farmland allocated for the private commercial school with a name Elshadai Primary School was initially acquired for declared purpose of building a center for caring orphaned children.¹⁴² In 2000 E.C, Hadnet Subcity Administration approached thirty five farmers and persuaded to leave their agricultural land for it would be allocated for orphan children care center to be built by a private benefactor. The farmers were persuaded to leave their land with promises that the center would fetch opportunities of job for their children and other utilities such as flour mills would be made available for them.¹⁴³ Attracted by the promises, the farmers handed over their agricultural landholdings. Immediately after construction, the center collected tens of orphans but after just few years the center switched into commercial school. Further worse, larger portion of the land was converted into agricultural land sown with crops which could be grown by farmers themselves. As the affected farmers were not made to benefit and upon realizing that all the hopes were dashed, they set up a committee of five elderly from among them who were entrusted to seeking payment of compensation as the land was put for unintended purpose. The administration however dismissed their complaint. Even worse, some members of the committee were unlawfully arrested and held in custody for as long as two weeks. One among the members of the Committee named Qeshi Mehretu Abaraha noted;

¹⁴² Interview with Qeshi Berhane Abraha, Lemlem Hagos and Qeshi Bezabih Baraki

¹⁴³ Id

When they decided to take our land, there was almost nothing they didn't promise to us. They told us that we would be given modern breed of cows or pair of oxen on our preference. A list was taken in which we were asked to choose between oxen or cows in exchange for our land and I chose modern breed of cows. Ultimately none of them were given to us. They gave us just less important items such as soaps and blankets. We were deceived. It is like looting. As we asked them to give us a solution, were arrested and even humiliated. Still, we need a solution.¹⁴⁴

Another woman who lost her land to the same school said;

Initially, we were happy with the taking because we thought giving our lands for purpose of taking care of orphans was something that God likes. The authorities also told us we would receive some services. Especially, we the women were happy when they promised to erect for us a flour mill. Additionally, we were waiting to get either cows or oxen. They haven't given us until today. Since we lost our land, large part of it is still cultivated by the owner of the school sowing it crops such as teff and wheat. The owner is selling to us a produces from what he grows on our land. The school rests in only portion of the land. Much of it is being cultivated.¹⁴⁵

Another case which involved the use of expropriation to take extensive tracts of land is a private investment found in the way from Mekelle to Quiha located near Aynalem subcity. The land was taken by developers in 2003 with a view to cultivating grape plantation. The project has taken 100 hectares of land previously owned by thirty farmers. Since it is acquisitioned in 2003 E.C, the land has not been put to the intended purpose of growing grapes. Instead, the investors have enclosed the land with fences; they grow in it ordinary cereals such as wheat, barley and maize. In addition, in many peri urban areas surrounding the city, substantial amount of lands formerly possessed by poor farmers were transferred to private uses who engage in micro and small-scale businesses such as poultry and dairy farming.

The national land laws ranging from the Constitution up to the Urban Lease holding proclamation and regional laws are generally regarded as allowing expansive approach in interpreting public purpose.¹⁴⁶ Accordingly, the state is empowered to take private land even with a view to generating money if authorities believe that it brings even a mere indirect benefit

¹⁴⁴ Id

¹⁴⁵ Interview with W/ro Lemlem Hagos

¹⁴⁶ Muradu Abdu, Supra note 4, P .307

to the public.¹⁴⁷ Many lawyers have criticized that the subjective standard which denies judicial involvement in determining public purpose during expropriations was a culprit for arbitrary evictions carried out without having regard to private property. In this regard, the newly introduced expropriation proclamation also adopts similar approach regarding the definition of public purpose.¹⁴⁸ The land under review was taken for exclusive use of individual investor which brings no benefit to the public. Obviously, this seems to have arisen from the extended interpretation given to concept of public purpose as provided under the laws. Additionally, as in many countries' laws, bringing economic development and investment as a legitimate purpose as to warrant compulsory acquisition of private landholdings is increasingly becoming common in Ethiopia. This is also the position reflected in expropriation practices undertaken in Tigray in general and Mekelle in particular. This as a result contributes for expansive interpretation of public purpose. This approach in consideration of the cases at hand is defective for several reasons.

Firstly, taking of farmlands for simple purpose of enlarging patrimony of other individuals under the guise of encouraging investment runs counter to very concept of modern-day expropriation. As it is broadly known, expropriation is considered as a restriction to private property which makes it exception rather than a rule. Institution of private property as an important element of economic right enshrined in the constitution and international agreements is subject to encroachment only for narrowly defined aims predetermined by law. Technically speaking, the issues of private property and expropriation are not two competing interests that stand in stark contrast with each other. Rather, expropriation is exceptional phenomenon which comes into place only when necessity of public interest warrants. As in every right, limitations or restrictions to property rights must meet legality elements of prior prescription of exhaustively listed legitimate aims which justify land takings. In the context of expropriation, the public interest element which justifies land acquisition must be restrictively defined so as to meet legally prescribed legitimate aims. Open ended definition of public purpose empowers governments to abuse their power against landholders thereby undermining tenure security. Additionally, ensuring economic development without promoting tenure security and protection of property right is impossible. In fact, scholars argued that effective and stable property especially land right

¹⁴⁷ Id

¹⁴⁸ Article 2(1) of Expropriation Proclamation No 1161/2019

which enhances its commodification and convertibility to capital is vital for economic development.¹⁴⁹ In other words, undermining tenure security of landholders by blatant disregard to the sanctity of private property negates the very notion of economic development. Such arbitrary taking of lands for purpose of enriching private patrimony which brings no direct or indirect benefit to the public runs counter to economic development.

Secondly, the other important problem inferred from the cases is that there is a tendency to forcing farmers to voluntarily hand over their land by invoking the term public purpose. Legally speaking, as the expropriation is compulsory in nature, no voluntary handover is required whenever the land is needed for overriding public interest. What farmers are empowered to do is renouncing reception of compensation. The legality of public purposes must be purely based the fulfillment of the normative elements provided under the laws. However, when authorities approach farmers to leave their farmlands, it seems that there is wrong assumption strict adherence with requirement of public purpose isn't mandatory if the land holders handover their land voluntarily. Hence, public purpose is being misused to coerce farmers into donating their landholding. This runs counter to rural land policies enshrined in the constitution and federal and regional land use and administration laws. Since the advent of the present rural land tenure, the prohibition of right to sale and other forms of exchange provided under the constitution has been justified by paternalistic idea of protecting farmers from selling their land in times of hardship. In many occasions, authorities explained that public ownership of land and prohibition of sale is devised to protect farmers from market induced displacements which may return old time's tenancy and accumulation of agricultural land in hands of few investors. This prohibition of right to sale includes right to donate. The constitutionally entrenched public ownership principle is further cemented by the subsidiary regional land laws. For example, Article 8(11)(a) states that peasants can only bequeath part of their land, only to a family member who is dependent on such land and even then they must secure the consent of local Government authorities.¹⁵⁰ Peasants cannot collateralize their user rights for that could eventually lead to alienation. Though, this policy is contradicted by a provision which grants investors a right to mortgage the amount of

¹⁴⁹ Hernando de Soto, *Mystery of Capital; Why Capitalism Triumphs in the West and Fails Everywhere Else?*, (2000)

¹⁵⁰ Tigray Land Use and Administration Proclamation Proclamation No 239/2006 E.C.

investment they made on land which drew criticism by scholars,¹⁵¹ the idea of prohibition to farmers from collateralizing their land is likewise justified by paternalistic conception of protecting them from deprivation. Furthermore, farmers' right to lease out their land to fellow peasants and merchandized farmers who use modern technology is restricted to three and twenty years respectively.¹⁵² This provision has no other explanation than the aim of precluding peasants from depriving themselves and their family of a survival asset.

Against this general rural land policy pursued by the state, using expropriation and 'public purpose' as alternate means of transferring agricultural land to private developers under lenient conditions is unacceptable. The expropriation law pertaining to agricultural land must be consonant to the protective rural land use and administration laws. Otherwise, having expropriation law and practice incompatible with the underlying policy will create arbitrage opportunities for investors. If private developers are able to easily get land for their commercial purposes through the instrumentality of expropriation, why would they resort to rural land lease which carries stringent limitations in duration and other conditions prescribed in the rural land use and administration laws? Will not they be able to circumvent the conditions depicted in the rural land laws regulating lease of agricultural lands by resorting to lenient conditions in expropriation? Even if authorities feel that it is important to upgrade the land into economically and socially better and efficient use which brings general welfare by permanent expropriation, the original peasant landholders must be given priority to develop it by themselves. Fortunately, the new federal expropriation proclamation has entitled landholders a right to have priority develop their land as per the land use plan.¹⁵³ This can be easily implemented in cases of expropriations undertaken for agricultural investments like the land taken for grape plantation. In order for this to be effective, empowering farmers with modern agricultural equipment and implements, making access to loan available, giving trainings and provision of material and moral support to encourage them do the investment themselves is very important. Accordingly, regional governments must enact a directive which provides about duties of appropriate bodies to enable farmers to develop their land as per the federal proclamation.

¹⁵¹ Muradu Abdo Srur, *State Policy and Law in Relation to Land Alienation in Ethiopia*(2014). P 104

¹⁵² *Supra* note 152, Tigray Rural Land Use and Administration Proclamation article 9(4) (a) and (b)

¹⁵³ Article 7(1) and (2) of Expropriation Proclamation No 1161/2019

Another big problem witnessed in expropriation is lack of effective institution which supervises compliance by the land developers with the laws in allocating the lands acquired to intended purpose. As indicated in the cases, apart from the inherent defect in the law and practice which allows expropriation of private lands for exclusive use of private developers, the investors are let free to convert the land to whatever purpose contrary to what they were originally granted. In the case of private school discussed above, the land which was taken for building of orphan care was converted to private school and huge agricultural investment. Likewise, the vast tract of land acquired in the name of developing it into modern agricultural investment of growing wines has never been developed as per the plan. By enclosing it with a fence, the investor has been using it to grow ordinary cereals for over a decade. From the legal point of view, neither the federal expropriation law nor Tigrai's land administration laws envisage the possibility of revocation of the expropriation whenever investors or the state allocates for unauthorized purpose. The new expropriation proclamation empowers affected individuals to file objections whenever requirements of public purposes provided for under proclamation are not met.¹⁵⁴ However, this provision suffers from defects on two counts. Firstly, the provision doesn't mention the appropriate body eligible to entertain the objection. The fact that filing objection seems to be confined to the Complaint Hearing and Appeal bodies established in the proclamation perpetuates the hitherto practice of determination of public purpose which is solely administrative business devoid of judicial scrutiny. Secondly, the possibility of filing objection against expropriation decisions which were undertaken before the advent of proclamation isn't provided. On the other hand, in order to institutionally address problems associated with land administration, Tigrai regional state has adopted a proclamation which establishes Land Use and Administration Bureau mandated with various powers and responsibilities.¹⁵⁵ The proclamation which was adopted in January 2020 empowers the bureau with power to oversee, follow up and taking measures on those who unlawfully take land or those who fail to appropriately develop.¹⁵⁶ However, what activities constitute 'inappropriate development' isn't clear. From practice, authorities were concerned only with failure to put the project into action on due time rather than the strict compliance with public purpose nature of the activity. Unless the term is construed as

¹⁵⁴ Article 5(4) of Expropriation Proclamation No1161/2019. The proclamation used the phrase በአግባቡ በልማት ያልቀለ

¹⁵⁵ Tigrai Regional State Land Use and Administration Bureau Establishment Proclamation No 343/2002 E.C

¹⁵⁶ Id , Article 9(11)

to empower the newly established bureau to annul expropriation or taking back of lands which were put to private purpose, the social instability resulting from illegal seizure of farmers' land will persist.

4.3. Compensation for Farmlands Expropriated for Urbanization

4.3.1. Displacement Compensation

Expropriation in Ethiopia is the main tool that supports urban expansion and makes land available to private developments such as residential complexes, commercial centers and other investments.¹⁵⁷ As soon as peri-urban territory is planned for urbanization by being included in the area covered by a Structural Development Plan), local landholders within this territory are assumed to be subject of expropriation.¹⁵⁸ The affected peri urban landholders who cease to possess their land due to urbanization are entitled to substitute land or cash compensation.¹⁵⁹ However, the amount of displacement and property compensation paid to local holders is too small. This partly stems from lack of strong legal protection of landholding rights manifested in the constitutional exclusion land usufruct from the definition of property interests.¹⁶⁰ Following this, the federal and regional land administration and use laws don't recognize loss of usufruct as compensable. Instead, farmers displaced from their land by expropriation are entitled only to amount of compensation fixed by the state. For those who lose their agricultural land, the amount of compensation was ten times the average agricultural income of three years preceding expropriation. Apart from the fact that it is far from being enough, the lack of proper evaluation and arbitrary determination of the amount by city administrations remains the major cause for dissatisfaction of peri urban landholders. For example, in the above case of land purportedly taken for Orphans Care center, only ten out of 35 affected farmers were paid compensation at flat rate of Br 12,000 each. Firstly, the majority of the landholders were displaced without compensation with empty promises of in-kind compensations.¹⁶¹ Secondly, even those who were compensated with cash were dissatisfied with the amount of compensation because it was disproportionate with the income they used to gain from their agricultural land. The flat determination of compensation to all affected persons which stands at Br 12000 indicates that no

¹⁵⁷ Achamyelch Gashu Adam, Peri Urban Land Tenure System in Ethiopia, (2014), p.13

¹⁵⁸ Id ,

¹⁵⁹ Id

¹⁶⁰ The 1995 FDRE Constitution Article 40(7)

¹⁶¹ Supra note 144 Interview with Qeshi Berhanu et al

expertise valuation was conducted pursuant to prescription of expropriation laws. Interviews held with farmers dispossessed from their land for reason of airport expansion by civil aviation indicate that the amount of compensation is determined by negotiation with the landholders in halls without any objective assessment of incomes derived from the land as prescribed by the law.¹⁶²

Property Compensation

Property compensation refers to compensation given to fixtures built on land. It mainly includes compensable interests such as utility lines, permanent improvements to land, property situated on the land which can be removed and relocated, property which can be removed for consumption (e.g. standing crops) and property which cannot be relocated.¹⁶³ This type of compensation is the only one which was envisaged in the FDRE Constitution as it adopts labour theory of property in which property holders are entitled to compensation to the extent of added capital and labor to their land.¹⁶⁴ This is further emphasized by provisions in the expropriation legislations issued by the federal and regional governments.¹⁶⁵

In the context of peri urban areas, property compensations mainly refer to payments made against expropriation of residential houses and perennial plantations and crops demolished or expropriated to be incorporated into urbanities. In such areas, however, the expropriation rules and principles are not adhered that property rights of local residents are negatively affected. During expropriation, land lease directives enacted by Bureau of Urban Development undermine rights of property holders recognized by formal expropriation laws. By superseding the constitutional right to property and by disregard of appropriate procedures, such legislations restrict property holders from developing their property in a manner that undermines appropriate determination of property compensation. Upon adoption of structural development plans to incorporate peri urban villages, property holders are restrained from improving their residential holdings by planting perennial crops or building extra rooms. For example, in Feleg Da'ro Kebelle, rural village was incorporated into urban administration as per structural development Plan in 1996 E.C. Likewise, other kebelles in formerly rural villages known as Aynalem and

¹⁶² Interview with Farmers Kalayu Hagose , Hailemariam Reda and Hagos Hadgu

¹⁶³ Muradu Abdo, Supra note 4, p. 311

¹⁶⁴ Ibid

¹⁶⁵ Article 2(2) of Expropriation Proclamation No 1161/2019, and Article 33(1) of Tigray RLAUP

Debri were incorporated into urban administration in 2003 which saw similar problem of preventing local residents from building new rooms or plant perennial crops with a view to protecting the state against burden of paying higher compensation when the property is eventually expropriated.¹⁶⁶ Since that time, the plan hasn't been implemented as of today, as a result residents cannot develop their possessions as the directive enacted by Bureau of Urban Development and Trade and Industry prohibits from doing so.¹⁶⁷ According to the lease holding directive, in big towns residential building owners who live in areas incorporated by SDP which is set to be implemented in five years aren't allowed to build new homes except works of maintenance. This sanction replaces the cut-off date provided under expropriation laws after which developments made on once property are accounted for compensation. In the 1960 Ethiopian Civil Code, the date of serving of expropriation order seems to be the cut-off date for the purpose determining property compensation.¹⁶⁸ In recently repealed expropriation proclamation, notice of expropriation simultaneously contains amount of compensation to be paid to affected persons.¹⁶⁹ This implies the amount of compensation is determined before the landholder is notified. Hence, the procedure of taking inventory of properties subject to expropriation undertaken by experts assigned by the implementing agency seems the cut-off date. Upon completion of valuation and serving of notice as to amount of compensation, landholders cannot claim compensation for properties for improvements made thereafter. This implies that improvements and fixtures made on the land after such cut-off date are not accounted for compensation. With regard to the new expropriation proclamation, it perpetuates the rule by fixing the cut-off date on date of notice. What is newly added in this proclamation is that seasonal crops planted upon notification on the amount of compensation are due to be recompensed once the appropriate body fails to pay compensation within three months of the notice.¹⁷⁰

Therefore, the appropriate expropriation laws don't restrain landholders from improving or otherwise developing their property up until at least three months before payment of compensation or expropriation. The lease holding directives regulating expropriation of peri

¹⁶⁶ Tigray Lease holding Directive No 5/2007

¹⁶⁷ Id ,

¹⁶⁸ Article 1470 of 1960 Civil Code

¹⁶⁹ Article 8(1)e of Expropriation Proclamation No 1161/2019

¹⁷⁰ Article 8(3) a of Expropriation Proclamation No 1161/2019

urban properties for urbanization however prohibit landholders from improving their land for five years preceding implementation of LDPs. What is more, even after expiry of the five years, the LDPs are never implemented under the condition that the restrictions imposed on landholders are not lifted. As a result, the residents are condemned not to exercise legitimate property rights for years close to a couple of decades. Such people live in houses made up of stones and mud most of them built many years back by their ancestors. In case they attempt to grow perennial plants such as eucalyptus tree or build new rooms in their residential holding, they are prohibited from doing so by village administrators.¹⁷¹ This prohibition reduces the market value of property to be compensated during expropriation anticipated to be undertaken after years thereby undermining fairness of compensation. Even worse, the development plan is not implemented within the legally prescribed five years limit as a result property holders remain for decades without possibility of improving their possessions.

In light of the widely known valuation methods which are employed to reach the fair market value or compensation of the properties expropriated, such practice of restricting property holders from improving their possessions happens to be unfair. One of the valuation methods is Income Capitalization Method. This method gives value to the property in relation to the income it produces.¹⁷² The potential of property's income capitalization depends in the property holder's ability to improve it by investing his/her capital and labor. In light of this valuation approach, the properties of such peri urban landholders are even rendered unable to produce income long before actual expropriation with a view to circumventing future obligation of paying compensation for capitalized income thereby reducing fair market value at the time of taking.

The second valuation method is Cost Replacement Approach. In this approach, amount of compensation is determined in a manner that is able to cover the cost of improvements made on the land which are subject to expropriation.¹⁷³ This approach is actually adopted in Ethiopia's expropriation law. Article 12(2) of the newly enacted expropriation proclamation stipulates that the amount of compensation for property on the land shall cover the cost of replacing property

¹⁷¹ Interview with Tadesse Abraha and Hagos Kalayu held on Ginbot 1, 2012 E.C (members of a *solution seeking committee* formed in 2011)

¹⁷² Daniel Weldegabriel, *Supra* note 5, p 14

¹⁷³ *Id*

anew.¹⁷⁴ This approach was also prescribed in the predecessor expropriation Proclamation No 455/2005 and its implementing regulation No 135/2007. In the context of expropriation of residential properties and other fixtures in these peri-urban areas, the amount of compensation cannot be deemed as replacing the cost of existing properties. Instead, the compensations are covering the cost of fixtures built or planted many years preceding expropriation. Since property holders have constitutionally guaranteed rights to improve their property and receive compensation in cases of eviction and compensation,¹⁷⁵ imposing premature restrictions is utterly unreasonable and harmful. In this connection, the proper and acceptable concern of unnecessary expense incurred by the government because of deliberate improvement by property holders is duly acknowledged. Deterring such deliberate improvements with anticipation of future expropriation by speculative farmers is important issue which must be taken into account. Such concern was in fact felt when the civil code excludes improvements made after service of expropriation order with purpose of obtaining greater amount of compensation.¹⁷⁶ However, this provision assumes undertaking of expropriation within the period provided for under the laws. In expropriation for urbanization purposes, the time required for implementation of development plans might understandably be longer. In such cases, speculative improvements can be deterred by capping the amount of compensation through fixing maximum amount.

In addition, the directive not only prohibits the landholders from improving, but also any type of transaction such as sale and donation. This turns properties into ‘deed capital’ which affects property holders’ rights of reaping fruits from possessions and enhancements thereof. Other concomitant problem resulting from their being not subject to transaction faced by courts is difficulty in enforcing rights in case dispute arises in respect of such properties.¹⁷⁷ For example, when husband and wife appeal to court requiring division of property following divorce, judges are sometimes forced to physically go to the place of residence and give temporary order dividing the property without ordinary title deed because such properties remain locked and frozen.¹⁷⁸ Generally, barring landholders from improving their property and imposing restriction not to dispose for indefinite period of time undermines the constitutionally guaranteed right

¹⁷⁴ Expropriation Proclamation No 1161/2019

¹⁷⁵ Article 40(7) of the FDRE Constitution

¹⁷⁶ Article 1476(1) of the 1960 Civil Code.

¹⁷⁷ Interview with Judge Selam Kidane on Ginbot 5, 2012 E.C.

¹⁷⁸ Id

create wealth through one's labour and capital¹⁷⁹ thereby turning such properties into deed capital.

4.3.2. Compensation in the form of substitute Land for Demolished Peri-Urban Residences

One of the major sources of discontent in the areas surrounding the town is denial of substitute lands for those people whose ancestral residential houses are demolished as a result of urbanization. This is mainly felt by members of young population who are excluded from grant of substitute land undertaken when formerly rural villages are incorporated into urbanities. As the demolition of such residential houses is often accompanied by widespread displacement of the local population from their agricultural plots, denial of the youth to urban lease holding exposes them to acute economic problem. Cash compensations made for displacements from agricultural plots and costs of demolished property are too small to support the future livelihood of the farmers. Furthermore, absence of abundant substitute agricultural lands coupled with failure of urban administration to absorb the local population entails in their exclusion from both rural and urban economy. Implementation of master plans incorporating peri urban villages through expropriation without accommodating the local population mainly the youth through the lease hold system is increasingly becoming source of violent oppositions. The property compensations made in the form of cash against demolished structures are paid to the parents and inadequate to support livelihood of large families. Likewise, grant of land for residence is not accommodative because lease directives and subsidiary administrative statutes known as *solution directions* (Mefthi Anfetat) are discriminatory based on arbitrary criteria. For example, in a directive adopted in 2000 E.C applicable only in Mekelle city, grant of land is allowed to children who live in compound of their parents given that they are married and have their own room given to them by their parents. Considering marital status as a ground to get lease holding is discriminatory against spirit of standard expropriation principles. The rural land administration law provides requirement of attaining majority age as ground to get land for residence.¹⁸⁰ No other personal requirement is laid down. When absorbed into urban administration, putting such discriminatory qualification goes against elements of modern day expropriation that protect landholders against arbitrary takings. After all, the young members whose ancestral houses are

¹⁷⁹ Article 40(7) of FDRE Constitution

¹⁸⁰ Article 30(1) of Tigray RLAUP

included to urban areas are displaced from rural life and there is no possibility for them to be entertained by the rural land tenure.

Additionally the different so called solution directions (Meftehi Anfetat) which are enacted by urban administrations to help implement the federal and regional urban land lease proclamation and directives are becoming other sources of complaints in relation to land administration in those peri urban areas. These acts are principally aimed at executing laws pertaining to land administration which include ways of granting substitute lands for urban landholders whose possessions are expropriated for urban development purposes. Specifically, Tigray national state had a proclamation which provides powers and duties of urban administrations.¹⁸¹ This proclamation empowered urban administrations to enact these acts. Though the provision was subsequently repealed by another proclamation in 1998 E.C, repercussion of land rights related decisions based on these solutions are felt as of today. Normally, they are deemed to play procedural role of facilitating the superior lease laws. In practice however, they contain substantive rights which undermine rights of land holders which drew criticism from legal scholars.¹⁸² For example, lease directives adopted in 2002 E.C stipulates that peoples expropriated from their possessions are entitled to substitute land amounting 100 m2 by subsidy on top of remaining amount through lease contract. A subsidiary *solution directive* adopted in 2006 E.C fixed the maximum amount at 250 m2 through lease contract to rural residential houses included into urban administration.¹⁸³ In addition to the illegality issue surrounding the determination of substitute land by these statutes, fixing the maximum amount at 250 without having due regard to the amount of land expropriated raises another question in its fairness.

4.3.3. Effect Rural Land Tenure System in Land Compensation for Expropriations in Peri-urban Areas

The rural land tenure system includes lands which are utilized for agriculture which includes pastoral land and plots of land used by peasants to build residential homesteads. Tigray's rural land use and administration proclamation devotes some provision which regulates ways of acquisition, use and transfer of rural lands used for residences.¹⁸⁴ Article 30(3) of the proclamation stipulates that rural residential plot is not subject of sale. Furthermore, sub article

¹⁸¹ Tigray Powers and Duties of Urban Administrations Proclamation No 65/1995 E.C

¹⁸² Interview with Ato Yared Berhe on Ginbot 5,2012 E.C, teacher at Mekelle University School of Law

¹⁸³ Meftehi Anfet 7.1.1 adopted in 2006 E.C

¹⁸⁴ Article 30 Of Tigray's Land Use and Administration Proclamation

six of the same provision forbids holders not to collateralize rural residential land. This is further reinforced by Article 35 of the proclamation and Article 38(2) of rural land administration directive which impose criminal fine and civil liability of dispossession respectively.¹⁸⁵ This prohibition applies to residences located in peri urban areas.

Based on this general rule, peasants who acquired residential land through sale in those areas are excluded from compensation. Not only in the rural land administration proclamation, lease directives adopted by the regional state emphatically forbid payment of compensation for such lands.¹⁸⁶ This is justifiable due to the fact that free land is not subject of sale as per constitution and acute shortage of land warrants close regulation. The problem however is that administrative decisions extend the prohibition to include plots received by children from their parents through donation. Many people complain that denial of compensation for their lands expropriated for development purposes was breach of their rights.¹⁸⁷ Arbitrariness is rampant due to series of laws and administrative decisions which contain inconsistencies. At one hand, the laws approve possessions received by donation if they are confirmed by social courts. Reversely, the provisions clearly deny compensations for such possessions whenever they are taken for development purpose. Approval of possessions by courts received by donation presupposes that the prohibition imposed on right to sale doesn't apply to donation. In fact, donating plots for residential purposes by parents are clearly authorized by law.¹⁸⁸ Treating lands received through donation as unlawful as those received by sale violates clear stipulation provided for under the law. Therefore, the administrative *solution direction* which excludes lands received by donation from compensation is inappropriate and unlawful.

¹⁸⁵ Ibid ,see also Article 35 and Land Administration and Use of Rural Land and Agricultural Investment Directive No 4/2008 E.C

¹⁸⁶ 1.2.4 of Directive adopted in 2002 E.C

¹⁸⁷ Interview with members of a Debrri committee formed to seek solution for land related claims.

¹⁸⁸ Article 30(7) of Tigray Land Use and Administration Proclamation

Chapter Five

5. Conclusion and Recommendation

5.1. Conclusion

Peri-urban areas represent the intermediate places located between urban and rural tenures which become a cause for intensive displacements induced by development works carried out by the state. The acquisitions are undertaken without fulfilling the key elements of modern day expropriations mainly public purpose and fair compensation. Farmers leading their livelihood on agriculture in peri urban areas of Mekelle town are subjected massive land grab for private uses under the guise of investment and economic development. Lands taken for declared purposes of agricultural investment and voluntarism purposes by displacing many farmers were unlawfully allocated to enrich patrimony of private investors without fetching any job opportunities or other economic benefits to the local population. Even worse, the investors put the land into growing ordinary crops which were cultivated by the farmers themselves.

Such Maximalist approach towards public purpose runs counter to the very rural land policy followed by the state. The constitutionally sanctioned land tenure system which forbids private ownership of land is justified by paternalistic idea of protecting farmers from impoverishing themselves by selling their lands in times of hardship. The federal proclamation and subsidiary

regional land proclamations and directives strengthened the rule by extending the prohibition to leasing out of agricultural land. Accordingly, farmers cannot lease out their land to fellow smallholders for years exceeding three years. In addition, the maximum period of time agricultural investors can get land through lease stands at 25 years. These limits are aimed at ensuring tenure security of farmers. Therefore, use of extended definition of public purpose as an excuse to acquire land from farmers contradicts the underlying land policy followed by the state. The policy reasons behind prohibitions on right to sale and lease imposed on farmers is rendered meaningless if private investors are allowed to get farmers' land by invoking public purpose. Lack of institutional follow-up of lands taken through expropriation whether they are allocated for the appropriate purpose also represents another problem in this regard. Example of land taken under guise of growing cash crops which was diverted to cultivation of ordinary cereals indicates this problem. Another case of appropriation of large tract of land taken for building Orphans Care which has been put for agricultural purpose also notes the big problem in this regard. All in all, the cases indicate that determination of public purpose in expropriation is defective because it is purely administrative business devoid of judiciary review.

With regard to rural villages included into urban administration in accordance with master plans, the laws and practices expose local population to landlessness, displacement and inadequacy of compensation. Farmers living in peri urban areas surrounding the town are prevented from improving their ancestral residential buildings. Upon inclusion into urban master plans often undertaken without consultation with the population, they are banned from planting perennial crops; build extra rooms or other significant improvements for many years. Though the lease directives prescribe implementation of the master plans within five years after the expiry of which the restrictions must be lifted, the practice remains otherwise. Village administrators prevent them from doing so even after expiry of the duration. This affects constitutionally guaranteed property rights such rights to create wealth on land by investing labour and capital and right to receive compensation during expropriations.

Whenever peri-urban rural areas are incorporated into urban administration, approval/grant of lease holdings for the local population is never inclusive because the administrative decisions known as *solution directions* provide arbitrary criteria such as marital status which is discriminatory and unlawful. Dual land system followed in Ethiopia has also its effect land

tenure in peri-urban areas. Particularly, Tigrai rural land use proclamation forbids sale of plot of lands provided for residential purposes. In consonance to this general prohibition, the urban land lease directives and decisions passed by Mekelle city administration deny approval of lands received through sale. However, these laws unjustly include lands received by donation. As a result, people who receive land from parents through donation are excluded from benefit of compensation and substitute land during expropriations. Practices based on such decisions have caused for violent complaints by the youth which resulted in arrest of many people.

5.2. Recommendations

In order to reduce problems and complaints associated with administration and expropriation of lands located in those areas, the researcher suggests the following recommendations,

1. The purposes which justify expropriation of private property must be exhaustively provided by law in a way that discourages abuse of power by authorities and allocation of expropriated property for purely private purposes. Particularly, legality of the purpose for which lands are expropriated must not be justified by voluntary nature of the handover. Giving up a landholding voluntarily has more to do with compensation than public purpose element. In this connection, regard must be had to the rural land tenure which emphasizes ensuring tenure security. Voluntary land transfer right is limited in our laws with the view to ensuring tenure security. Hence, the expropriation laws which provide list of public purpose must take this underlying policy into account.
2. With respect to lands taken for purposes of creation of job opportunities such as micro and small scale businesses and agricultural investments, priority must be given to local population. This scheme is clearly provided in the federal expropriation proclamation. Regional states should adopt comprehensive subsidiary laws which help for that. In order to support effective development by locals, assistances such access to loan, financial incentives and trainings must be provided by the state.
3. The laws and practices which impose indefinite bans on property holders not to renovate and improve their possessions must be outlawed. In order to avoid a burden of paying excess compensation for deliberate improvements, laying down maximum amount of compensation is possible.

4. Alternatively for the above, imposing a duty on the state of paying compensation for damages caused by failure to implement the master plans on due time may be provided by law.
5. The laws and administrative decisions which provide arbitrary criteria for award of substitute land or cash compensation for expropriated built-up peri urban properties must be repealed. People excluded as a result of these laws must be compensated.

Bibliography

Laws

Constitution of the Federal Democratic Republic of Ethiopia. (1995). Proclamation No. 1/1995.

Expropriation of Land Holdings for Public Purpose and Payment of Compensation Proclamation. (2005). Proclamation No.455/2005.

Payment of Compensation for Property Situated on Landholding Expropriated for Public Purposes, Negarit Gazeta. Regulation No.135/2007.

Expropriation of Land Holdings for Public purposes, Payments of Compensation and Resettlement of Displaced People Proclamation No 1161/2019

Tigray Rural Land Use and Administration Proclamation No 236/2006.

The Civil Code of the Empire of Ethiopia. (1960). Proclamation No. 165/1960.

Urban Lands Lease Holdings Proclamation No 731/2011

Books and Journals

Abebaw Abebe Belay, EXPROPRIATION, VALUATION AND PAYMENT OF COMPENSATION; THE LAW AND THE PRACTICE IN ADDIS ABABA CITY, ETHIOPIA, INTERNATIONAL REVIEW OF HUMANITIES AND SCIENTIFIC RESEARCH By International Scientific Indexing, available at www.irhsr.org

Daniel Woldegebriel Ambaye(2013), History of Expropriation in Ethiopian Law, Mizan Law Review Volume 7

Muradu Abdo(2015), Reforming Ethiopia's Expropriation Law, Mizan Law Review Vol.9 No 2

Daniel Weldegebriel AMBAYE(2009), Land Valuation for Expropriation in Ethiopia: Valuation Methods and Adequacy of Compensation,

Achamyeleh Gashu Adam (2014), Peri-urban Land Tenure in Ethiopia,

LEI CHEN, Legal and Institutional Analysis of Land Expropriation in China,

Shaohua Zhan (2018), Accumulation by and without dispossession: Rural land use, land expropriation, and livelihood implications, *Journal of Agrarian Change*, available @ wileyonlinelibrary.com