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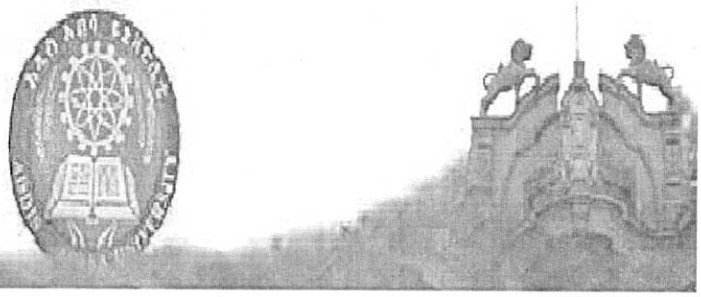

ADDIS ABABA UNIVERSITY

COLLEGE OF LAW AND GOVERNANCE

CENTER FOR HUMAN RIGHTS

VILLAGIZATION IN CONTEMPORARY ETHIOPIA: THE EXPERIENCE OF GAMBELLA REGION, ANYWAA ZONE, FROM HUMAN RIGHTS PERSPECTIVE

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JUNE 2014

ADDIS ABABA

ETHIOPIA

VILLAGIZATION IN CONTEMPORARY ETHIOPIA: THE EXPERIENCE OF GAMBELLA REGION, ANYWAA ZONE, FROM HUMAN RIGHTS PERSPECTIVE

SUBMITTED IN PARTIAL FULFILMENT OF THE REQUIREMENTS FOR MASTER'S DEGREE OF ART IN HUMAN RIGHTS AT ADDIS ABABA UNIVERSITY, CENTER FOR HUMAN RIGHTS

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JUNE 2014

DECLARATION

I, Zinabu Endalfer, do hereby declare that this work **'Villagization in Contemporary Ethiopia: The Experience of Gambella Region, Anywaa Zone, from Human Rights Perspective'** is my original work and has not been presented in any other institution before. Whenever other sources are used or quoted they have been duly acknowledged.

Name of Author: Zinabu Endalfer

Signature: _____

Date: _____

APPROVED BY BOARD OF EXAMINERS

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INTERNAL EXAMINER SIGNATURE

CERTIFICATION

This thesis entitled **'Villagization in Contemporary Ethiopia: The Experience of Gambella Region, Anywaa Zone, from Human Rights Perspective'** submitted in partial fulfillment of the requirements of the Master of Arts in Human Rights to the College of Law and Governance, Addis Ababa University, through the Center for Human Rights, written by Zinabu Endalfer, has been submitted for examination with my approval as Addis Ababa University advisor.

Name: _____

Signature: _____

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ACRONYMS

AAU	Addis Ababa University
ACHPR	African Charter on Human and Peoples' Rights
ACHPR	African Commission on Human and Peoples' Rights
BOFED	Bureau of Finance and Economic Development
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women
CERD	Convention on the Elimination of All Forms of Racial Discrimination
CESR	Committee on Economic, Social and Cultural Rights
CRC	Convention on the Rights of the Child
E.C	Ethiopian Calendar
EFY	Ethiopian Fiscal Year
FDRE	Federal Democratic Republic of Ethiopia
FGD	Focus Group Discussion
FPIC	Free, Prior, and Informed consent
FTC	Farmer Training Center
GOE	Government of Ethiopia
GPNRS	Gambella Peoples National Regional State
GTP	Growth and Transformation Plan
Ha	Hectare
HRBA	Human Rights Based Approach to Development
HRC	Human Rights Committee
HRW	Human Rights Watch
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
ILO	International Labor Organization
MDGs	Millennium Development Goals
MOARD	Ministry of Agriculture and Rural Development
MOFA	Ministry of Federal Affairs
MOFED	Ministry of Finance and Economic Development

NGO	Non-Governmental Organization
PRSP	Poverty Reduction Strategic Paper
RRC	Relief and Rehabilitation Commission
SNNPR	Southern Nations Nationalities and Peoples Region
UDHR	Universal Declaration of Human Rights
UN	United Nations
UNGA	United Nations General Assembly
VVP	Voluntary Villagization Program
WB	World Bank
WORKING GROUP	African Commission's Working Group on the Rights of Indigenous Populations/Communities
WPE	Workers Party of Ethiopia

ABSTRACT

In Ethiopia history dates back to the imperial regime relocating people from drought prone and over-crowded areas to less populous and moisture sufficient areas has been adopted as one of the policy ideals that have introduced to alleviate various socio-economic problems. However, such schemes of people's relocation undertaken in Ethiopia had been bitterly criticized within the international community given that the scheme had been driven by merely political imperatives and characterized by coercive, unplanned and disregards humanitarian considerations.

It is against this background that in 2003 E.C the GoE embarked up on the villagization program in emerging regions of the country, Gambella as a case in point and "socio-economic and cultural transformation" of communities who are settled in a dispersed way, with its declared purpose. Taking this as a background, this study was concerned on examining the villagization experience from a human rights perspective in two case study villages in Anywaa zone of Gambella region. To achieve this objective, the study employed qualitative approach. And, data for the study were collected from target communities, key informants, field observation, and from secondary source as international and regional human rights instruments, national legislations, reports, and documents of different institutions.

After conducting serious analysis as per the interview responses of the target communities in the study villages and key informants represented from federal to Kebele level, and field study, the researcher, presents empirical evidences and eventually addressed the following concerns to the study villages: procedural issue of consultation and the villagization program, distributive issue of compensation and the villagization program, cultural practices at the new settlement areas, access to basic social services in new villagization site, and the villagization program implications for the right to development of villagers.

CHAPTER ONE

1.1 Background to the study

Villagization is characterized by the relinquishment of the traditional scattered or semi-permanent way of settlements predominantly used by pastoralists or shifting cultivators and the adoption of concentrated and permanent settlements among various sections of the society towards settled agriculture.[1]Debates about how to improve the quality life of the peoples and on the nature of how development conceived is still important for Africa where myriads of developmental models failed. In spite of the fact that, there is little consensus what development actually means and how development could be brought about, it remained as one of the key aspirations of the developing world including Ethiopia. Presently, one of the development models which are being promoted as a panacea for Africa is the developmental state. According to Asnake, "the core idea of the theory of developmental state is that the state should make development its top priority and intervene in the economy to facilitate growth and industrial transformation".[2]

In Ethiopia's context, the incumbent party has explicitly committed itself to building a "democratic developmental state" that efficiently guides the national socio-economic and political development of the country by mobilizing the human and material resources of the state and directing them towards improving the living conditions of the majority of its population.[3]

The Federal Democratic Republic of Ethiopia (FDRE) Constitution recognizes the presence of different socio-cultural groups, including historically disadvantaged and underserved communities with reference to their rights to socio-economic equity and justice.[4] Currently, to address this, the government in its institutional framework mandated the Ministry of Federal Affairs (MoFA) to ensure equitable development among regions with special emphasis on

[1] Kikula, I. (1997): Policy Implications on Environment: The Case of Villagization in Tanzania. Uppsala: The Nordic Africa Institute,p.14
[2] Asnake Kefale (2011): Narratives of Developmentalism and Development in Ethiopia: Some Preliminary Explorations,p.2
[3] Ibid at p.2
[4] Federal Democratic Republic of Ethiopia(2013): Pastoral Community Development Project (PCDP-3) and Regional Pastoral Livelihood Resilience Project (RPLRP): Social Assessment Report,p.3

delivering special support to emerging regions including Gambella People's National Regional State (GPNRS).[5] As a policy option, although the current ruling coalition opposed to similar programs the *Derg* undertook in the mid-1980s, it promotes a villagization program as an approach to ensure development in general and provision of social services to least served emerging regions in particular.[6] Accordingly, the government of Ethiopia recently launched a villagization program in the GPNRS which has been implemented during 2010/11-2012/13 and targeted to settle 45,000 households.[7]

The period of Ethiopia's political history of direct relevance to the policy of villagization begins during the 1980s.[8] Alula and Piguet labelled, the *Derg* regime's experience of villagization: "one of the most complex, ambitious and draconian measures ever attempted by the Ethiopian state".[9] It was poorly planned, badly organized and violently enforced as well as not sufficiently maintained and has been driven more by political imperatives than humanitarian or economic objectives.[10] Likewise, from African countries experience of villagization, Sakamoto pointed out that, villagization was pursued in Tanzania, commonly called *ujamma* villages, intended to create self-reliance for agriculture and provision of basic social services but resulted socio-economic and cultural failure to the villagized communities due to improper planning and implementation processes.[11] Thus, the villagization experiment of *ujamaa* is criticized as a failed example of large-scale state planning.[12]

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[5] FDRE Ministry of Federal Affairs, Equitable Development Directorate (2013): Equitable Development Manual: Regions in need of special support strategy,p.3

[6] Oakland Institute(2013):Development Aid to Ethiopia: Overlooking Violence, Marginalization, and Political Repression,p.10

[7] Gambella Peoples' National Regional State; Villagization Program Action Plan (2003 EFY),p.1

[8] Lorgen, C. (1999): The Experience of Villagization: Lessons from Ethiopia, Mozambique, and Tanzania; Oxfam GB,p.12

[9] Derese Getachew (2009): Resettling the Discourse on Resettlement Schemes towards a New Approach,p.867

[10] Stellmacher, T. and Eguavoen, I. (2011): The Rules of Hosts and Newcomers. Local Forest Management after Resettlement in Ethiopia,p.4

[11] Guyu Ferede (2012): Voluntary Villagization Scheme (VVS) for Transforming Semi-pastoral Communities in Benishangul-Gumuz Region, Northwestern Ethiopia: Challenges and Local Development Indicators,p.248

[12] Scott, J. (1998): Seeing Like the State: How Certain Schemes to Improve the Human Condition Have Failed. New Haven: Yale University Press.

Parallel to the Tanzania's *ujamma* villagization experience, *Derg's* political objective of villagization program in Ethiopia resulted in the fleeing of thousands of people to avoid villagization and others died, and those forcefully relocated to the newly established villages lived in deplorable conditions.[13] Paradoxically, the current government vows that a repeat of the *Derg's* failed attempt will not happen, and at the same time under the Growth and Transformation Plan (GTP) explicitly states that enhancing and expansion of social development is among the main pillar strategies.[14] Realizing these developmental targets is difficult and costly in the lowlands mainly due to the scattered human settlement.[15]

To deal with the constraints of sparse population density, the Ethiopian government has embarked up on a "voluntary villagization program" in regions of Afar, Beninshangul-Gumuz, Gambella, Oromiya, Somali, and Southern Nations, Nationalities and Peoples (SNNP). On the face of it, this policy direction seems to follow from the FDRE constitution Article 89 sub-article 4, which stipulates the government's duty to provide special assistance to least advantaged nations, nationalities, and peoples in economic and social development.[16] To this effect, GPNRS as a case in point, the villagization program is framed as the regional government's development agenda and has been pursued since 2010/11 for the three consecutive years with its declared aim to bring socio-economic and cultural transformation of the people who are scattered along the riverside, prone to frequent flooding.[17]

Taking these points as a background, the objective of this thesis is to examine the experience of the Gambella region (Anywaa zone) villagization program from a human rights perspective.

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[13] Resettlement and villagization, retrieved from http://countrystudies.us/ethiopia/
[14] Ministry of Finance and Economic Development(2010): Growth and Transformation Plan,2010/11 – 2014/15,p.8
[15] Ministry of Finance and Economic Development(2003): Rural Development Policy and Strategies,p.59
[16] The Constitution of the Federal Democratic Republic of Ethiopia, Federal Negarit Gazzeta. No. 1, 1995
[17] Supra note 7 at p.1

1.2 Problem Statement

In Ethiopia there is disparity in social development indicators between the highland and the lowland, and the latter is least served. Accordingly, the Growth and Transformation Plan (GTP) document gives special emphasis to deliver basic social services in the peripheral regions (including GPNRS), where access to basic social services is limited.[18] To this end, in Gambella, the regional government has developed and executed villagization program during 2010/11-2012/13 fiscal years with the aim of gathering the regional community which were settled along riversides. The declared purpose is to ensure food security, build socio-economic facilities and accessibility to development as well as cultural transformation.[19]

However, the role of the state in promoting socio-economic progress has been a subject of contestation among international development experts and policy analysts.[20] The current villagization program in the Gambella region is also not without controversy. The Human Rights Watch (HRW), which is one of the most known transnational human rights advocacy organizations, contests that the program is taking place through eviction of indigenous peoples from their ancestral land with no a meaningful consultation or compensation. The organization also argues that the measures taken by the Ethiopian government are inconsistent with international law in general and the Ethiopian constitution in particular. Paradoxically, the Ethiopian government argues that villagization is necessary for local people to benefit from development and ensure their socio-economic rights despite rights groups' contention that the program is merely intended to make land available for commercial agriculture foreign investors and small-scale Ethiopian investors at the expense of the human rights of indigenous peoples.[21]

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18 Dereje Feyissa (2013): "Centering the periphery? The Praxis of Federalism at the Margins of the Ethiopian State"; Ethiopian Journal of Federal Studies,p.170.

19 Gambella Peoples' National Regional State Bureau of Agriculture and Rural Development(2010): Villagization Program Implementation Manual,p.2

20 Fritz, V. and Menocal, A. (2006): Rebuilding Developmental States: From Theory to Practice, Working paper 274,p.2

21 Human Rights Watch Report (2012): "Waiting Here for Death" Forced Displacement and Villagization in Ethiopia's Gambella Region,p.17

1.3 Research Objectives

General Objective

The general objective of this study was to examine the trade-offs between socio-economic rights, and cultural and consultation rights of Anywaa community in the implementation of the villagization program.

Specific Objectives

The specific objectives of the study are;

- To assess whether the villager's right to be consulted was taken in to account when the villagization program was undertaken.
- To describe how the issue of compensation was considered in the implementation of the villagization program.
- To explore changes made on basic social services in the new villagization sites in comparison to the pre-villagization settlement areas.
- To determine to what extent the villager's are exercising their cultural practices in the new settlement areas.
- To exemplify the villagization program implications for the right to development of the villagers'.

1.4 Research Questions

1. Has the villager's right to consultation been considered when the villagization program was undertaken?
2. How the issue of compensation was considered in the implementation of the villagization program?
3. How adequate are the socio-economic services provided in the new villagization sites?
4. To what extent the villager's are exercising their cultural practices in the new settlement areas?
5. What are the villagization program implications for the right to development of the villager's?

1.5 Significance of the study

This research is significant at many levels. So far there are very few researches done in Ethiopia on villagization scheme of indigenous peoples of the region. Therefore, it is hoped that the findings of this study will generate valuable information on pros and cons of the villagization program from a human rights perspective. This study will also help to produce empirical evidences to address the current villagization program which is subjected to controversy with regard to the rationale behind the program between human rights advocacy groups and the Ethiopian government. Furthermore, the researcher hopes that the findings of this study will help other researchers and act as a springboard for further investigation of other areas not covered in this study.

1.6 Research Methodology

The research methodology employed in this study in order to achieve the objectives stated above is qualitative approach. Qualitative research focuses on respondents' perceptions and the way they make sense of their lived experience.[22] To this end, data was collected from the target communities, representatives of federal government, regional government as well as zonal, *woreda*, and *Kebele* administrators. Documents of relevant institutions, at various levels were also examined.

1.6.1 Data Collection Tools

In order to accomplish the purpose of this study, the following methods of data collection have been used.

- Semi-structured interview was conducted with officials from Ministry of Federal Affairs, Regional Federal Assistance Board Coordinating Office, Gambella Region Bureau of

[22] Creswell, J. (2003): Research Design: Qualitative, Quantitative and Mixed Approaches, 2nd Edition, p.22

Agriculture, Gambella Region Villagization Program Coordinator, Gambella Region Culture and Tourism Bureau, Zonal administration, *Woreda* administration and *Kebele* administration.

- Focus group discussions with the affected communities were also conducted. Furthermore, the researcher made exclusive interview with two households (relatively good to speak in Amharic) from each *kebele*.
- The researcher also observed the settlement pattern, way of life of villagers, success of agricultural extension program in increasing productivity, accessibility and functionality of socio-economic facilities (school, health post and water points).
- Photographs were also taken during field observation.

1.6.2 Sampling

To access the relevant data, the researcher used purposive sampling technique. In line with this, key informants from federal level up to *kebele* level who were involved in the planning, designing, implementing and monitoring as well as supervision of the villagization program were interviewed. Beside, the researcher collected relevant information through focus group discussion (FGD) from the selected village's residents who are affected by the program. With respect to sample size four FGDs (two FGDs in each village) were conducted in the selected villages. Consequently, 6 women and 10 men in each FGDs, a total of 16 individuals from Abobo *woreda* (Chebokir village), and 9 men and 5 women in each FGDs, a total of 14 individuals from Abole *woreda* (Opagna village) participated in the FGDs. From those who took part in the FGDs 11 of them are women and 19 are men. Furthermore, the researcher also conducted semi-structured interview with four households from the selected villages.

1.7 Scope and Limitation of the study

The rights of indigenous peoples enshrined under the international human rights instrument and regional human rights framework are numerous. To carry out a research on all those rights will suffer from time and resource limitations. The scope of this study is therefore delimited to examining two basic areas: the socio-economic rights of the indigenous peoples in the new settlement areas (with particular reference to access to education, health care and clean water) in the one hand, and cultural rights and right to be consulted on the other.

With regard to the research setting, from the three zones of the Gambella region (Anywaa Zone, Nuer Zone and Megeng Zone) where the villagization program has been implemented, the program covers 11 woredas. To make the research manageable, only Anywaa zone was selected as a research setting. From Anywaa zone the villagization program covers five *woredas* and from these the researcher took two *woredas* and these are Gambella *woreda* and Abobo *woreda*. *Kebeles*/villages were selected from the two *woredas* keeping in mind financial and accessibility issue. And from Gambella *woreda* and Abobo *woreda*, Opagna *kebele* and Chebokir *kebele* chosen respectively. This study was delimited to villages established during the first round of villagization program (2003 E.C.).

Financial constraints, transportation problems, and insecurity forced the researcher to choose those *woredas*. Besides, language barrier was also challenge the researcher to get in-depth feelings of the communities. However, the researcher used a translator to collect the relevant data from the communities.

1.8 Ethical Considerations

Researchers are expected to be careful of the ethical issues on the data collection procedures which are vital to collect valid and reliable data from research participants. Firstly, permission to carry out the research official letter to the concerned institutions at federal and regional level was obtained from Addis Ababa University, Center for Human Rights, MA program coordinating office. Accordingly, the researcher has taken an important ethical consideration in to account. To this end, the researcher considered ethical principles such as informed and voluntary participation, privacy and confidentiality of research participants. Interviewees and discussants have been informed of the purpose of the study without any form of deception before securing informed consent from them. Moreover, all participants of the study were informed on their right to confidentiality of the personal information they provide during the interview, where if they don't, their names are not used in this thesis.

1.9 Organization of the thesis

This study is structured in to four chapters. Chapter one introduces the study, problem statement, objective of the study, research question, significance of the study, scope and limitation of the study, methodology and ethical consideration. Chapter two contains the review of related literature part. Background of the study area, and findings and discussions form chapter three. Lastly, the conclusion of the findings completes this study.

CHAPTER TWO

REVIEW OF RELATED LITERATURE

2.1 Introduction

Resettling of people to new locations has become a dominant development practice in many parts of the world in response to natural and manmade factors or for political, economic, and social reasons.[23] Terms used in the program implementation guidelines of such movement of people have certain differences. Governments describe such population relocation schemes as resettlement, villagization, collectivization, commune and the like. The concept of villagization is frequently confused with resettlement, of course, there are points where they overlap and differ. Cognizant of this and due to the interchangeable usage of the two concepts by some researchers, having a clear cut and agreed up on definition is mandatory for the purpose of this study. According to Mengistu resettlement is defined as the process by which "individuals, or a group of people, spontaneously or unspontaneously, leave their original settlement sites to resettle in new areas where they can begin new trends of life by adopting to the biophysical, social and administrative system of the new environment."[24] Resettlement involves large-scale movement of the population over long distances.

Villagization involves the relocation of scattered dwellings and settling in mostly similar geographic and administrative units without moving significant distances.[25] Bearing in mind that villagization and resettlement are different in characteristics, and that the government of Ethiopia explicitly stated in its program as "voluntary villagization program", the term villagization seems to be more appropriate for use in this study. Moreover, the program implementation document signifies people are relocated to areas in their own similar geographic and administrative units, without mixing ethnic groups. Therefore, in this section the term 'villagization' and the scant literature on it would be used and reviewed.

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[23] Fasika Hailu (2013): The Approach and The Reproaches of The Resettlement and Villagization Program in South Omo Zone,p.13

[24] Mengistu Woube (2005): Effects of Resettlement Schemes on the Biophysical and Human environment: The case of Gambella Region, p.19

[25] Supra note 23 at p.13

2.2 Villagization Experiences in Ethiopia

2.2.1 Villagization under *Derg* Regime

Ethiopia is one of the world's poorest countries. Throughout its recent history, it has suffered from recurring droughts and famines, in particular, during the dark period of the 1984-1985, when the southern and northern parts of the country were devastated by famine.[26] Consequently, the primary government reaction to the drought and famine was the relocation of affected people living in the drought prone areas to the southwestern parts of the country.[27] Accordingly, this relocation of famine stricken people labeled in two distinct but faintly related programs of resettlement and villagization under the government ten-year development plan.[28] The government conducted most of these relocation programs under the auspices of the Relief and Rehabilitation Commission (RRC) and the Ministry of Agriculture.[29] Particularly, the villagization program was organized by the National Villagization Coordinating Committee of the Ministry of Agriculture in collaboration with the Workers Party of Ethiopia (WPE).[30] When the villagization program began, it was in a limited scope, but a year later became a nationwide campaign which came up with a plan of moving some 33 million rural residents into villages, approximately two-thirds of the nation's population.[31]

The *Derg's* villagization policy seems to follow from the constitution provision which reads as:"the state shall encourage the scattered rural population to aggregate in order to change their backward living conditions and enable them to lead a better social life". Accordingly, the government justified the objective of *Mandar Mesereta* (villagization) program; to regroup scattered farming communities throughout the country into small village clusters, so as to

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[26] Sandra, S. (1987): Resettlement and Villagization-Tools of Militarization in SW Ethiopia; Cultural Survival Quarterly,p.1

[27] Ofcansky, P. and Laverie, B. (2002): Ethiopia, a Country Study. Black mask Online Retrieved from http://www.blackmask.com

[28] Supra note 26 at p.1

[29] Supra note 27 at p.107

[30] Ibid at p.138

[31] Supra note 26 at p.1

improve agricultural production, to introduce social and economic change, rational land use as well as to make the distribution of people compatible with that of the natural resources.[32]

This program was implemented in the regions of Ethiopia that have the biggest farming populations such as the Shoa, Arsi, Hararge, and to a limited extent Gojjam, Sidamo, Wellega, Keffa and Illubabor.[33] The way the villagization program had been implemented especially the level of force, for instance in Hararghe, was believed to be substantial, indeed, including executions of uncooperative farmers as well as the burning of houses and crops. These were also true, in the remaining target areas of the program. Thus, the program execution was definitely involuntary.[34] By 1989 the government had villagized 13 million people. Later on international condemnation and deteriorating insecurity conditions as well as scarce resource on the government's side caused the program to vividly slow down.[35]

According to Lorgen, poor planning, lack of popular support, site selection without experts, and being coercive contributed to social disruption and decline of agricultural production. As a result, he stated that, "villagization in Ethiopia destroyed cultural identity and inhibited peoples' independence and organizational ability".[36]

As cited in HRW report, Mulatu summarized the villagization experience of the *Derg* regime, as follows:

> The verdict on villagization was not favorable. Thousands of people fled to avoid villagization; others died or lived in deplorable conditions after being forcibly resettled. There were indications that in the short term, villagization may have further impoverished an already poor peasantry. The services that were supposed to be delivered in new villages, such as water, electricity, health care clinics, schools, transportation, and agricultural extension services, were not being provided because the government lacked the necessary resources. Denied

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[32] Lorgen, C. (1999): The Experience of Villagization: Lessons from Ethiopia, Mozambique, and Tanzania; OxfamGB,p.13
[33] Supra note 23 at p.31
[34] Supra note 32 at p.14
[35] Supra note 21 at p.12
[36] Supra note 32 at p.14

immediate access to their fields, the peasants were also prevented from guarding their crops from birds and other wild animals.[37]

2.2.2 The Current Villagization Program in Ethiopia: Overview

Yet, in Ethiopia, the state's desire of enhancing expansion and quality of infrastructure development has not reached its expected level due to limited human capacity, huge investment requirement and dependency on foreign aid.[38] Accordingly, limited provision of infrastructure has also remained one of the alarming challenges in the endeavor towards socio-economic transformation and poverty reduction in Ethiopia in general and in emerging regions in particular.[39]

Cognizant of this, under the GTP Plan document, enhancing expansion and quality of infrastructure development to bring about societal transformation is considered as a central pillar strategy. To achieve this, the government has been taking measures, particularly in lowland areas where access to social services is limited.[40] In line with this, the government came up with implementing villagization program in selected regions of the country, and contends that the hitherto underdeveloped regions within a few years will become development centers.[41]

Accordingly, the year 2003 E.C marked the revitalization of planned population relocation strategies of "voluntary villagization program" (VVP) by the GoE, and the program covers all emerging regions; Afar, Benishangul-Gumuz, Gambella, and Somali. The government insists that, if settlement is deemed to be the best way forward for rural development, it should be conducted based on a well-conceived plan and with a well-coordinated government support. Furthermore, it has been declared that the program will not repeat the political crime perpetrated by the *Derg* rather it should definitely take into account and considerations for the shortcomings of the *Derg's* settlement program; i.e., that it was carried out hastily, compulsory, guided by an incorrect political outlook rather than humanitarian motives. Therefore, the *Derg* villagization

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[37] Mulatu Wubne (2002):"Resettlement and Villagization". Cited by Human Rights Watch Report (2012):"Waiting Here for Death" Forced Displacement and Villagization in Ethiopia's Gambella Region,p.11

[38] Supra note 14 at p.8

[39] FDRE Ministry of Finance and Economic Development (2002): Sustainable Development and Poverty Reduction Program p.34

[40] Supra note 14 at p.10

[41] Supra note 39 at p.58

program failed miserably and caused considerable economic, social and cultural failure to those who were villagized.[42]

On the face of it, the GoE took the VVP as a strategy of transforming the livelihood of settlers and ensure food security at household level as well as providing socio-economic and infrastructural delivery on a voluntary principle through intra-regional approach.[43] A case in point, Gambella's VVP, has been implementing since 2003 E.C with the declared purpose of improving:

> "access to basic socio-economic infrastructures of those people who are settled scattered and along the riverside which are prone to flood hazard and those who practice cut and burn shifting cultivation and ultimately to make them food secured and to bring socio-economic and cultural transformation of the people".[44]

2.3 Revisiting Villagization Experiences of other African Countries

The basic notion of villagization is to collect a scattered settlement pattern of rural populations into a nucleated form of villages, which usually does not involve moving significant distances. Its motive may be humanitarian, political, ecological, agricultural, militaristic, administrative, or a mix of several of these. As well, the process of implementation and the lived experience of those villagized also considerably vary between and within countries.[45]

Accordingly, this section is devoted to review the experiences of villagization from selected African countries. These are Tanzania and Mozambique, where massive villagization program had been undertaken in the 1970s. The countries' villagization experience would be examined in consideration of the motives behind the program, the process of its implementation and its impacts on those who were villagized from a human rights perspective.

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[42] Ibid at P.56

[43] NCFSE (2003): Voluntary Resettlement Program (Access to improved land), New Coalition for Food Security in Ethiopia. Cited by Guyu Ferede (2012): Voluntary Villagization Scheme (VVS) for Transforming Semi-pastoral Communities in Benishangul-Gumuz Region, Northwestern Ethiopia: Challenges and Local Development Indicator,p.244

[44] Supra note 7 at p.1

[45] Supra note 32 at p.1

2.3.1 Lessons from Tanzania's Villagization Experience

At independence in 1961, about 90 percent of mainland Tanzanian population lived in the countryside in scattered hamlets. These scattered settlements posed problems to the post-independence government which was determined to improve the standards of living of its people through increased agricultural productivity and provision of various social amenities.[46]
As well, the World Bank mission in 1959, recommended resettlement as a pre-condition for transforming peasant agriculture. Indeed, the administration believed that self reliance at national level as the only way out of Tanzania's poor economic situation.[47] And later, with the Arusha Declaration of 1967, the government set a path for the state, towards socialism and self-reliance, with villagization as an important component.[48]

Accordingly, the *ujamaa* villagization scheme was adopted for the rural sector success. The purpose of village formation was aimed at: "the delivery of services; the creation of a more productive, modern agriculture; and the encouragement of communal, socialist forms of cooperation".[49]

Furthermore, the government justified the villagization scheme on the ground that;

> It would lead to the modernization of the traditional agriculture characterized by shifting cultivation, small farms, poor implements and low yields, and this would change through economies of scale in use of tractors, distribution of agricultural inputs (e.g. fertilizers and insecticides) and dissemination of information. It was also argued that it would be both practical and economical to provide people with the different social amenities if the settlements were concentrated.[50]

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[46] Supra note 1 at p.13
[47] Ibid at p.14
[48] Supra note 32 at p.17
[49] Supra note 12 at p.230
[50] Supra note 46 at p.14

In early periods of implementation of the program was voluntary and no one was forced in to an *ujamaa* village. However, later on when the government felt that the scheme was not going as planned, the approach eventually changed, and to live in village was considered as an order. To this end, "force, or the threat of force, was used liberally against those who would not go voluntarily, and houses were destroyed to make sure that peasants did not move back into their old homes". Furthermore, its implementation was out of tune with the social and cultural realities of the rural society.[51]

Although the *ujamaa* villagization scheme advocated through which people work and live together for their own good, but improper planning, lack of popular support, and inadequate appreciation of the Tanzania's reality contributed to the scheme to be futile.[52]

Accordingly, given that the *ujamaa* philosophy was unsuccessful attempt, Ibhawoh and Dibua pointed out its outcome by saying:

> The *ujamaa's* commitment to the modernization paradigm resulted in a situation where improving the conditions of the peasants meant alienating them from their cultural and social realities in favor of transplanting western ways of life and it was unique in the paradoxes it reflected, in its inward orientation and attention to social equity and distributive justice.[53]

James Scott in his seminal work "Seeing Like a State: How Certain Schemes to Improve the Human Condition Have Failed" stated that, the experiment of *ujamaa* villagization philosophy as a typical failed example of large-scale state planning villagization program with adverse economic, cultural and environmental consequences for peasants in developing countries.[54]

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[51] Supra note 32 at p.18
[52] Ibhawoh, B.and Dibua, J.(2003): Deconstructing Ujamaa: The Legacy of Julius Nyerere in the Quest for Social and Economic Development in Africa,p.68
[53] Ibid at p.61
[54] Supra note 12 at p.225

2.3.2 Lessons from Mozambique's Villagization Experience

After Mozambique became independent from Portugal in 1975, the new government had seen the country as impoverished and crippled, particularly in its resource and socio-economic services. Accordingly, the government devised communal villagization, a way to redistribute scarce resource and social amenities to the dispersed traditional family unit as well as a means to urbanize and modernize the countryside.[55]

In earlier periods of implementation, joining villages was optional. However, large-scale forced rapid villagization began later in the early 1980s, which resulted in peasant discontent and resistance against the program. Despite peasants claim that their land had historical value and relatives were buried on the land, the government carried out along militaristic lines, with severe penalties for those who resisted to move, including burning down homes and refusing food to those in need.[56]

However, poor planning process by external experts who were not familiar with Mozambican reality, failure to consider the needs of the peasants, lack of pre-studies in establishment of villages, that they were poorly situated in access to water supply, construction materials and distance from farm areas, and the general incompatibility of the program with the objective realities in the rural areas and ignoring inputs from the bottom contributed to its failure. For example, long distance to the fields hurt the agricultural productivity and social services were provided only in some villages.[57]

2.4 Indigenous Peoples' Rights: A look at International and Regional Instruments

2.4.1 "Indigenous Peoples": A contested concept

Recently, the concept and the rights of indigenous peoples have been the subject of intense debate. Despite this attention and the enormous strides that have been made at international law, at least with respect to drawing world attention to the plight of groups that identify themselves as indigenous peoples, there is controversy regarding its applicability to certain parts of the world

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[55] Supra note 32 at p.15
[56] Ibid at p.16
[57] Ibid at p.17

and determining which peoples are indigenous is a complex and difficult question. Conceivably this explains why there is presently globally no universal single agreed definition of the concept of indigenous peoples.[58]

This thesis does not aim at giving a clear-cut definition of 'indigenous peoples'. In Africa the concept is even more controversial. Initially the African Commission did not find the term indigenous peoples applicable to African conditions. The counter argument was that 'all Africans are indigenous to Africa' and that no particular group can claim indigenous status. The African Commission's Working Group of Experts on Indigenous Populations, entrusted to examine the concept of indigenous people in Africa, however, asserted that "a strict definition of indigenous peoples is neither necessary nor desirable".[59] In view of this, the Working Group instead of defining the concept of indigenous peoples, considered the criteria for identifying indigenous peoples in Africa.

Accordingly, as there is no single definition can capture their identity, the working group outlined possible criteria for identifying who the indigenous peoples and communities in Africa are, *inter alia,* self identification, who are regarded as less developed and less advanced, who live in inaccessible regions, whose ways of life is dependent on access and rights to land and natural resources as well as who have distinct and different cultures and ways of life from the dominant society.[60]

The working group designates hunter-gatherers, pastoralists as well as some small scale farmers as indigenous peoples. For instance, the Pygmies of the Great Lakes Region, the San of Southern Africa, the Hadzabe of Tanzania and the Ogiek, Sengwer and Yakuu of Kenya are mentioned as examples of hunter-gatherer communities who identify themselves as indigenous peoples. Similarly, pastoralist communities such as the Pokot of Kenya and Uganda, the Barabaig of Tanzania, the Maasai of Kenya and Tanzania, the Samburu, Turkana, Rendille, Endorois and

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[58] Bojosi, K. and Wachira, G. (2006): Protecting Indigenous peoples in Africa: An analysis of the approach of the African Commission on Human and Peoples' Rights, in Frans Viljoen (ed): The African Human Rights Law Journal ,Volume 6 No 2, p.393

[59] Ibid at p.393

[60] Report of the African Commission's Working Group of Experts on Indigenous Populations/Communities, Submitted in accordance with the Resolution on the Rights of Indigenous Populations/Communities in Africa adopted by the African Commission at its 28th ordinary session (2005),p.89

Borana of Kenya, the Karamojong of Uganda, the Himba of Namibia and the Tuareg, Fulani and Toubou of Mali, Burkina Faso and Niger can all be mentioned as examples of pastoralists who identify as indigenous peoples.[61] As well, the pastoralist communities such as the Afar, Borana, Kèreyu (Oromo), Nuer, and Somalis of Ethiopia are also labeled as indigenous peoples.[62]

For the purpose of this study, the Anywaa community are considered as 'indigenous communities' to the region given that the existing literatures[63] on the Anywaa ethnic groups labeled them as 'indigenous peoples', and different documents[64] of the government also describe the lived experiences of the Anywaa community in a way that qualify to be 'indigenous' to the region, as such some documents unequivocally states those groups of communities as indigenous to the region. Moreover, some domestic enactments[65] recognize the existence of indigenous peoples in the country.

Furthermore, as already mentioned above, the working groups acknowledged the pastoralist communities, Nuer of the Gambella region as indigenous in view of the possible criteria despite having a more recent history in the region as compared to the Anywaa communities. Thus, it is not as such hard, like Nuer to label the Anywaa communities are qualify to be indigenous to the region as per the possible criteria outlined by the working group, among others, their special

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[61] Indigenous Peoples in Africa (2006): The forgotten peoples? African Commission Working Group on Indigenous Populations/Communities Report Summary,p.10

[62] Ibid at p.15

[63] For example, Alexander Meckelburg (2014): Large Scale Land Investment in Gambella, Western Ethiopia-The Politics and Policies of Land, in Mulugeta Gebrehiwot (eds). A Delicate Balance: Land use, Minority Rights and Social Stability in the Horn of Africa; Dereje Feyissa (2013): "Centering the periphery? The Praxis of Federalism at the Margins of the Ethiopian State"; Ethiopian Journal of Federal Studies; Yonas Adaye and Ezra Abate (2014): Conflict dimensions of large scale Agricultural investment in Ethiopia: Gambella Case Study, in Mulugeta Gebrehiwot (eds). A Delicate Balance: Land use, Minority Rights and Social Stability in the Horn of Africa; Dereje Feyissa (2009): A National Perspective on the conflict in Gambella, in Svein Ege, et al (eds).Proceedings of the 16th International Conference of Ethiopian Studies. Trondheim, pp.641-653; Human Rights Watch Report (2012): "Waiting Here for Death" Forced Displacement and Villagization in Ethiopia's Gambella Region; Oakland Institute (2013): Development Aid to Ethiopia: Overlooking Violence, Marginalization, and Political Repression.

[64] FDRE Ministry of Federal Affairs, Equitable Development Directorate (2013): Equitable Development Manual: Regions in need of special support strategy; Gambella Peoples' National Regional State(2003): Villagization Program Action Plan; Gambella Peoples' National Regional State Bureau of Agriculture and Rural Development (2010): Villagization Program Implementation Manual; Gambella Peoples Regional State Development GAP Assessment Report (2010): Gambella Regional State Development Gap Assessment and Recommendation for Equitable and accelerated Development.

[65] Development, conservation and utilization of wildlife proclamation No.541/2007, art 2(10), which read as "wildlife reserve" means an area designated to conserve wildlife where indigenous local communities are allowed to live together with and conserve the wildlife".

relationship to ancestral land (used for economic, social, cultural, and spiritual purpose), being hunter-gatherers, having distinct culture and ways of life as well as regarded as less developed and less advanced. However, indigenous people's rights recognized globally, which Ethiopia is not a state party and without ratification status is not the approach of this thesis to use as a point of reference and to make analysis.

In light of the above background, the section here under is devoted to explore the status of indigenous people's rights, *inter alia*, the right to free, prior and informed consent, the right to land, cultural rights, and the right to development from the standing point of international law and African human rights system.

2.4.2 Right to free, prior and informed consent

Indigenous peoples' right to free, prior and informed consent (FPIC) has been recognized by a number of intergovernmental organizations, international bodies, conventions and international human rights law to varying degrees.[66]

At international level, the only binding international instrument that specifically tackles the concerns of indigenous peoples, the ILO Convention No. 169 refers to the principle of free, prior and informed consent in the context of relocation of indigenous peoples from their land in its article 16. The same instrument, under article 7 recognize indigenous peoples' "right to decide their own priorities for the process of development" and "to exercise control, to the extent possible, over their own economic, social and cultural development". As a common principle, Article 6 of the convention requires that consultation must be undertaken in good faith, in a form appropriate to the circumstances and with the objective of achieving consent to the proposed measure.

As well, in its General Recommendation XXIII on the rights of indigenous peoples, the Committee on the Elimination of Racial Discrimination (CERD) calls upon States to "ensure that members of indigenous peoples have equal rights in respect of effective participation in public

[66] Tamang, P. (2005): An Overview of the Principle of Free, Prior and Informed Consent and Indigenous Peoples in International and Domestic Law and Practices,p.3

life and that no decisions directly relating to their rights and interests are taken without their informed consent".[67]

Regionally, within the African human rights system, "even if the African Charter on Human and Peoples' Rights (ACHPR) does not expressly include indigenous peoples within its ambit, there is no reason why members of these groups should not benefit from the charter's guarantees either as individuals, or, more importantly, as members of a collectivity". Furthermore, as per the interpretation of the concept of 'peoples' by the African Commission on Human and Peoples' Rights(African Commission), indigenous peoples should as a matter of principle be eligible to claim as 'peoples'.[68]

The ACHPR has not included explicitly vis-à-vis the principles of free, prior, and informed consent in its ambit. Accordingly, the principles of free, prior, and informed consent have not yet been incorporated into national policy in any African country. However, several African countries have enacted a legislation that requires at least some level of consultation from local and affected communities.[69] However, consultation to the concerned peoples should be done prior to the proposed measure and even during the design stage, to ensure that indigenous peoples' views are taken into consideration. Besides, it should be conducted in good faith with consent of the concerned peoples through appropriate procedures and institutions that are representative of the indigenous peoples themselves.[70]

2.4.3 Right to Land

Land and resource rights are indisputably core claims by indigenous peoples globally. This is due to the fact that indigenous peoples mainly rely on traditional lands and natural resources for their livelihood, economic sustenance, as well as religious and cultural life.[71] Accordingly, the

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[67] CERD General Recommendation No.23: Concerning Indigenous Peoples, adopted at fifty-first session, 1997, Para. 4 (d)

[68] Viljoen, F.(2010): Reflections on The Legal Protection of Indigenous Peoples' Rights in Africa, in Solomon Dersso (eds), Perspectives on the Rights of Minorities and Indigenous Peoples in Africa,p.85

[69] Vermeulen, S. and Cotula, L. (2010): Over the Heads of Local People: Consultation, Consent, and Recompense in Large-scale Land deals for Bio-fuels Projects in Africa, The Journal of Peasant Studies,p.907

[70] Wachira, G. (2010): Indigenous Peoples' Rights to Land and Natural resources, in Solomon Dersso (eds), Perspectives on the Rights of Minorities and Indigenous Peoples in Africa,p.337

[71] Supra note 70 at p.299

recognition of the rights of indigenous peoples to the ownership, control and management of their traditional territories, lands and resources is imperative. From the international standpoint, land and natural resources rights of indigenous peoples are recognized in the ILO Convention No.169. Specifically, the land rights provisions of the ILO Convention No. 169 are framed by Article 13(1), which states:

> In applying the provisions of this part of the convention governments shall respect the special importance for the cultures and spiritual values of the peoples concerned of their relationship with the lands or territories, or both as applicable, which they occupy or otherwise use, and in particular the collective aspects of this relationship.[72]

Furthermore, the ILO Convention No.169 vis-a-vis indigenous peoples obliged states to give legal recognition and protections to use their lands in its article 14(1) which reads as;

> The rights of ownership and possession of the peoples concerned over the lands which they traditionally occupy shall be recognized. In addition, measures shall be taken in appropriate cases to safeguard the right of the peoples concerned to use lands not exclusively occupied by them, but to which they have traditionally had access for their subsistence and traditional activities. Particular attention shall be paid to the situation of nomadic peoples and shifting cultivators in this respect.[73]

Similarly, in its General Recommendation XXIII on the rights of indigenous peoples, the CERD calls up on states to "recognize and protect the rights of indigenous peoples to own, develop, control and use their communal lands, territories and resources, and where they have been deprived of their lands and territories traditionally owned or otherwise inhabited or used without their free and informed consent, to take steps to return those lands and territories".[74]

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[72] ILO Convention No. 169, article 13(1)
[73] Ibid, article 14(1)
[74] Supra note 67, Para.5

At the regional level, cognizant that land is the basis for the lives, cultures and identities of indigenous peoples, the ACHPR (under Articles 20, 21 and 22), states clearly that all peoples have the right to existence, the right to their natural resources and property, and the right to their economic, social and cultural development.[75]

2.4.4 Cultural Rights

The right of indigenous peoples to enjoy their own culture is important in a development context. However, violation of cultural rights is a particular form of human rights violation suffered by indigenous peoples. Such violations of cultural rights take different forms. For instance, the loss of key productive resources is impacting negatively on indigenous peoples' cultures, denying them the right to maintain the livelihood of their own choice and to retain and develop their cultures and cultural identity according to their own wishes.[76] Consequently, indigenous peoples' preservation of their culture and historical identity has been and still is jeopardized.[77]

Nevertheless, cultural rights of indigenous peoples are articulated under the core international human rights instruments. For instance, although article 27 of international covenant on civil and political rights (ICCPR) does not expressly mention indigenous peoples, according to the Human Rights Committee, its provisions are applicable to these groups.[78]
Accordingly, with regard to the exercise of the cultural rights protected under article 27 of ICCPR, the Committee noted that culture manifests itself in many forms, including a particular way of life associated with the use of lands and natural resources for their traditional activities as fishing or hunting, in particular to indigenous peoples.[79] Furthermore, in its General Recommendation XXIII on the rights of indigenous peoples, the CERD calls up on states to "recognize and respect indigenous distinct culture, history, language and way of life as an enrichment of the State's cultural identity and to promote its preservation" and "provide

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[75] African (Banjul) Charter on Human and Peoples' Rights
[76] Supra note 61,p.18
[77] Supra note 67, Para.3
[78] Human Rights committee General comment No.23: The rights of minorities (Art.27), adopted at Fiftieth session, 1994, Para.3
[79] Ibid,Para.7

indigenous peoples with conditions allowing for a sustainable economic and social development compatible with their cultural characteristics".[80]

The ACHPR, which also entrenches the right to culture and identity of all peoples under its article 22 (1) which reads as;

> All peoples shall have the right to their economic, social and cultural development with due regard to their freedom and identity and in the equal enjoyment of the common heritage of mankind.[81]

2.4.5 The Right to development

The right to self-determination, as defined in Article1 of both International Covenants of Human Rights, refers to the right of all peoples "to freely pursue their economic, social and cultural development".[82] As per this provision, for the indigenous peoples, the right to self-determination is more a reflection of "the right to define and decide on their own development priorities through participating in the formulation, implementation and evaluation of plans and programs for national and regional development activities that may affect them."[83] Being aware of the collective nature of the rights and interests of indigenous peoples, the CERD provides guidelines regarding the participation of indigenous peoples in development activities. Accordingly, indigenous peoples have "equal rights in respect of effective participation in public life and that no decision directly relating to their rights and interests are taken without their informed consent."[84]

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[80] Supra note 67,para.4 (a and c)
[81] Supra note 75, article 22(1)..... African (Banjul) Charter on Human and Peoples' Rights
[82] International Covenant on Economic, Social and Cultural Rights (ICESCR), adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 December 1966 entry into force 3 January 1976; International Covenant on Civil and Political Rights (ICCPR), G.A. U.N.T.S.171, entered into force Mar. 23 1976.Article 1.
[83] United Nations Development Group (2009): Guidelines on Indigenous Peoples Issues, p.15
[84] Supra note 67,para.4(d)

On the face of it, the ACHPR stipulates relevant provision which obliged states towards indigenous people's right to development which enunciates "states shall have the duty, individually or collectively, to ensure the exercise of the right to development".[85]

2.5 Indigenous Peoples' Rights: Under the Ethiopian Legal System

Despite the controversy on the authenticity of the process of identification of certain peoples as indigenous in their territories, the Working Group has also identified some indigenous peoples in Ethiopia.[86] Although the FDRE constitution does not employ the phrase 'indigenous people' in its ambit, they are eligible to claim the rights afforded to nations, nationalities and people. Nonetheless, domestic enactments, for instance Development, Conservation and Utilization of Wildlife Proclamation No.541/2007[87] have mentioned indigenous peoples signifying their recognition in Ethiopia.

Taking this as a background, this section is dedicated to the exploration of constitutional provisions that have implications for indigenous people's rights, *inter alia*, the right to consultation, the right to land, cultural rights, and the right to development.

2.5.1 The Right to Consultation

The right to consultation has got constitutional basis under article 43(2) and 92(3) of the FDRE constitution. For instance, article 43(2) states that "nationals have the right to ..... be consulted with respect to policies and projects affecting their community". And the other provision which enunciates the right to consultation is article 92(3) which reads:

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[85] Supra note 75,article 22(2)

[86] The Working Group identified the Afar, Borena, Kereyu (Oromo), Nuer and Somalis, as indigenous peoples in Ethiopia (see: Indigenous Peoples in Africa (2006): The forgotten peoples? African Commission Working Group on Indigenous Populations/Communities Report Summary,p.15).

[87] Under Article 2(10) states "wildlife reserve means an area designated to conserve wildlife where 'indigenous local communities' are allowed to live together with and conserve the wildlife".(see: Development, Conservation and Utilization of Wildlife Proclamation No.541/2007, art 2(10).

> People have the right to full consultation and to the expression of views in the planning and implementation of environmental policies and projects that affect them directly.[88]

Similar to ACHPR, the FDRE constitution also has not included the principles of free, prior, and informed consent in its ambit. However, the right of local communities to prior informed consent is recognized in proclamation to provide for Access to Genetic Resources and Community Knowledge and Community Right.[89]

2.5.2 The Right to Land

The Constitution prescribes the right to private ownership of property of every Ethiopian citizen. However, the right to land and natural resources therein are exclusively vested in the State and the peoples of Ethiopia.[90] Whereas, concerning the pastoralists and agro-pastoralist of the lowland areas, article 40(5) stipulates that Ethiopian pastoralists have the right to free land for grazing and cultivation, and are also guaranteed against displacement from their possession.[91]

2.5.3 Cultural Rights

The cultural rights of nations, nationalities and people, is recognized under article 39 of the FDRE Constitution which guarantees the cultural rights of all nations, nationalities and peoples', in addition to the obligation of the State to protect and preserve historical and cultural legacies.[92]

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[88] The FDRE constitution, article92(3)

[89] Under Article 7(1):The right of local communities to regulate access to their community knowledge shall include the following: (a), the right to give prior informed consent for access to their community knowledge; (b),when exercising the right to give prior informed consent, the right to refuse consent when they believe that the intended access will be detrimental to the integrity of their cultural or natural heritages;(c), the right to withdrew or place restriction on the prior informed consent they have given for access to their community knowledge where they find out that such consent is likely to be detrimental to their socio-economic life or their natural or cultural heritages;(d), the right to demand the restriction or withdrawal of the prior informed consent given by the Institute for access to their genetic resources where they found out that is likely to be detrimental to their socio-economic life or their natural or cultural heritages.(see: A Proclamation to Provide for Access to Genetic Resources and Community Knowledge and Community Right Proclamation No. 482/2006).

[90] Supra note 88, article 40 (1 and 3)

[91] Ibid, article 40(5)

[92] Ibid , article 39(2) and 41(9)

Apart from the constitutional framework, the cultural rights of nations, nationalities and people have asserted in the Genetic Resources and Community Knowledge proclamation. Despite the Proclamation makes no mention of indigenous peoples, but local communities, under Article 13 of the Proclamation provides the condition by which the institute can deny access to local communities genetic resources where such access has adverse effects on their cultural values.[93] Indeed, as explicitly stated the contents of access agreement must respect their cultural practices, traditional values and customs.[94]

2.5.4 The Right to development

The FDRE constitution acknowledged the right to development of nations, nationalities and peoples' and provides particular provisions in a way to realize. Accordingly, the reflection of the right to development of nations, nationalities and peoples' are understood through the right to improved living standards and to sustainable development, which is affirmed under article 43(1) of constitution and the nations, nationalities and peoples' to take part in the national development process, and also to be consulted in policies and projects affecting themselves.[95]

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[93] Proclamation to Provide for Access to Genetic Resources and Community Knowledge and Community Right Proclamation No. 482/2006, article 13 (2).

[94] Ibid, article 17(17).

[95] Supra note 88, article 43 (1 and 2)

CHAPTER THREE

FINDINGS AND DISCUSSIONS

VILLAGIZATION IN ANYWAA ZONE, GAMBELLA REGION

3. Background of the Study Area

3.1 Location

Gambella Peoples National Regional State (GPNRS) is one of the nine regional states established in 1994 by the new constitution of Ethiopia that created a federal system of governance. GPNRS is found in the south-west of Ethiopia, about 766 Km from Addis Ababa. It is situated in the lowlands of the Baro-Akobo River Basin between latitudes 6^0 22' and $8^0$30'N, and longitudes $33^0$10' and 35^0 50' E. Gambella is bordered by the Republics of Sudan and South Sudan in the southwest, northwest, and north; the Southern Nation and Nationalities Peoples' Regional State (SNNPRS) in the south, southeast and east; the Oromia National Regional State in the north, northeast and east; and the Benishangul-Gumuz National Regional State in the north.[96]

The region has a total surface area of about 34,068 sq. km. The settlement pattern of the region is dispersedly populated, with a population density reaching as low as 7.7 persons per square kilometer. The region is characterized by flat topography and a significant part of the region is susceptible to flooding.[97]

3.2 Climate

The GPNRS is characterized with different climatic features. Lowland and midland agro-ecological zones characterize the region's climate. Annually, the region's mean annual rainfall varies from *woreda* to *woreda*: 9000-1500 mm in the lowland area and 1900-2100 mm in midland *woredas* .The annual rain fall has uni-modal occurrence and is erratic in distribution.

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[96] GPNRS President Office (2013): Gambella in Reality: Document on general Information about Gambella National Regional State.

[97] GPNRS Bureau of Finance and Economic Development (2008): Socio-Economic Survey report.

The main rainy season in the region is from mid-May to October. In addition the mean annual temperature varies from 17-30 ^{0}c in the mountains to 28-30 ^{0}c in the plain.[98]

3.3 Population

There are five indigenous ethnic groups in the GPNRS namely; Anywaa, Nuer, Megang, Komo and Opo which constitute 72% of the total population. Besides, other nations, nationalities and peoples who are settlers and coming from high lands living together collaboratively, in harmonization and synchronization.[99]

According to the 2007 census conducted by the Central Statistical Agency of Ethiopia (CSA), the GPNRS has a total population of 307,096.The Nuer numbered 143,286(46.66%), the Anywaa,64,984(21.14%),the highlanders,83,510(27.19%), the Majang,12,280 (3.99%), and the Opo and Komo combined,1,214(0.39%).Of which 74.6% are living in the rural areas of the region and 25.4% of the population are urban dwellers. In terms of sex composition, 52% are males and 48% are females. Administratively the region is divided in to three Nationality zones, thirteen woredas, and one town administration. The Anywaa zone: consists of Gog, Abobo, Jor, Gambella, and Dima *woredas*. The Nuer zone consists of: Jikaw, Lare, Makuey, Wanthowa and Akobo *woredas*. Mejang zone consists of: Meti and Mengeshi. In addition to these, Itang special woreda and the Gambella town Administration are among the fourtheen *woredas* of the region. They all comprise a total of 258 *kebeles.* [100]

Accordingly, the villagization program has been implemented in the region covers *kebeles*/communities within all zones, special woredas and woredas of the region vulnerable to various natural and manmade disasters, engaged in dispersed settlement and shifting cultivation practices. As indicated (section 1.7), from the three zones of the region, where the villagization program was undertaken, the focus of this study is the Anywaa zone with particular reference to Abobo *woreda* and Gambella *woreda*. From the 4 and 6 villages established in the first round in

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[98] Ibid

[99] GPNRS GAP Assessment report (2010): Gambella Regional State Development Gap Assessment and Recommendation for Equitable and accelerated Development.

[100] Supra note 96

Abobo and Gambella *woreda* respectively, the researcher visited villages of Chebokir *Kebele*[101] (Abobo woreda) and Opagna *Kebele*[102] (Gambella Woreda).

3.4 Procedural Issues: Consultation and the Villagization program

As indicated in the section dealing with the right to free, prior and informed consent of indigenous peoples, in its General Recommendation XXIII on the rights of indigenous peoples, which stresses the importance of ensuring the "informed consent" of indigenous peoples, the CERD calls upon States to "ensure that members of indigenous peoples have equal rights in respect of effective participation in public life and that no decisions directly relating to their rights and interests are taken without their informed consent".[103] Therefore, the committee's recommendation imply, state parties are obliged to give due consideration for securing informed consent and ensuring effective participation of the indigenous peoples concerned to the proposed measure before taking place.

At the same time, the CESCR on report of Columbia in relation to traditional lands, in its concluding observation, noted "with regret that the traditional lands of indigenous peoples have been reduced or occupied, without their consent, by timber, mining and oil companies, at the expense of the exercise of their culture and the equilibrium of the ecosystem." The committee subsequently urged "to consult and seek the consent of indigenous peoples concerned prior to the implementation of timber, soil or subsoil mining projects and on any public policy affecting them."[104]

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[101] Found in the southern direction of the region (in Abobo woreda), about 5 Km from the woreda and 40 Km from Gambella town. The total land mass of the kebele about 87516.82 ha, a total population of 729. Of which a total of 121 households was relocated because of the program. Their livelihood system is depending on crop production, fishing, hunting, and collection of wild food.

[102] Found in the West of the region (in Gambella woreda), about 20 Km from the woreda and 35 Km from Gambella town. The kebele inhabited by a total population of 633. Of which a total of 143 households joined villages. Their livelihood system is depending on mixed farming, fishing, hunting, and collection of wild food.

[103] Supra note 67,para.4(d)

[104] Concluding Observations of the Committee on Economic, Social and Cultural Rights: Colombia 30/11/2001: The CESCR considered the fourth periodic report of Colombia on the implementation of the International Covenant on Economic, Social and Cultural Rights (E/C.12/4/Add.6) at its 61st and 62nd meetings, held on 14 November 2001 (E/C.12/2001/SR.61 and 62), and adopted, at its 85th and 86th meetings (E/C.12/2001/SR.85 and 86), held on 29 November 2001.

Gambella region's VVP has been taking place under the guise of improving the lives of the people who are leading a scattered way of life. To this end, the villagization program implementation manual explicitly puts "voluntary", among other principle, which signifies the program implementation merely based on the willingness, consultation and cooperation in good faith with the communities concerned. However, the HRW report indicates that the villagization program taking place in the Gambella region is characterized by forcible moving of indigenous peoples from their homes, situated at their own ancestral land to new villages without meaningful consultation, including intimidation, arrest and beatings to those who refused to move.[105]

In contrary, during in time of data collection, both at the federal and regional level officials, who were interviewed, disagree with the above statement made by HRW, and contend that there was no any forced displacement of the indigenous peoples from their ancestral land, rather joining to villages was carried out through various consultations conducted with the concerned communities. For instance, according to Addisu Haleko, villagization program coordinator of the GPNRS, consultations were conducted at different levels, starts from the political leaders from the top to the *woreda* and *kebele* level administration as well as with the target communities at the grass roots level. He further explained that, after awareness creation about the program on the part of officials represented at regional level, various consultations at different times were conducted with tribal leaders, youth, and women by using influential local elders, who were members of the *kebele* villagization committee.[106] However, as indicated by Kedir Yasin, Ministry of Federal affairs, Equitable Development Directorate Deputy General, given the negative propaganda against the program, the consultation took much time to persuade the target communities.

Similarly, participants of the focus group discussions with selected villagers of Chebokir *kebele* and Opagna *kebele* indicated that, officials, who came from federal and *woreda* level together with *Kebele* administrators, discussed the issue and tried to convince the communities to join villages, but at the early period the communities refused, thinking that the program will not

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[105] Supra note 21 at p.29

[106] Interview with Ato Addisu Haleko, GPNRS villagization program coordinator, February 12,2014

benefit them. They further explained that, after various consultations were conducted with the target communities and due to the fact that the place where the communities were asked to move to was inhabited by their ethnic folks, and that it has relatively better social services, the communities agreed to join the new villages.

According to Ogula Ojulu, Head of Anywaa zone, villagization was done through discussion with various sections of communities. He cited as evidence by taking the villagers effective participation in the program implementation, by saying:

> The very purpose of the program is for the benefit of the communities who were living in a risk area vulnerable to disease and flooding. Due to this fact, the villagers joined villages (even if it took much time to convince) because of their willingness, particularly from Chebokir *Kebele*. But, the fact that some individuals, found in Perpengo and Terkudi refused to join villagization sites, and they were not forced to move, given the program is based on the interest and willingness of the communities. Evidently, in the other villagization centers, there was genuine participation of communities in any issues, among others, clearing sites, site selection and even claiming to change sites identified by studies by saying the areas are swamp in rainy season, providing inputs and constructing their own houses ("*abile*" in Anywaa language) as well as participating in evaluating program implementation and supervision.[107]

Similarly, the Chebokir *kebele* administrator, Ato Obang Okogn stated that, when the Farmers Training Center (FTC) was constructed, the community contributed a lot from the initial stage up to its completion. In addition, he also indicated that, the communities were involved in cutting trees and grasses for clearing sites as well as constructing their own homes ("*abile*").

With regard to the response of the government to those who refused to go in to villagization center, Ato Ojulu Ojulu, Head of Gambella *woreda* confirmed that, some households refused. He further told the researcher by taking Opagna *kebele* as case in point, where some community members returned back to their original settlement areas. But, to get access to social services

[107] Interview with Ato Ogula Ojulu, Head of Anywaa zone, February 15,2014

(like; schooling, clean water, health services), they are used to come from their areas to the villagization centers given that it is impossible to provide the service in their scattered way of settlement.[108]

Therefore, the data collected from the different angle, public officials interviewed on the one part and focus group discussants from Chebokir and Opagna villages on the other revealed that, consultations were conducted with the concerned communities at different times, till obtaining willingness to the program despite the communication method chosen were in a top-down fashion i.e. the community consultation was confined to local elders, officials and elites. Conversely, consultation with concerned communities should be carried out under conditions, among others, through appropriate procedures and in particular through their representative institutions, in good faith and with the objective of achieving agreement to the proposed measures[109], prior to the proposed measure and provides greater voices for affected communities within the process.[110]

However, given the silence of the legal framework which lacks to explicitly spell out conditions or standards to be considered in consultation process, the villager's right to be consulted was characterized by the approach of convincing them in a way that the government desires. Thus, the writer of this study came to the conclusion that, the implementation of the villagization program in the study villages were executed by inadequate or lack of proper consultation with the target communities.

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[108] Interview with Ato Ojulu Ojulu, Head of Gambella woreda, February 19, 2014

[109] ILO Convention No. 169, article 6(1),a and 6(2)

[110] Supra note 70,p.337

3.5 Redistributive Issues: Compensation and the Villagization program

"Lands and territories have material, cultural and spiritual dimensions for indigenous peoples. They are required for their survival and economic sustainability and are intrinsically linked to the identity and existence of a people."[111] However, where the commitment of national laws and legislations are poor, to pay attention for human rights of indigenous peoples in terms of the individual and collective right dimensions, the issues of land and natural resources are often at the heart of the tensions between indigenous communities and states, and recurrently the source of human rights violations.[112]

However, the international human rights instruments that currently exist pertaining to the rights of indigenous peoples, accredited that, indigenous peoples' lands and territories should be legally recognized, demarcated and protected from outside pressures. Indigenous peoples have rights to lands used traditionally (e.g., nomadic peoples, shifting cultivators, etc.) , and further states are obliged to recognize the traditional management systems of indigenous peoples as well as where the concerned peoples lands have been lost for the purposes of national development, restitution or redress should be made.[113] Accordingly, in its General Recommendation XXIII on the rights of indigenous peoples, which emphasized the need to make restitution by the state, the CERD calls up on state parties to:

> "Recognize and protect the rights of indigenous peoples to own, develop, control and use their communal lands, territories and resources and, where they have been deprived of their lands and territories traditionally owned or otherwise inhabited or used without their free and informed consent, to take steps to return those lands and territories. Only when this is for factual reasons not possible, the right to restitution should be substituted by the right to just, fair and prompt compensation. Such compensation should as far as possible take the form of lands and territories."[114]

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[111] Supra note 83 at p.18
[112] Ibid at p.16
[113] Ibid at p.15
[114] Supra note 67,para.5

At the same time, the FDRE constitution in its provision of the right to property, under article 40(9), which reads as ".....the government may expropriate private property for public purposes subject to payment in advance of compensation commensurate to the value of the property." However, this provision of the constitution, having a look at, 'private property', merely gives compensation, where a property deemed as private property, or the property he/she builds by his/her labour or capital[115]. As well, FDRE Expropriation Proclamation 455/2005, under article 3(1) entitles the government, ".....upon payment in advance of compensation, to expropriate rural or urban landholdings for public purpose where it believes that it should be used for a better development project to be carried out by public entities, private investors, cooperative societies or other organs".[116]

Based on the above legal framework at the national level, when we see the issue of compensation consideration to the villagers, some regional officials interviewed, underscore that, there was no compensation made to the villagers. For instance, Ato Seid Mendis, Gambella Region Equitable Development Director, expressed as follow about the issue of compensation in a way that he describes 'it was unthinkable to claim':

> "As far as the program objective is, bringing households to a central village as a way to provide effective and efficient service delivery and to improve the lives of the people, who were exposed to manmade and natural disaster, and were deprived to get access to social services. Furthermore, it is evident that their original settlement belongs to themselves, or not claimed by the government for public purpose, and even to the extent that they are entitled the right to return back to the riverbanks from the village centers at whatever time".[117]

Accordingly, it is true, what has been indicated in the HRW report, that the indigenous peoples were not compensated. At the same time, the government is not denying it and justified it on the ground given that the initial aim of the program is for the benefit of the target communities.

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[115] As per FDRE constitution, article 40(7): "Every Ethiopian shall have the full right to the immovable property he builds and to the permanent improvements he brings about on the land by his labour or capital. This right shall include the right to alienate, to bequeath, and, where the right of use expires, to remove his property, transfer his title, or claim compensation for it."

[116] Expropriation of Landholdings for Public Purposes and Payment of Compensation Proclamation No 455/2005, article 3(1)

[117] Interview with Ato Seid Mendis, Gambella Region Equitable Development Director, February 12,2014

Furthermore, as explicitly articulated under the Expropriation of Landholdings for Public Purposes and Payment of Compensation Proclamation, the government is obliged to give compensation where, the land expropriated is used for public purpose[118], and it is true that the researcher, from his personal observation, did not find practical evidence that the original settlement area is used for public purpose, rather it is being used as farming areas to the villagers themselves.

This is also confirmed by the focus group discussants; in the villagization program implementation, there was no compensation made to the villagers. And, the participants further clarified the reason, their original settlement area as well as the farm land is under their control. As such some villagers who were disinterested also returned to the previous settlement areas, for instance, some villagers in Opagna *Kebele* returned back to the riverbanks, thinking that the given settlement area was not enough and they require homes constructed by government to join villages.

One thing that is obvious from the above explanations, and as it was reported from the officials interviewed and FGD participants, together with the researcher empirical observation, there is no pragmatic evidence to substantiate the claim that the aim of the villagization program was intended to displace the communities from their ancestral land and to use it for public purpose or for land investment. Therefore, the researcher came to a conclusion, with particular reference to the dwellers of Chebokir and Opagna villages; giving compensation is not justifiable as well as has no legal status. Moreover, the legal framework articulates nothing regarding to providing compensation for communal land tenure. Indeed land ownership is not subject to private ownership[119], and the original settlement area is not claimed by the government for public purpose.

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[118] According to Expropriation of Landholdings for Public Purposes and Payment of Compensation Proclamation No 455/2005, defines public purpose defined 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."

[119] The right to ownership of rural and urban land, as well as of all natural resources, is exclusively vested in the State and in the peoples of Ethiopia. Land is a common property of the Nations, Nationalities and Peoples of Ethiopia and shall not be subject to sale or to other means of exchange (Article 40(3) of FDRE constitution).

3.6 Cultural Practices in the new Villagization sites

Cultural rights are among the collective rights acknowledged for indigenous peoples. Accordingly, the right of indigenous peoples to enjoy their culture is important in a development context. As indicated in the section (see 2.4.4) dealing with the cultural rights of indigenous peoples, under article 27, the Human Rights Committee jurisprudence has illustrated that there exists a close nexus between indigenous people's culture and their traditional forms of economic life, supported by their lands and natural resources. Indeed, in its General Comment No. 23 on ICCPR article 27, with regard to the exercise of the cultural rights protected under article 27, the committee recognizes that "culture can manifest itself in many forms, including a particular way of life associated with the use of land resources, especially in the case of indigenous peoples. That right may include such traditional activities as fishing or hunting and the right to live in reserves protected by law".

At the same time, at the national legislation, which is relevant to the cultural rights of nations, nationalities and peoples of Ethiopia enshrined under the FDRE constitution, in its article 39(2), articulated as "nations, nationalities and peoples have the right to promote and develop their own culture".

In light of this background, when we examine the cultural practices of the villagers in the new villagization sites as compared to before the program, FGD participants indicated that, the villagization program did not hinder them from practicing their cultural practices. However, officials interviewed, for instance, Ato Pinykew Ojulu, Regional Culture and Tourism Bureau; Culture Sector, Core Process Owner, indicate that there was nothing planned to be done from the very beginning: Given that the Bureau of Culture and Tourism has been independently institutionalized recently in 2003 E.C, when the villagization program began, and in the villagization program implementation manual, not included as members of the steering committee.[120]

[120] Interview with Ato Pinykew Ojulu, Regional Culture and Tourism Bureau; Culture Sector, Core Process Owner, February 21,2014

At the same time, w/ro Achalla Didumo, Abobo *woreda*, Culture and Tourism Bureau Head, explained that, when the villagization program was undertaken, experts from our bureau to a lesser extent helped the *woreda* villagization program steering committee, but due to the fact that the bureau was established recently and having budget problem, and lack of experts hindered us to participate in different activities of the villagization program.[121]

Although the activities carried out by the Bureau of Culture and Tourism both at the regional and *woreda* level has been lesser, the researcher asked a question, i.e. whether the villagization program threatened the sustainability of the cultural practices of the villagers or not. And, accordingly, Ato Oguta Adiw, Culture Studies, Research officer, stated that, the villagization program does not have a negative implication for the villagers to sustain their cultural practices. He further clarified how the program does not threaten in sustaining cultural practices, by saying, "cultural practices are more realized when groups of individuals are living together, indeed the program has positive implication".[122]

The discussants of the FGD, for instance, the villagers of the Chebokir *Kebele*, explained that, they are practicing the cultural practices in the way that it was before the villagization program. It was further reported in the discussion, the program contributed significantly to the cultural practices. They cite as evidence such cultural practices as 'kurumma'[123], 'Ajwak'[124], and 'Akurbuk'[125] are practiced by the communities in a good manner. They explained that the communities are being collected together as opposed to their previous scattered settlement, and indeed those mentioned cultural practices require more people in the ceremony.

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[121] Interview with W/ro Achalla Didumo, Abobo woreda, Culture and Tourism Bureau Head, February 15,2014

[122] Interview with Ato Oguta Adiw, Culture Studies, Research officer, February 21,2014

[123] Is a cultural dance in the Anywaa community; performed by males and females through making their respective side and dancing by selecting a partner. Whenever, a male or a female wants to select a partner, she/ he should go to the opposite row and selects a partner. As such in this event, either a male or female can look for his/her fiancé.

[124] Is a kind of cultural practice; for the purpose of collecting money or cultural materials by villagers or a certain groups of communities.

[125] Is a cultural healing technique; a kind of dance in which males and females insult each other. This is not done simply but to heal someone cursed. So, when males and females insult each other, the healer starts to remove the bad sprit from the body of the cursed.

Therefore, from the above elucidation given by the villagers, who are right holders, the researcher at some point deduced, given the fact that, the villagization program does not so far resulted on the degradation of their entire way of life, including their traditional forms of economic life, as stated by the Human Rights committee[126] and loss of their natural wealth and resources as well as their cultural identities, the villagization program does not have negative implications to the villagers in practicing their cultural practices in the new villagization sites. As such the extent of cultural practices entertaining by the villagers in the new villagization sites is equivalent to their previous settlement areas.

3.7 Access to basic Social services: Before and after the Villagization Program

As already mentioned in the section dealing with overview of the current villagization program (see section 2.2.2), one of the underlined rationales behind the villagization program in the region is to enhance the expansion and quality of socio-economic infrastructure development. Accordingly, the section here under discusses the basic social services put in to place in the new villagization sites of Chebokir and Opagna *Kebele*, with specific reference to education, health service, and clean water.

3.7.1 The Right to Education

"Education refers to the entire process of social life by means of which individuals and social groups learn to develop consciously within, and for the benefit of, the national and international communities, the whole of their personal capacities, attitudes, aptitudes and knowledge".[127] In view of this, the right to education is affirmed under the Universal Declaration of Human Rights

[126] "With regard to the exercise of the cultural rights protected under article 27, the Committee observes that culture manifests itself in many forms, including a particular way of life associated with the use of land resources, especially in the case of indigenous peoples. That right may include such traditional activities as fishing or hunting".
[127] The Recommendation concerning Education for International Understanding, Cooperation and Peace and education relating to Human Rights and Fundamental Freedoms, adopted by the General Conference of UNESCO at its 18th session(November 1974) Article 1(a). Cited by Girmachew Alemu and Yonas Birmeta(2012): Handbook on the Rights of the Child in Ethiopia,p.225

(UDHR) under article 26[128], and in the ICESCR in its article 13 and 14[129]. Furthermore, achievement of universal primary education is also one of the eight Millennium Development Goals (MDGs). Accordingly, at the national level, under the five year education sector development program, "expanding access to quality primary education for all and quality secondary education that will serve as a basis and bridge to produce a middle and higher level workforce in line with the demand of the national economy"[130], stated as, among others, objectives of the general education.

Accordingly, Ato Obang Okogn, Chebokir *Kebele* administrator, stated that before the villagization program children had to go long distance to get access to education. In contrast, after the program, given the fact that villagers are settled near the basic social services, children are getting educational services within 5 minutes walking distance from their houses. [131] This is also confirmed by the FGD participants; they explained that, before the program, their children used to go not less than 2hrs to attend schooling, and due to this, children were not interested to learn as well as there was high dropout rate. It was further reported by the participants, given they are settled around the school, at the present their children are being educating, and interested to go to school.

As can be seen from the following picture, in the two villages of Chebokir and Opagna visited by the researcher, the following are the primary schools established before the villagization program.

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[128] "Everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory. Technical and professional education shall be made generally available and higher education shall be equally accessible to all on the basis of merit."

[129] ICESCR, article 13(1)... "The state parties to the present covenant recognize the rights of everyone to education. They agree that education shall be directed to the full development of the human personality and shall strengthen the respect for human rights and fundamental freedoms." And, article 14..... "Each state party to the present covenant which, at the time of becoming a party, has not been able to secure in its metropolitan territory or other territories under its jurisdiction compulsory primary education, free of charge, undertakes, within two years, to work out and adopt a detailed plan of action for the progressive implementation, within a reasonable number of years, to be fixed in the plan, of the principle of compulsory education free of charge for all."

[130] Supra note 14 at p.51

[131] Interview with Ato Obang Okogn, Chebokir Kebele administrator, February 24,2014

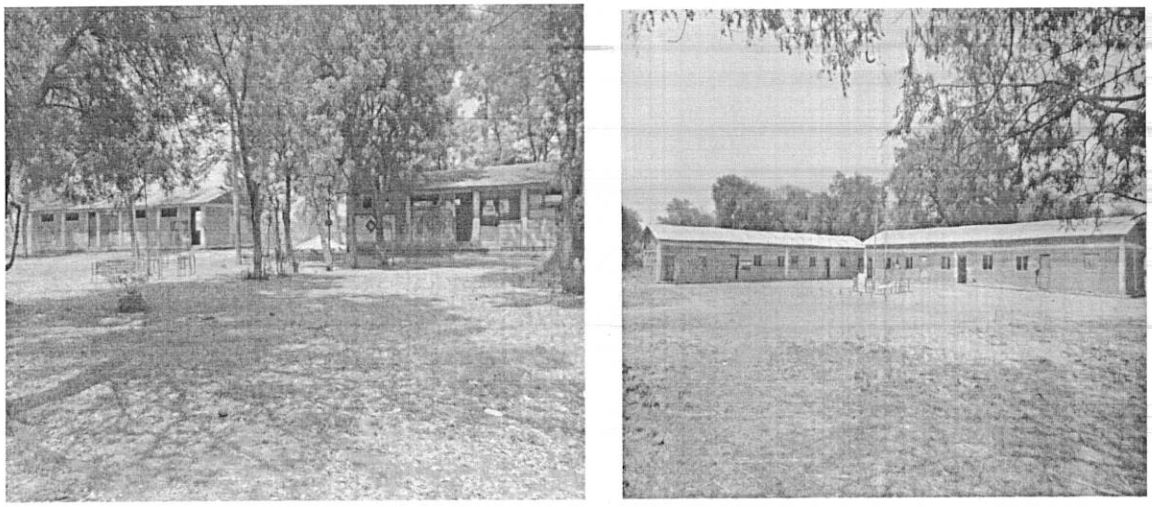

Figure 1: Primary School in Chebokir village (left) and Primary School in Opagna village (right), Field Photo taken, February, 2014

Interview with Ato Choul Ojato, Opagna *Kebele* administrator indicates that, before the villagization program the grade level was from Grades1-4, but now from Grades 5 -7 are added. He further stressed that at present the school needs maintenance, and it is also evident from the researcher field observation, the school is in need of repair as well as the facilities required to be fulfilled are poorly provided(see figure 2 below).

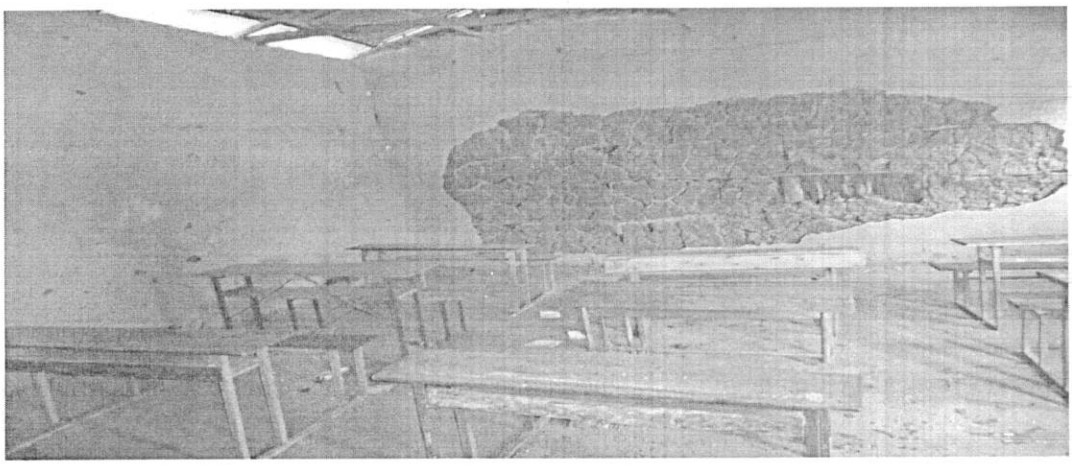

Figure 2: Primary School in Opagna village, inside view, Field Photo taken, February, 2014

Similarly, Ato Obang Okogn, Chebokir *Kebele* administrator stated that the school facilities necessary for the teaching-learning process are not fulfilled. Thus, as per the information obtained from the FGD participants, informants, and field observation, the writer came to a conclusion, given the school situated near to the villagers home contributed children inspiration to go to school and make the dropout rate lower, and it could be considered as creditable part of the villagization program. However, the poor provision of facilities including tables, chairs, blackboard, text-books and other necessary teaching materials are still challenging for children to get better education.

3.7.2 The Right to Health

Health is a fundamental human right indispensable for the exercise of other human rights. The human right to health is recognized in numerous international instruments; *inter alia*, UDHR, ICESCR, CERD, CEDAW, CRC, and in regional instrument such as ACHPR. In its General Comment No. 14, on the right to the highest attainable standard of health, the committee noted that the right to health contains four elements[132]. In this regard, at the country level, under the health sector development program, improving the health of the population through enhancing access and quality of health services[133] is indicated as a major objective.

Taking the objective of health sector development program as a backdrop, when we see the villager's access to health services after the villagization program, as revealed in the interview with health extension worker revealed that, prior to the villagization program, the communities suffered a lot in access to health services given their scattered settlement, especially pregnant women, who were deprived of anti-natal delivery and post-natal care. She further, indicated that, by now, due to the villagization program and the fact that they are near to the health post, the villagers are getting health services, and she cites in particular the pregnant women are using services include vaccination, anti-natal care, post-natal care, delivery, and medical checkup.

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[132] These are; Availability: refers functioning public health and healthcare facilities, goods and services, as well as programmes, have to be available in sufficient quantity. Accessibility: Health facilities, goods and services accessible to everyone, within the jurisdiction of the State party. Acceptability: All health facilities, goods and services must be respectful of medical ethics and culturally appropriate, as well as sensitive to gender and life-cycle requirements. Quality: Health facilities, goods and services must be scientifically and medically appropriate and of good quality (See General Comment No. 14 (2000): The Right to Health, adopted by the UN Committee on Economic, Social and Cultural Rights, para.12).

[133] Supra note 14 at p.56

However, with respect to the service rendered by the health post, the FGD participants, villagers from Opagna indicated that, as compared to pre villagization, at present they are getting some medication from the health post. But they expressed their concern to the researcher that the service delivered is not just like what has been promised. It was further reported in the focus group discussions, there is lack of experts; having only one health extension worker and shortage of medicine, medical equipments and instruments in the health post defying them to get better health service. Accordingly, they told the researcher, most commonly treated disease at the health post only malaria, because '*quartem*' is the only drug available in the health post. At the same time, the service provided by the health post is true in Chebokir *kebele* too as FGD participants explained.

Furthermore, it was also reported by the respondents in the discussion, given that lack of professionals on the area and an acute shortage of medicine, patients are used to go to Gambella hospital for serious treatment. The researcher also observed the health posts of Chebokir and Opagna villages, and the standard of construction is acceptable despite the focus group discussants' portray "only the building is put in place at the absence of professionals and medicine".

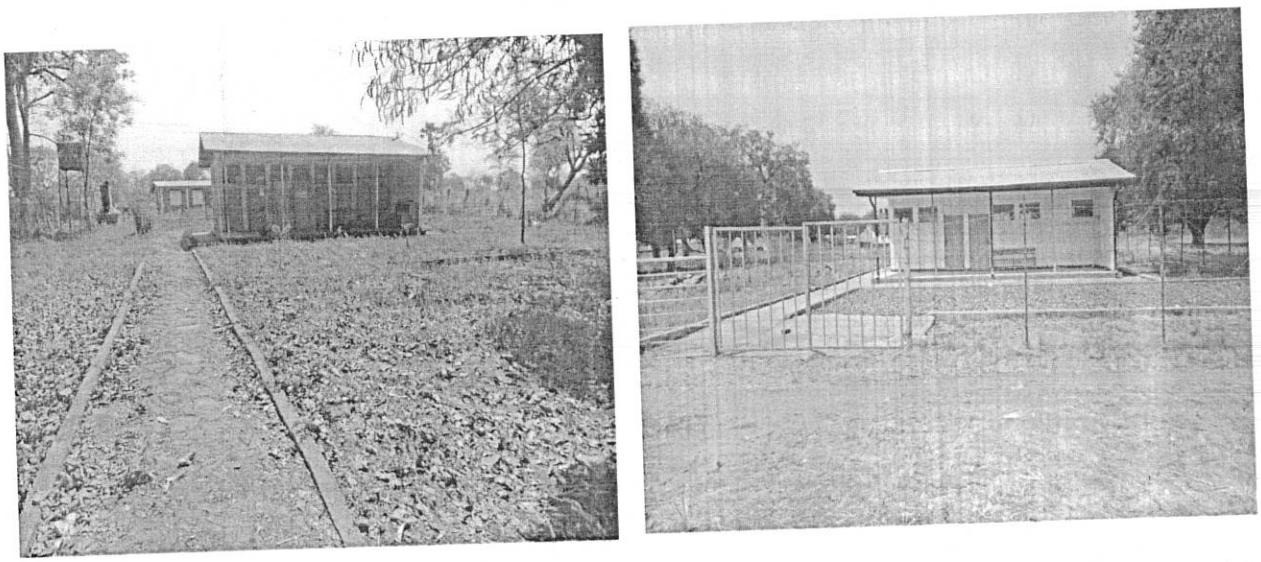

Figure 3: A Health post in Chebokir village (left) and Health post in Opagna village (right), Field Photo taken, February, 2014

Therefore, taking in to account the service provided by the health posts, when it is evaluated as per the core elements of the right to health[134], despite merely physical existence of the health post the existing services are beneath to the human rights standards. Thus, the researcher came to a conclusion; the villager's right to access health services is at stake.

3.7.3 The Right to Water

Access to safe and clean water is indispensable human right that is essential for the full enjoyment of life and a prerequisite for the realization of all other human rights. Accordingly, the right to water was explicitly recognized as a fundamental human right by the CESCR.[135] Prior to this, the right to water was only mentioned in the Convention for the Rights of the Child (1989) and the Convention on the Elimination of all Forms of Discrimination against Women (1979). Unquestionably, the human right to water is, for instance, a compulsory precondition for the realization of the right to an adequate standard of living(Article 11,ICESCR), the enjoyment of the highest attainable standard of physical and mental health(Article 12, ICESCR) and the right to life (Article 6, ICCPR).

Likewise, at the national level, the important provision in this regard is Article 90 (1)[136] of the FDRE constitution which lays the duty and authority on the government to fulfill the right to clean and safe drinking water to all citizens. Besides, providing adequate and clean water to the population, which in turn helps to progress in economic and social development, as well as improve population quality of life and ultimately to eradicate poverty, is indicated as the main objective of the water sector development plan.[137]

Thus, the fulfillment of access to clean and safe drinking water is one of crucial rights to be given full consideration in the villagization program. Accordingly, when we see the realization of the right to clean water in the villages visited by the researcher, the FGD participants from Chebokir and Opagna villages reported that, when they were in the previous settlement area

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[134] Supra note 132
[135] Committee on CESCR, General Comment No. 15 (2002): Concerning the right to water (arts. 11 and 12 of the International Covenant on Economic, Social and Cultural Rights),para.1
[136] "To the extent the country's resources permit, policies shall aim to provide all Ethiopians access to public health and education, clean water, housing, food and social security".
[137] Supra note 14 at p.11

around the riverbanks, they used to drink from the near baro river, which was not clean and most of them were vulnerable to water born diseases. In this regard, the FGD participants told the researcher in a way that 'the most successful in the name of the villagization program', and reported that at present they are in a better access to clean water put in place within the villages.

Evidently, from the researcher field observation, there are 3 water pumps put in place in Chebokir villages and 4 water pumps in Opagna villages with full functionality , and the writer of this study came to a conclusion without hesitation that the villagers right to clean and safe drinking water is realized (see fig.4).

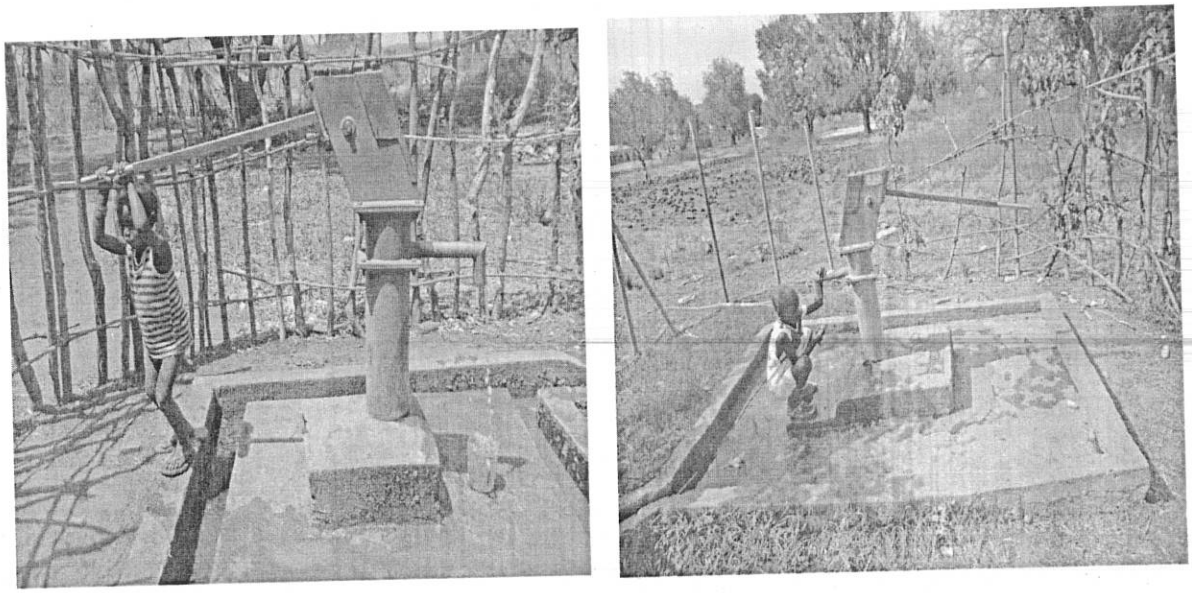

Figure 4: A child fetching water at the hand pump (left) in Chebokir village and a child washing at the hand pump (right) in Opagna village.

3.8 Implications for the Right to Development of villagers

"The right to development is an unalienable human right by virtue of which every human person and all peoples are entitled to participate in, contribute to, and enjoy economic, social, cultural and political development, in which all human rights and fundamental freedoms can be fully realized."[138] At the same time, in its General recommendation XXIII, the committee on CERD calls up on member states to "provide indigenous peoples with conditions allowing for a sustainable economic and social development compatible with their cultural characteristics". It is true; the right to development of nations, nationalities and peoples' has constitutional recognition under FDRE constitution (Article 43).

And, the constitution in its provision explicitly spells out the reflections of the realization of the right to development of nations, nationalities and people's as; "right to improved living standards and to sustainable development, the right to participate in national development and to be consulted with respect to policies and projects affecting their community as well as enhancement of the capacity of citizens for development and fulfilling their basic needs".[139]

Taking the above legal background of the right to development at international and domestic level (Article 43) in to consideration, as already mentioned in the section (see section 3.4) dealing with procedural issues, despite the consultation process approach was convincing and dominated by local elders, officials and elites, at least discussion with communities about the program were conducted, and also villagers access to basic social services (see section 3.7) although there are still deficiencies related to health services and education are considered as some instances.

Moreover, the FDRE constitution under article 43(4) the right to development is understood as ".....enhancement of the capacity of citizens for development and fulfilling their basic needs". Accordingly, here after as aspect of sustainable development and ensuring food security at the household level in the new villagization sites, 'agricultural productivity' is considered to gauge the villagization program implication for the right to development of villagers.

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[138] UN General Assembly (1986): Declaration on The Right To Development. GA Res. 41/28. Article 1(1)
[139] Based on FDRE constitution, article 43(1,2 and 4)

Regarding the success of the agricultural extension program in the study villages, interview with Ato Getachew Wolde, Process Owner of Agricultural Extension expressed to the researcher, the villagers when they were in their previous settlement areas, given poor agricultural techniques (through traditional tool for cultivation i.e. '*Caala'*, in Anywaa language), lack of access to agricultural extension services as well as lack of crop production inputs like improved seeds, pesticides, herbicides and insecticides, productivity of crops was at low performance. He further explained that, but at present given there is technology transfer to the local communities, existence of Farmers Training Centers (FTCs), access to crop seeds and water pump generators contributed to improvement in crop productivity.[140]

Furthermore, Ato Alemayehu Negash, Chebokir *Kebele*, Agricultural Expert, indicated that due to improvement in agricultural inputs and introduction of modern farming techniques (use of ox for ploughing, see fig.6), access to quality crop seeds, and access to agricultural extension services contributed a lot for high rate of crop farming. And, he further told the researcher the villagers (particularly in Chebokir Kebele) are at present producing more than consumption, and even they are in a condition to supply for market.[141] This also confirmed by the FGD participants from Chebokir *Kebele,* indicates that the agriculture extension workers has done a lot to improve crop productivity. Interview with one villager expressed that, to quote his saying:

> "Concerning the support of agriculture extension workers they are providing us with all necessary services based on their capacities. Even once they gave ox to us but unfortunately all of them died"[142]

Furthermore, FGD participants from Chebokir village told the researcher, currently they are no longer looking for food aid rather they are able to feed their families given that they are farming different crops[143] twice in a year supported by irrigation system and the agricultural extension services provided by experts through the FTC put in place (see figure 5 below).

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[140] Interview with Ato Getachew Wolde, Process Owner of Agricultural Extension, February 26, 2014
[141] Interview with Ato Alemayehu Negash, Agriculture Expert, Chebokir Kebele, February 24,2014
[142] Interview with Chebokir Kebele villager, February 25,2014
[143] Cabbage, *Adengore, Amula, Duba, kariya,Timatim….*

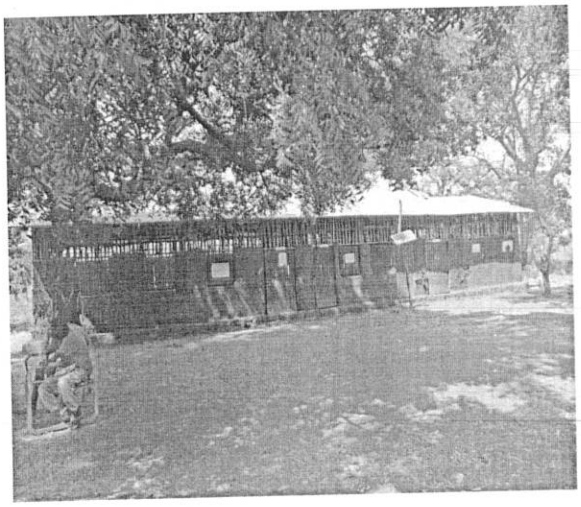

Figure 5: Farmers Training Center (FTC) at Chebokir village.
Field Photo taken, February, 2014

Figure 6: An Anywaa farmer while ploughing,
Field Photo taken, February, 2014

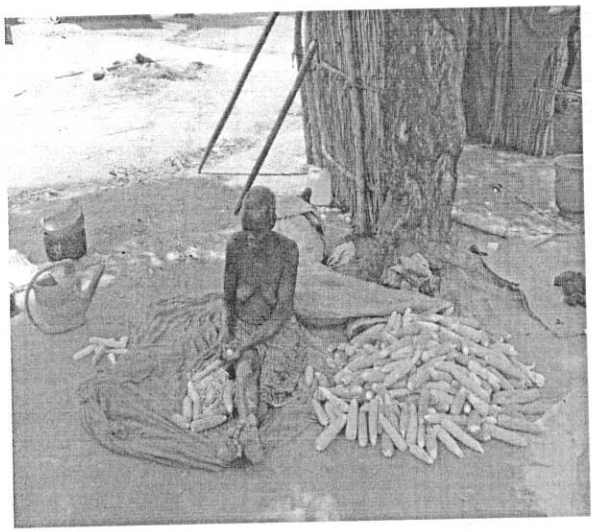

Figure 7: An old women flaking maize (in Opagna village),
Field Photo taken, February, 2014

Figure 8: A women collecting Cabbage (in Chebokir village),
Field Photo taken, February, 2014

However, the success of agricultural extension program at Opagna *Kebele* is not satisfactory, and as it was reported by the FGD participants, this is due to using traditional agricultural technique, failure to establish FTC, in turn lack of support from the assigned agricultural extension workers, and lack of water pump generator.

In a nutshell, the result of this study reveals that, despite the fact that the success of agricultural extension program has been immature at Opagna *Kebele*, the villagization program implications has laid some hope for the future development of the villagers. In this regard development indicators such as ; access to basic social services (schools, health posts, FTC, water points, and flour mill), modern irrigation scheme, permanent settlement, technology transfer, access to agricultural extension services and increasing in crop productivity (particularly in Chebokir village) can be cited. This implies that the voluntary villagization program, if planned with adequate inputs and executed with proper care and support for the villagers, will have a positive contribution to further developments of villagers in a sustainable manner.

CHAPTER FOUR

CONCLUSION

The purpose of this study was to examine the trade-offs between socio-economic rights, and consultation and cultural rights of villagers in the implementation of the villagization program. To this end, the study raised five questions. These are villagers' level of consultation to the scheme, the consideration of compensation in the implementation of the villagization program, the fulfillment of basic socio-economic institutions in the study villages, sustainability of the villagers' cultural practices in the new settlement areas, and the villagization program implication for the right to development of the villagers.

Based on the findings of the study, the following conclusions can be drawn:

The study revealed that likewise as reported by the HRW, the implementation of the villagization program in the study villages was undertaken through without having meaningful consultation with the target communities. Evidently, the approach chosen by the regional government to consult the target communities about the program was dominated by local influential elders, officials and elites at the expense of providing greater voices for the affected communities. Thus, the research concludes that, the procedural issue of consultation about the villagization program has been done not along the lines of the required procedures of consultation rather through convincing the target communities in a way that the government desires. Therefore, the regional government neither obtained prior and informed consent of the target communities nor considered the requisite procedures of appropriate consultation.

With regard to the redistributive issue of compensation in the implementation of the villagization program, the study showed that there was no compensation made to the target communities of the study villages. And, it is justified on the ground, the fact that the villagization program has been undertaken for the benefit of the communities, the original settlement area of target communities has not been claimed by the government, and the legal framework obliges the government to provide compensation merely when landholdings expropriated for public purpose. Thus, the study has come to the conclusion; payment of compensation is not justifiable as well as has no legal status.

Despite the HRW organization contention that the target communities livelihoods have been decimated and the preservation of their cultural identity has been at stake due to the villagization program, conversely the study found that because of the villagization program the villagers in the study villages has not been hinder to sustain their cultural practices in the new settlement areas and the livelihood system of the villagers, mostly relying on fishing, hunting, gathering, and mixed farming, has not been disrupted. Therefore, given that with regard to the exercise of cultural rights, as the Human Rights Committee noted culture manifests itself in many forms including traditional activities as fishing or hunting, and it is evidently considered to the villagers, and they are sustaining their cultural practices in a way that it was before the villagization program. Hence, the study concludes that, the villagization program has not disregard the cultural rights of the target communities, and being dweller to the new settlement areas did not hamper to sustain ritual cultural practices.

While assessing the basic social services in the study villages, the study revealed that, prior to the villagization program the target communities were deprived of access to basic socio-economic services. Nonetheless, after the villagization program given the villagers pattern of settlement helped them to access basic social services that they have never before accessed. In this regard the villagers have a better access to clean and safe drinking water. However, the required facilities to the school, and drugs, medical equipments and instruments to the health post are poorly provided.

The general conclusion of this study, is that, the villagization program declared purposes associated to socio-economic changes to the target communities are partially fulfilled given still there are deficiencies related to health services and schooling. In such cases i.e. in the progressive realization of the socio-economic services, the study further concludes that despite the implementation of the program undertaken without proper consultation, the villager's ways of life, cultural rights as well as ancestral land and natural resources has not been sacrificed at the table of modernization or development discourse.

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Annex- Data Collection Tools

I. Semi-Structured Interview Guideline

Regional Level:

1. Gambella Peoples' National Regional State Bureau of Agriculture and Rural development:

1. General objectives of the villagization program in the region.
2. Contribution of your institution in the villagization program.
3. Study period of the villagization program.
4. Assessments conducted to ensure that
    - The village sites are suitable for living.
    - Given farming areas are suitable for agriculture.
5. Measures taken to raise awareness on the program to the target groups
    - When was the villagization decided to take place?
    - When was the community informed?
    - What communication methods were chosen?
    - What section of the community was targeted?
6. Practicality of villagization program implementation manual guidelines and principles.
7. How was the discussion about the program with the target communities?
8. Are there communities or individuals who refused the program? If "Yes", what was the government response to them and where currently they are living?
9. Villagization program relation with commercial agriculture.
10. Success of the villagization program:
    - Infrastructure development.
    - The success of the agricultural extension program of the region.
11. Challenge you faced in the implementation of the villagization program.

2. Gambella Peoples' National Regional State Culture and Tourism Bureau:

1. General objectives of the villagization program in the region.
2. Role of your institution in the villagization program.
3. Involvement as member of the steering committee for the villagization program.
4. What the villagization program aim of "cultural transformation" signifies?
5. Measure taken so far for the continuity of the villager's to promote, develop and preserve their cultural practices in the new villages.
6. Do you think the villager's way of life in the new villages helps them to realize their cultural rights? If "Yes", how? If "No", why?

3. Regional Federal Assistance Board Coordinating Office

1. General objectives of the villagization program in the region?
2. Role of your office in the villagization program?
3. What the villagization program aim of "cultural transformation" signifies?
4. Procedure of consultation to the target communities.
5. Any compensation made to the villagers?
6. Is there any relationship between the villagization program and large-scale commercial farming in the region?
7. How was the general participation of the target groups?
8. Is the program successful in attaining its proposed objective? If "Yes", how? /indicators?
9. Responsible bodies to cover the cost for house construction and socio-economic services.
10. How do you describe the success of the villagization program?
11. Challenge you faced in the implementation of the villagization program?

4. Zonal and *Woreda*/Kebele Administration:

1. General objectives of the villagization program in the region.
2. Measures taken to raise awareness on the targeted communities about the villagization program.
3. Responsible bodies in identification of sites for settlement and target groups for the villagization program.
4. Assessments conducted to ensure that the village sites are suitable for living.
5. Studies conducted to ensure that the given farming areas are suitable for agriculture.
6. Consultation with the affected communities.
7. Participation of the affected communities.
8. Socio-economic services established to the villagers.
9. Number of households joined the villages to date.
10. Responsible bodies to cover the cost for house construction and socio-economic services.
11. Success of the villagization program.
12. Challenge faced in the implementation of the program.

Federal level:

1. Ministry of Federal Affairs Equitable Development Directorate General:

1. Rational behind the villagization program in the country.
2. Is there any linkage to the commercial agriculture investment?
3. Measures taken to raise the awareness and ensure the participation of the affected communities about the objectives of the villagization programs.
4. What was the communication method choose to consult the target communities?
5. Are there communities/individuals who refused? If "Yes", what was the government response to them and where currently they are living?
6. The efforts taken to ensure that the new villages have the required infrastructures before resettling the communities.
7. How do you describe the success of the villagization program?
8. Challenge you faced in the implementation of the villagization program?

II. Focus Group Discussion Questions:

1. What do you think the reasons for the villagization program?
2. How do you describe the physical environment of your new settlement site as compared to your previous residence?
3. Are you allowed to go back to your previous settlements? If "Yes", why you used to go?
4. What socio-economic services did you get here, which you didn't in your old village?
5. What convinced you to join the villages?
6. How did the consultation take place?
    - When and by whom you were first informed about the program?
    - With whom you had consultation? Who were took part from the community side?
    - When, where and for how many times the consultation undertaken?
    - What were the points of discussion in time of consultation?
    - Did you agree? If "Yes", how did you express your willingness?
    - How was the general participation?
    - Are there communities/individuals who refused? If "Yes", what was the government response to them and where currently they are living?
7. Opportunities because of the program:
    - Are the new villages good for living? If "No", why?
    - Does the villagization program improving your living standard? If "Yes", in what way?
8. Socio-economic and cultural rights and villagization:
    - Socio-economic services provided before you relocated.
    - Socio-economic services provided after you relocated.
    - Extent of access to basic social services (health center, school, water points)
    - Do the socio-economic services provisions go along with your culture?
    - What are problems related to basic social services? If there, what do you suggest to overcome those problems?
    - How do you describe your way of life here in the new villages as compared to pre-villagization?

- Effects of the program in sustaining cultural practices:
  - How do you think living in villages will affect your culture?
  - Cultural practices better realized due to the program.
  - Cultural practices regressed due to the program.
- Means of Livelihood before relocation.
- Means of Livelihood after relocation? If changed, why?

9. What problems you encountered so far in the new settlement areas?

III. Observation Guideline:

1. Existence and number of social and economic infrastructures.
2. Functionality of socio-economic services.
3. Settlement of the villagers' in the new settlement areas.
4. Way of living of the villagers.
5. Closeness to school, health center, waster points, justice organs, market …

	taxes and non tax source is more than its expenditure responsibilities?																				
8	Do you think that the source subsidy/grant/ that the federal government transfers to the States is Revenue from taxes and non taxes Constitutionally assigned to it?	8	5	63 %	3	27 %	10	8	80 %	2	20 %	15	11	73%	4	27%	7	5	71%	2	29 %
9	Do you think that the assignment of revenue sources/ taxes/ to the federal government which is dominant in revenue generating is appropriate assignment?	8	5	63 %	3	27 %	10	6	60 %	4	40 %	15	10	67%	5	33%	7	4	57%	3	43 %
10	Is incapacity of tax administration and less potentials of revenue generation of Oromia National Regional State cause of its less revenue capacity?	8	4	50 %	4	50 %	10	9	90 %	1	10 %	15	1	7%	14	93%	7	2	29%	5	71 %
11	Do you think centralization of dominant tax/revenue source/ for the purpose of interregional equity affect regions those relatively have better Natural resource endowment and tax bases?	8	8	100 %	-	-	10	9	90 %	1	10 %	15	15	100 %	-	-	7	7	100%	-	-
12	Do you observe that under Ethiopian fiscal decentralization, instances of horizontal fiscal transfer from relatively rich regions to back ward regions?	8	5	63 %	3	37 %	10	8	80 %	2	20 %	15	13	87%	2	13%	7	5	71%	2	29 %
13	Do states in Ethiopia; have the power of determining tax rate and tax bases freely?	8	1	12 %	7	88 %	10	2	20 %	8	80 %	15	4	27%	11	73%	7	1	14%	6	86 %
14	Do Regional state In Ethiopia have tax autonomy/ sovereignty/?	8	3	37 %	5	63 %	10	4	40 %	6	60 %	15	-	-	15	100 %	7	-	-	7	10 0%
15	Does Oromia National Regional State have tax autonomy according to the theory of fiscal decentralization which claims that sub-national governments have the power to determine tax rates and tax bases under their jurisdiction?	8	2	25 %	6	75 %	10	3	30 %	7	70 %	15	1	7%	14	93%	7	-	-	7	10 0%
16	Do you think that, all expenditure needs of Oromia Regional state can be financed by the revenue collected from its tax sources and non tax sources under its jurisdiction?	8	-	-	8	10 0%	10	-	-	10	10 0%	15	-	-	15	100 %	7	-	-	7	10 0%
17	Do you think that Oromia National Regional State is benefiting from federal subsidy/ Grant/ because the region/state/ gets additional revenue which it could not raise from its tax bases?	8	6	75 %	2	25 %	10	5	50 %	5	50 %	15	7	47%	8	53& %	7	4	57%	3	43 %

18	**Can the provision of public goods and service in ORG be properly performed matching the needs of the region in the presence of high dependence of the region on federal subsidy?**	8	3	37 %	5	63 %	10	1	10 %	9	90 %	15	-	-	15	100 %	7	1	14%	6	86 %
19	**Do you think/ do you observe/ that, low political commitment for revenue raising and lack of skilled man power for proper administration of taxes causes less revenue capacity of Oromia National Regional State?**	8	4	50 %	4	50 %	10	3	37 %	7	63 % %	15	4	27%	11	73%	7	3	33%	4	57 %
20	**Do you observe that, revenue sharing particularly VAT is properly implemented and Oromia is benefiting from this transfer system?**	8	1	12 %	7	88 %	10	4	40 %	6	60 %	15	-	-	15	100 %	7		29%	5	71 %
21	**do you think that, VAT, Profit tax from PLC and share company custom duty etc are improperly centralized by the federal government disregarding the interest of the Regional governments?**	8	4	50 %	4	50 %	10	7	70 %	3	30 %	15	13	87%	2	13%	7	4	57%	3	43 %
22	**Do you think that expenditure needs/ responsibilities/ which should be the responsibilities of federal government is assigned to the Region than its revenue power , thus unable to cover the cost of such responsibilities?**	8	1	13 %	7	87 %	10	3	30 %	7	70 %	15	6	40%	9	60%	7	-	-	7	10 0%
23	**Do tax payers and tax collectors have contributed to region's/ Oromia's/ less revenue capacity?**	8	4	50 %	4	50 %	10	3	30 %	7	70 %	15	3	20%	12	80%	7	3	43%	4	57 %
24	**Do you observe that revenue generating capacity of ORG is improved?**	8	7	88 %	1	12 %	10	9	90 %	1	10 %	15	11	73%	4	27%	7	5	71%	2	29 %

Annex Three: Contacted Informants for Interviews

No	Name	Office	Interview day
1	Tesema Bekele	ORG BoFED	April 16/2014
2	Aschenaki Disasa	ORG BoFED	April 16/2014
3	Hussien Seid	ORG BoFED	April 16/2014
4	Kebede Zegeye	Regional Bureau of Revenue	April 10/2014
5	Tadesse Kenei	Legal Expert in ORG S. Court	April 18/2014
6	Abdissa Dashura	Master Student at AAU	April 20/2014

Annex Four: Interview questions provided for the interviewees above

1	Do you observe some problem with fiscal decentralization particularly with revenue assignment among levels of governments in Ethiopia relating it with theory of fiscal decentralization and experience of other federation?
2	What do you think is a real cause of vertical fiscal imbalance between federal and the state governments?
3	Do you think under the Ethiopian decentralized fiscal system revenue assignment is centralized against the principles and theory of tax assignment?
4	What are the impacts of centralizing taxes from unevenly distributed Natural resources on regions endowed with these resources? Does it mean penalizing them while benefiting the other?
5	What if certain tax bases previously owned by the federal government would be decentralized to states as a policy option to narrow vertical fiscal imbalance?
6	Do you think that States in Ethiopia would fully exercise constitutionally guaranteed self government in the presence of high dependence on federal governments for financial support to perform their responsibilities?
7	Do you think that Revenue sharing and federal grants are the only ways of managing both vertical and horizontal fiscal imbalances? And are they properly implemented to affect their purpose?
8	Does Oromia National Regional State have tax autonomy according to the theory of fiscal decentralization which claims that the sub-national government to determine tax rates and tax bases under their jurisdiction?
9	On which tax bases can Oromia National Regional State determine its bases and rates freely?
10	What do you think is the practical cause of less revenue capacity Oromia National State?
11	Do you think that Oromia National Regional State is benefiting from federal transfer/ Grant/ because the region/state/ gets additional revenue which it could not raise from its tax bases?
12	Is incapacity of tax administration and less potentials of revenue generation of Oromia National Regional State cause of its less revenue capacity?

13	As it is true also for the rests of states in Ethiopia, Oromia National Regional State is highly dependent on federal government for financial support to perform its constitutionally assigned functions. - The question here is, do you think that such dependence affects the autonomy and self government which include development of political, economic and social development within the region? - Do you think federal grant is sufficient to be incentive for officials of the region to perform the above motioned tasks particularly to provide public service which matches the needs of the people?

Annex Five: Budgeted Revenue and Expenditure of ORG (2006)

	1. Expenditures	
1.Recurrent Expenditures	Birr	Birr
Administrative and General Services	1,279,249,113.00	
Economic Services	871,216,309.00	
Social Services	1,930,804,712.00	
Total Recurrent Expenditures		**4,081,270,134.00**
Capital Expenditures		
Administrative and General Services	181,355,860.00	
Economic Services	4,207,787,763.00	
Social Services	1,267,962,128.00	
Total Capital Expenditures		**5,657,105,751.00**
3. Block grants for Weredas and city Administrations		**11,756,556,143.00**
4. Grants for Projects		**4,875,000,000.00**
5. Others		**100,000,000.00**
6. Reservation		**250,000,000.00**
Total Expenditures		**26,719,932,028.00**
	2. Financial sources	
1) Regional Revenues		
Revenue from Taxes	5,980,281,530.000	
Revenue from Direct Taxes	4,001,284,976.000	
Revenue from Indirect Taxes	1,978,996,554.000	
Non Tax Revenues	882,784,500.000	
Capital Revenue	2,933,970.000	
Total Regional Revenue		**6,866,000,000.00**
2) Grants/subsidy/ from Federal government		13,815,498,571.00
3)Foreign Assistance		149,979,187.00
4) External/foreign/loan		13,454,270.00
5) Internal revenue from public sectors		642,005,000.00
6) Budget for millennium projects		4,875,000,000.00
7) Others		357,995,000.00
Total Revenues		**26,719,932,028.00**

Annex Six: Powers and Functions of Regions

All power not given expressly to the federal government alone or concurrently to the Federal Government and the states are reserved to the states.
Consistent with sub-article 1 of this Article, states shall have the following powers and functions.
a) To establish a state administration that best advances self government, a democratic order based on the rule of law; to protect and defend the federal constitution;
b) To enact and execute the state constitution and other laws;
c) To formulate and execute economic, social and development policies, strategies and plans of the state;
d) To administer land and other natural resources in accordance with federal laws;
e) To levy and collect taxes and duties on revenue sources reserved to the states and to draw up and administer the state budget;
f) To enact and enforce laws on the state civil services and their condition of work; in the implementation of this responsibility it shall ensure that educational; training and experience requirements for any job title or position approximate national standards;
g) To establish and administer a state police force, and maintain public order

But my point is that, this provision of the proclamation which provides a **four years** period for regularizing illegal possessions is also criticized by many people by alleging that further illegal possessions will be conducted even after the coming in to force of this new proclamation for the coming four years.[316] Because the proclamation does not make it clear that illegal occupations carried out after the coming in to force of the same will never be regularized. As a result, it is said that this encourages further illegal possessions. Thus unless serious mechanisms of control and follow up are established this provision will bring about extensive illegal land occupation. Of course, it has been disclosed through the media that the process of land grabbing has been aggravated after the coming in to force of this proclamation, especially this year. People are conspiring to occupy bare land to construct houses illegally and bring false testimonies that the possessions are held before the enactment of the proclamation.[317] To this end, this provision may expose people who implement the proclamation to corrupt and rent seeking practices. Obviously corruption is anti-development.

As a result, the existence of this and many other unclear provisions under the proclamation initiates corrupt practices. If there is corruption, the country will lose the income that would have been generated. Consequently, this informal settlement causes three main problems: 1) the resource that would have been used for development works will be used for enriching illegal individuals. This stimulates rent seeking thinking. 2) Erodes the rule of law and causes the expansion of illegal activities. 3) Makes government officials victims of corruption and rent seeking and the principle of good governance that the proclamation wants to ensure remains to be mere slogan and the law becomes a source of rent seeking, corruption and discrimination.

Moreover, since this proclamation negatively affects the interest of illegal possessors whose possessions *are not found to be acceptable in accordance with urban plans and parceling standard*, such people will continue to exert their maximum effort to make their possession legal even by paying a big amount of money in the form of bribe and by trying to influence the adjustment or preparation of the plan of the city in favor of them by concealing evidences which can criminalize them. This dictates government officials whose task is related with this to be engaged in unnecessary and corrupt practices.[318] Thus, there should be a system for identifying

[316] See Mekasha, cited above at note 44, p.64.
[317] Ibid.
[318] Ibid.

the legal from the illegal ones. Unless such system is created the system of good governance that the law strives to ensure will be at stake.

With regard to informal settlements that are not found to be in conformity with the master plan of the city, such buildings will be demolished with no compensation paid to the possessors. As a result, a significant number of people (mostly the poor) will be exposed to economic crises.

From the above discussions, therefore, the new urban land lease holding proclamation in one way or another has brought its own negative implications on the transaction of immovables i.e., land and buildings, security of tenure of urban residents, the construction industry, banking services, urban housing service, the market and investment.

Thus I can safely conclude that the proclamation is accompanied by its own negative implications on the Ethiopian economy. It is clear that let alone an influence on the whole of the Ethiopian people and the market, a loss on an individual firm affects the country's economy. Thus it seems to be wise to devise mechanisms by which the problems can be avoided or minimized. Therefore, to minimize these negative implications of the proclamation some of which have already started to show preliminary impacts, the proclamation should be amended at least to minimize the problems which affect the country's economy.

To this end the writer of this paper proposes that, as land under the FDRE constitution is owned by the state and the peoples of Ethiopia[319], the urban land laws should at least fairly reflect the fact that urban residents as part of the society are also joint owners of the urban land. This can be made by entitling urban residents to a fairly enough square meters of urban land through the permit system for residential purposes. Then, for business purposes it is fair if people pay a fair amount of lease price to support development activities.

Concerning the size of the land that should be allowed by the government to urban residents free of lease payments for residential purposes, a fair national standard as provided under article 6(2) can be designed.

[319] Article 40(3) of the FDRE Constitution, cited above at note 2.

Of course, it is clear and is always stated by the government that urban land is limited by its nature, but the government in this regard can devise a mechanism by which people can form associations and construct multiple storey buildings to restrict the horizontal expansion of the urban centers.

Chapter Four

Conclusion and Recommendations

4.1. Conclusion

As per the new urban lands lease holding proclamation, in principle, the only way through which urban land can be obtained is through lease system and after winning a competitive tendering. It is only exceptionally that land may be allocated through allotment.

The lease system allows use right on urban land only for a definite period of time upon payment of lease price. Thus, the permit system which formerly entitled urban residents to exercise use right for indefinite period does not work in case of urban land acquired after the coming into force of this new lease holding proclamation save the case of old possessions obtained in the form of inheritance. Of course the government has also planned to convert all old possessions to lease holding. Therefore, according to this plan, the permit land holding system will gradually be abolished.

However, the fact that the lease proclamation is made applicable in all urban centers and for all grades of land and that everyone will be allocated urban land for any purpose based on tender is unfair taking in to account the economic capacity of most urban residents and the fact that urban residents as part of the people are theoretically joint owners of land. This drives the poor and the middle income urban residents out of the game. Thus in an attempt to avert rent seeking practices this proclamation negatively affects the urban poor and the middle income who are afflicted by the housing problem. It also brings the monopolization of urban land by few rich investors who can afford to offer much during auction. Based on this, the stand of the government seems that this country can be changed only by the few rich investors and the government itself.

Under the new proclamation except in the case of inheritance, transfer of old possession is made to be through lease system and transfer of lease hold right on which half of the required construction is not completed is to be made under the control of the appropriate body so that any increase in the value of the land will be due to the government. Therefore except in the case of transfer of lease hold after half completion of construction the proclamation almost totally blocks

the chance of benefiting from the market value of land. Thus, in contrast to the previous lease proclamations, the new one hampers the right of access to urban land. The different strategies included in the new proclamation restrict the free transfer of land holding rights both for old possessors and lease holders.

This law became a big threat to old possessors. Old possessors' benefits related with bank loans and transfer value are seriously affected by the proclamation. They are afraid that their possession may in the near feature be converted to lease hold or the rent on the land may unreasonably be increased as the law entitles the executive body to take either of the actions. Old possessors couldn't sale their possessions at their market value as buyers are expected to pay lease for the government in addition to the sale price of the properties attached with the land to the sellers during transfer. Old possessors' chance of getting bank loans is seriously restricted as the location value will not be taken into account and banks don't know the amount of lease payable to the government in case the debtor fails to pay the loan.

The proclamation lacks the necessary transitional provisions for many issues. This has endangered the interest of many individuals by subjecting them to unexpected additional obligations. For instance, the proclamation has subjected many buyers of old possessions who bought such old possessions but did not start the process for transfer of title before the coming in to force of the same to double payments. Because this proclamation obliges them to pay lease for the government after they have already paid the full market value of such possession to the possessors. Thus it has caused financial crises on such individuals.

The restrictions imposed on transfer of old possessions imply that there is less possibility for an individual to derive financial benefits from his land holding. Moreover such restrictions imposed on land holders are contrary to free market economy stated under the preamble of the proclamation, because people cannot benefit from the market value of their possession.

The proclamation has also imposed many restrictions on leasehold rights. For instance, with the exception of inheritance, transfer of leasehold right prior to commencement or half-completion of construction is to be made under the control of the government and 95% of the lease transfer

price in this case will go to the government. Moreover, where a lessee uses his leasehold right as collateral prior to commencement of construction, the collateral value may not exceed the balance of the lease down payment after deductions such as a penalty fee amounting to seven percent of the total lease price and payment of the lease amount that covers the period from the date he took possession of the land. A lessee can only use his lease hold right as capital contribution only to the extent of the lease amount already paid.

But these restrictions discourage people from taking land on lease basis and are unfair in the light of the free market principle. It is also unjust for the government to impose such restrictions so far as the lease holders have once effected their lease payments as per the lease contract. Moreover, it is difficult to implement all these restrictions, because people may effect transfer of lease right on a bare land or below half completed constructions through informal/internal agreements which in turn causes a big loss of revenue which would have been derived had these transfers been made legally for the government. This is prejudicial to the interest of the government and the parties to the internal transaction.

The government states that the proclamation is designed to discourage corruption and rent seeking practices in relation to urban land. However, it still like the former proclamations contains many unclear provisions that can allow government officials to make discriminations among individuals and engage themselves in rent seeking and corrupt practices thereby putting the principle of good governance enshrined under the same proclamation in doubt. For instance, the fact that no clear procedures are provided in the case of sale of unfinished constructions in case the lessee fails to complete constructions to be conducted by the government, the fact that there are no clear criteria in the case of projects having special national significance considered by the president of the region or the mayor of the city administration and referred to the cabinet under article 12(1/g), the case of a sole bidder with no clear criteria under article 11(8), the expression '...the appropriate body may authorize...' under articles 21(3) and 25(2) and the fact that the reasons for failure to renew the lease contract are not clearly stated under article 19, etc. Thus, it is important to emphasize that even the current law will not achieve its purposes unless efficient, transparent and accountable urban land administration system which functions based on clearly provided criteria is designed.

The new proclamation also incorporates the issue of regularization of informal settlement which is a very progressive idea in contrast to the former confrontationist attitude towards squatting. However, the fact that the regularization process will be conducted with in the coming four years from the coming in to force of the proclamation may encourage informal settlement and production of false testimonies to simulate such possessions with those which are to be legalized. The absence of an explicit provision to the effect that informal settlements occupied after the coming in to force of the proclamation will not be regularized may aggravate the problem. Thus unless due control and follow up is made this will bring about the loss of large resource and encourage rent seeking practices.

In addition to the fact that the proclamation does not clearly indicate the reasons why the appropriate body may refuse to renew the lease contract, the absence of compensation in the event of non renewal creates insecurity and discourages lease holders from making maintenance and long lasting investments on their leased hold. It is also unfair and unconstitutional to leave the leaseholder uncompensated for the properties on the land.

The proclamation has classified the period of grace to be provided for each type of construction projects based on their complexity but it does not take in to account whether basic infrastructural facilities are fulfilled for the same land. This is aggravated by the fact that while the obligation of the government to fulfill infrastructural facilities for the land to be obtained based on tender is clearly provided under the proclamation, this obligation is not clearly mentioned in the case of land to be permitted based on allotment. Moreover, it is customary that the municipality focuses on the fulfillment of infrastructural facilities and even allocation of land for tender.

Moreover, the time provided for commencement and completion of construction under the proclamation does not take into consideration the capacity of most urban residents. For instance, the fact that small scale construction projects are given only two years and half to complete construction is unrealistic and discourages the low and middle level income people from engaging themselves in minimizing the housing shortage problems in effect making them non beneficiaries of the urban land. Before the coming in to force of this proclamation it was

customary that a land holder finishes one or two rooms and starts living on his/her possession to develop it progressively, but now this is impossible. Based on this and taking in to account the capacity of people who may be permitted land by allotment such as self help associations delays in commencement and completion are likely to happen. On top of that, the harsh measures following failure to commence and complete construction, including the fact that the requirements for a force majeure to exist are those stated under the civil code, but not based on the special problems of the construction industry create a sense of insecurity on individuals and thereby discourage them from engaging in construction activities. If such provisions are strictly implemented either many urban residents, especially the poor and middle level income people will never take part in construction or they will be subjected to loss as a result of the sale and demolishing action by the government of their unfinished constructions. This in turn has its own negative bearing on their right to shelter. These restrictions kill the motive of individuals to save and construct a shelter. This aggravates the housing problem in the cities because the government alone cannot solve it. Thus because of some rent seeking people both from the government offices and private individuals the benefits of honest and poor citizens have been taken away.

In addition to that, even if the length of time to be extended to compensate time lost due to force majeure should be determined by the duration for which the force majeure lasted, the maximum periods of grace both for commencement and completion of construction is provided under articles 34(3 and 4) of the draft model regulation and 23(4) of the lease proclamation. But this does not take in to account at least the case of force majeure since the time lost because of force majeure is determined by the duration for which the force majeure lasted. Based on this, the time given to compensate delays in construction due to force majeure should be equal to the time lost on account of the same reason and hence should not be provided in advance. On top of that, the fact that the requirement of force majeure for the extension of the time limit is based on the civil code and not based on the common problems of the construction industry will bring its own problems and economic loss on lease holders as well as on the country.

Generally the restrictions imposed by the proclamation on transfer, collateralizing and contributing in the form of capital of use rights on urban land and the serious measures following

failure to commence and complete construction with in the short time given without considering the capacity of most of the urban residents discourage people from making investments on urban land. Consequently this by itself has a negative bearing on the housing problem, job opportunity, the income of urban residents, and the revenue of the government and generally on the county's economy.

On top of that the proclamation does not provide mechanisms as to how disputes concerning the commencement and completion of construction, non renewal of lease contract, as to the existence or otherwise of force majeure, the extent of the time lost because of such force majeure are to be solved and who solves them. Such differences will necessarily arise between the appropriate body and the lessee. Thus since no administrative remedy is provided by the proclamation it is inevitable that these issues will contribute to the increase in the case load of the regular courts.

The proclamation does not put the ways how the interest of third parties such as banks will be protected when the contract of lease is terminated according to article 25 and measures such as sale or demolition are undertaken. This in turn exposes third parties such as banks which extended loans having collateralized both the lease hold right and the construction on it to losses which can finally discourage them from granting loans to lease holders. On the other hand if banks are discouraged from granting loans investment activities will be discouraged.

The fact that the time given for those people who are said to be illegal settlers is too short in contrast to the legal ones in the case of clearing urban land under articles 26(4) and 28(2), most of the time causes the destruction of the property of the poor without being given the right to be heard. Such people are not given adequate time to collect evidence for submitting grievances and appeals or clear their properties.

The proclamation does not clearly incorporate the idea of giving priority to land holders in case of urban renewal, expropriation, and expiry of lease contract if such people can individually or in cooperation with each other undertake the required development project. This discourages the motive of investment on the part of urban residents.

The proclamation does not indicate as to whether the size and location of the substitute land given in the event of expropriation is proportionate to what has been taken. But this issue is a big concern to persons displaced from their land holding. Moreover, the amount of compensation paid in the event of expropriation is solely decided by the government without the involvement of the land holder. As a result many people usually complain that compensation paid in this regard is inadequate taking in to account the market value and the location of the land.

The proclamation is designed in such a way that cases arising from urban land clearance order will not go to the regular courts as much as possible. Under article 26 the appropriate body is given the power to clear urban land where it is in the public interest. On the other hand, under article 28, the same body is given power to hear grievances of land holders who are served with clearing orders after which an appeal is to be lodged to the appellate tribunal which renders final decisions except for issues of compensation. However, the fact that the appropriate body renders decisions on the grievances emanating from its own clearing order and that no appeal is allowed from the decision of the tribunal except on issues of compensation is unfair. Thus it can be said that the complaint handling system under the proclamation restricts the full access to justice of aggrieved parties.

The legislature does not seem to have consulted the provisions of the criminal code before stipulating the penalties under the lease proclamation to ensure compatibility. That is why article 35 begins by saying "unless the offence is punishable with more severe penalty under the Criminal Code…". This in turn brings about differential treatment of individuals who committed similar offences as the judges and public prosecutors are likely to be confused by the incompatibility between the provisions of the criminal code and that of the lease proclamation. Moreover, the government, in incorporating penalties under the various proclamations it enacts seems to be of the opinion that the criminal code is not sufficient to penalize all offences committed within the country.

On top of that, under article 35(1) (a/3) of the proclamation all omissions irrespective of their weight and nature are qualified as crimes punishable by rigorous imprisonment and fine. But penalizing all omissions including those minor ones through imprisonment and fine is at least humanly unfair. People may commit many possible omissions which can be subjected to

administrative correction at least as human beings, but imposing this type of penalties irrespective of their intention and the weight of the contravention is unjust.

Concerning the economic implications of the proclamation, even if the government blames rent seekers for creating confusion within the urban residents and initiating opposition about the same, from the information collected through interviews, focus group discussions and the writings of legal professionals, the writer has understood that the new urban land lease holding proclamation has its own negative implications on the transaction of immovables i.e., land and buildings, security of tenure of urban residents, the construction industry, banking services, urban housing service, the market and investment. This in turn affects money circulation, job opportunity and the income of both individuals and the government and has a negative bearing on the country's economy.

Under the model regulation, we find provisions which incorporate ideas totally or partially different from what is provided in the proclamation. Thus, after facing public opposition based on the fact that the proclamation has a number of gaps and problems, the government seems to be trying to make some amendments to the proclamation through the model regulation which is expected to be adopted by the different regions and city administrations. Therefore, some of the errors made by the law maker are corrected by the executive organ. But this act by itself is legally invalid as a proclamation cannot be amended by a regulation.

4.2 Recommendations

Based on the aforementioned points and findings the writer would like to recommend the following:

- As land under the FDRE constitution is owned by the state and the peoples of Ethiopia the urban land lease holding proclamation should minimize the monopolization of urban land by few rich investors who can afford to offer much during auction. Accordingly urban residents should be entitled to a fairly enough square meters of urban land through the permit system for residential purposes, provided however that; those urban residents who submit a request to be allocated urban land to that effect should show the required

financial capacity to undertake construction as per the plan of the city before obtaining the land by depositing the required money in a blocked bank account as usual. The government in this regard can devise a mechanism by which people can form associations and construct multi-story buildings to restrict horizontal expansion of urban centers.

- Alternatively, if the above proposal does not work; the lease proclamation should be amended in a way that incorporates a provision which entitles the regions to permit urban land for residential purposes depending on their own prevailing conditions.

Moreover,

- Article 3 which deals with the scope of application of the proclamation should be amended so that it shall be applicable to all urban centers with in Ethiopia with regard to urban land for non dwelling purposes. In the same fashion, the prohibition of land possession and permission other than through lease holding provided under article 5 should be applicable to urban land for non dwelling purposes.
- The government should provide those squatters whose possession is to be demolished because of the fact that it is not found to be in conformity with the master plan of the urban centers, with access to substitute kebele housing or facilitated purchase of condominium housing unit based on humanity and social justice. Their settlement should not also be demolished within a short period of time until they get such alternative shelters. Moreover, considering the inevitability of squatting for the future, the government should primarily work a lot for a change in attitude towards squatting, squatters and squatter settlements.
- To protect further squatting, the government should design a modern and efficient mechanism to identify and control all the urban land that is not yet allocated.
- The preconditions provided for urban land made available for tender under article 8(1) should also be applicable to land that will be allocated through allotment and the permit system proposed above.
- Clear and transparent criteria should be designed in the case of a sole bidder under article 11(8) and in the case of projects having special national significance considered by the

president of the region or the mayor of the city administration and referred to the cabinet under article 12(1/g).

- Lease holders who obtained land according to the previous lease proclamation should be entitled to enjoy the 10 years increase in the period of lease for industry and trade and others in Addis Ababa provided under article 18 of the new lease holding proclamation so far as they can pay the lease price for this additional period.
- The fact that the appropriate body can refuse the renewal of a lease contract under article 19 of the proclamation should only be based on public interest and this should be incorporated under the proclamation. Of course what constitutes public interest should be clearly provided by law and it should not be susceptible to abuse by the relevant officials. The government should also pay compensation at market price for the properties attached with the land and the permanent improvements on the land to the lessee when the contract of lease is not to be renewed because of the fact that the appropriate body refused to renew the lease contract when the land is needed for public interest.
- The three years period of payment given under article 20(6) after which the appropriate body is empowered to seize and sale the property of the lessee to collect the arrears should be reasonably extended taking in to account the objective realities in which the lessee is found.
- The expression "...may authorize..." under articles 21(3) and 25(2) should be amended as "...shall authorize...".
- The time given for the commencement and completion of construction should be reasonable taking in to account the capacity of most of the urban residents in the country. Such time should also reasonably be extended taking in to account the infrastructural facilities fulfilled by the government and the capacity of the land holder. Generally the time for commencement and completion of construction should take in to consideration the prevailing realities on the ground. At the end a reasonable warning notice should be given to enable the land holder to finish the construction rather than rushing to confiscate it.
- Under article 22(3 and 4) of the proclamation, there should not be penalty fee where a lessee fails to commence construction within the specified period. Of course there should

be reasonable time limits for commencement and completion of construction, but in case of failure to do so there should not be any penalty. Simply retaking of the land is enough.

- The proclamation should adjust clear and transparent procedures of sale of unfinished properties in case of failure to complete construction as provided under article 23(5-8). In the same fashion there should also be clear procedures for submitting and entertaining complaints arising from such sale. In such cases if there is construction on the land, it should be sold through open tendering after the value of the construction is evaluated by a neutral third party in a relevant profession and returning the value of the construction to the lessee.
- The proclamation should be amended in a way that eliminates any restriction in the transfer of land use rights. It is enough for the government if it collects the transfer taxes and related charges and no more restriction is necessary.
- The proclamation should balance the interest of the lessor and the lessee. Thus it should be designed to equally protect the interest of the two parties.
- What is provided as maximum extension period under articles 23(4) of the proclamation and 32 of the model regulation should not be applicable for delays due to force majeure, because, the length of time to be added to compensate time lost due to force majeure should be determined by the duration for which the force majeure lasted. Moreover, the requirement of force majeure for the extension of the time limit under article 25(2) of the proclamation should be based on the common problems of the construction industry and not merely based on the civil code provisions.
- Under articles 26(4) and 28(2) of the proclamation the fact that people who are said to be illegal settlers are given only seven working days both as a period of notice and for submitting grievances to the appropriate body is insufficient in contrast to the legal ones. Thus, as such people who are qualified as illegal settlers can prove otherwise using their chance of submitting grievances and appeals they should be given equal time with the legal ones that are given a minimum of 90 days for clearing and 15 working days for submitting grievances.
- The proclamation should also incorporate provisions entitling interested parties whose rights on the expropriated immovable have been entered in the register of immovables to be served with the expropriation order like what was given under the civil code. The idea

of priority of creditors should also be incorporated and banks should not be expected to secure court order to sale collaterals.

- In case of expropriation land holders should be awarded with compensation depending on the market value of the expropriated property valuated by neutral professionals. Because the expression 'commensurate compensation' is said to be unclear and is usually abused by public authorities. To avoid confusions in calculating the amount of compensation, the proclamation should take as a basis the day when the appropriate body has served the leaseholder with a clearing order. The size and location of the substitute land provided in this case should also be proportionate to what has been expropriated and this fact should be expressly provided by the law, because this is also usually abused. In doing so, location, distance and other factors that determine demand for land should be taken in to consideration in giving the substitute plot of land for the displaced person.
- If a leaseholder whose land is expropriated does not want to take the substitute land; justice requires that the lease holder should be entitled to payment of the remaining lease payment with interest starting from the time of payment as per the prevailing interest rate on loans offered by the Commercial Bank of Ethiopia under article 20(4) of the proclamation.
- The government should also find alternative ways for compensation of evacuated people through neutral body facilitated negotiations between the investor and the former possessor. This can serve as a solution to the problem regarding the amount and kind of compensation, because, through negotiations between the investor and the leaseholder, better agreements can be reached. Then if the negotiation fails the currently working way of compensation by the government can be applied.
- In the case of clearing urban land under articles 28-29, the tribunal should exercise first instance jurisdiction and one chance of appeal to the regular courts should be given on all issues as a right for grievances of the land holders. Or as the impartiality of both the appropriate body who passes the first decision and the appellate tribunal who renders final decision on all issues other than compensation is doubtful an appeal should be allowed to a regular court of law on all issues.
- As an adjudicatory body the appellate tribunal to be established as provided under article 30 of the proclamation should be established by law and the members of the tribunal

should be nominated by the legislative body of the concerned region and the procedures by which such tribunal will be governed should also be prepared by the same body and published in Negarit Gazeta so that everyone will have easy access.

- An appeal from the decision of the Tribunal under article 29(4) of the proclamation should be on all issues and it should be made to the regular high court.
- During expropriation, unlike what is provided under article 29(5), land holders should not be obliged to surrender the land until after the case is no longer appealable and compensation is paid. Alternatively, if article 29(5) of the proclamation which imposes an obligation of handing over of the land as a pre condition for appeal cannot be amended, the 30 days time provided for appealing to the appellate court as mentioned above should run starting from the time when the appropriate body takes over the land rather than from the time of receipt of the decision of the Tribunal.
- In case of expropriation the proclamation should be amended in a way it incorporates provisions allowing or prioritizing land holders to develop the land individually or in joint venture according to the new land use. For this purpose such land holders should be provided with access to credit by collateralizing the land and other means.
- The provisions of the proclamation dealing with penalties should be revised after consulting the provisions of the criminal code and in a way that they should not create confusion among judges and public prosecutors thereby violating the rights of individuals and impose other administrative remedies on minor omissions instead of rigorous imprisonment or heavy fine.
- Rather than trying to avert corruption by imposing very serious penalties the government should recruit well disciplined and competent professionals who can work honestly, effectively and efficiently in urban land administration.
- Rather than trying to amend the proclamation through a regulation the government should amend the proclamation itself as a regulation which is enacted to implement the proclamation cannot legally amend the same. Thus it is better to amend the proclamation itself by employing competent professionals. For this purpose, all the good amendments made by the draft model regulation should be incorporated in to the proclamation itself.
- The expression 'the appropriate body' stated throughout the proclamation should be specifically and clearly provided by law otherwise it will be confusing.

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የከተማ ቦታን በሊዝ ለማስተዳደር እንዲያስችል የተዘጋጀ ረቂቅ ሞዴል ደንብ ቁጥር.../2004፡፡

በአዲስ አበባ ከተማ አስተዳደር የከተማ መሬት ሊዝ ደንብ ቁጥር 49/2004 ዓ.ም፡፡(Unpublished).

የከተማ ቦታን በሊዝ ስለመያዝ እንደገና ለመደንገግ የወጣው አዋጅ መግለጫ፣ ከከተማ ልማትና ኮንስትራክሽን ሚኒስቴር ለሕዝብ ተወካዮች ም/ቤት በረቂቁ ላይ ተወያይቶ እንዲያጸድቀው የተላከ፡፡ Available at the House of Peoples' Representatives Library.

የኢትዮጵያ ፌዴራላዊ ዴሞክራሲያዊ ሪፐብሊክ 4ኛው የሕዝብ ተወካዮች ም/ቤት 2ኛ ዓመት የሥራ ዘመን 1ኛ መደበኛ ስብሰባ ቃል በቃል ቃለ- ጉባኤ፣ (መስከረም 30 ቀን 2004 ዓ.ም አዲስ አበባ፡፡ Available at the House of Peoples' Representatives Library.

የከተማ ልማትና የኮንስትራክሽን ጉዳዮች ቋሚ ኮሚቴ የከተማ ቦታን በሊዝ ስለመያዝ እንደገና በወጣው አዋጅ ላይ ከከተማ ልማትና ኮንስትራክሽን ሚኒስቴር የሥራ ሃላፊዎች ጋር ያካሄደው ውይይት አጭር ቃለጉባኤ፣ (ታህሳስ 6 ቀን 2004 ዓ.ም፣ ፣) Available at the House of Peoples' Representatives Library.

አዲሱ የከተማ ቦታን በሊዝ ስለመያዝ የወጣው አዋጅ የኢትዮጵያን ሕዝብ የዜግነት መብት የሚሸረሽር ስለሆነ በጥብቅ እንቃወማለን! ከኢትዮጵያ ፌዴራላዊ ዴሞክራሲያዊ አንድነት መድረክ (መድረክ) የተሰጠ መግለጫ፣ (ህዳር 12 ቀን 2004 ዓ.ም አዲስ አበባ፡፡)

ቁጣና ማስፈራራት፣አዋጅ በደንብና መመሪያ ሊያሻሻል አይችልም (የጠቅላይ ሚኒሲቴር መለስ ዜናዊን የስድስት ወራት የፖርላማ ሪፖርትና የሊዝ አዋጅ ገለጣን

አስመልክቶ ከኢትዮጵያ ፌዴራላዊ ዴሞክራሲያዊ አንድነት መድረክ (መድረክ) የተሰጠ መግለጫ፣ (የካቲት 15 ቀን 2004 ዓ.ም አዲስ አበባ፣፣)

<u>የዜጎች የንብረት ባለቤትነት መብት ይከበር፣፣</u> ከኢትዮጵያ ፌዴራላዊ ዴሞክራሲያዊ አንድነት መድረክ (መድረክ) የተሰጠ መግለጫ፣ (ጥር 17 ቀን 2004 ዓ.ም አዲስ አበባ፣፣)

Interviews

Interview with Ato Kahsay Teklezgi, Lecturer in Economics, School of Business and Economics, Dilla University, on 12 September 2012.

Interview with Ato Muradu Abdo, Lecturer in law, at the School of law, Addis Ababa University, on 20 November 2012.

Interview with W/ro Tewedaj Jemal, legal advisor at CBB, on 23 November 2012.

Interview with Ato Tsegaye Gedeon, legal advisor at CBB , on 23 November 2012.

Interview with Ato Tilahun Mengste, collateral valuator at CBB, on 23 November 2012.

Interview with Ato Nurhussien Said, Abysinia bank Sidist Kilo branch manager, on 23 November 2012.

Interview with Ato Baye Shewamene, a broker engaged in facilitating the sale of houses and cars, at Piassa, on 24 November 2012.

Interview with Ato Kidane Desta a broker, engaged in facilitating the sale of houses and cars, at Piassa, on 24 November 2012.

Interview with Ato Bahru Chendo, special document authenticator at DARO Sidist kilo branch or Branch 4, on 26 November 2012.

Interview with Ato Selomon Mared, special document authenticator at DARO Megenagna branch or branch 3, on 26 November 2012.

Interview with Ato Seife Gizaw, legal and information officer at the Addis Ababa city administration municipality, on 27 November 2012.

Interview with Ato Aklilu Abrha, an accountant at the central credit department of the commercial bank of Ethiopia, Addis Ababa, on 27 November 2012.

Interview with Ato Gebru Asrat, Msc in economics and Vice chair man and in charge of foreign affairs of Ethiopian Federal Democratic Unity Front on 30 October 2012.

Interview with Ato Gebreselasie Gebremariam, a contractor working in Addis Ababa, on 30 November 2012.

Dictionaries

Garner, Bryan A. (ed.), *Black's law dictionary* (2009, 9th ed.), West, A Thomson Reuters Business, U.S.

Long man dictionary of contemporary English (1986), Longman group Ltd. UK.

Oxford student's dictionary (1988).

Annexes

Interview Questions

Lawyers

- ✓ How do you see the new lease holding proclamation?
- ✓ Does it carry provisions which contradict with any other law?

Economists

- ✓ What do you think are the implications of the new urban land lease holding proclamation on the Ethiopian Economy?
- ✓ How do you see the proclamation in terms of the free market economic principle?

Bankers

- ✓ What are the implications of the new urban land lease holding proclamation on banking services?

Old possessors

- ✓ How do you see the new urban land lease holding proclamation?
- ✓ What are its implications on old possessors?

Lease holders

- ✓ How do you see the new urban land lease holding proclamation?
- ✓ What implications does it have on lease holders?

People who are non land holders

- ✓ How do you see the new urban land lease holding proclamation?
- ✓ Whom do you think does this law benefit more?

Brokers

- ✓ How do you see the new urban land lease holding proclamation?
- ✓ Is there any change in the housing market after the coming in to force of this proclamation?
- ✓ Whom does this law affect more?

DARO Workers

- ✓ What does the transfer of title for houses before and after the coming in to force of the new urban land lease holding proclamation look like?

Contractors

- ✓ How do you see the new urban land lease holding proclamation?
- ✓ How do you see the time limit given for the commencement and completion of construction under the proclamation?
- ✓ Is it fair to apply the provisions of the civil code dealing with force majeure to construction projects?
- ✓ What possible implications does this law have on the construction industry?

The municipality

- ✓ Would you accept lower lease prices for the purpose of full upfront payment?
- ✓ Would you cancel a bid for the reason that the maximum lease price is not as you thought?
- ✓ How is the municipality going to follow up the commencement and completion of constructions? Is there full capacity to do so? If there is no capacity, doesn't this create discrimination between those who are caught due to follow up and those who are not for lack of the same? Can't this open for unnecessary negotiation and corruption?
- ✓ Does the displaced person get the priority if s/he wants to undertake the intended project which is meant for public interest purposes?
- ✓ Has the regularization of informal settlements been started? What actions are taken to protect further informal settlements?

የከተማ ቦታን በሊዝ ለማስተዳደር እንዲያስችል የተዘጋጀ ረቂቅ ሞዴል ደንብ ቁጥር------/2004

የመሬት ባለቤትነት ጉዳይ በሕገመንግስታችን በግልፅ እንደሰፈረው የሕዝብና የመንግስት ሀብት ሲሆን መሸጥ መለወጥ እንደማይቻል ተደንግጓል። ሆኖም ሀገሪቱ ከምትከተለው የነፃ ገበያ የኢኮኖሚ ፖሊሲ ጋር ለማጣጣም የመሬት አሰጣጥ ሥርዓት የመጠቀም መብትና የመጠቀም መብትን በሊዝ የማስተላለፍ መብት በግልፅ እንዲለይ የሊዝ አዋጅ ለ3ኛ ጊዜ በመሻሻሉ፤

በሃገራችን ያሉ ከተሞች አዋጁን ተከትለው ወደ ሥራ ባለመግባታቸው በተዘበራረቀ ሁኔታ ሲካሄድ የነበረው የሊዝ ሥርዓት ወጥና ተናባቢ ሆኖ እንዲቀጥል ለማድረግ በነባሩ ህግ ላይ የነበሩ ችግሮች ተቀርፈው በአዲስ መልክ የአዋጁ መዘጋጀት በማስፈለጉ፤

አዋጁን በተሟላ መልክ ተግባራዊ ለማድረግ እንዲቻል የከተማው መሬት በሊዝ ሥርአት የሚመራበትን ደንብ ከወቅቱ ተጨባጭ ሁኔታ ጋር በማጣጣም ማዘጋጀት በማስፈለጉ፤

የ.....ክልል መስተዳድር ምክር ቤት በ.....ህገ መንግስት አንቀጽ....ና የከተማ ቦታን በሊዝ ስለመያዝ በወጣው አዋጅ ቁጥር 721/2004 ዓ.ም አንቀጽ 32 ንኡስ አንቀጽ 5 በተሰጠው ስልጣን መሰረት አዋጁን በሚገባና በተሟላ መልኩ ለማስፈጸም ይህንን ደንብ አውጥቷል።

ክፍል አንድ

ጠቅላላ

1. አጭር ርዕስ

ይህ ደንብ የ..... ክልል/ ከተማ ቦታ ሊዝ ደንብ ቁጥር -----/2004 ዓ.ም ተብሎ ሊጠቀስ ይችላል።

2. ትርጓሜ

የቃሉ አገባብ ሌላ ትርጉም የሚያሰጠው ካልሆነ በስተቀር በዚህ ደንብ ውስጥ፤

14) “የጨረታ አስፈጻሚ ቡድን” ማለት አግባብ ባለው አካል የጨረታ ሂደቱን እንዲያስፈጽሙ በሲቪል ሰርቪስ ህግ መሰረት የቋሚ ቅጥር ምዝገባ የተሰጣቸው እና ተገቢ ባለሙያዎች ያሉት የመሬት የሊዝ ጨረታ ሁኔታዎችን የማመቻቸት ተግባራትን እንዲያከናውኑ የሚሰየሙ አባላት ያሉት ቡድን ነው።

15) "ምደባ" ማለት የከተማ መሬት ከውድድር ውጪ ባላቸው ማህበራዊ፣ ኢኮኖሚያዊና ፖለቲካዊ ፋይዳ እየተመዘኑ በነፃ ወይም በሊዝ አግባብ መሬት ለልማት የሚፈቀድበት ሥልት ነው።

16) “የሊዝ መነሻ ዋጋ” ማለት የመሠረተ ልማት ዋጋን፣ የመሬት የዝግጅት ወጪን እና እንዲሁም ሌሎች ተጨባጭነት ያላቸው ታሳቢዎችን መሠረት በማድረግ የሚሠላ የመሬት ሊዝ ዋጋ ወለል ነው።

17) “የሊዝ መብት ማስተላለፊያ ዋጋ” ማለት ግንባታ ያልተከናወነበት ወይም ከግማሽ በታች የተገነባ ግንባታ ያረፈበትን የሊዝ መሬት መብት በህጉ መሰረት ሲተላለፍ በሚመለከተው አካል በሚደረግ ጥናት የሚወሰን ዋጋ ነው።

18) “የችሮታ ጊዜ” ማለት መሬት በሊዝ የተፈቀደለት ሰው ወይም ነባር ስሪት ከውርስ በስተቀር የተላለፈለት ሶስተኛ አካል ከጠቅላላ የመሬቱ የሊዝ ዋጋ ውስጥ በየአመቱ መከፈል ያለበትን መክፈል ከመጀመሩ በፊት ከአመታዊ ክፍያ ነጻ ሆኖ እንዲቆይ የሚፈቀድለት የእፎይታ ጊዜ ነው።

19) “ግንባታ መጀመር” ማለት ቢያንስ በቦታው ላይ ለመስራት ከተፈቀደው ግንባታ ወይም ሕንፃ ቢያንስ የመሠረት ሥራ፣ የኮለን ግንባታ ለማከናወን የሚያስችሉ የኮለን ብረቶች የማቆም ሥራ እና የፍሳሽ መስመር በሌለባቸው አካባቢዎች የፍሳሽ ቆሻሻ ማጠራቀሚያ ጉድጓድ ሥራ ማጠናቀቅ ነው።

20) “ግንባታን በግማሽ ማጠናቀቅ” ማለት፡-

ሀ) ቪላ ሲሆን የመሠረቱን፣ የኮለኖችና ለጣሪያ ውቅር የሚያስፈልጉ ቢሞችን ሥራ ማጠናቀቅ፣

ለ) ፎቅ ሲሆን የመሠረቱንና ከጠቅላላው ወለሎች ውስጥ 50 በመቶ የሚሆኑትን የሶሌታ ሥራ ማጠናቀቅ፣ ወይም

ሐ) ሪል ስቴት ሲሆን የሁሉንም ብሎኮች ግንባታ እንደአግባቡ ማለትም የሁሉንም ማስተላለፍ ሲፈልግ የሁሉንም ብሎኮች፤ በተናጠል ማስተላለፍ ሲፈልግ የተናጠሉን ሕንፃ በዚህ ንዑስ አንቀጽ ፊደል ተራ (ሀ) ወይም (ለ) በተመለከተው ደረጃ ማጠናቀቅ ማለት ነው።

ክፍል ሁለት

የከተማ መሬትን በሊዝ ስለማስተዳደር

4. መሬት በሊዝ አግባብ ስለሚሰጥበት ስልት እና የፕላን አግባብ

1) ማንኛውም የከተማ ቦታ በዋነኛነት የሚያዘው በሊዝ ብቻ ነው።

2) የከተማ ቦታ በሊዝ የሚፈቀደው

ሀ. በዋናነት በጨረታ እና

ለ. እንደአስፈላጊነቱም በምደባ ይሆናል።

3) በዚህ አንቀፅ መሰረት በሊዝ የሚፈቀደው ቦታ የከተማውን መዋቅራዊ ፕላን እና ዝርዝር የአካባቢ ልማት ፕላን እንዲሁም ሌሎች ተገቢ የሆኑ የመሬት አጠቃቀም ፕላኖችን መሠረት በማድረግ ይሆናል፤ ይህም ለህዝቡ ይፋ መደረግ ይኖርበታል።

4) በዚህ አንቀጽ ንኡስ አንቀጽ 2 መሰረት መፈጸም በማይቻልባቸው ከተሞች ቦታ በሊዝ የሚፈቀደው በመሠረታዊ ፕላን ወይም የክልሉ ካቢኔ እንደተጨባጭ ሁኔታው በሚወስነው አግባብ ይሆናል።

5. ወደ ሊዝ ሥርዓት ስለሚገቡ ከተሞች

1) በአዋጁ አንቀጽ 5 ንዑስ አንቀጽ 4 በተደነገገው መሰረት በክልሉ ውስጥ የሚገኙ ከተሞች በአምስት ዓመት ጊዜ ውስጥ ወደ ሊዝ ስርዓት ተጠናቀው ይገባሉ።

2) በዚህ አንቀጽ ንኡስ አንቀጽ 1 በተቀመጠው የጊዜ ገደብ መቼ እና እነማን ወደ ሊዝ እንደሚገቡ ዝርዝር መርሀ ግብሩ በክልሉ አዋጁን ለማስፈጸም ስልጣን በተሰጠው አካል ተዘጋጅቶ ለመስተዳድር ምክር ቤት እየቀረበ ሲደገፍ በክልሉ ምክር ቤት ይጸድቃል ።

3) በአዋጁ አንቀጽ 5 ንዑስ አንቀጽ 4 መሠረት በተለዩት ከተሞች በዓመታዊ የመሬት የኪራይ ተመን መነሻነት በጨረታ አግባብ ለተላለፈ መሬት የሚዘጋጀው የይዞታ የምስክር ወረቀት በነባር ስሪት መሰረት ይሆናል። ሆኖም በተላለፈው መሬት ላይ የሚኖረው የልማት ግዴታ እና ልማቱን ባለማከናወን የሚወሰደው እርምጃ በሊዝ ስርዓት በሚተዳደሩት ከተሞች ባለው የአፈጻጸም ሥርዓት መሰረት ይሆናል።

ሸ) ባለመብት ጥያቄውን በጽሁፍ ሲያቀርብ የሁለት ዓመት የችሮታ ጊዜ በሚመለከተው አካል ሊሰጠው ይችላል።

ቀ) በዚህ ንኡስ አንቀጽ 1(ረ) መሠረት የቦታ ኪራይ ቀሪ ሆኖ የሊዝ ኪራይ የሚከፍል ሰው በመሬቱ ላይ ላለ ንብረት ግብር መክፈሉ አይቋረጥም።

በ) የውል ዘመን መቆጠር የሚጀምረው የሊዝ ውል ከተፈረመበት ቀን ጀምሮ ይሆናል።

ተ) የቤቱ ስፋት ከቦታው ስፋት ምጣኔ የክፍፍል ድርሻ ተሰልቶ በሚሰጥ የንብረት ባለቤትነት ማረጋገጫ ደብተር የተያዘ ንብረት ከውርስ በስተቀር ወደ ሶስተኛ ወገን ሲተላለፍ በጋራ ግቢው የክፍፍል ምጣኔ ድርሻ ላይ የተናጠል ተጠቃሚነቱ እስካልተረጋገጠ ድረስ በኮንዶሚኒየም ሽያጭ አግባብ ይስተናገዳል።

2) ከ19..... እስከ..... ያለፈቃድ የተያዙ ይዞታዎች ህጋዊ ሲደረጉ የአካባቢ ልማት ፕላን እና የሽንሻኖ ፕላንን መሰረት በማድረግ ህጋዊ ተደርገው ወደ ሊዝ ሲሸጋገሩ፤ የሊዝ መነሻ ዋጋን መሠረት በማድረግ፡-

ሀ) መዋቅራዊ ፕላኑ ባስቀመጠው የአገልግሎት ዓይነት መሠረት የሊዝ መነሻ ዋጋውን መነሻ በማድረግ ውል ይዋዋላል። የውል ዘመኑም ለአገልግሎቱ በተቀመጠው የጊዜ ወሰን መሰረት ይሆናል።

ለ) የውል ዘመኑ መቆጠር የሚጀምረው ውል ከተዋዋለበት ቀን ጀምሮ ይሆናል።

ሐ) በአዋጁ አንቀጽ 20 ንዑስ አንቀጽ 2 የተመለከተው የሊዝ ቅድሚያ ክፍያ ይፈጸምበታል።

መ) የግንባታው አግባብ በፕላን ከሚፈቀደው ስታንዳርድ በታች ከሆነ ባለመብቱ እና ከተሞች በሚስማሙበት መርሀ ግብር መሰረት መዋቅራዊ እና የአካባቢ ልማት ፕላን በሚጠይቁት አግባብ እንዲፈጸም ተግባራዊ ማድረግ ይጠበቅባቸዋል።

3) በነባር እና በሊዝ ስሪት የሚተዳደሩ ይዞታዎች ተቀባይነት ያለው የግንባታ ፈቃድ ሲኖራቸው እና የይዞታዎቹ መቀላቀል የሽንሻኖ ስታንዳርድን የጠበቀ ሆኖ ነባሩ ወደሊዝ ሲሸጋገር ባለመብቱ፤

ሀ) በነባሩ ሊዝ ውል ላይ በተመለከተው አገልግሎት ውል ይዋዋላል፤

ለ) ነባሩ በሊዝ መነሻ ዋጋ የሚታሰብለት ይሆናል፤

ሐ) የሁለቱ ይዞታዎች ክፍያ ድምር አማካይ በማውጣት ዓመታዊ ክፍያውን ይፈጽማል፤

2) ከተሞች ጨረታ ለማውጣት እቅዳቸውን ለህዝብ ይፋ ባደረጉት መሰረት የሚመለከተው አካል የመፈጸም ግዴታ እና ተጠያቂነት ይኖርበታል። ዝርዝሩ በመመሪያ ይወጣል።

3) የጨረታ መነሻ ዋጋ፣ የቀድሞ የአካባቢው የጨረታ ዋጋ፣ የአካባቢዉው የልማት ዕቅድ እና ተዛማጅ መረጃዎች ህዝቡ በግልጽ እና በቀላሉ ሊያገኘው በሚችልበት አግባብ በስራ ላይ እንዲውል ይደረጋል። ይህንን አለመፈጸምም ተጠያቂነትን የሚያስከትል ይሆናል። ዝርዝሩ በመመሪያ ይወጣል።

4) የከተሞች የወደፊት ቀጣይ የጨረታ ቦታ ዝግጅት እና ያለፉ ጨረታዎች ዝርዝር መረጃ ለህዝብ ይፋ መደረግ ይኖርበታል።

10. የጨረታ አቀራረብ

1) ጨረታ እንደፕሮጀክቱ ባህሪ መደበኛ ጨረታ ወይም ልዩ ጨረታ በመባል በተናጠል ወይም በጣምራ ሊወጣ ይችላል።

2) በዚህ አንቀጽ ንኡስ አንቀጽ 1 የተመለከተው መደበኛ ጨረታ በመደበኛ መርህ ግብር የሚወጣ እና በመጀመሪያው ዙር ቢያንስ ሶስት ተጫራቾች ካልቀረቡ የሚሰረዝ ነው። ዝርዝሩ በመመሪያ ይወጣል።

3) በዚህ አንቀጽ ንኡስ አንቀጽ 1 በልዩ ጨረታ የሚካተቱት በአዋጁ አንቀጽ 11 ንኡስ አንቀጽ 8 መሰረት ተለይተው በጨረታ አግባብ የሚስተናገዱ እና በመጀመሪያው ዙር አንድ ተጫራች ቢቀርብም እንዲስተናገድ የሚደረግበት ነው። ዝርዝሩ በመመሪያ ይወሰናል።

4) በዚህ ደንብና ይህንን ደንብ ተከትሎ በሚወጣ መመሪያ የማይሸፈኑ ጉዳዮች በመንግስት የግዢ መመሪያ የጨረታ አፈጻጸም በሚደነግገው መሠረት ይመራል።

11. ስለጨረታ ማስታወቂያ

1) የጨረታ ማስታወቂያ በጨረታው ስለሚወጣው መሬት ዝርዝር መረጃን በሚሰጥ መልኩ መዘጋጀት ይኖርበታል። ዝርዝሩ በመመሪያ የሚወጣ ይሆናል።

2) የጨረታ ማስታወቂያ እያንዳንዱ ከተማ በክልሉ እና በፌደራል የስራ ቋንቋ እንዲሁም ልዩ ጨረታ በሚሆንበት ጊዜ በእንግሊዝኛ ቋንቋ ጭምር የሚዘጋጅ ይሆናል። :

3) የጨረታ ማስታወቂያ ጨረታው ከሚካሄድበት ከአስር የስራ ቀናት በፊት አመቺ በሆኑ የብዙሀን መገናኛ ዘዴዎች የሚተላለፍ ይሆናል። ዝርዝሩ በመመሪያ ይወጣል።

12. የመሬት ሊዝ ጨረታ ማስታወቂያ ስለማውጣት

14. የጨረታ ማስከበሪያ ዋስትና

1) እያንዳንዱ ተጫራች ከመጫረቱ በፊት የጨረታ ማስከበሪያ ዋስትና የማስያዝ ግዴታ አለበት። ዝርዝሩ በመመሪያ ይወሰናል።
2) የጨረታ ማስከበሪያ ዋስትና ለተሸናፊ ተጫራቾች በዚህ ደንብ በተወሰነው ጊዜ እና ሁኔታ መሰረት ተመላሽ ይደረጋል።
3) በዚህ አንቀጽ ንኡስ አንቀጽ 2 የተጠቀሰው እንደተጠበቀ ሆኖ አሸናፊ የሆነው ተጫራች የውል ግዴታውን ለመፈጸም የጨረታ ዋስትና ማስከበሪያ በዝግ ሂሳብ ያስያዘው ገንዘብ የሚታሰብለት ይሆናል። ሆኖም አሸናፊው ተጫራች በዚህ ደንብ በተወሰነው ቀነ ገደብ ውስጥ ቀርቦ ካልተዋዋለ አሸናፊነቱ ይሰረዛል። ያስያዘውም የጨረታ ማስከበሪያ ዋስትና ለአስተዳደሩ ገቢ ይደረጋል። ዝርዝሩ በመመሪያ ይወሰናል።
4) በዚህ አንቀጽ ንኡስ አንቀጽ 3 መሰረት በአንድ ዓመት ውስጥ ሶስት ጊዜ አሸናፊነቱ ተገልፆ ቀርቦ ያልተዋዋለ እና ጨረታው የተሰረዘበት ተጫራች ለሁለት ዓመት በከተማው ውስጥ ከሚካሄድ ጨረታ ይታገዳል።

15. ተጫራቾችን የማወዳደርና አሸናፊዎችን የመለየት ሂደት

1) የጨረታ አሸናፊዎችን በመወሰኑ ሂደት የሚከተሉትን የማወዳደሪያ መስፈርቶችን መሰረት በማድረግ ግልፅ በሆነ አግባብ ተገምግሞ ይወሰናል፡
   ሀ) ተጫራቾች ለቦታው ያቀረቡት ከፍተኛ የጨረታ ዋጋ 80%
   ለ) የለዝ ቅድሚያ ክፍያ መጠን 20% ሆኖ ዝርዝር የማወዳደርያ መስፈርቶች በሚወጣው መመሪያ ይወሰናሉ።
2) በጨረታ ውጤቱ ተጫራቾች ያቀረቡት ዋጋና የገቢቸው ግዴታዎች ተመሳሳይ ሆነው ከመቶ አኩል ነጥብ ካገኙና ከውድድሩ ተካፋዮች ውስጥ ብቸኛ ሴት ተወዳዳሪ ካለች የጨረታው አሸናፊ እንድትሆን ይደረጋል። ከዚህ ውጭ ከሆነ አጠቃላይ አሸናፊው በእጣ እንዲለይ ይደረጋል።
3) ለተጫረተበት ቦታ በሁሉም መስፈርቶች በሚያገኘው ድምር ውጤት ከፍተኛውን ነጥብ ከመቶ ያገኘ ተጫራች የጨረታው አሸናፊ ይሆናል፤ አንደኛ የወጣው ተጫራች ካልቀረበና ሁለተኛ የወጣው ተጫራች ለጨረታ የሰጠውን ዋጋ ከፍሎ ቦታውን ለመረከብ ከፈለገ መብቱ ይጠበቅለታል። ሁለተኛ የወጣው ለመረከብ ፍቃደኛ ካልሆነ ጨረታው ይሰረዛል።

4) የሚመለከተው አካል ተጫራችን ተጨባጭ በሆነ ምክንያት ከጨረታው የማገድ ስልጣን ያለው ሲሆን ተጫራቹን ወይም ከጨረታ ሂደት ለማገድ የሚያበቁ መሰረታዊ ጉዳዮች እና ዝርዝር ምክንያቶች በመመሪያ የሚወሰን ይሆናል።

17. የጨረታ ውጤት ስለማጽደቅ

1) የመሬት ሊዝ ጨረታ አስፈጻሚ የስራ ቡድን የጨረታ ውጤቱን በመገምገም አሸናፊውን እንዲሁም ሁለተኛ የወጣውን በመለየት ጨረታው በተከፈተ በሚቀጥለው የሥራ ቀን የጨረታ ውጤቱን ይገልጻል።
2) በዚህ አንቀጽ ንኡስ አንቀጽ 1 የተጠቀሰውን ውጤት እንዲያጸድቅ ስልጣን የተሰጠው አካል ውጤቱ በቀረበለት በሁለት የስራ ቀናት ውስጥ በማጽደቅ አግባብ ባለው ማስታወቂያ እና በከተማው ወይም ክልል ድህረ ገጽ ለሕዝብ ይፋ ያደርጋል።
3) በዚህ አንቀጽ ንኡስ አንቀጽ 2 መሰረት የተገለጸው አሸናፊ ተጫራች ውጤቱ አግባብ ባለው መንገድ ከተገለጸለት ጊዜ ጀምሮ ባሉት 10 የስራ ቀናት ውስጥ ቀርቦ ቅድመ ክፍያ በመፈጸም እና ተገቢውን ቅድመ ሁኔታ በማሟላት ውል እንዲፈርም ይደረጋል።
4) በዚህ አንቀጽ ንኡስ አንቀጽ 3 መሰረት አሸናፊው ተጫራች ግዴታውን አሟልቶ ውል ካልፈረመ በሦስት ተጨማሪ የስራ ቀናት ቀርቦ ቅድመ ሁኔታዉን አሟልቶ ውል እንዲፈርም በጽ/ቤቱ የማስታወቂያ ሰሌዳ ማስጠንቀቂያ እንዲለጠፍለት ይደረጋል።
5) የጨረታው አሸናፊ በዚህ አንቀጽ ንኡስ አንቀጽ 4 መሰረት በተሰጠው ሦስት ተጨማሪ የስራ ቀናት ውስጥ ቀርቦ ቅድመ ክፍያ ያልፈጸመ ከሆነ ቦታውን እንደማይፈልገው ተቆጥሮ በሲፒኦ ያስያዘውን የጨረታ ማስከበርያ ገንዘብ ለከተማው ገቢ ይደረጋል።
6) በዚህ አንቀጽ ንኡስ አንቀጽ 5 መሰረት ውል ላልተፈጸመበት ቦታ የጨረታ አስፈጻሚ ቡድኑ ሁለተኛ ለወጣው ተጫራች በሰጠው ዋጋ መሠረት ተመሳሳይ ጥሪ በማድረግ በዚህ አንቀጽ ንኡስ አንቀጽ 3 እና 4 በተደነገገው የጊዜ ገደብ ውስጥ ተገቢውን ቅድመ ሁኔታ እንዲያሟላ እና ውል እንዲፈጽም ያደርጋል።
7) በዚህ አንቀጽ ንኡስ አንቀጽ 6 መሰረት በተሠጠው የጊዜ ገደብ ውስጥ ሁለተኛ የወጣው ተጫራች ካልቀረበ ጨረታው እንደተሰረዘ ይቆጠራል።

7) የጨረታ አሸናፊን በተቀመጠው የግምገማ መስፈርት ይለያል፤ የውሳኔ ሃሳብ አደራጅቶና ውሳኔ እንዲሰጥ ስልጣን ለተሰጠው አካል አቅርቦ ያጸድቃል፡፡ ዝርዝሩ በመመሪያይወሰናል፡፡

8) በእያንዳንዱ የሊዝ ጨረታ የጨረታውን አጠቃላይ ሂደት የሚያሳይ በተለይም የጨረታውን አፈፃፀም ሥርዓት፣ እያንዳንዱ ተጫራች ለመስፈርቱ ያቀረበውን ኃላብና የገባቸውን ግዴታዎች፣ ያቀረባቸውን ልዩ ልዩ ሰነዶች፣ በተለየ ሁኔታ የቀረበ ማመልከቻ ካለ የጨረታውን አሸናፊ፣ አሸናፊ የሆነበትን ምክንያት እንዲሁም ሌሎች ተጫራቾች ያላሸነፉበትን ምክንያት የያዘ ቃለ ጉባዔ ያዘጋጃል፡፡

9) ለዉዝፍ ዕዳ መክፈያ የተያዘን መሬትና መሬት ነክ ንብረት በዕዳው ልክ ብቻ ሽያጭ ያስፈጽማል፡፡ ለሥራውም የተለያዩ አግባብነት ያላቸው አጋዥ ሙያተኞችን ያስተባብራል ይመራል፡፡

ክፍል አራት

የከተማ ቦታን በሊዝ ምደባ ስለመስጠት

21. መሬት በሊዝ ምደባ የሚሰጥበት አግባብ

1) መሬት በሊዝ ምደባ የሚሰጠው በአዋጁ አንቀጽ 12 መሰረት ለተፈቀደላቸው ፕሮጀክቶች እና ዘርፎች በክልል ወይም በከተማው ካቢኔ በኩል በየዓመቱ ዕቅድ ቀርቦ ከፀደቀ በኋላ ዝርዝር አፈጻጸሙ በየከተሞቹ ይተገበራል፡፡

2) በዚህ አንቀጽ 21 ንዑስ አንቀጽ 1 የተገለጸው እንደተጠበቀ ሆኖ በአዋጁ አንቀጽ 12 ንኡስ አንቀጽ 1 በፊደል ተራ ሰ መሰረት በክልል ፕሬዚዳንት ወይም በከተማ ከንቲባ እየተመሩ በካቢኔ የሚወሰኑ ሌሎች ፕሮጀክቶች ዝርዝር ይህን ደንብ ለማስፈፀም በሚወጣው መመሪያ የሚወሰን ይሆናል፡፡

22. በሊዝ ምደባ ስለሚሰጡ ቦታዎች የጥያቄ አቀራረብና አወሳሰን ስርአት

1) ጥያቄዉ የባለ በጀት መስሪያ ቤት ከሆነ ቀጥሎ በተቀመጡት ቅድመ ሁኔታዎች መሟላት አለባቸው፡፡

ሀ) የባለበጀት መ/ቤቱ የክልል ወይም የከተማ አስተዳደር የበላይ ኃላፊ ማረጋገጫ፤

3) በህገ-ወጥ መንገድ በተያዘ ቦታ ላይ ለሰፈረ ንብረት በተለያየ ምክንያት እንዲነሳ ሲወሰን ምንም ዓይነት ካሣ እና ምትክ ቦታ አይሰጥም።

4) የጋራ ህንጻ በተገነባበት እና የቤት ልማት ፕሮግራም በሂደት ላይ ባለበት ከተማ የመንግስት ወይም የቀበሌ መኖሪያ ቤት ህጋዊ ተከራይ የሆነ ሰው በከተማው መልሶ ማልማት ፕሮግራም ምክንያት ተነሺ በሚሆንበት ጊዜ የጋራ መኖሪያ ቤት በግዥ በቅድሚያ የሚያገኝበት ሁኔታ ይመቻችለታል። ዝርዝሩ በመመሪያ ይወሰናል።

5) የቤት ልማት ፕሮግራም በሌለበት ከተማ የመንግስት ወይም የቀበሌ መኖሪያ ቤት ህጋዊ ተከራይ የሆነ ሰው በከተማ መልሶ ማልማት ፕሮግራም ምክንያት ተነሺ በሚሆንበት ጊዜ የመኖሪያ ቤት መገንቢያ ቦታ በሊዝ ምደባ የሚሰጠው ይሆናል። ዝርዝሩ በመመሪያ ይወሰናል።

6) የመንግስት ወይም የቀበሌ የንግድ ቤት ህጋዊ ተከራይ የሆኑ ሰዎች በከተማ መልሶ ማልማት ፕሮግራም ምክንያት ተነሺ በሚሆኑበት ጊዜ ፕላኑ የሚፈቅደውን ግንባታ በጋራ ለማከናወን ፍላጎት ሲኖራቸዉ ለዚሁ ግንባታ የሚሆን ተመጣጣኝ ቦታ በሚመለከተው ክልል ወይም የከተማ አስተዳደር በሚወሰነው መሠረት ማጣራት ተደርጎ በፕላኑ ለህንጻ ግንባታው ከተፈቀደው ቦታ፡-

ሀ) በአንደኛ ደረጃ ከተሞች በነፍስ ወከፍ 25 ካሬ ሜትር፤

ለ) በሁለተኛ ደረጃ ከተሞች በነፍስ ወከፍ 75 ካሬ ሜትር፤

ሐ) በሶስተኛ ደረጃ ከተሞች በነፍስ ወከፍ 150 ካሬ ሜትር በሊዝ መነሻ ዋጋ የሚስተናገዱ ሆኖ በፕላን የተመለከተው ሽንሻኖ ለአባላቱ በነፍስ ወከፍ ከተፈቀደው ጠቅላላ ስፋት በላይ ከሆነ ቀሪው በአካባቢዉ ከፍተኛ የጨረታ ዋጋ በሕጉ መሠረት ከፍለው ይመደብላቸዋል።

7) በከተማ ክልል ውስጥ በልማት ምክንያት ቦታቸውን እንዲለቁ የተደረጉ አርሶ አደሮች አግባብ ባለው ሕግ ተወስኖ ለንብረቱ ከሚከፈለው ካሳ በተጨማሪ በክልል ወይም በከተማ አስተዳደር ካቢኔ በሚወጣው መመሪያ መሠረት ተመጣጣኝ ምትክ ቦታ በነባር ስሪት ይሰጣቸዋል።

24. በአጭር ጊዜ በሊዝ ስለሚሰጡ ቦታዎች

1) በአዋጁ አንቀፅ 18 ንዑስ አንቀፅ 2 ፊደል ተራ ለ በተጠቀሰው መሰረት በአጭር ጊዜ ጥቅም ላይ የማይውሉ የከተማ ቦታዎች ለሚከተሉት አገልግሎቶች ማለትም፡-

ሀ) ከከተማ ግብርና ሥራ ጋር የተያያዙ /አትክልት፣ አበባ፣ ዶሮ እርባታ ወዘተ....፤

ሁኔታዎችን፣ የግንባታ መጀመሪያና ማጠናቀቂያ የጊዜ ገደብ፣ በተጨማሪ ከቦታው የተለየ ባህሪ ጋር የሚሄዱ ልዩ ሁኔታዎችን የሚያመለክት መሆን አለበት። ዝርዝሩ በመመርያ ይወሰናል።

2) የውሉ ቃሎችና ሁኔታዎች ረቂቅ ከጨረታው ሰነድ ጋር እንደ አንድ ክፍል ሆነው መቅረብ ይኖርባቸዋል።

3) በጨረታ የተሰጡ ቦታዎችን በመስሪያ ቤቱ ችግር ምክንያት በውሉ በተጠቀሰው ቀን መሠረት ማስረከብ ካልተቻለ ውሉ እንደገና ይታደሳል፤ የችሮታ ጊዜ፣የግንባታ መጀመሪያ እና ማጠናቀቂያ ጊዜ እንዲሁም የሊዝ ክፍያ ማጠናቀቂያ ጊዜ እንደገና እንደ አዲስ ይወሰናል።

4) በሊዝ ውሉ ላይ የተገለፁና የውሉ ሰነድ አካል ሆነው የተፈረሙ ጉዳዮች በሊዝ በወሰደው ሰውም ሆነ በሊዝ ውል ሰጪው በኩል እንደ ሕግ ሆነው ያገለግላሉ።

5) የሊዝ ውል በጨረታ ባሸነፈ ወይም በምደባ በተሰጠው ወይም በአዋጁና በዚህ ደንብ ወደ ሊዝ ሥሪት እንዲገባ በተወሰነበት የከተማ ቦታ ሊዝ ባለመብትና በውል ሰጪው መካከል ይህን ደንብ ለማስፈፀም በሚወጣው መመሪያ በሚቀመጠው የጊዜ ሰሌዳና ዝርዝር የአፈፃፀም ሂደት መሠረት መፈረም አለበት።

6) አስፈላጊውን ክፍያ አጠናቅቆ የሊዝ ውል የተዋዋለ ሰው በግንባታው ዓይነትና ደረጃ ተለይቶ በተቀመጠው የጊዜ ገደብ ውስጥ ግንባታ መጀመርና ማጠናቀቅ አለበት።

27. የሊዝ ይዞታ የምስክር ወረቀት

1) የከተማ ቦታ በሊዝ የተፈቀደለት ሰው የሊዝ ይዞታ ምስክር ወረቀት ይሰጠዋል።

2) የሊዝ ይዞታ የምስክር ወረቀት የሚከተሉትን መግለጫዎች፡-

ሀ) ቦታ በሊዝ የተፈቀደለትን ሰው ሙሉ ስም ከነአያት፤

ለ) የቦታውን ስፋትና አድራሻ፤

ሐ) የቦታውን የአገልግሎት ዓይነት፣ ደረጃና የፕሎት ቁጥር፤

መ) የቦታውን ጠቅላላ የሊዝ ዋጋና በቅድሚያ የተከፈለውን መጠን፤

ሠ) በየዓመቱ የሚፈጸመውን የሊዝ ክፍያ መጠንና ክፍያው የሚጠናቀቅበትን ጊዜ፤

ረ) የሊዝ ይዞታው ፀንቶ የሚቆይበትን ዘመን፡

ሰ) የይዞታ የምስክር ወረቀት ቁጥር አካቶ መያዝ አለበት።

6) የሊዝ ባለይዞታ ሃብት መያዝ የሚቻለው የመያዙ ትዕዛዝ በተሰጠበት ጊዜ በይዞታ ሥር የሚገኝ ንብረት ብቻ ላይ ነው።

7) ውዝፍ የሊዝ ክፍያ የሚሰበሰበው ተቋም የሊዝ ባለይዞታውን ሃብት በሚይዝበት ጊዜ የፖሊስ ሃይል እንዲገኝ ሊጠይቅ ይችላል፡

8) ሃብቱን የያዘው ተቋም ሃብቱን ከያዘበት ቀን አንስቶ ከሚቆጠር ከአሥር የሥራ ቀናት በኋላ በሃራጅ እስከቻለው ድረስ በዕዳው ገደብ ንብረቱን መሸጥ ይችላል።

9) በአዋጁና በዚህ ደንብ መሠረት ባልተከፈለ የሊዝ ክፍያ ምክንያት የሚገኝን ገቢ ወይም ሌላ ንብረት መያዝ የሚቻለው የሊዝ ክፍያ ለመሰብሰብ ኃላፊነት የተሰጠው ተቋም ሃብቱን በመያዝ ውዝፍ የሊዝ ክፍያ እንደሚሰበስብ አስቀድሞ ለሊዝ ባለይዞታው በፅሁፍ ካስታወቀ በኃላ ይሆናል። በዚህ ዓይነት የሚሰጠው ማስታወቂያ ሃብቱ ከመያዙ ሠላሳ (30) ቀናት በፊት ለሊዝ ክፍያ ባለዕዳው ሊደርሰው ይገባል።

10) በፍርድ ቤት ትዕዛዝ የተከበረ ወይም በአፈፃፀም ላይ ያለ ወይም በሕግ አግባብ በዋስትና የተያዘ ካልሆነ በስተቀር ማናቸውም በውዝፍ የሊዝ ክፍያ ምክንያት የተያዘ ንብረት በእጁ የሚገኝ ወይም ለውዝፍ ሊዝ ባለዕዳው ማናቸውም ግዴታ ያለበት ሰው ውዝፍ የሊዝ ክፍያ የሚሰበስብ ተቋም ሲጠይቀው የያዘውን ሃብት የማስረከብ ወይም ያለበትን ግዴታ የመፈፀም ኃላፊነት አለበት።

11) ማንኛውም ሰው የውዝፍ ሊዝ ክፍያ የሚሰበስብ ተቋም ሲጠይቀው አንድን የተያዘ ንብረት ለማስረከብ ፈቃደኛ ሳይሆን የቀረ እንደሆነ በተያዘው ንብረት መጠን በግል ተጠያቂ ይሆናል። ሆኖም ተጠያቂነቱ ለንብረቱ መያዝ ምክንያት ከሆነው ውዝፍ የሊዝ ክፍያ መጠን (በውዝፍ ሊዝ ክፍያ ላይ የሚታሰበውን ወጪ ጨምሮ) ሊበልጥ አይችልም።

12) በዚህ አንቀጽ መሰረት ንብረቱ ለውዝፍ ዕዳው መክፈያ የተያዘበት ሰው በአፈጻጸሙ ላይ ቅሬታ ካለው ጉዳዩን ለከተማው ከንቲባ ኮሚቴ በጽሁፍ ማቅረብ ይችላል።

13) በዚህ አንቀጽ ንኡስ አንቀጽ 12 መሰረት አቤቱታው የቀረበለት አካል ጉዳዩን መርምሮ ከአንድ ወር ባልበለጠ ጊዜ ውስጥ ውሳኔ መስጠት አለበት።

32. የችሮታ ጊዜን ስለመወሰን

1) የከተማ ቦታ በሊዝ የተፈቀደለት ሰው እንደ ልማቱ ወይም አገልግሎቱ ዓይነት ከሁለት እስከ አራት ዓመት የሚደርስ ሆኖ፡-

ሀ) ለአግሮፕሮሰሲንግ ዘርፎች 4 ዓመት ዝርዝሩ በመመሪያ ይወሰናል፤

ለ) የይዞታ ስፋቱ ከ251 እስከ 5000 ካ.ሜ ይዞታ ላይ የሚገነባ ግንባታዎች፤

ሐ) የመኖሪያ ቤት 4 እና 5 ወለል የሆኑ ግንባታዎች፤

መ) የመኖሪያ ቤት በአንድ ጊዜ እስከ 80 ነጠላ ቤቶች የያዙ፤

ሠ) የሕዝብ መጠቀሚያ ያልሆኑ ሌሎች ወለላቸው 4 እና 5 ለሆኑ ግንባታዎች፤

ረ) ለትምህርት ተቋማት እስከ 2ኛ ከፍተኛ ደረጃ የሚያጠቃልሉ ግንባታዎች፤

ሰ) ለጤና ማዕከል እስከ ከፍተኛ ልዩ ክሊኒክ የሚያጠቃልሉ ግንባታዎች፤

ሸ) ለቤተ መፃሕፍትና ለሁለገብ አዳራሾች እስከ 500 ሰው የሚይዙ ግንባታዎች፤

ቀ) ለስፖርት ሜዳዎችና ለስፖርት ማዘውተሪያ ማዕከላት እስከ 500 ሰው የሚይዙ ግንባታዎች፤

በ) አጠቃላይ የወጪ ግምታቸው እስከ ብር 5,000,000 (አምስት ሚሊዮን) የሆኑ መካከለኛና አነስተኛ የማምረቻ እና ማከማቻ ተቋማቶችን ያጠቃልላል።

3) ከፍተኛ ደረጃ ያላቸው ግንባታዎች

ሀ) 6 ወለልና ከዚያ በላይ ለሆነ ማንኛውም ግንባታ፤

ለ) ስፋቱ ከ5001 ካ.ሜ በላይ በሆነ ይዞታ ላይ ለሚገነቡ፤

ሐ) በዓለም፣ በአገር እንዲሁም በከተማ አቀፍ ደረጃ ለሚገነቡ የትራንስፖርት የመነሃሪያ ተቋማቶች፤

መ) የዲፕሎማቲክ ተቋማት የሚገነቧቸው ግንባታዎችን ያጠቃልላል።

34. ግንባታን መጀመር

1) ማንኛውም ቦታ በሊዝ የተፈቀደለት ሰው የግንባታ ፈቃድ ከወሰደበት ቀን ጀምሮ ለግንባታ ደረጃው በተቀመጠው የግንባታ መጀመሪያ የጊዜ ገደብ ውስጥ ግንባታ መጀመር አለበት።

2) የግንባታ መጀመሪያ የጊዜ ጣሪያ ለአነስተኛ ደረጃ ግንባታዎች እስከ 6 ወር፣ ለመካከለኛ ደረጃ ግንባታዎች እስከ 9 ወር እና ለከፍተኛ ግንባታዎች እስከ 18 ወር ይሆናል።

3) በአዋጁ አንቀጽ 23 ንዑስ አንቀጽ 2 ከሀ-ሐ የተመለከተው ጣሪያ ቢኖርም በዚህ የጊዜ ጣሪያ ውስጥ በተለያዩ ምክንያቶች ግንባታ ሳይጀምር ቢቀር ለአንድ ጊዜ ብቻ ከማስጠንቀቂያ ጋር ለአነሰተኛ ግንባታዎች 6 ወር፣ ለመካከለኛ ግንባታዎች 9 ወር እና ለከፍተኛ ግንባታዎች 1 ዓመት ተጨማሪ የግንባታ መጀመሪያ ጊዜ በግንባታ ፈቃድ ሰጪው አካል ሊሰጣቸው ይችላል።

36. የግንባታ መጀመሪያ ጊዜ ስላለፈባቸው ይዞታዎች

1) አግባብ ያለው አካል በሊዝ መሬት የተፈቀደላቸውን ሰዎች መረጃ በመያዝ የግንባታ መጀመሪያ ጊዜ ከማለቁ ቢያንስ ከሁለት ወር ቀደም ብሎ እንደአመቺነቱ በደብዳቤ በአድራሻቸው ወይም ማስታወቂያ በቦታው ላይ በመለጠፍ ወይም በአካባቢው በሚገኝ የህዝብ የማስታወቂያ ሰሌዳ ላይ በመለጠፍ ማስጠንቀቂያ መስጠት አለበት፡፡
2) የግንባታ መጀመሪያ የጊዜ ገደብ ያለፈበት ሰው ቦታው በተፈቀደበት የአስተዳደር ዕርከን ለሚገኘው አግባብ ያለው አካል ቀርቦ ግንባታ ያልጀመረበትን ምክንያትና በቀጣይ ግንባታውን ለመጀመር ያለውን ዝግጁነትና አቅም የጊዜ ገደቡ ከመጠናቀቁ በፊት ወይም ካለፈ በኃላ አንድ ወር ባልበለጠ ጊዜ ውስጥ በጽሁፍ ማቅረብ አለበት
3) ጥያቄው ተቀባይነት ካገኘ በዚህ ደንብ የተቀመጠው ተጨማሪ ጊዜ ሊፈቀድለት ይችላል፡፡ በዚህ ጊዜ ውስጥ ያልቀረበ የጊዜ ይራዘምልኝ ጥያቄ ከአቅም በላይ የሆነ ችግር እንዳጋጠመው በማስረጃ ማረጋገጥ እስካልተቻለ ድረስ ተቀባይነት የለውም፤
4) ተጨማሪ የግንባታ መጀመሪያ ጊዜ ተፈቅዶለት በተጨማሪው ጊዜ ውስጥ ግንባታ ያልጀመረ ወይም ተጨማሪ የጊዜ ጥያቄው ተቀባይነት ያላገኘ ወይም ቀርቦ ያልጠየቀን ሰው ውል በማቋረጥ አግባብ ያለው አካል ቦታውን መልሶ መረከብ ይችላል፡፡
5) የሊዝ ውል የተቋረጠበት ሰው በዚህ ደንብና በሊዝ አዋጁ አንቀጽ 24 ንዑስ አንቀጽ (3) ከፊደል ተራ ሀ-ሐ የተደነገገው ቅጣት እንደአግባቡ ተፈጻሚ ይሆንበታል፡፡

37. የግንባታ ማጠናቀቂያ ጊዜ ስላለፈባቸው

1) አግባብ ያለው አካል እንደግንባታው ደረጃ በዚህ ደንብ የተቀመጠው የጊዜ ጣሪያ ካለፈ ከአንድ ወር ባልበለጠ ጊዜ ውስጥ ግንባታውን ያላጠናቀቀበትን ምክንያት በአሥር የስራ ቀናት ውስጥ የሊዝ ባለመብቱ ቀርቦ በማስረጃ እንዲያስረዳ በጽሁፍ ጥሪ ማድረግ አለበት፡፡
2) ባለመብቱ ጥሪው ከተላለፈበት ቀን ጀምሮ በ10 የሥራ ቀናት ውስጥ ቀርቦ ካላስረዳ ወይም አሳማኝ ምክንያት ማቅረብ ካልቻለ የግንባታው ማጠናቀቂያ የጊዜ ገደብ ካበቃበት ቀን ጀምሮ ለሚፈቀድለት ተጨማሪ ጊዜ ከጠቅላላው የሊዝ ዋጋ የሚታሰብ ለእያንዳንዱ ተጨማሪ ወር የ3% የገንዘብ ቅጣት በአንድ ጊዜ እንዲከፍል ይደረጋል፡፡
3) የሊዝ ባለመብቱ በተሰጠው 10 ቀናት ውስጥ ቀርቦ ካመለከተና ግንባታውን ያላጠናቀቀው ከአቅም በላይ በሆነ ምክንያት መሆኑን በማስረጃ ካረጋገጠ ያለቅጣት ተጨማሪው ጊዜ ሊፈቀድለት ይችላል፡፡

4. በዚህ አንቀጽ ንዑስ አንቀጽ 4 ላይ የተደነገገው እንደተጠበቀ ሆኖ በዚህ አንቀጽ ንኡስ አንቀጽ 1 እና 2 ስር ከተደነገገው ውጭ በማናቸውም ሁኔታ የአገልግሎት ለውጥ ተፈጽሞ ከተገኘ የአካባቢው ከፍተኛ የሊዝ ዋጋ 3 በመቶ ቅጣት ተከፍሎ መዋቅራዊ ፕላኑ የሚፈቅድ ወይም ሊስተካከል የሚችል ከሆነ ለውጡ ሊፈቀድ ይችላል፤ የሊዝ ዋጋውም አዲስ በተቀየረው የአገልግሎት ዓይነት መሰረት ተስተካክሎ በቀሪው የሊዝ የመክፈያ ዘመን እንዲጠናቀቅ ይደረጋል፣

5) የዚህ አንቀፅ ድንጋጌዎች እንደተጠበቁ ሆነው ለአገልግሎት ለውጡ የሚከፈለው የሊዝ ዋጋ ቀድሞ ከነበረው አገልግሎት ዓይነት የሊዝ ዋጋ የሚያንስ ሆኖ ከተገኘ ቀድሞ በነበረው የሊዝ ዋጋ ስሌት 3 በመቶው ቅጣት ተከፍሎ ለውጡ ሊፈቀድለት ይችላል።

39. የአገልግሎት ለውጥ የማይደረግባቸው ዋና ዋና ሁኔታዎች

1) በማናቸውም ሁኔታ የፕላን ምደባ ለውጥ ማድረግ የማይፈቀድባቸው ቦታዎች፡-

ሀ) የፕላን ምደባቸው ለአረንጓዴ ወይም ደን፣ ለፓርክ እና ለጥብቅነት የተከለሉ ቦታዎች፤

ለ) የፕላን ምደባቸው አርኪኦሎጅካል የሆኑ ወይም በተፈጥሮአዊ አቀማመጣቸው የተለየ ገጽታ ያላቸው ቦታዎች፤

ሐ) ማንኛውንም ዓይነት ብክለት ሊፈጥሩ የሚችሉ አገልግሎቶች ከፕላን ምድባቸው ውጭ ለማቋቋም የሚቀርብ ጥያቄ ተቀባይነት አይኖረውም።

40. የአገልግሎት ለውጥ በልዩ ሁኔታ የሚደረግባቸው ሁኔታዎች

1) በመርህ ደረጃ የፕላን ምደባ ለውጥ ማድረግ የማይፈቀድባቸው ነገር ግን አስገዳጅ ወይም አሳማኝ ሁኔታዎች ሲኖሩ በልዩ ሁኔታ በሚከተሉት ቦታዎች ላይ የፕላን ምደባ ለውጥ ሊፈቀድ ይችላል ፤

ሀ) ለስፖርት ማዘውተሪያ የፕላን ምደባ የተሰጡ ቦታዎች፣

ለ) ለገበያ፣ ለመናኸሪያ፣ ለእምነት ተቋማትና ለቀብር ቦታ የተመደቡ ቦታዎች የሚመለከታቸውን የህብረተሰብ ክፍሎች በማወያየት መግባባት ላይ ሲደረስ ለውጥ ሊደረግባቸው ይችላል።

2) በዚህ አንቀጽ ንኡስ አንቀጽ 1 ሥር በተመለከቱት ጉዳዮች ላይ የፕላን ምደባ ለውጥ ሊፈቀድ የሚችለው ከተማው እና የከተማውን መዋቅራዊ ፕላን እንዲያስፈጽም ውክልና በተሰጠው አካል ብቻ ነው።

7) የሚመለከተው አካል በዚህ አንቀጽ ንኡስ አንቀጽ 6 ገቢ ከተደረገለት ገንዘብ ላይ በአዋጁ አንቀጽ 24 ንኡስ አንቀጽ 3 (ሀ) እና (ሐ) የተመለከተውን ክፍያ ገንዘቡ ገቢ በተደረገ በሶስት የስራ ቀናት ውስጥ ለሻጭ የሚከፍለው ይሆናል።

42. ግማሽ ግንባታ ያረፈበትን ቦታ የሊዝ መብት ማስተላለፍ

1) ማንኛውም የሊዝ ባለይዞታ የግንባታ ማጠናቀቂያ ጊዜ ከማለፉ በፊት ከግማሽ በታች ግንባታ ያረፈበትን ቦታ የሊዝ መብት ለሶስተኛ አካል ማስተላለፍ ይችላል።
2) የሪል ስቴት ልማትን በተመለከተ በተናጠል በተጠናቀቀ ግንባታ ላይ የሪል ስቴት ባለሀብቱ በገባው ውል መሰረት ለተጠቃሚው ማስተላለፍ የሚችል መሆኑ እንደተጠበቀ ሆኖ ሙሉ በሙሉ ሪል ስቴቱን ወደሶስተኛ አካል ከውርስ በስተቀር ለማስተላለፍ ሲፈልግ በሁሉም ብሎኮች ላይ በዚህ ደንብ አንቀጽ 2 ንኡስ አንቀጽ 21 መሰረት ግንባታውን ማከናወን ይኖርበታል።
3) በዚህ አንቀፅ ንኡስ አንቀጽ 1 መሰረት የተላለፈ የሊዝ መብት ዋጋ ለሚመለከተው አካል የሚቀርበው የመሬት ሊዝ መብት ዋጋ እና የግንባታ ዋጋ በሚል ተለይቶ ይሆናል።
4) በዚህ አንቀፅ መሰረት ከግማሽ በታች ግንባታ የተፈጸመበት ቦታ ዝውውር የሚፈጸመው ባለመብቱ በቅድሚያ በሚመለከተው አካል በቀረበው የመሬት ሊዝ መብት መሸጫ ዋጋ ከተስማማ ይሆናል።
5) በዚህ አንቀጽ መሰረት ከውርስ በስተቀር ወደ ሶስተኛ አካል የተላለፈ የሊዝ መብት የስም ዝውውር የሚፈጸመው መብቱ የሚተላለፍለት ሰው ለሚመለከተው አካል የመሬት ሊዝ መብት ዋጋውን ገቢ ሲያደርግ ብቻ ነው።
6) የሚመለከተው አካል በዚህ አንቀጽ ንኡስ አንቀጽ 5 መሰረት ገቢ ከተደረገለት ገንዘብ ላይ በአዋጁ አንቀጽ 24 ንኡስ አንቀጽ 3 (ሀ) እና (ሐ) የተመለከተውን ክፍያ ገንዘቡ ገቢ በተደረገ በሶስት የስራ ቀናት ውስጥ ለሻጭ የሚከፍለው ይሆናል።
7) በዚህ አንቀጽ ንኡስ አንቀጽ 4 በተመለከተው መሰረት የሊዝ መብቱን ለማስተላለፍ ቅሬታ ያለው አካል ቅሬታውን አግባብ ላለው አካል በጽሁፍ ማቅረብ ይችላል። አግባብ ያለው አካልም በአስራ አምስት የስራ ቀን ጊዜ ውስጥ ቦታውን ለጨረታ በማቅረብ በአዋጁ አንቀጽ 24 ንኡስ አንቀጽ 3 በተመለከተው መሰረት መብቱን የሚያስጠብቅለት ይሆናል።

5) በዚህ አንቀጽ መሰረት አማካይ ውጤቱ ለባለመብቱ መሬቱ ቀደም ሲል ከተላለፈበት ዋጋ በታች ከሆነ የሚመለከተው አካል ከሁለቱ ተደማሪዎች በተሻለው የመሸጫ ዋጋውን ሊወስን ይችላል።

6) በዚህ አንቀጽ ንዑስ አንቀጽ 3 የተመለከተው እንደተጠበቀ ሆኖ ገዢው ከተገኘው አማካይ የሰጠው ዋጋ ውጤት ከ5 በመቶ በታች ከሆነ የሚመለከተው አካል አማካይ ውጤቱን መነሻ በማድረግ ቦታውን ለጨረታ የሚያቀርበው ይሆናል።

ክፍል ዘጠኝ

የሊዝ መብትን በዋስትና ስለማስያዝ

45. ግንባታ ያልተከናወነበትን ቦታ በዋስትና ስለማስያዝ ወይም በካፒታል አስተዋጽኦነት ስለመጠቀም

1) ማንኛውም የሊዝ ባለይዞታ በአዋጁ አንቀጽ 24 መሰረት ግንባታ ከመጀመሩ በፊት የሊዝ መብቱን በዋስትና ለማስያዝ ወይም የከፈለውን ቅድመ ክፍያ በካፒታል አስተዋጽኦነት መጠቀም ይችላል፣

2) ማንኛውም ባለይዞታ በዚህ አንቀጽ ንኡስ አንቀጽ 1 መሰረት በዋስትና ማስያዝ የሚችለው ከሊዝ የቅድሚያ ክፍያው ወይም ከቅድሚያ ክፍያው ተጨማሪ የከፈለም ከሆነ ከክፍያ መጠኑ ላይ በአዋጁ አንቀጽ 22 ንዑስ አንቀጽ 3 መሠረት ሊደረጉ የሚችሉ ተቀናሾች ታስበው በሚቀረው የገንዘብ መጠን ላይ ብቻ ይሆናል።

3) በዚህ አንቀጽ ንዑስ አንቀጽ 2 መሠረት የሊዝ መብቱን በዋስትና ያስያዘ ሰው የዋስትና ግዴታውን ባለመወጣቱ በህጉ መሰረት የተመለከተው የሚፈጸም ይሆናል።

46. ግንባታ ያረፈበትን ቦታ በዋስትና ስለማስያዝ ወይም በካፒታል አስተዋጽኦነት ስለመጠቀም

1) ማንኛውም የሊዝ ባለይዞታ በማንኛውም ደረጃ ላይ ግንባታ ያረፈበትን ይዞታ የሊዝ መብቱን በዋስትና ለማስያዝ ወይም በካፒታል አስተዋጽኦነት ለመጠቀም ይችላል።

2) ማንኛውም ባለይዞታ በዚህ አንቀጽ ንኡስ አንቀጽ 1 መሰረት በዋስትና ማስያዝ የሚችለው ከሊዝ የቅድሚያ ክፍያው ወይም ሌላ በተጨማሪነት የተፈጸመ ክፍያ ካለም በተከፈለው መጠን ላይ በአዋጁ አንቀጽ 22 ንዑስ አንቀጽ (3) መሠረት ሊደረጉ

2) በዚህ አንቀጽ ንኡስ አንቀጽ 1 የተመለከተዉ እንደተጠበቀ ሆኖ በሚከተሉት መሠረታዊ ምክንያቶች ፡-

ሀ) በመዋቅራዊ ፕላን ለውጥ፤

ለ) ቦታው ለህዝብ ጥቅም ሲፈለግ፤

ሐ) ነባሩን ልማት ቦታው ወደሚጠይቀው የልማት ደረጃ እና አግባብ ለመቀየር የማይቻል ሲሆን የሊዝ ውሉ ዳግም ሊይታደስ ይችላል።

49. የአጭር ጊዜ የሊዝ ዉል ዕድሳት

1) የአጭር ጊዜ ሊዝ ውል ቦታው ለሌላ ልማት የማይፈለግ መሆኑ በሚመለከተው አካል ሲረጋገጥ ለአንድ ጊዜ ብቻ ሊታደስ ይችላል፤ሆኖም የውል እድሳቱ ከአምስት ዓመት ሊበልጥ አይችልም። ዝርዝሩ በመመሪያ ይወሰናል።

2) ለማስታወቂያ ሰሌዳ መትከያ የተፈቀዱ ቦታዎች ቦታው የማይፈለግና የትራፊክ እንቅስቃሴ ላይ ችግር የማይፈጥር መሆኑ እየተረጋገጠ በየጊዜው ሊታደስ ይችላል፤

50. የሊዝ ውል ስለማቋረጥ እና ካሳ አከፋፈል

1) የከተማ ቦታ የሊዝ ይዞታ በአዋጁ አንቀጽ 25 ንዑስ አንቀጽ 1 (ሀ) መሠረት ሲቋረጥ ተገቢው ወጪና መቀጫ ተቀንሶ የሊዝ ክፍያው ለባለመብቱ ተመላሽ ይሆናል።

2) የከተማ ቦታ የሊዝ ይዞታ በአዋጁ አንቀጽ 25 ንዑስ አንቀጽ 1 (ለ) መሠረት ሲቋረጥ ባለይዞታው አግባብ ባለው ሕግ መሰረት ተመጣጣኝ ካሣ ይከፈለዋል።

3) የከተማ ቦታ የሊዝ ይዞታ በአዋጁ አንቀጽ 25 ንዑስ አንቀጽ 1 (ሐ) መሠረት ሲቋረጥ ባለይዞታው እስከ አንድ ዓመት ባለው ጊዜ ውስጥ በቦታው ላይ ያሰፈረውን ንብረት የማንሳት መብቱን በመጠቀም ንብረቱን በማንሳት ቦታውን አግባብ ላለው አካል መልሶ ማስረከብ አለበት።

4) ባለይዞታው በዚህ አንቀጽ ንዑስ አንቀጽ 3 በተመለከተው የጊዜ ገደብ ውስጥ እና በተሰጠዉ መብት ተጠቅሞ ንብረቱን ካላነሳ የሚመለከተው አካል ለንብረቱ ክፍያ ሳይፈጽም ቦታውን ሊወስደው ይችላል። ለአፈፃፀሙም አስፈላጊ ሆኖ ሲያገኘው ፖሊስን ማዘዝ ይችላል።

ክፍል አስራ አንድ

ልዩ ልዩ ድንጋጌዎች

53. ከዚህ በፊት በሊዝ ተይዘው ግንባታ ያላጠናቀቁትን በተመለከተ

ቀደም ሲል ቦታ በሊዝ አግባብ ወስደው ግንባታቸው ያልተጠናቀቀ ይዞታዎችን በተመለከተ ከከተሞች ጋር በሚደረግ ስምምነት መሰረት መርህ ግብር በማውጣት የሚፈጸም ይሆናል።

54. የክልሎችና የከተማ አስተዳደሮች ሥልጣንና ተግባር

1) በሁሉም ከተሞች ውስጥ የሚገኘውን መሬት በአዋጁ መሠረት ያስተዳድራሉ፤
2) ይህንን ሞዴል ደንብ ከተጨባጭ ሁኔታቸው ጋር በማጣጣም አዋጁን ለማስፈጸም የሚያስችል ደንብ ያጸድቃሉ፤ ደንቡንም ለማስፈፀም የሚያስፈልጉ መመርያዎች ያወጣሉ።

55. የሽግግር ጊዜ ድንጋጌ

1) ቀደም ሲል ቀርበው በእንጥልጥል ላይ ያሉ የከተማ ቦታ ጥያቄዎችን በሚመለከት አዋጁ ከፀናበት ቀን ጀምሮ ባሉት ሦስት ወራት ጊዜ ውስጥ በቀድሞው ህግ መሠረት ውሳኔ መስጠት አለባቸው።
2) ደንቡ ከመጽናቱ በፊት አግባብ ባለው አካል የተፈረመ የሊዝ ውሎችና በእነዚሁ መሠረት የተከናወኑ ሥራዎች ህጋዊነታቸው ተጠብቆ ተፈፃሚነታቸው ይቀጥላል።

56. የመተባበር ግዴታ

ማንኛውም ሰው ይህንን ደንብ ለማስፈፀም በሚደረግ ማናቸውም እንቅስቃሴ ትብብር እንዲያደርግ ሲጠየቅ የመተባበር ግዴታ አለበት።

57. የተሻሩና ተፈጻሚነት የማይኖራቸው ህጎች

1) በክልል ወይም የከተማ አስተዳደር የከተማ ቦታን በሊዝ ስለመያዝን እደገና ለመደንገግ የወጣውን ደንብ ቁጥር------- /--------ዓ.ም በዚህ ደንብ ተሸሯል፣
2) ከዚህ ደንብ ጋር የሚቃረን ማናቸውም ደንብ፣ መመሪያና አሰራር በዚህ ደንብ በተሸፈኑ ጉዳዮች ላይ ተፈፃሚነት አይኖረውም።

DECLARATION

I, the undersigned, declare that the thesis is my original work and has not been presented for a degree in any other university and that all sources of materials used in the thesis have been duly acknowledged.

Declared by:-

Araya Asgedom
Signature _____
Date _____

Confirmed by:-

Professor Tilahun Teshome
Signature _____
Date _____