



ADDIS ABABA UNIVERSITY
SCHOOL OF GRADUATE STUDIES
COLLEGE OF LAW AND GOVERNANCE
SCHOOL OF LAW

**PUBLIC PURPOSE DURING LAND EXPROPRIATION IN OROMIA:
THE LAW AND THE PRACTICE**

**A THESIS SUBMITTED TO THE SCHOOL OF GRADUATE STUDIES OF
ADDIS ABABA UNIVERSITY IN PARTIAL FULFILLMENT OF THE
REQUIREMENTS OF THE DEGREE OF MASTERS OF LAW (LLM) IN
BUSINESS LAW**

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Ethiopia

Declaration

I, Fita Dechasa Mechessa, hereby declare that this Thesis is my original work and has not been presented for degree in any other university, and all sources of materials used in this Thesis have been duly acknowledged and cited.

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Conformation

This Thesis has been worked by the student under my supervision, guidance and submitted for examination with my approval as an advisor to the student.

Advisor: Dr. Muradu Abdo (PhD)

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Approval sheet

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By: Fita Dechasa Mechessa

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Thank you all!!

List of Acronyms and Abbreviations

ANRS	Amhara National Regional State
Art.	Article
Derg	Committee (The Military government that ruled Ethiopia 1974-1990)
EHRT	European Human Right Treaty
EIA	Environmental Impact Assessment
ETB	Ethiopian Birr
FAO	Food and Agricultural Organization
FDRE	Federal Democratic Republic of Ethiopia
FSC	Federal Supreme Court
Kebele	Administrative Sub-District below
ILA	Institution of Land Administration
MFED	Ministry of Finance and Economic Development
Neg. Gaz.	Negarit Gazeta
NDP	National Development Plan
NGOs	Non Governmental Organizations
No.	Number
OSC	Oromia Supreme Court
OECD	Organization for Economic Co-operation and Development
ONRS	Oromia National Regional State (Oromia State or the Region)
PDRE	People Democratic Republic of Ethiopia
Proc.	Proclamation
RUDP	Rural and Urban Development Plan
SNNPRS	Southern Nations, Nationalities and Peoples Regional State
SZOSF	Special Zone of Oromia Surrounding Finfine
TNRS	Tgray National Regional State
UNECA	United Nations Economic Commission for Africa
USA	United States of America
USAID	United Nations Agency for International Development
Woreda	Administrative District

Abstract

Displacement in Ethiopia in general and in Oomia in particular due to land expropriation is common where the existence of public purpose for which the land expropriated is determined by government decision as the expropriation is the premium option to get land held by small landholders under the guise of public purpose. Thus, this Thesis examines mainly the right of small landholders whose landholdings are compulsorily taken for public purpose through expropriation scheme.

Expropriation of landholding presupposes two competing interests such as the public need for land and property protection for landholders. The expropriation policy of the country in general is expected to balance these conflicting interests. Thus, the Thesis considers how these competing interests can be balanced in expropriation proceeding. To bring about and maintain a balance between these two interests, genuine public purpose must exist in a way that protects the constitutionally guaranteed land rights of the rural masses. Thus, the Thesis seeks examine the legislative gap in determining existence of public purpose during land expropriation in light of the FDRE and Oromia constitutions.

To undertake this Thesis research the Empirical Doctrinal legal research Methodology has been used to understand the theoretical and conceptual frameworks as guideline direction, and enabling to generate empirical evidences to answer the research problems. Thus, the empirical findings indicate that there is a great difference between the objective for which the land is expropriated and practical implementation caused by vague and ambiguous definition of the term 'public purpose' for which the land has been taken. Absence of clear lists of public purpose components in the expropriation law of the country and unchecked discretion of administrative authority by independent courts of law are the main reasons for abusing and arbitrary decision making regarding the existence of public purpose. Thus, the Thesis recommends that legislative reform which empowers affected population to appeal to independent courts of law on the basis of existence of public purpose in expropriation proceeding.

Furthermore, the expansive and unclear treatment of public purpose by expropriation law of the country causes adverse social, economical, cultural, environmental and political effects in the Region. Above the researcher recommends both Federal and Oromia state governments to rethink about the expansive and unclear public purpose definition provided by current land expropriation law of the country which has opened the door for abuse and arbitrary decision making by administrative authority that highly affects the tenure rights of poor landholders. Thus the government should conduct the expropriation of landholding for limited, clear and genuine public purpose in order to save the life of small landholders and also to curb the observably growing incidents of informal land transitions.

CHAPTER ONE

1. Introduction

1.1 Background of the Thesis

In contemporary world the realization of sustainable development requires government to provide available public facilities and infrastructure that ensure safety and security; health and welfare; social and economic progress; and protection and restoration of natural environment. Therefore, expropriation of appropriate land is the uninhibited action of a government to realize those public needs.

Thus, expropriation is the power of sovereign state to appropriate private landholdings and property for particular use that promotes the general welfare. Therefore, expropriation is an important tool in most countries to take landholding rights for public purpose. Generally, for the purpose of economic development and improving the well-being of the citizens, government in every country exercises the power of expropriation on private landholdings and properties for public purpose.¹ So, any development project for which the land has taken should endeavor to insure overall economic benefit to the citizens, including those who have been displaced by the project.

However, expropriation of private landholding rights involves two opposing interests; i.e., a public need for land; and protection of tenure security and private property rights. In order to keep the balance of these interests, there should be legislative guideline that empowers the government to expropriate land rights only for clear and limited public purpose under the inspection of independent body. Therefore, most countries have developed land expropriation law to limit their government's power of expropriation of private landholdings, typically; by defining the causes for which the government can exercise its power, and enumerating the rights and participation of those persons whose holding rights are being expropriated.²

¹ Belachew Yirsaw Alemu, "Expropriation, Valuation and Compensation in Ethiopia", Doctoral Thesis in Real Estate planning, Real Estate Planning and Land Law, Department of Real Estate and Construction Management, School of Architecture and Built Environment, Royal Instruction of Technology (KTH) Stockholm, Swede, (2013), p. 1

² Ibid

Moreover, in case where there is legislation determining what constitutes public purpose, it has to be clear enough so as to eliminate the tendency of losing the land rights through discretionary power of government authorities.³ Thus, government authorities empowered to undertake expropriation should endeavor to mitigate the risk that could be sustain on the displaced peoples by devising means to implement smooth execution of the project for which the landholding rights have been taken.

Currently, since Ethiopia adopted public ownership of land, land is considered as a common property of state and people. Thus, it cannot be subject to sale, mortgage, and any other means of exchange.⁴ Similarly, the Oromia Regional State Constitution endorses the same provision that indicates public ownership of land.⁵ Peasants and pastoralists are guaranteed the rights to obtain lands free of charge and protection against eviction from their possession without just cause and due compensation, while urban dwellers obtain land through ground of lease arrangements.⁶

Ethiopia, like any other developing country has been under rapid urbanization, modernization of infrastructure and agricultural investments. Similarly, the Oromiya Regional State has been within the same pace as most of the towns and cities in the Region have been expanding in their size and incorporating vast rural areas. Since the Country opens its door for foreign and domestic investors on the basis of free market economy, a lion share of land has been required from Oromia Regional State for the establishment of large-scale commercial farms and agro-industries. As the region approximately occupies one fourth of the total area of the country and it surrounds the capital city of the country; a large portion of land has been required for private and public investment activities.

One of the means by which the Ethiopian Government in general and Oromia Regional state in particular use to furnish such land available for the above intended purpose is expropriating private landholding under guise of public purpose. However, the governments at both levels

³Brightman Gebremikael, "Public purpose as Justification for Expropriation of Rural Land Rights in Ethiopia", *Journal of African Law*, Vol. 60, Issue 2, (2016), p. 2, Published online, 15th of February 2016, (available at <https://www.soas.ac.uk>),

⁴The constitution of the Federal Democratic Republic of Ethiopia, 1995, Art. 40(3), Proc. No. 1, *Federal Nag. Gaz.*, Year 1, No. 1 (Hereinafter cited as FDRE constitution)

⁵Oromia Regional State Revised constitution, 2001, Art. 40(3), proc. No. 46, *Megeleta Oromia*, year 8, No. 6 (Hereinafter cited as Oromia State Revised Constitution)

⁶FDRE, Constitution, Art. 40 (4,5)

should balance the competing interests' stated above in undertaking expropriation for adequately clear, limit and genuine public purposes.

Since the current expropriation system of Ethiopia adopts expansive approach to public purpose definition, landholding system has been shifted from predominant subsistence landholding into commercial landholding system in order to enhance economic development⁷. Therefore, the ambiguous definition provided to the term public purpose by the law, contradicts the FDRE Constitution which seeks to protect tenure security of small landholders. Above all, the Oromia Regional State legislative organ has not so far enacted regional expropriation laws, be it a proclamation or regulation. Thus, the fate of landholders whose landholdings have been expropriated by the regional government is being determined in accordance with the Federal expropriation law.⁸

Therefore, this study will try to analyze expropriation laws and their practical implementation in Oromia Regional state. Moreover, the writer of this thesis argues that the protection of property and land using rights of landholders have been affected due to the legislation failure to empower affected people from taking an appeal to an independent court of law objecting the fact that the project to which the private landholding is expropriated does not satisfy the requirements provided by the law to determine the existence of public purpose. Further, the study examines the adequacy of those laws to meet the objectives stipulated under FDRE Constitution and the Regional Constitution that is protection against eviction in light of expropriation of land for public purpose. Thus, this study considers whether the expropriation of land for public purpose, as treated both in the federal and the regional legal framework, has maintained the balance between the interests of affected landholders and the government.

1.2 Statement of the problem

Nowadays, the expansion of foreign and national investment activities in Ethiopia in general, and in Oromia in particular, calls for expropriation of both rural and urban landholding rights as a means by which the Government of Ethiopia as well as Oromia can get such land for the

⁷ Cumulative reading of Article 2(5) and Article 3(1) of Expropriation of Landholding for Public Purposes and Payment of Composition, 2005, Proc. No. 455, Federal Negarit Gazeta, year 11, No. 43 (hereinafter cited as FDRE Land Expropriation Proc. No. 455/2005)

⁸ FDRE, Land Expropriation Proc. No. 455/2005

intended purposes. Meanwhile, population growth both in urban and rural area of the Region as well as population migration from rural to urban leads to expansion of towns and cities. All this entails demands for housing, infrastructure including public utilities that in turn require land to be obtained via expropriation by the Regional State. Since landholders depend on land for their livelihood, the effect of expropriation on landholding may be perpetuated throughout their life. Therefore, unplanned or arbitrary taking of land under the guise of public purpose may devastate the livelihood of the landholders and hence it may alter their life forever.

Here in Ethiopia, as most of literature envisaged, there is no uniformity among the decisions of governmental authorities regarding determination of the existence of public purpose for which the land has been expropriated. Both FDRE and Oromia State Constitutions have guaranteed peasants and pastoralist the right not to be evicted from their possession without genuine public purpose. However, subsidiary laws both at federal and the State level are criticized for lack of clear and limited criteria to determine the existence of public purpose when expropriation of landholding has been undertaken by the administrative authorities. The legislative inadequacy to address public purpose and practical incompatibilities are also another big problem that needs further solution. Moreover, the legislative dichotomy regarding the power of regular courts to review administrative decisions concerning the existence of public purpose, and the judicial independence in entertaining issues relating to expropriation should be other fundamental problems that need more investigation.

In most cases, lands expropriated under the guise of public purpose have been held by those investors without making any use of it for the purpose it was expropriated are contrary to land lease contracts they have concluded. Therefore, it is a timely and significant to examine the laws, policies and practices in Oromia within the scope of the notion of public purpose during expropriation of landholding by the state. In general, determining the existence of genuine public purpose in undertaking expropriation of private landholdings is the core analysis of this Thesis.

1.3 Objectives of the Thesis

This research has examined how the land expropriation laws of the Federal Democratic Republic of Ethiopia and land laws of Oromia National Regional State are treat public purpose and assess

related impacts on small landholders in the Regional State in light of FDRE Constitution and Oromia State Revised Constitutions.

1.3.1 General Objective

The basic objective of this research is to examine availability of the legal framework to determine the existence and scope of public purpose when private landholding and attached properties are taken for private investment or public projects in Oromia. The study also examines laws and practice applicable to determine the existence of public purpose during expropriation of land use rights in the Region. Furthermore, it analyses the hindrances or limitations of existing laws both at federal and the state level to determine the existence of public purpose and whether the practices are consistent with the existing laws and regulations.

In general, the Thesis seeks to determine whether there are adequate criteria to test the existence of public purpose for the expropriation of land using rights in the Region clearly provided by the law; and aims to investigate the actual existence of public purpose for the cause of expropriation of land.

1.3.2 Specific objective

The research has aimed to:-

- Investigate relevant legal provisions adopted in relation to the existence of public purpose for the expropriation of land using rights both at federal and the regional state level;
- Analyze whether there are adequate, clear, uniform and limited guidelines of law to determine the existence of public purpose;
- Critically study the availability of right to appeal against the decision of administrative authorities to independent regular courts regarding the existence of public purpose which causes the acquisition of land in Ethiopia in general and in Oromia in particular; and
- Make conclusion and suggest recommendations on the problems regarding procedures to be applied to determine the existence of public purpose when private landholding has been expropriated by governmental administrative authorities for public purpose.

1.4 Research Questions

This Thesis has desired to respond the following questions:-

- A. Is expropriation law at present in Ethiopia Federal or Regional matter or both?
- B. How public purpose is defined and what constitutes public purpose under existing Ethiopian and Oromia state laws?
- C. Do Laws and policies adopted in relation to expropriation in Ethiopia as a whole and in Oromia in particular effectively address the issue of public purpose in light of FDRE and Oromia State Constitutions? And how far public purpose is open to precise definition?
- D. Is expropriation power both at the Regional and Federal States in fact being exercised to achieve the public purpose?
- E. Prior to expropriation, must the government inform and consult the landholders about the acquisition plan including the reason for expropriation?
- F. To what extent the practice to determining the existence of public purpose is compatible with the federal and Oromia state laws?
- G. How far the federal and the state laws and regulations are adequate to dispense fair procedures while land use rights are expropriated under the guise of public purpose?
- H. How effective is the capacity of various Oromia regional state administrative authorities to render a decision regarding the issue of public purpose and apply grievance redress mechanisms and adjudication?
- I. Is there clear law that guaranteed the landholders to bring claim to regular courts to review the decision of administrative agencies on the issue of public purpose?
- J. How far regular courts in Ethiopia, and typically in oromia, are independent to entertaining cases relating to the issue of expropriation of land for public purpose?

1.5 Research Methodology and Methods

1.5.1 Research Methodology

The researcher is used mainly empirical doctrinal legal research method; as it is broadens legal discourses in terms of its theoretical and conceptual framework which guide the direction of researcher and enabling to generate empirical evidence to answer research problems.⁹ Since empirical legal research is complementary to doctrinal legal research, both methodologies can be used simultaneously to examine the legal and practical issues.

⁹ Mike Mc Conville and Wing Hong Chui, (editors), Research Methods for Law, Edinburgh university Press, (2007), p. 5

Therefore, the researcher of this Thesis has consulted the combination these legal research approach as the hybrid of the two methodologies currently the most plausible legal research methods.

1.5.2 Research Approach and Study Methods

To conduct the study, qualitative data collection method has mainly deployed as principal data collections and analyzing method. The first methodological task was collecting data information to identify representative areas in order to obtain target groups in the Regional State. The data has been collected at individual and collective level in the forms of interviewees and focus group discussion from participants of the research sites, governmental administrative officials and judges at different hierarchical status in Oromia in relation to the issue under the Thesis study.

In Oromia National regional state, the Special Zone of Oromia surrounding Finfinne in general; Sebeta Town and Sebeta Awas Woreda, Dukem Town and Akaki Woreda, Burayu Town, Walmera Woreda, and Ejere Woreda in particular are selected as the main research sites of this Thesis. The mentioned Towns and Woredas are preferred by the researcher because they are areas from Oromia Region with high turnover of investment activities which calls for expropriation of abounded private landholding for the purpose of building factories, manufacturing industries and public infrastructure that have undertaken by public and private enterprises under the guise of public purpose.

Moreover, high rate of urban population growth and migration from rural to urban amount to the expansion the Towns to pre-urban areas which resulted predominant displacement of rural landholders in these areas. Thus, expropriation of landholding for public purpose has been considered as the hottest issue in the selected sites. Therefore, the Towns and Rural Woredas selected by the researcher from the Special zone would be considered as the representatives of the whole Oromia for the issue under the Thesis study.

1.5.3 Data Collection Methods

1.5.3.1 Primary Data Collection Methods

One of the research tools used in collection of primary data consist of structured and semi-structured questionnaires that have been administered to all categories of participants with regard

to expropriation and manner of determining the issue of public purpose in the research sites. Particularly, administrative officials, judges, practitioner lawyers and farmers from which their landholdings were expropriated for public and private purposes such as urbanization, infrastructure developments, factories, manufacturing and agro industries, and other private investment activities are participated as informants. Moreover, interview conducted with selected peoples including peasants whose landholdings have been expropriated for the purpose of private investments and urban expansions in the research sites is very important. To remained that peasant participants in the interview have been selected objectively from those whose landholdings are expropriated under the guise of public purpose.

Generally, for this Thesis, structured and semi-structured questionnaires, key informant interviews and focus group discussions are employed as the main primary data collection methods. Personal observations conducted by the researcher are also deployed to discover and reinforce questionnaire finding or secondary data sources, and to assure the analysis of contextual background of different incidents.

1.5.3.2 Secondary Data collection Methods

Relevant documents, Legal concepts and Provisions, related Laws and Literatures gathered from different Journals, Reports, Books, Legislations and related commentary materials are consulted and reviewed by the researcher. Furthermore, the documentary materials which are reviewed by the researcher can be classified as Legal documents, Academic Literatures and documents that reflect practices.

Legal documents comprises of federal and Oromia constitutions; and subsidiary laws such as laws pertinent to expropriation of land, land administration and use and other related statutes. Academic literatures mainly include various research works and studies on related issue. Documents in practices indicate different official documents, reports and courts decisions found in concerned the State governmental offices and Courts which have conformity with the research Thesis at hand.

1.6 Significance of the Thesis

It is believed that solving most of problems related to expropriation of land for public purpose which indicates the purpose for which the landholding rights has been expropriated could save many landholders from eviction of their land using rights. The Thesis will be important for policy makers, and strengthening the legal framework and practical performance of government organs regarding the existence of public purpose while expropriating private landholdings. It will also be important for international organizations that are currently seeking policy measures regarding the issue of public purpose, particularly in line with its scope and limitation to undertake expropriation of landholding rights.

Moreover the research finding of this Thesis will contribute to the existing stock of knowledge in the expropriation of land for visible public interest in the Ethiopia in general and in Oromia in particular. Furthermore, it will also invite future researches to conduct further studies on the subject matter.

1.7 Scope of the Thesis

Expropriation of private landholding and attached property embraces at least three elements, such as public purpose, payment of adequate compensation and legal recourse. However, this research Thesis has only focused on issues dealing with public purpose. Particularly, it examines adequacy, limitation and clarity of requirements or procedures to undertake expropriation of landholding for public purpose which are stated under federal and the regional state laws in light of both FDRE and Oromia State constitutions.

1.8 Limitations of the Thesis

Conducting research Thesis could not be a simple assignment for most researchers. Obtaining relevant information and documents which are relevant to this Thesis was difficult as the result of tied and complex bureaucratic approach of the governmental institutions. Moreover, obtaining pertinent data to be used as input to develop this research Thesis was difficult due to lack of well organized data coding and registering system as well as absence of proper handling of documents with organized archive. Above all, time and resource are the main constraint for this Thesis.

Nevertheless, the researcher has been tried to mitigate these limitations through deep and consecutive follow up to searching those information and documents with tolerance and assistance of volunteer Officers and Clerks. Moreover, I have been forced to paying extra time allowance for some farmers to conduct interviews.

1.9 Organizational Structure of the Thesis

The Thesis is categorized into four chapters. The first chapter deals with an introductory parts of the study which incorporates back ground of the study, statement of the problems, objectives of the study, research questions, research methodology and methods, significance of the Thesis, Scope of the Study and limitation of the Study. The second chapter addresses expropriation of Land use Rights and the Issue of public purpose, typically, comprises the effect of expropriation on tenure security, definition and reflection on conceptual framework and history of expropriation, issues regarding with scope, power, manners and procedures to determine existence public purpose.

Chapter three explains about gaps regarding public purpose and expropriation law in oromia and mainly incorporates, issues concerning about public purpose as justification for expropriation of landholdings, requirements of public purpose in current Ethiopian and/or Oromia laws, judicial review of public purpose decisions, and impacts of improper implementation of public purpose during expropriation of land in Special Zone of Oromia Surrounding Finfinnee. Chapter four presents conclusions and recommendations.

CHAPTER TWO

2 Expropriation of Land Use Rights and the Issue of Public Purpose

2.1 Expropriation and Land Tenure Security

To determine land policy option of the country that ensure tenure security to poor landholders, defining and providing means of extinguishing tenure rights are very important. FAO refers land tenure as an institution which can determine individual's access to land use rights and rules governing rights and duties of land holders with the respect to the land.¹⁰ Thus, land tenure system asserts that who can use what land for how long and under what condition. Likewise, tenure security ensures the continuous land use right which is free from interference and imposition that enables the holders to harvest benefits from labour and capital invested in the land either in use or upon transfer to the another.¹¹ Generally, tenure security refers to guaranteeing the permanent, exclusive and free transfer of use rights to the land holders.

Expropriation of land for public purpose is one the means that can extinguish tenure rights of individual landholder. Improper justification for existence of public purpose in expropriation proceeding potentially unsecured land tenure which limits landholders to incentive to invest in land, using the improved technology and land management system that may accelerating the problem of land degradation.¹²

In Ethiopia and/or Oromia, Tenure insecurity may be caused by weak determination in existence of public purpose during expropriation of individual landholding that lead to arbitrarily violation of landholders use rights by administrative authorities which inhibits the realization of their economic and non economic uses related with property rights in land. Therefore, in order to protect land tenure security of small landholders, land should be expropriated for genuine public purpose that would be clearly stated by relevant legislation in conformity with FDRE and Oromia State Revised constitutions.

¹⁰ FAO, 2002 ,” Land tenure and rural development”, *Corporate document Repository*, Rome: Italy, (2002), P. 7

¹¹ Gudeta Seifu, “Rural Land Security in Oromia Regional State”, In Muradu Abdo, Eds, “Lana Law and Policy In Ethiopia since 1991: Continuities and Chang”, *Ethiopian Business law Series*, Vol. III, (2010), P. 109

¹² Samuel Gebre Sillassei, “Land, Land Policy and Smallholder Agriculture in Ethiopia: Opition and Scenario”, *Future Agriculture*, /Discussion Paper/ (March 2006), p. 6

2.2 Definition of Expropriation

Expropriation may be defined as, the rights of nation or state, or those to whom the power has been lawfully delegated, to condemn the private property for public use, and to appropriate the ownership and possession of such property without owner's consent on paying the owners due compensation to be ascertained according to law in order to benefit society.¹³

2.3 Reflection on Conceptual Framework and History of Expropriation

As indicated above, expropriation is understood as compulsory taking of property including land by competent government authority. Nevertheless, the principal objective of expropriation is not acquiring the property, rather to serve some public interest. Historically, expropriation of property for public purpose was practiced during Romans and Greeks civilization. Later on many western societies recognized expropriation of private property for public benefit through their legislation.¹⁴ In many cases, expropriation of private properties (including land) had taken place to satisfy public purposes like redistribution of land, urban development plan, income and wealth distribution, etc. Therefore, irrespective of contrasting views, the objective of expropriating land and attached properties must benefit the society rather benefiting individuals.¹⁵

In Ethiopia, the power of expropriation for public purpose did not become a matter of state concern until 20th century. Emperor H/Sellassie I recognized officially by 1931 Constitution ownership of private property as protected right. The Constitution empowered the state to take the land for public purpose, and stated as “*except in case public necessity determined by the law, no one shall have the right to deprive an Ethiopian subject of any movable or landed property which he owned*”.¹⁶ Accordingly, the expropriation could not be implemented with the sole aim of benefiting individual, rather benefiting the public at large.

The 1955 Revised Constitution of the Emperor also articulated expropriation of private property for public interest, as “... *no one may be deprived of his property except up on a finding by*

¹³ Corpus Juris Secundum, as cited in Gashew Tena Alemu, “Land Expropriation and Compensation Payment in Ethiopia,” Journals of Economics and Sustainable Development, vol. 6, No. 13, (2015), P. 94

¹⁴ Belachew Yirsaw Alemu, Note No. 1, p. 13

¹⁵ Id., P.16

¹⁶ The 1931 Constitution of Empire Ethiopia, Art 27.

minister order issues pursuant to the requirement of expropriation law enacted ...”¹⁷ The Constitution envisaged that the forthcoming law would be coming with details regarding expropriation.

As the result, the 1960 Civil Code has come up with detailed provisions with regard to expropriation.¹⁸ The Code provided that “*the eminent domain proceeding may not be made for the purpose solely of obtaining financial benefit.*”¹⁹ Thus, the expropriation proceeding shall be used to enable the public to benefit by increase in the value of the land arising from works done in the public interest. The Civil Code followed restrictive representation of expropriation scheme in a view of public purpose as that the competent government authority cannot initiate expropriation for the mere fact to obtain money.²⁰

The Derg regime also introduced its own expropriation rules in its both rural and urban land proclamations. The rural land proclamation states that “*the government may use land belonging to peasant associations for public purpose such as schools, hospitals, roads, offices, military bases and agriculture projects*”.²¹ Likewise, the urban land proclamation empowered the state to expropriate urban land and houses for public purpose.²² According to urban land proclamation, the urban land may be expropriated not only compulsorily, but also in time when the holder of the urban lands failed to utilize within the specified period of time. In all cases payment of compensation was feasible either in kind or money though the modality of assessment of compensation for expropriated urban house was not clarified by the proclamation.

Currently, as the ownership right of rural and urban land is exclusively vested in the state and peoples of Ethiopia, the state is empowered to expropriate land for public purpose.²³ Therefore, in Ethiopia expropriation is the chief method to acquire land for the government that it used for development activities or transfer it to individual users through lease arrangement. As the result of private ownership of land has been precluded by FDRE Constitution, the fate of individuals and investors to get land for construction of house or investment activity is in the hands of the

¹⁷ The Revised 1955 Constitution of Empire of Ethiopia, Art 44.

¹⁸ Civil Code of the Empire of Ethiopia, 1960, Art. 1460-1488, Proc. No. 165, *Negarit Gazeta*, Extraordinary Issue No. 2 (Hereinafter cited as Civil Code of Ethiopia)

¹⁹ Id. Art. 1464.

²⁰ Muradu Abdo, “Reforming Ethiopia’s Expropriation Law”, *Mizan Law Review*, vol. 9, No. 1, (2015), p. 308.

²¹ Proclamation to provide for public Ownership of Rural Lands, 1975, Art. 17, Proc. No. 31/1975

²² Proclamation for government ownership of Urban land and Extra Houses, 1975, Art. 8 & 19, Proc. No. 47/1975

²³ FDRE, Constitution, Art. 40(3,8).

state.²⁴ However, expropriation shall be used only in case where the land to be expropriated is used for public purpose and accompanied by advance payment of fair compensation.

The most important issue in expropriation of land is whether the cause for expropriation is genuine as in most lands expropriated in the name of public purpose are observed to be held by those investors without making any use of it for the objective it was taken in accordance with contract of lease.²⁵ Therefore, it is better to pay attention to and examine laws and the policy as well as practices in the country regarding the expropriation in light of public purpose.

2.3.1 Scope of Application of Expropriation Law of Ethiopia

The current Constitution of Ethiopia has provided the general guidelines on the condition of acquisition, nature and restriction of land use rights.²⁶ The Constitution has provided Ethiopian peoples and the state are joint ownership of land.²⁷ In parallel, it has guaranteed peasants and pastoralists with a free access to rural land,²⁸ whereas, private investors are ensured the use of land rights through payment arrangement.²⁹

Moreover, the Constitution has authorized the government to expropriate private property for public purpose upon the payment of compensation equivalent to the property to be expropriated.³⁰ However, the Constitution has not clearly provided whether the government empowered to expropriate rural land held by peasants and pastoralists unlike that of private investors. This is because the Constitution has empowered the government to compulsorily acquire private property for public purpose. Nevertheless, the definition provided for “private property” under the constitution excludes the rural land rights of peasants and pastoralists;³¹ as it is defined as:-

²⁴ Daniel W. Ambaye, “Scaling up Responsible land Governance: Urban land Transfer and State Monopoly in value capture in Ethiopia”, Annual World Bank conference on Land and Property, Washington DC, (March 14-18, 2016), p. 7

²⁵ Girma Kassa Kumsa, “Issues of Expropriation: The Law and the Practice in Oromia ”. LLM. Thesis, Submitted to School of Graduate Studies of Addis Ababa University, (2011), P. 52-58.

²⁶ FDRE, Constitution, Art. 40

²⁷ Id., Art. 40(3)

²⁸ Id., Art. 40(4,5)

²⁹ Id., Art. 40(6)

³⁰ Id., Art. 40 (8)

³¹ Brightman Gebremikael, Note No. 3, P. 10

“... any tangible or intangible which has value and is produced by labour, creativity, enterprise or capital of an individual citizen, associations which enjoy judicial personality under the law, or in appropriate circumstances, by communities specifically empowered by the law to own the property in common.”³²

According to this definition, since the Constitution has provided insurance to peasants and pastoralists with right to acquire rural land free of payment, the status of this right does not fall under the basket of private property. Therefore, the right is not the product of labour, creativity, enterprise or capital of peasant or pastoralist though it has value.

On the other hand, since the investor can acquire rural land use right through payment arrangement, is right can satisfy the definition of private property that provided by the Constitution. Therefore, this question may arguably raise the issue of the constitutionality of government authority to compulsorily acquire rural land use rights of peasants and pastoralists.³³

On the other hand, the general practice of different countries in the world; the nature of protection provided to peasants and pastoralists land rights; the right to sustainable development of citizens; and socio-economic objectives specified by the EDRE Constitution are the possible argument that the government has the sovereign power to expropriate Ethiopian rural lands held by peasants and pastoralists for public purpose.³⁴ Therefore, the second line of argument has been come compatible, because of national, economic and social objectives enshrined in the Constitution,³⁵ that require access to rural land to provide this facilities and plantation of others infrastructure.

The current practices imply that both the Federal and Oromia National Regional State (ONRS) governments have been exercising expropriation power of the rural land held by farmers to fulfill the demand of public purpose.³⁶ Therefore, it seems that the power of government to expropriate rural land rights of peasants and pastoralists is justified constitutionally so long as there is a genuine public purpose.

³² FDRE, Constitution, Art.40(2)

³³ Brightman Gebremikael, Note No. 3, p. 10

³⁴ Ibid.

³⁵ FDRE, Constitution, Art. 89 & 90

³⁶ Interview with Bedada Debela, Higher Director in Directorate of land use and administration control and follow up, in Oromia Regional State rural land use and administration Bureau, July 19, 2018

2.4 Public Purpose

2.4.1 General overview on the Concept of Public Purpose

The theories of expropriation contain three big and considerable mitigation of government power of expropriation. These aspects are public purpose; adequate compensation paid in advance; and fair process (procedural recourse). Thus, if the government decided to expropriate land and other properties, the decision should be motivated by public purpose, observe due process of law, be non-discriminatory and guided by transparent rules that define the situation in which expropriations are justified, and the process by which compensation to be determined.³⁷ State should expropriate where right to land are required for public purpose. Therefore, major objective of public purpose in relation to expropriation is to limit the discretionary power of government authorities.

The term ‘public purpose’ is named differently in different jurisdictions. The most synonymous terms to express the same idea in different countries’ constitution and subsidiary laws are ‘public use’, ‘public advantage’, ‘public welfare’, ‘public benefit’ or ‘public interest’. For instance, in the USA it is named as “public use”, in Europe, it is known as “public interest”, and in Ethiopia, called as “public purpose”.³⁸ However, these divergent terminologies call controversies whether they are synonymous or not in different countries. For instance in the USA whether “public use” can be synonymous to the terms such as “public advantage” “public utility” or “public purpose” is debatable as public use has been recognized by the constitution.³⁹ Moreover, compared to the others, the term “public interest” is wider and opens the door for unaccountable decision making. However, despite differences in interpretation, the important message behind this and similar terminologies is that private land may not be taken through eminent domain in the absence of benefiting the public.⁴⁰ This indicates that as the interest of public should prevail over that of individual, the government can only use its power of expropriation to acquire land or properties on land to benefit the public.

³⁷ OECD, “Policy framework for Investment, expropriation laws and review process“, Available at www.oecd.org.

³⁸ See the USA constitution 5th Amendment, Article 1 of Protocol No.1 of EHRT, and Article 40(8) of FDRE constitution respectively.

³⁹ Daniel weldegebrel Ambaye, “ land rights and expropriation in Ethiopia”, *Doctor thesis in land law*, real state planning and land law, department of real Estate and construction management, school of architecture and the built environment, royal instruction of technology (KTH), Stockholm, Sweden, (2013) p. 188

⁴⁰ Ibid.

From property right perspectives, it can be argued that the public purpose implements as corner stone for the state to take private property for some societal benefit.⁴¹ This means that the private property taken from one individual may not be transferred to another for personal use only. The society as a whole or partly must be beneficiary from the project for which the transfer has been conducted. Unlimited or too expansive freedom given to the state will robe individuals' tenure security and protections to private property. Thus, public purpose shall be in the manner of establishing equitable balance among the two competing interests, i.e, the social interest and individuals' interest.

2.4.2 Definition of Public Purpose

Since the concept of public purpose is highly debatable besides terminological differences, there is no consensus among scholars regarding its definition. Some are termed as expropriating private property for exclusive objective of traditional activities of government.⁴² However, the concept of public purpose in expropriating private property presupposes different social, economical and political issues of society.

Regardless of its conceptual difference, some definitions that have been forwarded in different literature are examined as follows. To begin with dictionary meaning, Black's Law Dictionary defines public purpose as "*an action by or at discretion of government for the benefit of the community as whole.*"⁴³ This definition is vague and ambiguous as it does not specify the nature of benefits that the community derives from intended project for which the expropriation has been undertaken. Rather it simply justifies the government action of eminent domain is to benefit public in general not individual. This defective definition may lead someone to interpret the nature of benefit into two ways; the first one could be the actual use that directly benefits the general public such as public park, high way, defense, etc; and the other it may be the inclusion of both direct and indirect benefits like improvement tax base and job opportunity without the direct use of expropriated land.⁴⁴

⁴¹ Id., p. 190

⁴² Dunning, Harrison, " law and economic development in Africa the law of Eminent Domain", Colombian law Review, vol. 68 (1968), p. 1298

⁴³ Bryan A. Garner, (editor in chief), Black's law Dictionary, (7th ed., 1999), p.1245

⁴⁴ Dana, David A., "Exclusionary Eminent Domain " Supreme court Economic Review, vol.17, (2009), p.14

Other scholar defines public purpose as “*a purpose which will benefit the public in general and not individual.*”⁴⁵ This definition conveys the message that the main objective for the undertaking of expropriation is to benefiting public at large than individuals. However, this does not mean that an individual does not benefit from project for which a private property is expropriated. Individual may benefit indirectly from activities that private landholding has been expropriated to undertake project beneficial to public.

Public purpose also has been defined by other writer as, “*a public benefit or advantage and may embrace anything tending to enlarge the conduct of capacity or resource of community to promote the general welfare and prosperity.*”⁴⁶ In comparison to the former definitions, this definition is more expansive in its scope and somewhat clear enough in determining the nature of benefits enjoyed by the society to justify the purpose of expropriation. Thus, it tends to anything that promote the general welfare of the society is considered as public purpose.

In other literature, public purpose is defined as “*whether legislative confers power on anybody to take land compulsorily for particular purpose, it on the ground that the using of that land for the public will be for public good.*”⁴⁷ The definition has deployed both direct and indirect benefits to the public anything that tends to promote the general welfare of the community to constitute public purpose.⁴⁸ Therefore, the definition affirms that public interest prevails over individual interest as far as the public is beneficiary.

Yet, although the scope may be different, all the definitions of public purpose have the same objective, i.e., the purpose for which the government undertakes expropriation must benefit the society in general or a section thereof which prevails the particular interest of the individual.

2.4.3 Scope, Power and Manner of Determining Components of Public purpose

2.4.3.1 Scope of components of Public Purpose

The above definitions of public purpose are still not satisfactory to specify exactly what constitutes public purpose. Thus, states should appreciate components of public purpose in their

⁴⁵ Raja Muhommed Muzaffer, *A Compulsory Acquisition of Land*, (1967), p.997

⁴⁶ George S.Guli and Robert T.Kimbrought, *American jurisprudence*, (1966), vol. 26, p. 665, as cited by Girma Kassa Kumsa, Note No 25, p. 44

⁴⁷ V.G Ronce Chandran, *The Law of Land Acquisition and Compensation*, (1965), p. 255

⁴⁸ Brightman Gebremichael, Note No. 3, p. 4

respective laws. In the early times states used to expropriate private properties including land for their traditional functions such as education, highway, defense and other equivalent purposes.⁴⁹ However, currently with the changing of social, economical and political spheres among various societies, the components of public purpose have been expanded. As the result, states have come up with their own legislation which considers public purpose that creates variation among the legislations. Therefore, how a law defines public purpose in the legislation provided credible permissible purposes beyond which the government may not expropriate land.

Laws with list of public purposes provide courts with better guidance when ruling on expropriation cases and minimize the potential for conflicting court decisions.⁵⁰ Without clear list of components of public purpose in law, government authorities may abuse their power of expropriation by arbitrarily justifying their decision under the guise of public purpose when the actual purpose will not serve public interest.⁵¹ For instance, the FAO, based on its deep study on developed and developing countries have provided the following commonly acceptable standards of components of public purpose for land expropriation.⁵²

- Transportation uses including, Canals, Highways, Railways, Bridges, Wharves and Airports;
- Public buildings including, Schools, Libraries, Hospitals, Factories, Religious Institutions and Public Housing;
- Public utility of water, Swage, Electricity, Gas, Communication, Irrigation and Drainage, Dams and Reservoirs;
- Public parks, Play grounds, Gardens, Sport facilities and Cemeteries;
- Defense Purposes.

Moreover, the FAO has also moved its determination on controversial issues where private land has been transferred to private investors on the justification that the changing in use will benefit the public indirectly by creating growth and job, and by increasing the tax base which in turn

⁴⁹ Dunning , Note No. 42

⁵⁰ Nicholas K. Tagliarino, “Encroaching on Land and Livelihood: How National Expropriation Laws measure up Against International standards”, World Resource Institution working paper, University of Groningen, Faculty of Law, (2016), p. 11

⁵¹ Ibid.

⁵² FAO 2008, Land Reform, Land settlement and Cooperatives, Land reform 2008/1, p.39

allows government to improve its delivery of public service.⁵³ In this regard, the FAO advises states “to undertake public scrutiny on the proposals to use the compulsory acquisition of land to ensure the balance between the public need, and that the compensation reflects potential of the land to be acquired.”⁵⁴

Scholars view the scope of components of public purpose in to two ways. They are named as minimalist (restrictive) and maximalist (expansive) view of public purposes.⁵⁵ Determining components of public purpose may be important to easily understand the extent of state power to expropriate private property under the guise of public purpose; as tools to measure the discretion of government authorities in taking of private property for public interest.

The position of restrictive ideals is to restrain the executive body from exercising compulsory acquisition of private property (land) to in rich the monetary value of the other; that is to prohibit expropriation solely for private purpose.⁵⁶ Thus, expropriating private property to benefit individual could not constitute public purpose. Accordingly, public purpose during expropriation of landholding rights must serve directly the public at large.

The maximalist concept viewed the public purpose as,

*“anything which lead to enhance the resource, maximizes industrialization and encourage the productivity of any considerable member of dweller or section of state or which lead to the advance of towns and invention of new resource for the implementation of capital and labor, contributes the general welfare and success of the whole community.”*⁵⁷

This concept envisaged expansive mode of interpreting public purpose since it considers every direct or indirect compulsory acquisition of property including land by government as falling under public purpose.

⁵³ Id., P. 12

⁵⁴ Ibid.

⁵⁵ Antonio Azuela and Carlos Herrera Martin, PP. 353-354, as cited in Muradu Abdo, Note No. 20, P. 305

⁵⁶ Muradu Abdo, Note No. 20, P. 305

⁵⁷ Bin cheng, “The Rational of Compensation for expropriation”, Transaction of Grotius Society, vol. 44, (1958) P. 292, as cited in Muradu Abdo, Note No. 20, P. 306

In summary, unclear list of public purpose and extremely broader descriptions of public purpose allows executive body to determine what constitutes public purpose and limits the potential for effective judicial or quasi-judicial oversight.

2.4.3.2 Power of Determining Components of Public Purpose

We have also sought disparities among different jurisdictions which branch of government authorized to determine what constitutes public purpose when compulsory acquisition of land has exercised. In some countries the constitution by itself provides specific provision defining and listing components public purpose for which the land has been expropriated.⁵⁸ In this regard, Ghana's and Chile's constitutions are prominent examples that include provisions specifying what kind of projects is allowed the governments to use power of expropriation.⁵⁹

In some countries like Poland, the legislative organ is empowered to decide components of public purpose in expropriation law. For instance, the 1991 expropriation law of Poland listed kinds of projects considered to serve public purpose for which land has taken by the state.⁶⁰

In other jurisdiction this power is vested to judiciary. For example, in USA courts are constitutionally mandate to have final say on the determination of public purpose where land has been compulsorily acquired by the state under the pretexts of public use.⁶¹ This imply that without further legislation definition which limits components of public purpose, courts are empowered to interpret an issue that can constitute public purpose.

In the early times notion of public purpose was interpreted narrowly by the courts. In the nation of narrowest view of public purpose had been interpreted as "*the employment of thing public or public use means the same as the use by public.*"⁶² According to this view indirect benefit that the concerned society received will not be considered as public use. However, as the result of economic change which calls for public engagement, the USA Supreme Court has provided broader interpretation of public use implying that possibility of expropriating private land by the

⁵⁸ Brightman Gebremichael, Note No. 3, P.5

⁵⁹ Ibid.

⁶⁰ Ibid.

⁶¹ The 5th Amendment of USA Constitution states that "*no person shall be deprived property without due process of law, nor shall private property be taken for public use without just compensation.*"

⁶² Daniel Weldegebrel Ambaye, Note No. 39, p.193

state without need to enact any law to define public use.⁶³ Thus, the court held that general benefits a society received from economic growth qualified development plans as a permissible public purpose as asserted by the Fifth Amendment of the US Constitution.⁶⁴

Nevertheless, the court emphasized that “*the sovereign may not take the property of A for sole purpose of transferring to another private party B.... It is equally clear that a state may transfer one private party to another if further use by the public is the purpose of taking.*”⁶⁵ Therefore, to determine the existence of public purpose, the court has affirmed that it is broader purpose of expropriation measures that should be taken into account not the single use of land by individual.

In other countries components of public purpose is determined by executive organ. The current expropriation law of Ethiopia is a good example in this regard.⁶⁶ In this legislation, the existence of public purpose, either direct or indirect, can be measured where the state administrative organ exercises its power of eminent domain to ensure the interest of the public in conformity with urban structure and development plan.⁶⁷ However, as like that of the USA, In Ethiopia it is not clearly provided by the law whether an executive administrative decision would be revised by the regular courts. As it will be precisely discuss in the subsequent chapter, absent of court intervention in the decision of administrative authorities regarding the existence of public purpose causes for arbitrary taking of poor landholdings under the guise of public purpose.

2.4.3.3 Manner of Listing Component of Public Purpose

In the legislation of different countries components of public purpose listed in different ways. Some literature categorized manner of listing components of public purpose into three ways.⁶⁸ The first one is exhaustive listing of potential public purpose elements within concerned legislation. In this way the state lists all components of public purpose for which the state can expropriate private landholding rights by the law.

This kind of listing has its own merit and demerit. It may be meritorious in minimizing ambiguity by providing exclusive and clear lists beyond which the state may not expropriate

⁶³ Kelo Vs City of New London, 545 US 469, 478-80, as cited by Brightman Gebremichael, Note No. 3, p. 6

⁶⁴ Ibid.

⁶⁵ Ibid.

⁶⁶ FDRE, Land Expropriation proc. 455/2005, Art. 2(5) & 3

⁶⁷ Ibid.

⁶⁸ Brightman Gebremichael, Note No. 3, P.6

land.⁶⁹ Regarding its demerit, a plausible public purpose for which the state may one day need to acquire land that was not considered when the law was enacted.⁷⁰ As the result, amendment of the law would be needed to accommodate the newly invented public purpose. However amendment may not be a solution when the lists of public purpose components are provided by the constitution; since amendment of constitution requires stringent prerequisites in most constitutions.

In practice, few countries have legislation with clearly defined lists of public purposes. For instance, Cambodia, India, Indonesia and Mongolia have laws that indicate that the governments cannot expropriate land for public purpose not explicitly provided in the list.⁷¹

The second one is inclusive listing approach that contains some clearly list of permissible public purposes accompanied by open-ended clauses grant states flexibility in interpreting what constitutes public purpose.⁷² This approach specifies some purposes for which the land may be expropriated and adds word or phrase implies the state to expropriate landholding rights for similar purposes. In this idea, the flexibility nature has provided an opportunity to include the eligible purposes when required and similarly, limiting the scope only to the purpose similar in nature with the list of public purposes provided as an instance.⁷³

In this regard, the FAO Land Tenure study 10 states that “*partially defined lists of public purposes can still provide courts with guidance when determining whether an Executive interpretation of ‘any other public purpose’ is outside the scope of the legal definition and therefore violates the law.*”⁷⁴

In the third approach, the law does not provide either exhaustive or open-ended lists of public purpose for which a state can expropriate land holding rights. The concerned legislation does not clearly define the components of public purpose; rather it leaves the interpretation to either

⁶⁹ FAO 2008, Note No. 52, P. 11

⁷⁰ Ibid.

⁷¹ Nicholas Tagliarino, Note No. 50, P. 12

⁷² Ibid.

⁷³ FAO 2008, Note No 52, P. 11

⁷⁴ FAO 2008, “Land Tenure studies 10: Compulsory acquisition of land and Compensation”, Section 2.15, Rome Italy: Available at <http://www.fao.org/3/ai056e.pdf>

executive or judiciary. Thus, this approach provides the organs legislatively unchecked discretionary power to undertake compulsory acquisition of land.⁷⁵

Generally in order to minimize the discretionary power of government authority who allowed to conduct expropriation of individual land rights, the law should be clear enough on the grounds of state's right to taking land for pretty clear public purpose in order to balance the public need for land and protection of individual property rights.

2.4.4 The Issue of Public Purpose under Ethiopian Laws

The Constitution of 1931 is the first legal document that recognized expropriation of private land holding for public purpose. Thus the constitution provides that “*Except in public necessity determine by the law, no one shall be entitled to deprive any Ethiopian subject to movable or landed property which he owns*”⁷⁶ In this constitution public purpose was administered as “public utility”. But the term is too narrow and vague that could not convey the current interpretation of public purpose. However, 1995 Revised Constitution Ethiopia had not clearly justified the issue of public purpose; it left the issue to the forthcoming expropriation legislation to be issued by ministerial order.⁷⁷

Likewise, the 1960 Civil Code of Ethiopia also does not clearly provide definition to “public purpose” as well as activities constituting public purpose. However, the justification provided under article 1464(1) indicates that the taking is seems restrictive. This is because the “*expropriation proceeding may not be used for the purpose solely of obtaining financial benefit.*”⁷⁸ Accordingly, the expropriation shall be undertaken to benefit the public at large; rather than only generating revenue to the state or individual investor.

The issue of public purpose had been provided by the 1975 Derg regime rural land law. The rural land proclamation of the regime stipulates that “*the government may use land belonging to peasant associations for public purpose such as Schools, Hospitals, Offices, Military basis and Agricultural projects.*”⁷⁹ The proclamation provided exhaustively limited activities that could

⁷⁵ Brightman Gebremichael, Note No. 3, P. 7

⁷⁶ The 1931 constitution of Empire of Ethiopia, Art. 27

⁷⁷ The 1995 Revised constitution of Ethiopia, Art. 44

⁷⁸ Civil Code of Ethiopia, Art. 1464(1)

⁷⁹ Proclamation to Provide for Public Ownership of Rural Lands, 1975, Art.17(1), Proc. No. 31/1975

constitute the public purpose. Thus the law followed the narrowest approach of public purpose interpretation. The Derg government ownership of urban land and extra-urban houses proclamation also empowered the state to expropriate urban house held by any person, family or organization for public purpose upon payment of compensation.⁸⁰

Similarly, the 1987 PDRE Constitution justified expropriation as “*the state may, where public interest so requires, purchase, requisition by making appropriate payment, or nationalize, upon payment of compensation, any property in accordance with the law.*”⁸¹ In this constitution the issue of public purpose was crafted in the form of public interest. However, the constitution did not provide definition for the term public interest as well as its ingredients.

The FDRE Constitution requires that the intention of taking private property through expropriation shall serve a public purpose.⁸² But the term public purpose is not defined anywhere in the constitution; and activities that might be considered as public purpose do not illustrate. I think, the Constitution leaves the detail to the forthcoming related subsidiary legislation.

The 2004 FDRE expropriation law defined the term public purpose as a public use and holder right to compensation. The proclamation defined the term ‘work’ to indicate public uses as,

*“... means the constitution of installation as appropriation for public user of high way power generating plant, building, airport, dam, railway, fuel depot, water sewerage, telephone and electrical works and the carrying out of maintenance work, comprises civil, mechanical and electrical works.”*⁸³

The definition provided by the law had been constitutes public purpose in a narrow sense. This restrictive approach to public purpose followed the tradition of the Civil Code and the Derge rural land law.⁸⁴ Accordingly, the proclamation limited the power of government to expropriate private landholding rights and attached properties for works that could contribute public interest to the society as a whole.

⁸⁰ Proclamation to provide for government ownership of urban lands and extra urban houses, 1975, Art. 19, Proc. No. 47/1975

⁸¹ Constitution of People’s Democratic Republic of Ethiopia, 1987, Art., 17, Proc. No. 1, Negarit Gazeta, Year 47, No. 1

⁸² FDRE, Constitution, Art. 40(8)

⁸³ Appropriation of land for government works and the payment compensation for property, 2004, Art. 2(2), proc. No. 401, Federal Negarit Gazeta, year 10, No. 42

⁸⁴ Muradu Abdo, Note No. 20, p. 308

However, this proclamation was not longer effective as it was replaced soon by Proclamation No. 455/2005, which is the main principal instrument which governs expropriation in today's Ethiopia. The current expropriation law defines the term "public purpose" for the first time as,

*"... the use of land define as such by the decision of the appropriate body in conformity with urban structure plan or government plan in order to insure the interest of the people to acquire direct or indirect benefits from the use of land and to consolidate sustainable socio-economic development."*⁸⁵

The definition provided by the law conveys broader meaning that creates opportunities for the administrative authorities to take land for the different purposes that could be perceived direct and indirect benefits as public purpose. Since the law holds vast scope that anything direct or indirect benefit to the public serves public purpose, it is influenced by broader principle of administering public purpose in situations where the appropriate body wants to take the landholding rights in the sprite of public purpose.⁸⁶ Moreover, the details on this law regarding public purpose will be discussed in the subsequent chapter.

Likewise, the 1993 urban land lease holding proclamation and it is subsequent proclamation of 2002 followed expansive mode of public purpose interpretation. The 1993 land lease holding proclamation viewed that the public interest may not be affected by the state expropriating property solely to generate money to earn public revenue. Similarly, the 2002 urban land lease holding law of the country states that *"... that which an appropriate body determines as public interest conformity with master plane or development plane in order to continuously ensure the direct or indirect usability of land by peoples, and to progressively enhance urban development."*⁸⁷

This provision provides widest power to administrative authority to expropriate land, as it considers direct or indirect usability provided by the project for which the land has been expropriated could be constitutes public purpose.

⁸⁵ FDRE, Land Expropriation proc. No. 455/2005, Art. 2(5)

⁸⁶ Muradu Abdo, note no. 20, p. 306.

⁸⁷ Re-enactment of urban lands lease holding, 2002, Art. 2(7), Proc. No. 272, Federal Negarit Gazeta, Year 8, No.19

Likewise, the current active urban land lease holding proclamation also grants more expansive interpretation of public purpose as like that of its predecessors by define the term, ‘public interest’ as,

*“... the use of land defined as such by the decision of the appropriate body in conformity with urban 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.”*⁸⁸

Thus, the current urban land lease holding law of the country also followed the expansive concept of public purpose treatment in similar wordings with that of the current active expropriation law.

The FDRE Rural Land Administration and Use Proclamation No 456/2005 provides the issue of public purpose as *“the holder of rural land who is evicted for purpose of public use shall be given compensation proportional to the development he has made on the land and the property acquire, or shall be given substitute thereon. ...”*⁸⁹ The proclamation neither defines the ‘public use’ nor illustrates the elements that could be constitutes ‘public use’. This means, the proclamation does not clearly provided list or indicators of activities that can constitutes public purpose for which the rural land has been expropriated either in exhaustive or illustrative manner.

Some regional states rural land administration and use proclamations define public purpose using different terminology and the others are not. For instance, the Southern Regional State (SNNPRS) Rural Land Proclamation defines ‘public use’ as *“... means public common service obtained from infrastructures such as school, health, road, water, etc.”*⁹⁰ Similarly, the Amhara state (ANRS) rural land proclamation defines ‘public service’ as, *“... a service given to the public directly or indirectly, such as government office, school, health service, road, religious*

⁸⁸ Urban Land Lease Holding, 2011, Art. 2(7), proc. No. 721, Federal Nagarit Gazeta, Year 18th, No. 4 (hereinafter cited as FDRE Urban Land Lease Holding proc. No. 721/2011)

⁸⁹ FDRE Rural Land Administration and Land Use, 2005, Art. 7(3), Proc. 456, Federal Negarit Gazeta, year 11, No. 44 (hereinafter cited as FDRE Rural Land Proc. No. 456/2005)

⁹⁰ The state of Southern NNP Land Administration and Use, 2010, Art. 2(23), Proc. 110, Dehub Negarit Gazeta, Year 13, No. 10

*institutions, military camps, and the like, and includes activities assumed important to be implemented on the rural land.”*⁹¹

Therefore, both regional states rural land proclamations provide restrictive definitions of the terms, which can limit the power of expropriating land by administrative authorities only to the activities directly serve the public. Meanwhile, the TNRS rural land administration and use law totally fails to define the issue of public purpose.⁹²

On the other hand, the ANRS rural land proclamation defines the term ‘Expropriation of landholding’ as, “... *taking the rural land from the holder or user for the sake of public interest paying compensation in advance by government bodies, private investors, cooperative societies, or other bodies to undertake development activities by the decision of government body vested with power.*”⁹³ This definition clearly conflicts with the definition provided for the term ‘public use’, since the latter conceived expansive approach of definition.

However, the Oromia State (ONRS) rural land proclamation does not clearly define the extent of the term “public use” provided under article 6(10,11) of the proclamation.⁹⁴ Nevertheless the close reading of this provision may convey the message that the law needs to uphold the narrowest concept of public purpose approach, that the expropriation of land use right could be restricted only to the public use.

In sum, we have seen that there are conflicts and incompatibility among Federal expropriation laws and the states rural land laws that is because the federal expropriation law introduces broadest approach of defining public purpose whereas the states rural land laws mainly confine themselves to narrower approach in determination of public purpose.

At this juncture, whenever such like conflicts happened, which law (the federal or the regional) shall be prevailing to solve the conflict is an important issue that needs further discussion in relation to power of expropriation. To answer the question, whether the expropriation law at

⁹¹ The Revised Amhara National Regional State Rural Land Administration and Use Determination Amendment, 2007, Art. 2(15), Proc. No. 148, *Zikre Hig*, Year 12, No. 11

⁹² The Revised Tigray National Regional State Rural Land Administration and Use Determination Amendment, 2007, Proc. No. 136, *Tigray Negarit Gazeta*, year 16, No. 1

⁹³ *Id.*, Art. 2(18)

⁹⁴ Proclamation to amend the proclamation no. 56/2002, 70/2003, 103/2005 of Oromia rural land administration and use, 2007, Art. 6(10 & 11), Proc. No. 130, *Magalata Oromia*, year 15, no. 12-138 (Hereinafter cited as Oromia state rural land Proc. No. 130/200-7)

present in Ethiopia can be considered as federal law, state law or both must be clearly justified through scrutinizing the FDRE constitution on the division powers among the federal and state governments to enact land relating laws. The FDRE Constitution which adopts federal system of government has appropriated power and functions among the two tiers of government. Accordingly, the Federal Government has exclusive authority on those powers and functions that are listed under article 51;⁹⁵ and states are empowered on the residual powers and functions that are not explicitly given to federal government and concurrent to federal and state governments.⁹⁶

Among the others, the Constitution has authorized the Federal Government to enact laws for the utilization and conservation of land;⁹⁷ whereas enacting land administration laws are vested to federating states.⁹⁸ Thus we can infer from these constitutional provisions that enacting land utilization and conservation is inherent power of federal government and administering land utilization and conservation in accordance with federal laws is exclusive power of states. However, the Constitution is not clear enough regarding the scope of utilization and conservation as it has not provided definition for these terms.

Nevertheless, it could be presumed that the Constitution leaves the detail prescriptions to the subsidiary land laws. Accordingly, the Federal Government provide current federal rural and urban land laws that define the landholding systems by which the nature and content of rights in land; conditions under which these rights are to be held and enjoyed; and the restrictions imposed thereof are determined.⁹⁹ The rationale behind promulgating land utilization and conservation scheme at the federal level seems to establish a single economic community in the country which is one of the objectives of the Constitution, the statutory and tenure system that regulates Ethiopian rural and urban landholdings right must be uniform all over the country.¹⁰⁰

Furthermore, the Federal Government constitutionally is empowered to define the rights of landholders, how such rights are acquired, what they constitute, how they operate in the holding and how these rights may be extinguished. One of the grounds that land using rights can be extinguished is expropriation of land for public purpose. Hence, the Constitution has authorized

⁹⁵ FDRE, Constitution, Art. 51

⁹⁶ Id., Art. 52

⁹⁷ Id., Art. 51(5)

⁹⁸ Id., Art. 52(2(d))

⁹⁹ FDRE, Rural Land Proclamation No. 456/2005 and FDRE Urban Land Lease Holding proc. No. 721/2011)

¹⁰⁰ Brightman Gebremichael, Note No. 3, P. 16-17

the Federal Government to enact expropriation law which could compulsorily extinguish the land using rights of landholders.¹⁰¹

Moreover, the current Land Expropriation of the country which is issued by federal government empowered the Council of Ministers to issue regulations for the proper implementation of the proclamation; while the regional states are allotted to issue only directives necessary to implement the proclamation and regulations.¹⁰² Furthermore, the proclamation vested power and duties of the Ministry Federal Affairs with respect to follow up and implementation of the proclamation in regional states;¹⁰³ while the regional lower administrative organs such as a woreda and urban administrations are duty bound to implement in accordance with the proclamation and the regulation.¹⁰⁴

Therefore, these all above mentioned explanations are indicate that power of enacting land expropriation law is vested to the federal government while state governments are empowered to implementing the law. Thus, it is possible to argue that the expropriation law at present in Ethiopia should be justified as federal law; and thus, states shall conduct their eminent power in general and determining existence of public purpose in particular based upon the rules procedures that have been provided by the federal expropriation laws.

2.5 Expropriation procedure /processes/ to Determine Public Purpose

Expropriation procedure is understood as the process of implementing the taking of private property through the power of eminent domain.¹⁰⁵ Moreover, expropriation procedure emphasizes the observance of due process of law whose absence has been resulted in "... being deprived of land rights, lacking access to legal remedy to defend them which constitutes ultimate state vulnerability ..."¹⁰⁶ Thus states should ensure that the planning and procedure for expropriation are transparent and participatory to appreciate the existence of public purpose.

¹⁰¹FDRE, Land Expropriation Proc. No. 455/2005, Preamble.

¹⁰² Id., Art. 14(1,2)

¹⁰³ Id., Art. 12

¹⁰⁴ Id., Art. 13

¹⁰⁵ Daniel Weldegebrel Ambaye, Note No. 39, P.167

¹⁰⁶ Kenate Worku, The Expansion of Addis Ababa and its Impact on Surrounding Area: Primary Study of Nefas Silk Lafto District", *Journal of Oromo Studies*, vol 15, No. 2, P. 126 &127, As cited in Muradu Abdo, Note No. 20, p. 323

The expropriation processes have been administered in different ways in different countries. For the purpose of convenience expropriation procedure can be allocated into two ways; the horizontal and vertical allocations.¹⁰⁷ Horizontal allocation is a power of expropriation that has been given to legislator, executive or judiciary with the clear procedure to be followed by concerned authority; and vertical the allocation refers to the case where the power of expropriation is exercised among the federal and constituent States or Departments.¹⁰⁸ The basic idea here is that in horizontal power allocation, the legislator should provide clear procedural law that determines the existence of public purpose during expropriation proceeding. However, the vertical allocation has focused on power allocating within the executive branch itself and procedural steps to be followed by different administrative hierarchies to provide decision on the existence of public purpose.

In accordance with to the practice of different jurisdictions, the process involves either administrative, judiciary or both. In countries like Singapore, the expropriation procedure in general and existence of public purpose in particular is purely administrative.¹⁰⁹ As will be discussed in the subsequent chapter, the Ethiopian expropriation procedure to determine the existence of public purpose is totally administrative in nature. However in USA, unlike in Ethiopia, the right is vested in judiciary. But in some countries the process requires the involvement of administration and courts. For instance in Peru, in the first stage the declaration for expropriation of parcel of land and determination of public purpose have decided by administrative authorities; and then in the second steps the court is empowered to approves the valuation result and provide order for land transfer.¹¹⁰

In process of undertaking expropriation; identification, notification and consultation of affected population on the effect of expropriation are very important procedural rules that should be followed. Anyone that is likely to be affected by expropriation measures should be identified, properly informed and consulted at all stages.¹¹¹ These procedural rules help the government and even the implementing agencies to evaluate the effect of expropriation that will have on the land

¹⁰⁷ Kitay M.G., (1985), Land Acquisition in Developing Countries: Practice and Procedures in Public Sectors; Gunn & Hain, Publishers, Inc., As cited in Daniel Weldegebrel Ambaye, Note No. 39, p.167

¹⁰⁸ Ibid.

¹⁰⁹ Ibid.

¹¹⁰ Kitay M.G, (1985), P.61, as cited by Daniel Weldegebrel Ambaye, Note No. 39, p. 168

¹¹¹ VGGTs, The Voluntary Guideline on responsible Governance of Tenure of land, section 16.2. As cited by Nicholas Tagliarino, Note No. 50, p. 14

tenure, livelihood of expropriated individuals and environment; and also important to identify a person who entitles to claim compensation as the result of expropriation.¹¹² Non-fulfillment of these processes on the parts of concerned governmental authority amounts to defect appreciation of public purpose and compensation that leads to tenure insecurity of landholders.

Inadequate access to information on the expropriation plan, including justifications for compulsory acquisition, deny the land holders know how that the effect expropriation brings on their tenure rights and inhibited the chance to explain their feelings regarding with the existence genuine public purpose for which their land to be expropriated.¹¹³ On the other hand, FAO states that “*information provided to affected population and the public should explain the purpose of acquisition, identify the land to be acquired, and provide a clear description of expropriation procedure.*”¹¹⁴ Thus, proper and effective procedural rules are important to ensure the protection of land tenure rights that safeguard from abuse of governmental authorities.

Moreover, consulting the community and victim persons prior to the acquisition of land can help the government to enjoy information that enables to provide equitable decision on the issue of public purpose and claimed compensation. In this regard FAO recommend that; “*options should be analyzed and presented to the public for their understanding and consultation in order to choose the site that presents the fewest obstacles, and best outcome, having regard to all impacts, including those on any owner’s occupants.*”¹¹⁵ Therefore, government can be beneficiary from this information to conduct proper due diligence and develop progressive expropriation pan; and uphold experience, over time, the likely impact on expropriated persons, cost of compensation and the impact of expropriation on environment.¹¹⁶

Generally, consultation can minimize financial risk by reducing the chance of delays that when victims of expropriations are consulted and decide to protest and appeal expropriation decision in court. As most the research finding of FAO has been obtained from developing countries, the advices and justifications provided by FAO are very important to be incorporated in Ethiopian forthcoming expropriation law.

¹¹² Ibid

¹¹³ Nicholas Tagliarino, Note No. 50, P. 14

¹¹⁴ FAO, 2008, Note No. 74

¹¹⁵ Ibid.

¹¹⁶ Nicholas Tagliarino, Supra Note 113.

CHAPTER THREE

3 Gaps regarding Public Purpose and Expropriation Laws in Oromia.

Governmental administrative authorities either at lower or upper; or at federal or states level empowered to decide on land expropriation should have duty to approve the existence of public purpose. Since Oromia State does not enact its own expropriation law, justifiably the existence of public purpose in land expropriation has been determined in accordance with the federal expropriation law. Therefore, the legislation gaps and practical analysis relating to the issues of public purpose that will be discussed in this chapter shall be determined based upon FDRE expropriation laws including Oromia State rural land laws and urban land lease holding directives.

3.1 Public Purpose as Justification for Expropriation of Land Use Rights

Government requires land to realize sustainable development, and to provide public facilities and infrastructures as its duty to do so. However, the land required to implement these public needs facilities may not be in its hand or ownership control. Thus, the most probable means by which the government can get land for those and other development activities would be expropriation of private landholding under the justification of public purpose. Therefore, in order to get land when and where it needed, the state should have power of acquisition as sovereign right for specific and clear public purposes without the will of landholders upon paying adequate compensation in accordance with law.¹¹⁷

Expropriation has two contradicting effects. In the first place, expropriation is supposed to benefit the public by upgrading economic and social welfares. In doing so, it affects the tenure security and evicts the landholders from their normal livelihood. Therefore, public purpose is an imperative tool to balance these divergent effects of expropriation as a means to limit the power of government. Thus, public purpose is the main justification to expropriate private landholding rights without consent of the holders. So, the government should expropriate the land for

¹¹⁷ Francis, C, and et al,” Eminent Domain” *Corpus Juris Secundum*, 29 A, CJS EMINENT DOMAIN No.2, as cited by Daniel W/Gebriel, “Compensation during Expropriation ”, In Muradu Abdo’s, (eds),” Land Law and Policy in Ethiopia since 1991: Continuities and change”, *Ethiopian Business Law Series*, Vol. III, (2010), P.194

legislatively clearly defined and listed constituent of public purpose, so as to limit the discretionary power of state to expropriate the land.¹¹⁸

This is because, vague and expansive approach of public purpose definition may open the door for corruption mad by the governmental authorities who can decide on existence of public purpose, or by speculative investors who need to influence the process to their advantage.¹¹⁹ To tackle these problems, the expropriation law has to provide clear provision that empowers independent body to review the decision of administrative authorities on the issue of public purpose. By doing so, it can justify the expropriation has been done for specific and clear public purpose, and the affected landholders have been given the appeal right to independent judiciary to check abuse of power by state authorities.¹²⁰

To this effect, Ethiopia today has on the verge of rapid growth of urbanization, modernization of infrastructure and agricultural investment. Above all, these activities have been implemented in Oromia Regional State. Most of the towns and cities in the Region, especially towns found in Special Zone of Oromia Surrounding Finfine (SZOSF) were expanded in size by two folds since 1990s and incorporated tremendous pre-urban rural villages.¹²¹ As the Zone is the most investment attractive area than any other Zone in the Region due to its proximity to facilities and the capital; many factories, large scale commercial farms and agro-processing industries have been established. As the result, vast nearby rural lands and urban lands have taken to establish these entities and to construct infrastructure needed to facilitate those investment activities.

The notable means by which the Regional State can get available land to provide to these investment activities and infrastructure construction would be expropriation of private landholding under the guise of public purpose. Thus, the Regional State has to deploy the principles of public purpose to justify the reasons for which the land has been expropriated in order to balance the two competing interests. Thus, the writer discusses how far these competing interests have been balanced in the Region through analyzing both federal and the region relevant legislation with practical applications in the subsequent sections.

¹¹⁸ Deininger Klaus, “Land policy and Powers Reduction”, the world bank policy research, world Bank Washington DC, (2003), P. 173

¹¹⁹ Id., P. 170

¹²⁰ Brightman Gebremichael, Supra note 3, P. 2

¹²¹ Interview with Adefris Addis, Expert and Department Coordinator of Displaced People for Development Affairs at Oromia Urban Development and Land Management Agency, July 25, 2018

3.1.1 The Scope and Limitation of Public Purpose

The scope of public purpose has accommodated the following most important standards. The first standard is, the state should acquire private landholding rights only for clear public purpose.¹²² This standard has conveyed the message that the legitimacy of expropriation shall be realized where the land is taken for clear purpose stipulated by the law. Clearly defined public purpose would be important to minimize arbitrary discretionary action of the expropriator. The mechanism employed to clarify scope of public purpose could be implied by exhaustive or illustrative manner of listing constituents of public purpose by concerned legislation.

The second standard is that the constituents of public purpose should be administered in narrow sense of the description. As discussed earlier, the components of public purpose may be enlarged from the direct uses by the public to uses by private investor that can indirectly benefit society through creating job opportunity or additional as tax base to the state. However, the expansive power of state to acquire private land under the guise of public purpose highly affects tenure security of the landholders.¹²³

Currently, most scholars agree that the dangers posed by expansive approach of defining public purpose “create incentives for corruption by private investors in trying to influence the process to their advantage.”¹²⁴ Other writers state that “for expropriation of private land rights on the grounds other than those listed by FAO, it is good to conduct public hearing in the process.”¹²⁵ This indicates that since expropriation has been undertaken for public interest, the public should have given an opportunity to pose their opinion on the decision making to determine how far they are going to be beneficiary from the project for which their land expropriated.

The third standard is that providing the expropriated person to appeal to independent body against the expropriation decision. In this regard, the FAO emphasis that to keep the equilibrium, the private holders whose land has been expropriated through intimidation or public

¹²² Deininger, Supra note 118, P. 170

¹²³ Id., P 173

¹²⁴ Kelly, D. B. “Public Use Requirement in Eminent domain Law: A Rational based on secret Purchase and Private influence”, *Cornell Law Review*, Vol. 92, No 1, PP. 1-66

¹²⁵ Brightman Gebemichael, Note No. 3, p. 8

purpose should have the chance to contest the expropriation decision to a body that is independent of an organ undertaking the expropriation.¹²⁶

Generally the scope of public purpose should be limited in accordance with standards discussed above. Thus, the writer examines the requirement of public purpose in light of standards feasible to balance the competing interests and practical application in Ethiopia in general and in Oromia in particular as follows.

3.2 Requirements of Public Purpose in Current Ethiopian and/or Oromian Laws

3.2.1 FDRE Constitution and Oromia Revised Constitution

The FDRE Constitution recognizes the expropriation of private property by the government provided that the acquisition would be for public purpose.¹²⁷ Although the constitutionality of expropriating rural land is debatable (see section 2.3.1 of this paper), in practice either federal or state governments in Ethiopia have been expropriating both rural and urban landholdings under the guise of public purpose.

Besides this, neither the FDRE nor Oromia constitutions define the term public purpose nor illustrate activities that might constitute public purpose.¹²⁸ By the way, the Oromia Constitution is a verbatim copy of that of the Federal Constitution. Thus, we cannot see any specialty regarding issues of expropriation in general and public purpose in particular except using the term “public interest”¹²⁹ instead of “public purpose”.

The FDRE Constitution may provide some illustration to the term “public interest” under article 40(1). However, the nature of this term is broader than the spirit of public purpose. Public purpose may be the subset of public interest as one can understand from the scrutiny of Article 40 (1) & (8) of the Constitution. Therefore, the implication is that public interest illustrated under Article 40(1) simply to imply all restrictions sanctioned on private properties including expropriation.¹³⁰ Therefore, the Constitution is not only limited in definition of public purpose and its constituents, but also it is vague in telling us whether it follows broader or narrower

¹²⁶ FAO, 2008, Note No. 52, P. 45

¹²⁷ FDRE, Constitution, Art. 40(8)

¹²⁸ See Article 40(8) of FDRE and Oromian Revised constitutions.

¹²⁹ See Oromian Revised constitution, Art. 40(8)

¹³⁰ Daniel Weldegebrel Ambaye, Note no. 39, P.200

approach of public purpose justification. The Constitution might leave the specification for the forthcoming federal expropriation law or other related subsidiary laws.

3.2.2 Subsidiary laws

A) FDRE Land Expropriation Laws

The FDRE land expropriation proclamation has defined the public purpose as,

“... the use of land defines as such by the direction of appropriate body in conformity with urban structure plan or development plan in order to insure the interest of the peoples to acquire direct or indirect benefits from the use of the land to consolidate sustainable socio-economic development.”¹³¹

The definition provided by the proclamation to interpret the concept of public purpose is very broad so as to open the door to for expropriating body to characterize any activity as constituting public purpose.

As discussed earlier, different countries followed different doctrine to interpret the issue of public purpose. However, two/three approaches are commonly employed to define public purpose in expropriation proceedings.¹³² First, only general guidelines are provided by legislation which states merely the expropriation, or similar purpose. This kind of definition allows expanded discretion of power to government organ deciding on existence of public purpose. The second one is listing explicitly the constituents of public purpose activities for which the land has been taken. In this method purely public serving activities like schools, health centers, roads, etc are considered as elements of public purpose. Methods of listing would be either exhaustive or illustrative as the case may be. In some countries the hybrid of the two methods could be deployed as third doctrine to determine the existence of public purpose in expropriation of private landholding.

Thus, the definition provided by FDRE land expropriation proclamation has resembles the first doctrine of determining public purpose. Furthermore, the proclamation neither deploys exhaustive nor illustrative approach of listing public purpose components in order to limit discretionary power of government authorities in determination of the purpose to which the land

¹³¹ FDRE, Land Expropriation proc. no. 455/2005, Art. 2(5)

¹³² Kitay, M.G. 1985, Land Acquisition in Developing Countries: Policies and Procedures of Public Sectors, Boston Oelgeschlager, Gunn & Hain, Publishers, Inc., as cited in Daniel Weldegebrel Ambaye, Note No. 39, P. 202

is to be expropriated. So, both direct and indirect benefits can be considered as public purpose which is large in scope and difficult to assess the process.

Moreover, the proclamation comes up with its unique approach where in public purpose that is better for development to be determined by appropriate body. This is indicated that as far as the appropriate body believes that the project to be carried out by public entities, private investors, cooperative societies or other organ will bring some form of public benefit; the urban or rural land may be expropriated from private landholders.¹³³

Thus, the proclamation has envisaged two basic specifications that may enable to verify the type of activities which constitutes public purpose. The first one is the better development or better use of land that amounts to public purpose. The parameter to measure better development or better use of land is an activity that will be carried on expropriated land should be in conformity with urban structure or development plan. The second one is to acquire direct or indirect benefit from the use of the land and consolidate substantial socio-economic development; that means the activity to which the rural or urban landholding expropriated should provide direct or indirect benefit to the society.

In this respect, the urban structural plan and national development plan parameters indicate that any compulsorily acquisition that assists the implementation of urban structural plan or states development plan may constitutes public purpose.¹³⁴ The term “urban structural plan” is defined by FDRE Urban Planning Proclamation as,

“... a legally binding plan along with its explanatory texts formulated and drawn at the level of an entire urban boundary that set out the basic requirements regarding physical development the fulfillment of which could produce a coherent urban development in social, economical and spatial spheres.”¹³⁵

¹³³ FDRE, Land Expropriation Proc. No. 455/2005, Art. 3(1)

¹³⁴ Daniel Weldegebrel Ambaye, Note No. 39, P 208

¹³⁵ FDRE Urban Planning Proclamation, 2008, Art.9(1), Proc. No. 574, Federal Neg. Gaz., Year 14, No. 29

This urban structural plan has been provided by each urban centers based upon their future developments.¹³⁶ As the result different expropriations have been conducted in Oromia urban centers to provide different infrastructure, like roads, condominium houses constructions, etc.

On the other hand, national development plan (NDP) refers to different development plans include Rural and Urban Development Plans (RUDP). For instance, the Growth and Transformation Plan of Ethiopia (2010/2011-2014/2015) referred to as GTP I guided economic and social development program of the government. The plan aspired to attain ambitious objective within the plans period that providing infrastructure and enhancing economic developments to create capacity to provide different public services.¹³⁷

Regarding acquired benefit, direct benefit standard stressed by the legislation to determine constituents of public purpose may be activities listed by FAO's survey of developed and developing countries which is discussed in section 2.4.3.1 of this Thesis. However the standard of indirect benefit test to consider whether an activity constitutes public purpose or not would be determined in two ways. First, the expropriated land that will be leased to the investors so that indirectly benefiting the society by enhancing economic growth that enables the government to improve its delivery of public services.¹³⁸ Second, indirect benefit may be feasible in condition where the expropriating landholding specially rural landholding has been caused by urban expansion to make land available for urban dwellers for residential purpose through lease arrangement in turn creates source of revenue to government that enable its delivery of public services.

The expansive approach of adopting the interpretations of public purpose determination may be justified since the country is underdeveloped that is eager for development and it has high dependency on any investment activities that can be made on the land by government entities; private investor (developers) may constitute public purpose.¹³⁹

¹³⁶ Id., Arti. 12 &14

¹³⁷ Ministry of Finance and Economic Development, FDRE Growth Transformation Plan (GTP), 2010/2011-2014/2015, vol. 1, (2010), P.22

¹³⁸ World Bank, "Options for strengthening Land Administration", Federal Democratic Republic of Ethiopia, WB Document, Report No.61631-ET, P.3

¹³⁹ Daniel W/Gebriel, "Compensation during Expropriation ", In Muradu Abdo's, (eds)," Land Law and Policy in Ethiopia since 1991: Continuities and change", Ethiopian Business Law Series, Vol. III, (2010), P. 192

However, the definition provided above to determine existence of public purpose would not work to investor landholders who have acquired the rural or urban land through lease contract arrangements. The close scrutiny of land expropriation law of the county implies some deferential treatment to expropriate the land held by investor under lease contract for public purpose. Article 3(2) of the same proclamation clearly provides that expropriation of land from investors who acquire urban land through lease holding arrangement for public purpose would be possible if and only if “*Where the lease holder failed to honor his/her lease contract obligation or when the land is needed for government work undertaken by the government.*”¹⁴⁰ (The emphasis added)

In similar talking, the current urban land lease holding proclamation also affirms that “... *no land leasehold may be cleared, prior to the expiry of lease period, unless the lessee has breached the contract of lease; the use of the land is not compatible with urban plan or the land is required for development activity to be undertaken by government.*”¹⁴¹ (The emphasis added).

The underlined phrases of the two laws clearly emphasizes that land held by investor through lease arrangement may not be expropriated, unless it is required for the projects undertaken by the government.

Similarly, the investors who acquired rural landholding through lease arrangement on the basis of payment would not be expropriated unless the land has required for development works to be undertaken by the government.¹⁴² Thus, unlike other private rural landholders (peasants & pastoralist), investor who acquired rural landholding through lease arrangement could not be expropriated before the expiring date of lease period for development activities carried out by other investor, cooperative society or other organs under the guise of public purpose.

Generally, it could be concluded that the land laws of the country embodied restrictive interpretation of public purpose where the land held by investor under lease holding contract is to be expropriated.

¹⁴⁰ FDRE, Land Expropriation Proc, No. 455/2005, Art. 3(2)

¹⁴¹ FDRE, Urban Land Leaseholding Proc. No. 721/2011, Art. 26(3)

¹⁴² Cumulative reading of, Art. 40(6) of FDRE Constitution, Art. 2(5) & 3(1,2) of FDRE Land Expropriation Proc No. 455/2005, Art. 5(4(A)) of FDRE Rural Land Proc. No. 456/2005 and Art. 11 & 1 2 of Oromia Rural Land Proc. No. 130/2007

As stated by Brightman, the justifiable reason behind these discriminatory treatments is that, the government may think the land may be efficiently utilized by and become base of tax and employment opportunity, will allow for much needed foreign currency to enter into economy and will contribute to long-term food security through transfer of technology to small scale farmers if it given to the investors than peasants and pastoralists.¹⁴³ This justification might be based from economic efficiency of the land.

However this justification may not work in practice. Especially, the practical outcomes in Oromia have been the opposite. Most of rural lands expropriated from the farmers under the guise of public purpose have been put by financing without undertaking any further development activities by investors. Moreover, the investors who were leased vast land through investment pretext have sold the land without adding any value in the expropriated land. Some investors in the research areas changed the initial objective of the project and made other entity which has no benefit to the public. The peasants whose land expropriated under the guise of public purpose transfer their land through lease arrangements and the state itself have not yet benefited from such investment activities either by creating job opportunity, technology transfer, in creating foreign hard currency, etc. As the result poverty and social or economical degradations have been increased due to unfeasible determination of public purpose in Oromia especially in Special Zone of Oromia surrounding Finfine.¹⁴⁴

Moreover, the differential treatment among private investors and small landholders may run against the very purpose of the Constitution and other subsidiary rural land laws for two reasons. First, the FDRE rural land law clearly provides for priority in getting access to and retaining land rights to peasant and pastoralists than any other landholders including private investor who acquire rural land through lease contract.¹⁴⁵ The current Oromia State rural land law also affirms this prioritized right. According to the ONRS rural land law, the government can rent out only the land not held by peasants or pastoralist.¹⁴⁶

¹⁴³ The Oakland Institute, “understanding land Investment in Africa”, Country Report: Ethiopia, (2011), P.1, as cited by Brightman Gebremichael, Note No. 3, P. 14

¹⁴⁴ Focus Group Discussion conducted with peasants in Sebeta Awas woreda, Gelan Gudda kebele Farmers Association, May 12, 2018, and panel discussion with Sebeta Awas woreda Rural Land Administration and Use Officers, (July 20, 2018)

¹⁴⁵ FDRE, Rural Land Proc. No. 456/2005, Art. 5(4)

¹⁴⁶ Oromian, Rural Land Proc. No. 130/2007, Art. 11(1,2)

Hence the land expropriation law should be logical and rational in decision given to priority right to peasant and pastoralist considering the purpose to which land is claimed to sustain the livelihood of farmers or pastoralists than private investors. However, the priority right given to peasant and pastoralists in accessing rural land would be make no sense unless the government`s discretionary power to expropriate their land has been limited. The government which is empowered to expropriate peasant holding to lease it out to private investors on the ground of public purpose may highly affect the farmers` priority right recognized by rural land laws.¹⁴⁷

Second, here we have seen a sort of discrimination among small landholders and investors whereby expropriating their holdings under the guise of public purpose. This gap might call for unconstitutionality of the law that affects constitutionally guaranteed right to equality.¹⁴⁸

B) Oromia State Rural Land Laws

There are disparities between the FDRE land expropriation law and Oromia State Rural land law in defining and explicating standards of public purpose. In fact, the Oromia State rural land law does not clearly define and illustrate components of public purpose. However, we can get some indicators from the close reading of article 6 (10) of the law that implies the extent of which the concept of public purpose interpretation goes.¹⁴⁹ This article states that; “... *the rural land use right shall be terminated only if that land is required for more important public uses*”

The provision impliedly defines the public purpose narrowly compared to the federal land expropriation law. Therefore, the Oromia State rural land law seems protect the peasants` and pastoralists` property right and also provides tenure security in a better way than the federal expropriation law. But a decision whether an activity for which the land has expropriated is for more important public purpose or not still lies in the desecration of competent Woreda administration.

However, the narrow approach provided to the term “public use” by ONRS rural land proclamation has been eroded by regulation issued to implement the proclamation. The Regulation has defined the term “Public Use” by including the “direct and indirect benefit” that

¹⁴⁷ Brightman Gebremichael, Note No. 3, P. 14

¹⁴⁸ FDRE, Constitution, Art. 25

¹⁴⁹ Oromia State Rural Land Porc. No. 130/2007, Art. 6(10)

the society incurred from the project for the land has been expropriated.¹⁵⁰ Thus, the regulation in contradiction to the proclamation opened a door to government to expropriate rural landholdings in the Region through unlimited discretionary power that resulted from “indirect benefit” standard in determining the issue of public purpose.

However, a regulation is issued to implement the mother law, i.e., the Proclamation. Logically regulation cannot contradict its mother proclamation. If it is so, the Regulation shall be without legal effect. Accordingly, the Oromia State rural land regulation could be considered as an invalidated law since it is contract its superior rural land proclamation. Therefore, the expansive definition provided by the regulation would be void provided that the mother law followed the narrow approach to define the term public use.

The other issue that is differently treated by the state rural land law is that the Regional Proclamation prohibits the government to expropriation peasants and pastoralists landholding to rent out to private investors under the guise of public purpose. Thus, the Proclamation states that *“The government can rent out the land not held by peasants or pastoralists or semi pastoralists.”*¹⁵¹

The stand of the Regional rural land law may contradict with the federal land expropriation law. This is because; the federal land expropriation law considers land acquisition by the government for private investment determination is as constituting public purpose.¹⁵² On the other hand Oromia State rural land proclamation denies the acquisition power of rural land to rent to private investment activities. However, one can argue that these differences may not constitute apparent conflict to call rules of interpretation of law to verify the prevailing one, since they regulate and apply in different situations.¹⁵³

Nevertheless, as FDRE land expropriation law has constitutional ground to apply anywhere in Ethiopia, this narrow implication provided by Oromia State rural land law practically may not work. The empirical study indicates that the rural land that held by farmers have been expropriated and administered for lease to private investors. This is true in Eden-flower and

¹⁵⁰ Oromia State, Rurula Land Reg. No. 151/2012, Art. 2(4)

¹⁵¹ Oromia State Rural Land Proc. No, 130/2007, Art. 11(1)

¹⁵² See article 2(5) & 3(1) of FDRE Land Expropriation proclamation No. 455/2005

¹⁵³ Brightman Gebremichael, note no. 3, p. 15

Golden-flower in Sebeta Awas woreda, and Linson-Rose Ethiopia flower in Ejere woreda Horticulture Farming development projects.¹⁵⁴

Therefore, as discussed earlier, in the context of existing situation the federal government has the power of determining constituents of public purpose irrespective of the restriction provided by the ONRS rural land law. But this dichotomy shall be reviewed by both the federal and the state governments in the forthcoming expropriation law or rural land laws.

3.3 Power, Duty and Procedural Steps in Determining Existence of Public Purpose:

The Law and the Practice

As discussed earlier, in Ethiopia the legislature is constitutionally empowered to promulgating expropriation legislation that determines the role of administrative authority and implementing agency as well as the procedure they followed in execution of expropriation. Thus, for the purpose of convenience the administrative roles and responsibilities for each organ will be discussed in the following manner.

3.3.1 The Role of Administrative Authorities

The current land expropriation law of the country provides relevant provision to verify the appropriate administrative authority that is empowered to render decisions on expropriation issues in general and existence of public purpose in particular. The proclamation stipulates that:

“A Woreda or an Urban Administration shall upon payment in advance of compensation in accordance with this proclamation, have the power to expropriate rural or urban land holding for public purpose it believes that it should used for better development project to be carried out by public entities, private investors, cooperative societies or other organs, or where such expropriation has been decided by appropriate regional or federal government organ for the same purpose.”¹⁵⁵

Thus, the Woreda and urban, or higher regional and federal administrative authorities have discretionary power to determine the nature of public purpose of the project for which the land has going to be expropriated.

¹⁵⁴ Panel Discussion with Land management officers of Sebeta Awas Rural land administration and use officers, (July 20,2018); and interview with Mulugeta Lemma, Legal Adviser and managing stuff of Linson-Rose flower plantation,(July 8,2018)

¹⁵⁵ FDRE Land Expropriation Proc. No. 455/2005, Art. 3(1)

Furthermore, these administrative authorities are also empowered to designate the land, establish valuation committee to assess properties on the expropriated land, issue order or notice to expropriated person, effect compensation to appropriate recipient and finally take the land and deliver to the project owner.¹⁵⁶ So, it is understood that under Ethiopian land expropriation law, expropriation has considered as easy translation which solely need simple administrative decision.¹⁵⁷ However, decisions of existence of public purpose, determine whether the land has been lawfully required, fixing just and fair compensation, notifying the landholder when the land has to be vacant and time of taking over the land are not an easy tasks to be left to the mere administrative discretions.

Arguably, the expropriation law seems to imply that the affected person cannot challenge the decision of administrative authorities on the issue of existence of public purpose. As will be discussed in the subsequent sections, the law doesn't leave a room to review the decision of administrative authorities on the existence of public purpose by regular court or any other independent quasi-judicial organ.

Thus, the exclusive power of administrative authorities to provide decision on the existence of public purpose has cleared the road for government to transfer the land from poor peasants to private investors with lax process.¹⁵⁸ At this juncture, as the scope of public purpose delimited by the law direct or indirect benefit serves public purpose, to what extent the administrative authorities exercise their expropriation power when the land is needed for private investment activities is an important issue. As directions provided by the law to determine the existence of public purpose are very broad in its nature, it is unquestionable that unqualified standards provide the administrative authorities with very unrestricted discretions to take small landholders possession under the guise of public purpose for the use of private sectors.¹⁵⁹

There are two different arguments regarding the simplest way of taking the land. First, as the poorest county Ethiopia needs tremendous foreign and domestic investment in order to bring rapid economic growth which is perceived to raise citizens personal income over a year progress

¹⁵⁶ Cumulative reading or article 3(1) & 4 of FDRE Land Expropriation Proc. No. 455/2005.

¹⁵⁷ Murabu Abdo, "state and law in relation to land alienation in Ethiopia" doctoral thesis submitted in partial fulfillment of requirement of the degree of Doctor of Philosophy in law, University of Warwick, school of law, (2014), P. 153

¹⁵⁸ Muradu Abdo, Note No. 20. P.327

¹⁵⁹ Daniel Weldegebrel Ambaye, Note No. 39, P. 211

that alleviates poverty. For this reason, the state decides to set out easiest way of transferring land from small landholders to private developers. To achieve the intended objective the law should provide suitable atmosphere in access to land so as to the private investors may get land easily and cheaply. In so doing, the state aspires to bring fundamental change in economic growth, in order to minimize the subsistence agricultural economy where the land is in the hands of poor peasants.¹⁶⁰

This strong government stand may emanate from, as land is the common property of nations, nationalities and peoples of Ethiopia which every Ethiopian has an indivisible ownership, and the government has trusteeship power over this communal right to implement the land for common good to ensure the interest of all. So the government should not be deterred by the laws and procedures that hinder its progressive development programs as long as such programs benefit the public at large.¹⁶¹

The counter argument is that state should be generous and kind enough to listen to the pain and suffering of the poor. The government has taken the Chinese economic development as exemplary model. However, Chinese are now regretting from human and property right violation they made in the past in the name of development. Ethiopia and China are not in the same economic position. Land expropriation in developed country as they have good compensation the expropriated individuals properly reinstated at the end of the day. However, taking land in Ethiopia typically for peasants means leaving them without alternative livelihood.¹⁶²

However, the practical outcome of government aspiration is the converse. The empirical field study indicates that most of the land taken from farmers and provided to private investment for development activities in the periphery of Finfine have been fenced and putting without any further development work done by the so called investors. Some are selling grass grown on the land; some are harvesting local crops from the land they take to plant modern manufacturing industries. Some are changing the objective and the purpose for which they take the land and plant project which is not allowed by the concerning administrative authorities. Some also

¹⁶⁰ Muradu Abdo, note no. 20, P. 328 and Daniel Weldegebrel Ambaye, note no. 39, PP. 211-212 -

¹⁶¹ Muradu Abdo, Supra Note 160

¹⁶² Daniel welegebrel Ambaye, Note No. 39, P. 212-213

construct insignificant building by simple and unqualified building materials and administer for selling.

The reasons for all failures may be attributable to lack of monitoring and follow-up capacity of administrative authorities, lack of integration among administrative authorities in process of expropriation and decision making, lack of soundness of the project for which the land has been taken, lack of know how regarding the issue of public purpose on the parts of administrative authorities, uninspected financial and professional capacities of investors, speculative attitudes of investors, etc.¹⁶³ Therefore, government intention that private investment scheme would benefit the poor peasants from whom the land has been taken for development activities lost its purpose due to failures from the administrative organs and speculative interest of private land takers under the guise of investment.

3.3.2 The Role and Responsibilities of Implementing Agency

Implementing agency is an organ that can initiate expropriation of land for public purpose. Thus, land expropriation law of Ethiopia defines the term Implementing Agency as, “*a government agency or public enterprise undertaking or causing to be undertaken development work with its own force or through contractors.*”¹⁶⁴

The implementing agency shall have the responsibility to prepare detail data or plan to the land needed to its works and submit a year before commencement of the work, to administrative authority that empowered to expropriate the land.¹⁶⁵ Moreover, the implementing agency is responsible to pay compensation to landholders whose holding have been expropriated.¹⁶⁶

However, the definition provided by the law to the implementing agency does not include all implementing agencies that are supposed as initiators by the law itself. It is clear that an agency such as public enterprises, private investors, cooperative societies and other similar organs are

¹⁶³ -Field observation conducted by the researcher in July 2018,

-Focus Group discussion with the farmers in sebeta Awas worda and Burayu keta, (May 12&20, 2018, and Jun 30, 2018)

- interview with Bedada Debela, Oromia rural land administration and use Bureau, land management and follow-up higher Director Directorate, July 19, 2018

-interview with Adefris Addis, Oromia urban development land management agency, Expert and head department of land preparation for development affairs, (July 25,2018)

¹⁶⁴ FDRE, Land Expropriation Proc. No. 455/2005, Art. 2(7)

¹⁶⁵ Id., Art. 5(1)

¹⁶⁶ Id., Art. 5(2)

perceived by the law as to undertake initiation to expropriate land for public purpose.¹⁶⁷ The definition includes only the government, government as public body and government as business enterprise.¹⁶⁸ However, the definition given by the law seems to be narrow in sense it excludes private investors from the ambit of implementing agencies.

It could be suggested that the proclamation wrongly defines the term implementing agency in the manner of contradicting itself. That means, on the one hand, it allows all those organs stated under Article 3(1) to get land by expropriation, i.e., they are potentially permitted to initiate expropriation; and on the other hand, it excludes them by definition from the realm of the initiators as beneficiary of expropriated land. Therefore, one should bear in mind that the implementing agency may be the government administrative body, the government business enterprise, private investors, charitable organizations, diplomatic missions, micro and small scale enterprise, etc.¹⁶⁹

Furthermore, as stated by the proclamation the initial duty expected from the initiators prepare data or plan that has to be sent to the administrative authorities with the application for all land access. The plan has to indicate the type of project to be carried out by the agency; financial assessment of the project; public benefits will be incurred from the project; environmental impact assessment (if any), time require to accomplish the projects work; etc¹⁷⁰ Thus, the project plan that attaching with application of an agency present to concerned administrative authority for decision.

For instance, in Oromia, investors who wish to engage in large scale projects shall apply to Oromia Investment Board that under the chairperson of ONRS President.¹⁷¹ Other investors who wish to engage in small scale investment projects also have to make their application to the relevant Zone, Woreda or Municipal administration offices. Then after the application and the project plan provided by the agency gets approval by concerned administrative authorities, the applicant may be directed to Woreda or Urban administration which is suppose to give the

¹⁶⁷ Id., Art. 3(1)

¹⁶⁸ Daniel W. Ambaye. "Expropriation Procedure", Institution of Land Administration (ILA), Bahir-Dar, Ethiopia, (2015), P. 170

¹⁶⁹ Ibid

¹⁷⁰ Id., P. 171

¹⁷¹ Proclamation to amend the oromia national regional state proclamation to reestablishment of investment administration No. 115/2006, 2008, Art. 6(7), Proc. no. 138, Megeleta Oromia, year 16, No. 138/2008

requested land. However, where the requested project is small scale investment or local community project, the application and all project plans may be administered to concerned Woreda or Municipal administration.

The other obligation that might be expected from implementing agency (the initiator), is that payment of compensation to affected population whose land has been taken as the result of proposed development project under the guise of public purpose. This obligation may rest upon the initiators or the administrative authority itself. For instance, in case of urban expansion, compensation has been covered by the concerned urban administration.¹⁷²

However, the empirical field observation indicates that the compensation has not been paid to the expropriated persons in advance or on time of expropriation in accordance with the law. Some private or public projects have no proper plan approved by concerned administrative authority.

3.3.3 Procedural steps to be followed in determining public purpose

The expropriation law of the country has not provided clear procedures to be followed by administrative authority to determine the existence of public purpose as well as the expropriation process in general. Therefore, some of related procedural steps provided in the expropriation proclamation and its regulation as well as in Oromia State rural land laws are discussed below.

I. Notification of Expropriation Order

Relatively a clear procedure that provided in Ethiopian land expropriation law is about issuance of notification of expropriation. Therefore, notification is one of the procedural requirements explicitly provided in expropriation proclamation that stated as, “*where Woreda or an Urban administration decides to expropriate a land holding ..., it shall notify the land holder in writing indicating the time when the land has to be vacant and the amount of compensation to be paid.*”¹⁷³

This provision states that notice has to be made in writing indicating only the time when the land has to be cleared and the amount of compensation to be paid. However, the practice is different

¹⁷² Interview with Dawit Tebebu, Department head of Land Management Agency, Sebeta Town Municipality, August 3, 2018

¹⁷³ FDRE, Land Expropriation Proc. No 455/2005, Art. 4(1)

in Oromia. Peasants are simply informed only about their land has been needed for “development activities” either by “developer investor” or by the government authorities. No written notice is provided to peasants for whom land has been expropriated as stated in the law. Even in Urban centers notice has not provided in written at hand. Mostly the expropriated person called to office and informed personally. In few municipalities notice has been posted on the office notice board when the expropriated persons are many in number.

II. Approving legality of application of implementing agency

Following an application attached with business plan has been made by the initiator; the administrative authority should undertake inquiries regarding the eligibility of the applicants and application thereof.¹⁷⁴ Identifying eligibility of person or body who initiates the expropriation should be an initial duty of the concerned administrative authority. An initiator should be one of the person or organ stated under Article 3(1) of the proclamation. For example, application for expropriation of land for personal house building is not proper.¹⁷⁵ In most cases, lands have historical, cultural, religious and sentimental values for indigenous peoples and local communities are not administered to expropriation.¹⁷⁶ Therefore, the administrative authority must inspect what type of land an application has been made. This is because land used for religious, cultural, traditional or historical practices may not be expropriated.

III. Ensuring existence of public purpose

It should be an inherent duty of administrative authority to approve the existence of public purpose before deciding on the expropriation requests. As indicated earlier, the Ethiopian expropriation law as well as Oromia State rural land laws have not provided clear lists of activities that might be constitutes public purpose. However, from general guidelines provided by the land expropriation proclamation, administrative authorities who are supposed to conduct expropriation must ensure for the existence of public purpose before approving expropriation initiation made by implementing agencies. For instance, as indicated in the above section the land requested should not be related to protected or conserved area such as natural, cultural and historical reserved areas.

¹⁷⁴ Daniel w. Ambaye, Note No .168, p.172

¹⁷⁵ Ibid.

¹⁷⁶ Nicholas k. Tagliarino, Note No. 50, P .19.

Moreover, the administrative authority should balance the merit and demerit that may the project come up with in determination of the existence of public benefit. For instance, expropriation should not be under taken for the purpose not providing significant benefit to society at large. Therefore, the public interest incurred from the project for which the private landholding has been expropriated should be out weight the benefits the land taker personally obtained from project.

IV. public Hearing

The concerned administrative authority before deciding on initiation of expropriation, should call a public meeting to undertake discussion on the public purpose the project might incur to the local community.¹⁷⁷ Public discussion gives a chance for the public including the evictees to know more about the project, to answer questions they raise about the process and procedures, and to voice their concern.¹⁷⁸

Thus, those people who are likely to be affected by the expropriation be properly consulted about the public benefit they can get from the project for which their land has going to be expropriated. Moreover, public discussion may be important to government to understand the concern of the people which enables to create peaceful environment for the project undertaking. In case where affected peoples do not understand the benefit and compensation they will receive before the inauguration of the project, conflict may happen.

In relation to public discussion in determining the existence of public purpose, the FDRE Land Expropriation Law has not provided any provision. However Oromia State rural land proclamation has required consultation of local people to expropriate rural land for urban expansion.¹⁷⁹ Thus, by putting consultation requirement the law seems to restrain the power of the state administrative authority to expropriate landholdings of rural farmers for the purpose of urban expansion only.

Nevertheless, the law said nothing whether public consultation or hearing is necessary for other purposes. Moreover, the empirical study indicates that the administrative authorities did not

¹⁷⁷ FAO, 2008, "Compulsory acquisition of Land and Compensation", *FAO Land Study 10*, Rome, Food and Agricultural Organization of United Nations, P.21

¹⁷⁸ Daniel W. Ambaye, Note No. 168, P. 174

¹⁷⁹ Oromia State Rural Land Proc. No, 130/2007, Art. 13(2), (the Afan Oromo and Amharic versions)

consult the peasants in pre-urban areas when they took the rural landholding for urban expansions as they considered land is the property of state.¹⁸⁰

Generally, the administrative authorities who are empowered to decide on the issue of existence of public purpose must identify, inform, and consult the landholders about the acquisition plan including the reason for the expropriation, and the benefit of project provides to the local community. This is because the issue of expropriation is not something limited merely to paying compensation. It also needs convincing local communities including the victims of expropriation about indispensability of the reason for which the expropriation has entitled. It must tell them in clear words the pros and cons the project has on the livelihoods of evictees. Therefore, the government should provide them in practice the opportunity to be heard and raise their concern which is the constitutionally addressed right.

3.4 Judicial Review of Public Purpose Decisions

Expropriation affects the property right of expropriated person and any disputes related with loss of property right is justiciable matter that should present to court for review.¹⁸¹ In the countries where the judiciary powered to review the existence of public purpose in expropriation decision, courts can interpret public purpose justification whether it is broad or narrow, or active or passive.¹⁸² Therefore, in case where the expropriated landholder has aggrieved with decision of administrative authority on the issue of public purpose, then the judiciary should entertain an action on the bases of objecting the purpose of the project by stating the project does not serve any public purpose. Thus, it shall be the judiciary that has a final saying on the determination of the component of public purpose.

Moreover, to keep the balance between the interest of government to expropriate land to provide public benefit and the protection of Tuner security of landholder, the individual land holder should given the chance to contest the expropriation decision passed by administrative authority to the independent judiciary. Therefore, the legislative should allow the appeal right to regular courts.

¹⁸⁰ Focus Group discussion with sebeta Awas Woreda Administration officers and Farmers resided in Gelan Guda and Haro Jila kebele farmers associations, (July 20, May 12, may 20, 2018 respectively)

¹⁸¹ Daniel Weldegebrel Ambaye, Note No. 39, P. 215

¹⁸² Nicholas k. Tagliarino, Note No. 50, P. 12

3.4.1 Power of Ethiopian/Oromia regular court to review the issues of public purpose

As indicated in above section the contradicting interests prevailed in expropriation of land for public purpose could be balanced when the legislation ensured the right of expropriated people to appeal to an independent body. That is the rationale behind FAO has suggested laws should guarantee the affected population the right to appeal to an independent body during expropriation in order to maintain the balance between the public needed for land, and the protection of property and land Tenure security rights of expropriated people.¹⁸³

However, in Ethiopian, both at federal or Oromia State level the role of courts in determining the existence of public purpose is not clearly provided by respected laws. In other words either the FDRE land expropriation laws or the State land laws do not clearly give provision relating with the power of courts to review the decision rendered by the administrative authorities on the issue of public purpose upon the expropriation proceeding. Rather, what is clear is that have the appeal at judicial power on decision of administrative authorities regarding the amount of compensation.¹⁸⁴ Therefore, the Ethiopian land expropriation law neither permits nor prohibits affected peoples to challenging the decision of administrative authority on the issue of existence public purpose by court of law.

Therefore, there are two stands regarding the judicial power of Ethiopian/oromian of regular courts to decided on the issue of existence of public purpose in expropriation proceeding .The first stand is that since the expropriation law is not clearly empowered courts litigation on the expropriation issues other than amount of compensation, the affected peoples are not allowed to challenge or appeal to court of law against the purpose for which one's landholding right is expropriated ¹⁸⁵ Thus, according to this stand the decision of appropriate administrative authorities who entitled expropriation of land under the guise public purpose has not subjected to review through court. This is implied from the law which clearly entitled the affected peoples to make their grievance on the amount of compensation. ¹⁸⁶ Accordingly, the a contrary reading of this stipulation convey the message that except grievance with amount of

¹⁸³ FAO 2008, Supra note 177, P 5 & 55

¹⁸⁴ FDRE , Land Expropriation proc. No. 455/2005, Art. 11(1)

¹⁸⁵ Brightman Gebremichael, Note No. 3, p. 18

¹⁸⁶ Ibid.

compensation, the affected population have no chance to challenge other grounds like public purpose in expropriation proceeding by regular courts.

However, there is counter stand that suggests the possibility of reviewing the decision of administrative authority regarding with the existence public purpose up on expropriation of land .This counter argument will be discussed based on the concepts indicated in the subsequent section.

3.4.1.1 Conceptualization of Existence of Public Purpose for Judicial Review

As discussed above both the federal and the ONRS land laws are silent on the possibility of reviewing the decision of administrative authority on the issue of public purpose by independent court of law. However the following concepts may assert the possible arguments that indicates the existence of court power to reviewing the decisions of administrative authorities on the issue of public purpose.

I. Constitutional Law Framework

In Ethiopia, both at Federal and states level judicial powers are vested in courts.¹⁸⁷ Moreover, constitution states the issue of justiciable matter as; “*Everyone has the right to bring justiciable matter to, and to obtain decision or judgment by, a court of law or any other competent body with judicial power.*”¹⁸⁸

Thus, as expropriation affects one’s property right and any dispute related with loss of property right construed as justiciable matter that calls for judicial involvement to be reviewed.¹⁸⁹

In this regard, it may be assumed that the decision rendered by competent authority on the issue of existence of public purpose for which the landholding has expropriated may be aggrieved the holders due to abuse or arbitrary use power committed by the authority. All these grievances can constitute justiciable matter that provides the affected people’s access to justice. Therefore, in case where the decision passed by administrative body on the issue of public purpose violates one’s property right, or if the public at large believe that the decision rendered by the authority

¹⁸⁷ FDRE, Constitution, Art. 79(1)

¹⁸⁸ FDRE, Constitution, Art. 37(1)

¹⁸⁹ Daniel Weldegebrel Ambaye, Note No. 39, P. 215

doesn't qualify public purpose, it should their constitutional right to loge their grievance to the independent court of law to set-aside the decision.

II. Substantive Law Framework

In principle, the Ethiopian Land Expropriation law and other land legislations both at federal and states levels do not clearly prohibits judicial intervention on the decision of administrative authority relating to existence of public purpose. In the doctrine of “what is not clearly prohibited by law assumed as allowed” can be invoked in connection to public purpose.¹⁹⁰ Usually, when the legislature does not want the judicial intervention on the administrative decisions, it would clearly provide finality causes for administrative decisions that restrain the judicial review. In this regard, there are tremendous laws in the country that holds finality clause for administrative decisions in order to prohibit the revision by other organ including courts. At this juncture, tax law, labour law, etc are good examples.

Therefore, in the absence of such finality clauses in the land expropriation laws of the country that preclude the involvement of regular courts to review the administrative decision on the issue of existence of public purpose, there is no room that can restrain affected peoples to take their grievance to independent courts to challenging the decision of expropriation on the grounds of the purpose for which their holdings are compulsorily acquired. Thus, it is possible to conclude that Ethiopian/Oromian courts have substantive law power of reviewing administrative decisions relating with the existence of public purpose in land expropriation proceeding.

III. Procedural Law Framework

Furthermore, the Ethiopian civil procedure code empowered high court to entertain cases relation with expropriation.¹⁹¹ Therefore, determining whether the decision of appropriate administrative authority constitutes public purpose is one of the expropriation issues litigated by the court.¹⁹² Currently, we have dual court jurisdictions at federal and states levels.¹⁹³ The federal court jurisdiction has been administered by, Federal courts establishment proclamation;¹⁹⁴ whereas,

¹⁹⁰ Muradu Abdo, Note no. 20, P. 330

¹⁹¹ Emperor of Ethiopian civil procedure code,1965 ,Art 15 (2, E),Decree No .52, Neg. Gaz., year 20, No.3

¹⁹² Girma kassa, Note No.11, p.61

¹⁹³ FDRE, constitution , Art 79

¹⁹⁴ Federal court proclamation ,1996, Art 3-15, proc no .25, Federal Neg. Gaz., year 2, No .13

oromia state courts has been distribute its jurisdiction pursuant to state court establishment proclamation.¹⁹⁵ Therefore based up on the matter of case (whether it is federal or state matter) and the amounts of money the claim for the material jurisdiction (If it is assessable) can determine proper jurisdiction of the court to entertain the case at issue. Therefore it is possible to argue that there is procedural law that determine jurisdiction of courts to entertain case relating the issue of existence of public purpose. Generally regular courts have possible jurisdiction to determine whether the decision of appropriate administrative body truly constitutes public purpose or not.

IV. The existing practice in Oromia

The empirical study on this issue indicates that there are different stands among courts and judge at different hierarchical level in Oromia. The empirical data collected from Oromia courts judges indicates that out of 35 judges 27 of them responded that since there is no clear law that guarantees landholder to file their claim with regard to public purpose in regular court in order to have the decision of administrative authorities reviewed, courts have no judicial power to entertain the case.

However, 8 respondents provided their argument based on the above mentioned concepts. They stressed their argument by suggesting, the expropriation proceeding pre-requisite existence of public purpose as grand qualification. Non-fulfillment of this grand qualification implies that the expropriation proceeding is improper. Improper execution of expropriation most probably affects the landholder in which the expropriation is under taken. It also assumes abuse of power by administrative authority that decides the expropriation proceeding also affects the landholder property right. So, as expropriation proceeding affects ones property right it is a justitiable matter that needs access to justice. Thus, the affected population due to improper appreciation of public purpose should have the constitutional right to lodge their grievance to independent court of law to revise the decision of administrative authority.

In this respect, there are tangible court cases before Oromia Supreme Court. In these cases the affected peoples applied to the lower court on the issues of improper decision on the public

¹⁹⁵ oromia national regional state courts establishment proclamation , 2008,Art 26-32 proc. No 141, Megeleta oromia, year 16, No. 10/2008

purpose, amount of compensation and non fulfillment of procedures such as notice and consultation issues. However, the trial court disregarded the grievance on the issues of public purpose and non-fulfillment of procedural requirements, and only decided on the issues of compensation. The affected farmers have lodged their appeal to the Supreme Court on the issues disregarded by the lower courts. However, the Supreme Court has affirmed the decisions of lower courts by reasoning courts are authorized by the law to adjudicate only the issue of compensation irrespective of the issues relating with public purpose¹⁹⁶

The writer of this Thesis supports the second line of argument. This is because as clearly justified by the minorities of the respondents; the most important reason that the government compulsorily acquires private landholding is to serve the public interest. If the project for which the land has been expropriated does not provide any benefits to the public at large, it is assumed that missing the very objective of expropriating the land. Therefore, the affected peoples as well as the public who expect benefit from the project for which the land has been expropriated should have the right to take their grievance to the independent body that constitutionally is empowered to review and set aside administrative decision on the issue of existence of public purpose upon expropriation proceeding.

3.4.2 Judicial Independency in Ethiopia/Oromia in Entertaining Cases Relating to Expropriation in General and Public Purpose in Particular

Judicial independency has been clearly adopted by FDRE Constitution.¹⁹⁷ Similarly, the Revised Oromia State Constitution has also proclaimed that “*independent judiciary has been established in the region.*”¹⁹⁸ Moreover, both the federal and the state constitutions guaranteed courts from interference and influence of any organ or person.¹⁹⁹ Both the federal and the state constitutions have ensured the institutional independency of courts at any level within the country in general

¹⁹⁶ - Fikadu Lemu and other 16 person Vs Oromia Water works Enterprise, (Oromia Supreme Court and OSC. cassation division, 284535, 214091, 289130, 21557)

- Oromia Urban development and land management Agency Vs Dajene Aserat, (OSC. Cassation Division, 290410)

- Tadelech Kinatu Vs Bishoftu Town Urban Development & land management Agency, (Eastern Shawa High court 52142)

¹⁹⁷ FDRE, Constitution, Art. 78(1)

¹⁹⁸ Oromia State Revised Constitution, Art. 61(1)

¹⁹⁹ See FDRE, Constitution, Art. 79(2), And Oromia State Revised Constitution, Art. 63(2)

and in Oromia in particular. Furthermore, the constitutions have also provided independency of judges where they undertake their judicial functions.²⁰⁰

Therefore, maintenance of independent judiciary has fundamental importance for the achievement of the role of courts as well as judges in the courts. This is because the principle of judicial independency is the main basis of the right and fair trial as well as vital for impartiality of courts, maintenance of public confidence and enhance rule of law.

In relation to expropriation in Ethiopia in general and Oromia in particular, the right of people who are affected by expropriation decision of administrative authority to respond to independent judiciary is not always functional. This is because of deficit independency of judiciary to oversight administrative decisions relating to public purpose in the favor of affected people since it perceived as exclusive power of administrative authority.²⁰¹

Unfortunately, the judicial independency in Ethiopia does not have good history as the result of bad legacy from the past government systems that create weak and dependent judiciary.²⁰² That means, there had been formal fusion among judiciary and executive body that adversely affect the perception of the past and present judiciary independence. This historical attachment of judiciary and executive organ affected the separate existence of court as an institution and subject to the interference by other branch²⁰³. In this regard, Asefa critically affirms that *“...external pressure on judiciary has deep root and is not without some hang over on new federal judiciary .Administrators at state level, even today, think that is natural to order the judge”*²⁰⁴

Generally, the above mentioned scholarly assertions testify that Ethiopia has been found in the bottom rank in judiciary independence and competence. Country’s lack of administrative law that can potentially provide procedure and extent of court involvement in reviewing administrative decision is also another limitation. As the results of all the above mentioned

²⁰⁰ Id., Art. 79(3), and Art. 63(3), respectively.

²⁰¹ Muradu Abdo, Note No. 20, P. 331

²⁰² Asefa Fiseha, (2005/2006), Federalism and accommodation of diversity in Ethiopia: a Comparative study, (Netherlands, Wolf Legal Publisher), P.390. As cited in Muradu Abdo, note no. 20, p. 331

²⁰³ Murdu, Supra note. 201

²⁰⁴ Asefa Fiseha, Supra note 202

reasons the present judicial independence would be put in doubt to entertain cases relating with expropriation in general and issues of public purpose in particular in free and in impartial status.

The empirical study under taken in Oromia State courts indicate that regular court in Ethiopia in general and in Oromia in particular are not independent to entertain cases relating to the issues of land expropriation in general, and public purpose in particular. The data collected from Oromia courts indicates that from 25 Oromia Supreme Court judges 20 of them responded that regular Courts in Oromia are not independent to entertain causes relating with public purpose at all. This is because, most of the time there is interference from the executive body, typically from administrative offices at different levels starting from the Higher official to lower Woreda (Municipal) administration.

Moreover, the administrative organs influence judges who are handling the case at issue in different mechanism. Some of the common mechanisms of intervention are the administrator directly contacting the president of the court and talking to him the case is so serious and may go against the development that the government made as an objective. So it is better to see in accordance with favoring the development. Sometimes the administrators directly called the judge and warn him to decide in their favor. In case where judges disregard the administrator warning and decide otherwise, the judge can be tagged as obstacle of public development. Sometimes the judge may be fired as he/she committed disciplinary fault. However, currently the magnitudes of internal and external interference and influence exerted on the independence of courts and judges have been considerably minimized in Oromia.

Some of the respondents are pronounced that the issue of public purpose does not fall under the court jurisdiction. Therefore, courts shall not be bothered to entertain cases relating to public purpose.

Generally, it can concluded that still now a day, courts in Ethiopia/Oromia are not independent to entertain cases relating to expropriation and/or public purpose. This is due to interference and influence from the external and internal organs; and perception of courts that they do not have power to adjudicate case relating to public purpose in expropriation proceeding. This could be the result of unclear stipulation of expropriation laws regarding the power of regular courts to review administrative decisions on the issue public purpose.

3.5 Impacts of Improper Implementation of Public Purpose during expropriation of land in Special Zone of Oromia Surrounding Finfinnee

The Special Zone of Oromia Surrounding Finfinnee is the most sensitive one in the Region where both urbanization and industrialization are rapidly growing that causes eviction for number of pre-urban landholders. The urban expansion for residential and commercial purposes and government expropriation of arable land for investment under the guise of public purpose are causes to transferring extensive rural landholding in to urban and industrial uses. Thus, in all directions the agricultural land is transferred in to commercial and urban residential area which is affecting the livelihood of farmers in the vicinities.

Thus, rapid expansions of towns in the zone to the fringe rural lands and unlimited land expropriation undertaken by the competent administrative authorities for investment purpose are resulting in social, economical, cultural, environmental and political impacts in the Zone in general, and in Sebeta Woreda and Sebeta Town in particular.

My special preference for these research sites is that since these areas are found in the vicinity of my residence which is more comfortable, saving time and resources to collect suitable data that are more important to my Thesis. Therefore, the issues have been precisely discussed hereinafter.

3.5.1 The Socio-Economic and Cultural Impacts

The expansion of investments, among others, favors local communities including the affected people in knowledge and technology transfer that help to increases productivity, jobs opportunity and infrastructure expansion. Moreover, investment may also suppose to be a source of foreign exchange that helpful to create hard currency as well as creates extra tax base for the government. These are all about the public purposes for which the private landholding would be expropriate to be used by private or public investment projects.

Likewise, compensation paid to affected people presumed to sustain the livelihood of expropriated persons. However, the paid compensation is inadequate to sustain their livelihood unless they provided rehabilitation service.

Therefore, the research findings from the study areas indicate that evicted peoples due to private investment activities, government run projects, and urban expansions suffer from social and economic problems. The key informant interviews conducted with concerned governmental officials and affected peoples in the study areas, typically from Sebeta Awas Woreda and Town confirm that, because of lack of extra arable land used for agriculture in the hands of government, only liquid money has been paid to the evictees in the form of compensation. Since expropriated rural landholders were forced to leave their locality, and some did not have any remaining land to settle themselves, they had migrated to nearby towns and Addis Ababa City for searching alternative livelihood. However, life would not be simple as had they not been evicted from their original rural residence.

Moreover, since the rural farmers were forced to lose their crop land, grazing land, grass land and other resource land, the income they were earning from agricultural activities highly decreased. Farmers had been forced to release many potential resources which could be converted into money without any feasible compensation. At the moment the benefits they pursue to get from the expropriated land resources and livestock are deteriorated. So, their access to capital is timely limited and decreased. The liquid money they have gotten in the form of compensation is highly deteriorating as majority of them are using it for daily consumption. The income they are getting from non-farming activities could be very small as they have no sufficient skills and profession other than framing. Current cost of living and inflation are other factors that make the life of evicted people due difficulty and putting them in poverty.

The private investors who were promised in their contract and project plan when they took their land did not provide them jobs opportunity, other food supply or expansion of infrastructures that could benefit them. This is because factories and industries owners do not want to hire the local peoples for the reason that they lack skill and education to work. As the result, peoples who had evicted from their original landholding due to improper decision of public purpose in expropriation proceeding are forced to migrate to urban centers to search livelihood. Therefore, their children were migrating to urban by dropping their school look for job.

The field observation and assessment indicates that many boys and girls from peasant family (even graduates from different colleges and Universities) were migrating to surrounding towns such as Sebeta, Alemgena, Burayu, Gelan, Dukem, from pre-urban areas of the Special Zone.

Currently, they are being involved in the daily working such as stone quarry activities; straight market along the road side; cobble stone production; daily labour works in different construction sectors; working as housemaids; working as grad in rich households, companies, factories or industries owners in the towns or rural areas; and any other daily labour works. However, the above mentioned temporary source of employment is not sustainable to maintain their lives.

Even the industries and factories interred in to production for profit, did not interest to employ farmers and their family since they are ignorant to implement the machineries of industries. Rather they simply engaged in heavy labour works when the entities were under building. Thus, the field studies affirm that unemployment and declining in income due to economic displacement of farming households causes food insecurity followed by poverty.

In fact, much of the land in the reserch areas is still fenced by private investors who still did not started any work on the land that had been expropriated from small landholders for number of years ago. It is clear that such idle land is putting for speculative purpose even the government officials have been involved in. Moreover, some of them changing the project purpose that was initiated to take the land and now ready for sale without significant value adding. As the result, the land productivity has been decreased which was harvested by evicted farms prior to the taking as the lad is without any value, fenced and putting idly.

Moreover, arbitrary decision of administrative authority regarding with the existence of public purpose during expropriation proceeding would be causes for distortion of cultures and traditions of expropriated people. Concerning cultural issue, the findings obtained from research sites indicate that peoples evicted as the result of expropriation forced to release their indigenous cultural, historical and religious heritages with expropriated land. The indigenous peoples had their own religious sites named in Afaan Oromo as “Iddo waaqeffannaa”, “Galma Ayyaantuu”, “Melkaa Irreecha”, “malkaa Ateetee”, etc. All of these religious sites, building, material, articles, funeral sites, and others were lost with their expropriated land.

Since getting replacement land is seriously difficult, evictees cannot re-establish their religious and cultural traditions. Not only cultural traditions, but also they lost their language and social interactions. For instance, the evicted farmers whose children used to learn in Afaan Oromo when they had been in rural areas, now they faced difficulty to their schools as the result of

change of language barrier in nearby town and the capital city. Likewise, evictees suffered in adapting urban life style.

3.5.2 Environmental and Political Impact

Improper decision on the issue of public purpose during land expropriation may harm the environment. Among the others, large scale land clearance, removal of woods and vegetable covers, are the main causes to environmental degradation.²⁰⁵ However, the environmental impacts caused in the study area are more than the above mentioned issue. Environmental pollution connected with urban expansion in Sebeta and Addis Ababa city cause serious damage on health and livestock of the surrounding peasants. For instance, bad emission from tannery, alcohol and chemical factories, and dangerous dust expelled from stone quarry crushers machines in Sebeta and surrounding town causes serious danger on the health, livestock, and crops of farmer located around the edges of the town. Specifically, bad smell and toxic emission expelled to nearby river from “HAFEDA” Tannery and Alcohol factories in Sebeta town exposed the surrounding dwellers for lung and respiratory organs problems. Livestock which were drinking the toxic emission in the river were caused to die. Likewise, dust particles expelled from stone quarry and stone crushers located at Gejja-Kajima kebele causes serious damage on health and crops of the local farmers. Similar harms were caused by alkaline chemical manufacturing industries situated in Suluta Town. Those all mentioned environmental problems happened due to weak and corrupt administrative actions which might be resulted from lack of good governance.

The other impact relating to expropriation of land is political or security problems caused by arbitrary decision on the issue of public purpose. The information collected from research areas and personal observation undertaken by the writer indicate that the above mentioned problems relating to economic, social, cultural and environmental issues are the immediate cause for conflicts between private investors and affected people in the areas. Affected people are dissatisfied by amount of compensation paid by the state for the land taken under the guise of public purpose. One interviewee from the research site responded that:-

²⁰⁵ Desalegn Keba Dheressa, “The Socio-Economic And Environmental Impacts Of Large Scale [Agriculture] Land Acquisition Of Lively Hold : A Case Study in Bakko Tibe Woreda “, Oromia region, Ethiopia, Master Degree Thesis, in culture environment and sustainability, center for development and the environment, University of Oslo, Blinder, Norway , (2013), p. 99

“at the moment, the government takes our landholding through paying compensation calculated by 49 ETB per m²; however, it transfers to private investors, urban house seekers or real estate developers under lease contract arrangements from 300 to 350 ETB per m² based on the grade of the land to be leased.”²⁰⁶

As the evictees and their families were not beneficiaries from the investment project, they have been destroying and committing theft and robbing acts on the property of the investors in which planted on the expropriated land. Such like acts and conflicts were happened since 2016/2017 in Oromia as a whole and in SZOSF in particular. Factories, manufacturing industries and other investment projects including different horticultures and agro-industries in the study areas were damaged by massive farmers’ protest.

The information obtained from the Thesis study area indicates that about 16 factories, manufacturing industries and/or investment projects were burned and damaged by those incidents. Most of the participants of the protest were young people (‘Qerroos’) who were grieved by expropriation undertaken on their landholding in which they are not beneficiaries. One interviewee witnessed that:-

“Farmers in the fringe areas who were very happy for their presence in the proximity of the towns in the special zone for school, health center, road, electric light, pure water, markets and other services now threat of being there due to unlimited expansions of urban and investments that could be encroached their farm land.”²⁰⁷

Furthermore, local farmers and youths were not beneficiaries of jobs opportunity from the factories and industries situated on their land. The owners of the entities prefer to bring human power from any elsewhere. Most of them are their relatives. So, this and other mentioned situations are now causing serious conflict between the factory owners and the local community which is at the end becomes political issue in the Region.

Therefore, it can be concluded that even if the FDRE Constitution and subsidiary laws set prescriptions for expropriation of landholding for public purpose, the procedural and practical

²⁰⁶ Interview with Gemechu Soboka, Farmer from Sebeta Awas Woreda, Gelan Guda Kebele Farmers Association, Jun 3,2018

²⁰⁷ Interview with Adefris Addis, Expert and coordinator of displaced people for development affairs Department, at Oromia State Urban Development and Land Management Agency, (July 25,2018)

applications have not been well managed and implemented when evaluating its implementation in the Special Zone of Ormia Surrounding Finfine for the past decades.

3.5.3 Informal Land Transactions

Peasants know that the issue of land is the issue of life and death, i.e., losing land means losing life as the land is an exclusive source of income and livelihood to them. Most of the Oromo people say that “*Lafti keenya lafee keenya*”; that means ‘our land is our backbone.’ The government’s strong desire to expropriating holdings rights of small landholders; inadequate compensation; lack of adequate information and know-how regarding expropriation on the fulfillment of benefits promised to landholders by both the government and private investors such as employment opportunity, new technology, provisions of infrastructure, and other impacts of expropriation were the main reasons for the expansions of informal land transaction.

The study conducted in the research sites confirm that farmers who have information prior to land expropriation, took the advantage of such information and decide to sell informally their holdings to land speculators. They believe that it would be preferable to sell in better amount of price than handover the land to the government for inadequate compensation for the land to be expropriated. On the other hand, farmers have not adequate information prior to the land expropriation; it is likely that they resist the expropriation that would be conducted by administrative body.

Therefore, in order to make the expropriation process is peace and secured, it is always important to clearly discuss with landholders who do not have another option of livelihood than the land. In this regard, different experiences witness that public participation in development project should be just to enhances the condition that the people not only trust the project but also develop sense of ownership and belongingness to such activities.²⁰⁸ Thus, the holders from which the land to be expropriated should know that the land will be taken for public purpose from which they would be beneficiaries.

However, the practical analysis from the research areas confirms that small landholders, typically rural landholders in the surrounding towns are ignored in decision making on existence of public purpose which is a sensitive issue of expropriation. The focus group discussion in the research

²⁰⁸ Danel Weldegebrel Ambaye, note no. 39, pp. 174-176

sites revealed that the farmers whose land is to be expropriated either for public development undertaken by the government or for private investment purpose are not invited to participate in any decision making though including their saying is necessary regarding with the benefit they will be deserve from the project or determining amount of compensation to be given for disruption on their asset²⁰⁹. As the result, once the farmers are certain that the expropriation of their landholding is absolute, they contemplate selling their holdings informally or transfer the land trough simulated contract of donation to any other person because of the compensation given to them has been inadequate to be surrender through expropriation proceeding.

Currently the scope of land dealing in Oromia in general and in special Zone of Ormia surrounding Finfine in particular rapidly increasing due to informal selling of rural lands in the periphery of the surrounding towns. As a result, the demography of the tows had been disturbed. Master plans of the tows have been distorted; corruption, mal-administration, and abuse of power highly spread; and the constitution or the rule of law is violated. This is because lack of follow-up by concerned government authorities whether the affected landholders are reconstructing their livelihood or not. Rather the competent administrative authorities continuously declare aggressive move towards expropriation of remaining rural areas that has been frustrating those farmers who have farm land along the border towns in the special zone.

Therefore, the government should reconsider the issue of rapid expansion of informal land dealing in the state and should have to take the necessary measures in order to save the potentially scarce resource of the country; that is the land.

²⁰⁹ Focus group discussion with the farmers in Sebeta Awas Woreda, Haro Jila kebele, May 20,2018

CHAPTER FOUR

4 Conclusions and Recommendations

4.1 Conclusions

The importance of land for agrarian countries is unquestionable. Since Ethiopia is an agrarian country, land is not only an economic issue; rather it is culture and identity of the people. Therefore, the issue of land, typically for rural farmers is the issue of life.

Since Ethiopia is in rapid growth of urbanization, modernization of infrastructure and agricultural developments, government demands land to realize these needs. To get land when and where it needs it shall employ power of expropriation beyond the will of landholders in paying adequate compensation. At this juncture, the most important considerable issue in expropriation of land is whether the cause for expropriation is for genuine public purpose or not. Nevertheless, though the Constitution allows the expropriation of land for public purpose, it does not provide for the scope of expropriation power. Even if peasants and pastoralists are guaranteed the right to protection against eviction from their landholding, practically extensive peasants and pastoralist landholdings have been expropriated under the guise of public purpose. As the expropriation at present in Ethiopia is regulated under federal law, the Oromia Regional State has been exercising its expropriation power based upon rules and procedures provided by FDRE land expropriation law.

In principle expropriation of land consider three grand rules such as public purpose, adequacy of compensation and procedural safeguards as mitigation grounds to limit government power of compulsory acquisition. The issue of public purpose is the main objective of this Thesis. Despite its difference in scope and components, the major objective of public purpose is to limit discretion of government to expropriate private landholding rights. Thus, the government should use its power of land expropriation to the benefit the public than advance individual economic interest. Therefore, public purpose shall be deployed to establish balances among these competing interests.

Currently with the changing of social, economical and political spheres, states delimit the scope and components of public purpose in broad or narrow manner in their respective domestic laws.

Laws with clear list of public purpose components minimize government abuse of expropriation power and arbitrary decision on the existence of public purpose; and also provide courts with better guidelines to review the administrative decision. On the other hand, broader and unclear description of public purpose allowed executive body to determine public purpose in abusive and arbitrarily manner which is difficult for judicial oversight. The experience of many jurisdictions indicates that power of determining existence of public purpose is either exclusively reserved to executive body discretion or allows review procedure to independent court of law.

The FDRE Constitution requires that the intention of taking private property through expropriation is to serve public purpose. However, either the definition or constituents of public purpose are not clearly provided by the Constitution. The intention seems that the matters are left for subsequent legislation. Nevertheless, the current land expropriation law of the country defines public purpose in broad and vague manner, as direct or indirect benefit of expropriation constitutes public purpose.

Accordingly, no one can predict what expropriation activity can constitute public purpose in expropriating small landholders' possession. However, holding rights of investors who acquire land through lease contract arrangement cannot be expropriated except for development project carried out by the government. This differential treatment contravenes the right of equality that is protected by the Constitution. However, the Oromia Regional State rural land law administers land lease arrangement to private investments only when the land is not held by peasants and pastoralists. On the other hand, the state rural land law describes the term 'public use' which is equivalent to public purpose as restrictive approach even though it does not clearly define the term in black and white.

The FDRE land expropriation law does not provide any provision regarding the issue of public hearing and consultation which provide for affected people a chance to voice their sound on the decision making regarding with the existence of public purpose. In decision process of land expropriation the affected peoples should have given an opportunity to pose their opinion on how far they are beneficiary from the project for which their land has been expropriated. Thus, the Oromia Regional State rural land law provides provision allowing consultation of affected people when their land will be expropriated for urban expansion, though it did not seen in practice

Currently, abuse of power and arbitrary decision by administrative authorities regarding the issue of existence of public purpose have been highly aggravated throughout the country in general, and in Oromia in particular since the expropriation law does not allow the involvement of independent and well established process to determine existence of public purpose by means of court appeal. Moreover, absence of independent regular courts to entertain cases relating to the issues of land expropriation in general, and existence of public purpose in particular has been affecting the citizens' access to justice.

Rapid expansion of towns to the fringe pre-urban rural lands and unlimited governmental expropriation measures in Oromia Regional State in general, and in Special Zone of Oromia Surrounding Finfine in particular caused serious social, economical, cultural, environmental and political impacts. The empirical study conducted in the Special Zone indicates that the expansion of private investment irrespective of providing evictees with technology transfer, employment opportunity, infrastructure, and other rehabilitative schemes was exposed farmers in the vicinity for social, economical, cultural, environmental and political crisis.

Among the others, unlimited desire to expropriate small landholders and reckless decisions regarding the existence of public purpose, lack of prior consultation of affected people, non-fulfillment of promises by government and private investor, are additional reasons for causes of informal land dealing in the Regional state.

4.2 Recommendations

With the rapid economic development and urbanization in the recent years, large amount of rural and urban land has been taken by expropriation under the guise of public purpose. Since land is seriously connected with the life of poor citizen it should not be taken for reckless public purpose in contrary to the rights to free access to land and against eviction from their land that provided to poor farmers. The amount of land to be expropriated should be to the minimum amount necessary to achieve a public purpose and should proved special care to expropriate lands held by poor and vulnerable peoples. Moreover, government should establish protection for areas of cultural, historical and environmental significance including indigenous people and local community. The expropriation of these areas should be as the last resort, and the risks should be adequately addressed.

1. Therefore, the existing rural and urban laws at federal and Oromia State levels should be revised to averting these problems in light of the FDRE Constitution.
2. Expropriation of land for public purpose should balance the two competing interests; the needs of land for public benefit and protection of individual holder tenure rights. Therefore, Public purpose is an imperative tool to balance these divergent effects by means of limiting the expropriation power of states. Thus, the state should expropriate land for legislatively clearly defined and listed elements of public purpose.

However, the definition provided by FDRE land expropriation law to interpret the concept of public purpose is very broad and vague so as to open the way for abuse of power and arbitrary in decision making by administrative authority as it consider any activity of expropriation indirectly constituting public benefit. As the result of disruptively crafted public purpose qualification, tremendous small landholders were evicted in Oromia.

Therefore, the existing land expropriation laws, regulations and directives both at federal or Oromia state levels should be amended in a way that providing clear definition and lists of elements of public purpose that can protect poor landholders from arbitrary eviction.

3. The definition provided by land expropriation law of Ethiopia to determine the existence of public purpose would not work for private investor landholder who has acquired rural or urban land through lease contract. Accordingly, the land held by private investor through lease contract arrangement may not be expropriated, unless it is required for projects undertaken by the government. However this differential treatment contravenes the constitution and subsidiary land laws for two reasons. First, as peasants and pastoralists have the right to free access and non-eviction rights that guaranteed by the constitution, priority right should be deserved to the farmers than private investors. Second, the discriminatory treatment among small land holder and private investor might call for unconstitutionality of the land expropriation law. Therefore, the government should reconsider this deferential treatment between the small landholder and private investor in the forthcoming land expropriation law.
4. Government should consult affected people in an open and participatory manner prior to taking possession of expropriated land. Public discussion gives a chance for the public to know more about the project, to answer questions they rise about the process and procedures, and to voice their concern on expropriation plan and ensuring that the affected

people able to participate meaning fully in expropriation decision. Thus, those peoples who are likely to be affected by the expropriation should be consulted about the public benefit they can get from the project for which their land has going to be expropriated. However, the FDRE Land Expropriation Law has not provided any provision regarding with consultation though Oromia State Rural Land Proclamation has required the consultation of people in expropriation of rural land for purpose of urban expansion provided that practically not implemented. Therefore, the government should provide clear provision that obliges the administrative authorities who are empowered to decide on the issue of existence of public purpose to inform and consult the landholders about the acquisition plan including the reason for the expropriation and the benefit the project provides to the local community in the forthcoming amendable land expropriation law, and should provide them in practice the opportunity to be heard and raise their concern which is constitutionally addressed right.

5. Currently, in addition to state unlimited expropriation power, absence of consultation procedure and reckless public purpose decision is the major cause for informal land sell in Oromia. So, the government should refrain itself from land value capturing and should provide clear law and regulation or other controlling mechanisms in order to minimize informal land transaction in Oromia.
6. Laws should subject governmental administrative decisions to independent and impartial oversight by judiciaries in order to restrain executive branch from abusing or arbitrary using of expropriation power to ensure proper check and balance. In Ethiopia, in general and in Oromia in particular, the legislation dichotomy regarding the power of regular courts to review administrative decisions concerning the existence of public purpose should be one of the fundamental issues that need further investigation. So, the existing laws should be amended in order to delimit an exclusive power of administrative agencies in determining existence public purpose. Therefore, the forthcoming land expropriation law either at federal or Oromia Regional state level should provide clear provision and well-established procedure that empowers independent and impartial regular courts to review the existence of public purpose by the means of appeal. In the meantime, courts should implement their inherent judicial power to serve justice.

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6 Appendixes

Appendix I: Descriptions of Fieldworks

I. Questionnaire administration

Written questionnaires were administered to:-

- 24 Oromian Supreme Court judges including the Vice President of the court,
- 6 legal officers who act as assistance judges of the supreme court; earlier they were woreda court judges and presidents, and some were high courts judges,
- 3 legal researchers at Oromian Supreme Court Research Department and
- 5 Practicing lawyers and advocates at federal and Oromia State courts
 - ❖ All Questionnaires were distributed and collected from January 15 to February 15, 2018 and in July 2018

II. Key Informant Interview Reports





The interviewees are:-

- Ato Seifu Wari, Senior Judge and Coordinator of Cassation Division, at Oromia Supreme Court, (Jun 4, 2018).
- Ato Getu Weyessa, the Head of the Bureau, and Ato Bedada Debela, the Higher Director in Land Administration, Use and Control Directorate, at Oromia National Regional State Rural Land Administration and Use Bureau, (July 19, 2018),
- Ato Adafri Addis, Director and Coordinator of Displaced Peoples for Development Affairs Directorate; at Oromia National Regional State Urban Development and Land Management Agency, (July 25, 2018),
- Ato Leta Abebe and Belay Dufera, team leaders, coordinators and follow-up in Department of land preparation for Investment works, team leader in Department of Coordination and Follow-up, at Oromia National Regional State Investment Commission, (July 25, 2018),
- Ato Sisay Degefa, head of the office; Ato Sagni Tullu, Deputy head of the office; Ato Lemma Dadi, Professional of land cadastral and member of Valuation committee; Ato Shimelis Negessa, coordinator of land preparation for investment and development works, and member of valuation

committee; and Ato T/Berehan Dinku lawyer or legal advisor of the office, at Sebeta Awas Woreda Rural Land Administration and Use office, (July 20, 2018).

- Ato Dumecha Dame, head of the office, at Sebeta Awas Woreda Investment Office, Sebeta, (July, 16, 2018),
- W/ro Mulunesh Kibi, professional and Investment License Department head, at Sebeta town Administration investment office, Sebeta, (July 17, 2018),
- Ato Dawit Tibabu, Urban Development and land Management Department head, and Ato Gazu Gonfa, Lawyer and coordinator of public notary and land lease transaction, at Sebeta town Administration Municipality, Sebeta, (August 3, 2018), and
- Interview with 10 Farmers who were evicted from their landholdings as the result of expropriation land for the purposes of private investment activities, Urban Expansions and public works in Sbeta Awas Woreda; Dima Gurand, Roge Atebela and Furiu Gara-Bollo Kebeles Farmers Associations, (Jun 3 to 17, 2018)

III. Focus Group Discussions

-  18 Farmers Who are evicted as the result of Golden-Rose flower plantation in Sebeta Awas Woreda, Gelan Guda kebele in the fringe of Tefki Town, (May 12, 2018),
-  15 Farmers Who are evicted as the result of Eden-Rose flower plantation in Sebeta Awas Woreda, Haro Jila kebele Farmers Association, (May 20, 2018),
-  23 Farmers who were evicted by private and governmental developmental activities around vicinities of Burayu Town administration, (Jun 30, 2018) and
-  27 Farmers who are evicted as the result of Linson-Rose Ethiopia flower plantation in West Shawa, Ejere woreda, Kibroye kebele Farmers association, (July 8, 2018)

IV. Researcher's Personal Observation

The Researcher undertake observation in the above mentioned study areas; and have scrutinized and analyzed the private investment and governmental development activities on land taken in the name of investment from urban and rural private landholders in the study areas from May to July 2018.

Appendix II: Research Tools

A. Questionnaire to Government Authorities (Administrative Authorities, Judges, other Lawyers and Professionals)

1. How do you justify expropriation law at present in Ethiopia?

- A) as Federal law
- B) as Regional law
- C) as both
- D) I can't determine

Pleas justify your answer in writing. _____

2. Do you think laws adopted by either Federal or Oromia Regional State in relation to expropriation effectively address the issue of existence of public purpose?

- A) It is well addressed.
- B) It is slightly addressed.
- C) It is not clearly and adequately addressed.
- D) I do not have any knowledge on the matter.

Because:- _____

3. Prior to the expropriation, must the government identify, inform and consult the landholders about the acquisition plan including the reason for expropriation?

- A) yes
- B) No
- C) Difficult to answer

Support your option by reasoning. _____

4. Practically, what is your benchmark to determine the existence of public purpose while the landholding rights of land users have been expropriated?

- A) The benefit that the project provides to the society
- B) The benefit the landholder acquires in the form of compensation
- C) The profit that the investor gains from the project
- D) The benefit that the government gets from the project

Justify your answer in writing _____

5. Practically, to what extent the land held by private landholders could be expropriated?

- A) To maximum amount of land held by the landholders.

- B) Only to the minimum amount of land held by private landholders.
- C) To the maximum amount of land necessary to satisfy the interest of the investor
- D) Only to the minimum amount of land necessary to achieve a public purpose

Please support your choice by reason. _____

8 Do federal and the state laws provide adequate and fair procedure in the course of expropriating land use rights for public purpose?

- A) Yes
- B) No

Why? or Why not? _____

9 What would be the fate of the land that would no longer be needed for public purpose?

- A) It could be return to the original holder.
- B) It could be allotted o any other landless person.
- C) It could inter to government land bank.
- D) It could be scheduled for any other public purpose.
- E) All could be the answer.

Why? _____

10 Do you think the government may have other alternative forms (other than expropriation) of getting land for development purposes to avoid or minimize forced eviction of small landholders in the name of public purpose?

- A) Yes
- B) No

11 If your option for question No. 10 is “Yes”, what could be possible means? _____

12 How do you evaluate the capacity of various administrative authorities to render a decision regarding the issues of public purpose and apply grievance redress mechanisms and adjudication?

- A) They are well trained to appreciate the existence of public purpose while expropriation is undertaking.
- B) They are well experienced through practice to determine the issue.
- C) They have no knowhow and experience to determine the issues relating to the existence of public purpose in undertaking expropriation of private land use right.
- D) It is difficult to determine.

E) Any other reason/s _____

13 Is there clear law that guarantees landholders to file their claim with regard to public purpose in regular courts in order to have the decision of administrative agencies in this regard reviewed?

A) Yes

B) No

14 If your answer to question No. 14 is 'yes', please indicate the legal grounds to justify your assertion. _____

15 How far regular courts in Ethiopia, and typically in Oromia, are independent to entertain cases relating to the issue of expropriation of land and attached properties in general, and issues relating to public purpose in particular?

Please provide your opinion on this based upon your knowledge and experience.

B. Interview Questions or questions to focal group discussion to concerned governmental officials (Administrative authorities, judges, lawyers and other professionals)

1. How do you justify the broader public purpose power of the state in expropriating land for unlimited activities?

2. Has your institution expropriated land held by private holders and attached properties for public purpose? How far do you have knowledge about public purpose? (*only for administrative Authorities*)

3. Are laws and procedures adopted in relation to existence of public purpose during expropriation of land for public purpose in Oromia Regional State adequate to limit the scope of public purpose?

4. What criteria would be used to determine the existence of public purpose in undertaking expropriation of land use rights?

5. Do you think the expropriation proclamation has given clear procedural steps to determine the existence of public purpose that should be followed by administrative authorities in the events of expropriation? What matters are to be considered in the determination of public purpose?

6. Are persons whose land has been expropriated adequately consulted and informed before taking of the land about the aim and objective for which the land has been taken?
7. Do you think expropriation practices are in conformity with existing laws and regulations?
8. Do you think the persons whose landholdings have been expropriated are beneficiary from the project undertaken for private or public purpose? How?
9. Is there a legal framework to ensure the expropriated land is used for intended purpose within the time provided by law or agreement? What does the practice look like?
10. Do you think landholders whose land use rights have expropriated have right to appeal against the decision of government authorities in the relation to issues of public purpose?
11. How do you examine the technical capacity of the courts or administrative tribunal to hear the contested issue of public purpose in undertaking expropriation?
12. How far regular courts or administrative tribunals are independent and impartial to entertain cases relating to expropriation in general and the issues of public purpose in particular?
13. Generally, what do you think are challenges encountered in expropriation of land for public purpose?
 - 13.1 The social issues _____
 - 13.2 The Economic issues _____
 - 13.3 Political issues _____
 - 13.4 Cultural Issues _____
 - 13.5 Environmental issues _____

C. Interview Questions or Questions to focus group discussion to expropriated landholders

1. How many hectares (for farmers), meter square (for urban dwellers), of land is expropriated for public purpose by administrative authorities?
 - 1.1 What type of land?
 - 1.2 Is it only land or in addition other properties attached to the land expropriated? If any, can you indicate the type of property attached?
 - 1.3 For what purpose your landholding is expropriated?
2. When was your land expropriated? Did construction on the expropriated land begin? If your answer is no, what is the reason for the expropriated land to be an idle?

- 3 Did the administrative authority consult you regarding the purpose for which the land was been expropriated? If your answer is yes, how far did you get satisfied with the decision of administrative authority?
- 4 Do you and the societies at large benefit from the project for which your land has been expropriated?
- 5 If you have any grievance against the decision of administrative authority, is there any administrative procedure to present your grievance? Is it practically applicable?
- 6 Do you think the purpose for which the government expropriated your land meets its objective?
- 7 Do you think that you have right to appeal against the decision of administrative agencies on the existence of public purpose? If so, how far do you think that they are independent and impartial to entertain such cases?
- 8 Is there any impacts come up as the result of your land expropriation? If it is so, what is/are the manifestation/s

