



ADDIS ABABA UNIVERSITY

School of Law

Adequacy of the Legal and Institutional Frameworks Regarding Urban Land Complaint Hearing Body and Appeal Tribunal under the New Expropriation Law: Special Attention to Addis Ababa City Administration

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*Adequacy of the Legal and Institutional Frameworks
Regarding Urban Land Complaint Hearing Body and Appeal
Tribunal under the New Expropriation Law: Special Attention
to Addis Ababa City Administration*

By

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**A Thesis Submitted to the School of Law in Partial Fulfillment of the
Requirements of Master of Laws (LL.M) Degree in Urban Property and Land
Law**

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Addis Ababa, Ethiopia

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DECLARATION

I, Abdulmajid Gebi, hereby declare that this thesis is my original work and has not been submitted to any other institutions before. Further, I confirm that all resources used in writing the research have been duly acknowledged.

Declared by *Abdulmajid Gebi*

April 2025

Approval Sheet by the Board of Examiners

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I bear sole responsibility for any errors presented below.

To Aster Ashuta Waqo

The heart that gave without measure, with gentle care, selflessly

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ACRONYMS

AAC - Addis Ababa City

AACG - Addis Ababa City Government

ACHPR - African Charter on Human and Peoples' Rights

ANRS - Amhara National Regional State

AT - Appeal Tribunal

CHB - Complaint Hearing Body

Derg - (meaning "Committee" or "Council") was the Marxist-Leninist military junta that ruled Ethiopia from 1974 to 1987.

DRM - Dispute Resolution Mechanism

EPRDF - Ethiopian People's Revolutionary Democratic Front

FDRE - Federal Democratic Republic of Ethiopia

ICCPR - International Covenant on Civil and Political Rights

NGO - Non-Governmental Organization

UDHR - Universal Declaration of Human Rights

VGGT - Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security (*FAO 2012*)

ABSTRACT

Presently, due to the development endeavors in urban areas, the urban landholder's property rights are under serious threat as a result of expropriation. A review of expropriation is vital in addressing grievances that arise due to the use of this intrusive power. This thesis tries to assess the effectiveness of administrative tribunals established to adjudicate expropriation disputes in Addis Ababa. The effectiveness of the tribunals is assessed by utilizing independence and impartiality as a parameter, along with other critical legal and institutional matters. The research employs qualitative methodologies. It is based on desktop research and an in-depth interview with key informants, alongside personal field observations.

The study argues that the effectiveness of the administrative tribunals put in place to adjudicate expropriation disputes is significantly undermined by the diminished independence and impartiality of the tribunals. The study moreover argues that the tribunal's independence and impartiality were eroded by the incongruent membership appointment, loosely designed membership composition, and absence of the requirement for membership among others. Furthermore, the study enunciates that a lack of clarity and disparity in practice regarding the scope of power, as well as the procedural rules applied in adjudication, affected the tribunals' effectiveness. The study further elucidates a spectrum of persistent institutional and operational challenges that constrain tribunal effectiveness.

This study recommends legislative review to enable the tribunals to have a diverse composition of members to enhance specialized expertise, to enumerate membership requirements to have members who have the required integrity and capacity, and to minimize procedural rigidity to enhance accessibility. Furthermore, improvements in the implementation of the laws also needed to be considered in order to bolster the tribunal's effectiveness.

Key Words:

Expropriation, Expropriation Disputes, Dispute Resolution, Administrative Tribunals, Independence and Impartiality

Chapter One

1 Introduction

1.1 Background of the Study

This Thesis examines the adequacy of the legal and institutional frameworks put in place by the AACG to handle expropriation grievances in contexts where there is growing interest in urban land and where the government is trying to manage disputes and grievances emanating from urban land in an effective manner.

The surging demand for urban land, fueled by swift urbanization and population growth, has augmented disputes and grievances over urban land in AAC.¹ The government is addressing these surging demands for urban land through the utilization of unoccupied land narratives and the expropriation of urban and peri-urban lands.² Under the unoccupied land narrative, urban lands considered '*res nulls*', and those owned by the state, are being repurposed to meet the rising demand. In addition to lands owned by the state and lands without owners, the unoccupied land narrative is utilized to exploit communal lands and urban open spaces.³

The other mechanism through which the government strives to meet the growing urban land demand is expropriation.⁴ Expropriation refers to the authority possessed by every state to take private property.⁵ While indispensable for development, this authority inherently carries the potential for infringing upon individual property rights.⁶

¹ Dereje Tessema Adigeh and Birhanu Girma Abebe, 'The Practice of Peri-Urban Land Acquisition by Expropriation for Housing Purposes and the Implications: The Case of Bahir Dar, Ethiopia' (2023) 41 Urban Science 2.

² Muradu Abdo Srur, 'State Policy and Law in Relation to Land Alienation in Ethiopia' (Doctoral thesis, University of Warwick, 2014) 147.

³ Ibid.

⁴ Anthony Harris, 'Expropriation, compensation and transition to new livelihoods: evidence from an Expropriation in Ethiopia' (CSAE Working paper 2015) 1.

⁵ Daniel W. Ambaye, 'Land Rights and Expropriation in Ethiopia' (Doctoral Thesis, Royal Institute of Technology (KTH) 2013)114; Brightman Gebremichael Ganta, 'The Power of Land Expropriation in the Federation of Ethiopia; the Approach, Manner, Source and Implications' (2016) Bahir Dar University Journal of Law Vol.7 (1) 6.

⁶ Muradu Abdo, 'Reforming Ethiopia's Expropriation Law' (2015) Vol. 9 Mizan Law Review 301.

Due to a number of economic and political factors, the intensity and frequency of expropriation of urban lands in AAC are higher.⁷ The use of this intrusive power intensively and frequently in AAC has devastated a number of city dwellers' and hinterland peasants' lives.⁸ The government's stand to privilege economic development over the livelihood interests of small-scale landholders has exacerbated the impairment that the city dwellers and the hinterland peasants have sustained so far.⁹

Throughout its legislative history, the Ethiopian legal system has progressively incorporated limitations to alleviate the potential infringement by restraining this intrusive power, as it has elsewhere.¹⁰ These limitations generally include procedural safeguards to ensure due process and substantive criteria mandating the demonstration of public interest alongside the provision of just or adequate compensation. Review by judicial and quasi-judicial bodies plays a crucial role in ensuring adherence to these limitations.¹¹

The Ethiopian legislative framework also provides for the review of expropriation actions. Specifically, the new expropriation law assigns this adjudicative responsibility to administrative tribunals to be established within regional states and city administrations. Accordingly, the AACG has also established a two-tier tribunal to deal with expropriation grievances in a timely and effective manner.

1.2 Statement of Problem

The necessity of robust DRM in expropriation is well-established, serving as a cornerstone for protecting tenure security and restraining the use of this intrusive power. Generally, Expropriation is required to ensure due process and limit arbitrary government action. Yet, the Ethiopian context presents a wide discretion left to the government with little restraint, thereby resulting in infringement of tenure security and property rights. Critiques highlight the wide discretion left to the expropriating body in the determination of public purpose, vague compensation standards,

⁷ Abebaw Abebe Belay, 'Expropriation, Valuation, and Payment of Compensation; The Law and the Practice in Addis Ababa City, Ethiopia, *International Review of Humanities and Scientific Research* 29.

⁸ Fekede Terefe Gemedo et al, 'Land acquisition, compensation, and expropriation practices in the Sabata Town, Ethiopia' (2023) Vol 7(2) *European Journal of Sustainable Development* 2.

⁹ Muradu Abdo, 'Reforming Ethiopia's Expropriation Law' (2015) Vol. 9 *Mizan Law Review* 301.

¹⁰ Ibid; Daniel (Note 5 above)

¹¹ Ibid; Daniel (Note 5 above)

inadequate compensation, inadequate consultation and notice periods, and weak rehabilitation to support their point. In an effort to curb this or mitigate the impairments, the role of review is monumental. To this end, the new expropriation laws have established a two-tier tribunal.

However, this gives rise to the core problem investigated herein: whether the tribunals possess sufficient independence, impartiality, and procedural fairness to effectively address grievances. Given the existing critiques, there is a significant risk that these tribunals may lack the necessary institutional capacity or legal authority to provide meaningful protection. Therefore, this research problematizes the presumed effectiveness of these tribunals and seeks to critically evaluate their independence, impartiality, and procedural fairness, focusing on the case AACG.

1.3 Research Questions

1.3.1 Central Question of the Research

Are the legal and institutional frameworks put in place by the AACG adequate for handling expropriation grievances?

1.3.2 Specific Questions

- i. What is the *raison d'être* for setting up CHB and AT in the context of expropriation proceedings?
- ii. How are the CHB and the AT composed in the AACG? What are the membership requirements?
- iii. What is the scope of power of the CHB and the AT in AACG?
- iv. What are the reviewable matters before the CHB and the AT in AACG?
- v. Is exhaustion of remedies before the CHB and the AT in AACG mandatory to lodge a complaint before regular courts? Are the decisions of the Appeals Tribunal reviewable by regular courts? What does the practice look like in this regard?
- vi. Do the CHB and the AT in AACG apply the provisions of the Ethiopian Civil Procedure Law? If not, what procedural law do they apply in resolving disputes?

1.4 Objectives of the study

1.4.1 General Objective

The basic objective of this study is to assess the adequacy of the institutional and legal framework of the CHB and AT in the AACG.

1.4.2 Specific Objectives

- ❖ Identifying the *raison d'être* for setting up the CHB and the AT in the AACG in the context of expropriation proceedings.
- ❖ Identify and assess the composition and membership requirements of the CHB and the AT in AACG.
- ❖ Determine the scope of power of the CHB and the AT in AACG.
- ❖ Identify reviewable matters before the CHB and the AT in AACG.
- ❖ Identify and explore whether exhaustion of remedy before the CHB and AT in AACG is mandatory to lodge a complaint before a regular court.
- ❖ Identify and examine the procedural rules that the CHB and the AT in AACG apply.

1.5 Research Methodology

The study has employed a qualitative research approach. The qualitative research approach is chosen purposely as it is ideal to deeply understand the existing legal and institutional framework of the CHB and AT and uncover loopholes that hinder the effective settlement of expropriation-related disputes. To attain the objectives of the study and obtain answers to the research questions above, the study will make use of empirical data.

1.5.1 Source of Data

The study has made use of primary and secondary sources of data.

1.5.1.1 Primary Sources of Data

An in-depth, unstructured interview with key informants, particularly practicing members of the tribunal, registrars, and legal experts, was used as the primary source of data.

To comprehend the legal framework in which the CHB and AT function and scrutinize their implementations, the study will make use of the 1995 FDRE Constitution, Expropriation Proclamation 1161/2011, Expropriation Regulation No. 472-2020, AACG Expropriation Directive 19/2014, Expropriation Proclamation 455/2005, Urban Land Lease Holding Proclamation

721/2011, AACG Appeals Commission Establishment Regulation No. 30/2002, and AACG CHB Establishment Regulation No. 06/2020.

1.5.1.2 Secondary Sources of Data

Published books, journal articles, reports, conference papers, book chapters, and various data from the internet, published and unpublished research papers, working papers, and the like are employed as secondary sources of data and play an immense role in understanding the study area better. In addition to the primary and secondary sources, whenever necessary, territory data such as dictionaries and encyclopedias have also been used in the course of the research.

1.5.2 Data Collection Tools

1.5.2.1 Literature Review

In conducting legal research, a review of existing literature is vital. *Inter alia*, it is important to build theoretical frameworks, identify gaps already unearthed by studies conducted, and support arguments. In addition, it serves as a tool for data collection and is essential to vividly understand the study area. Accordingly, the study employed, *inter alia*, journal articles, published and unpublished research papers, working papers, and books to acquire the benefits mentioned above.

1.5.2.2 Key Informants' Interviews

An in-depth interview with key informants, in particular with those practicing in the area related to the subject under this study, is a principal tool for data collection. unstructured and semi-structured interviews were conducted with members, registrars, and legal experts of AT and CHB to enable the deep exploration of the topic under study through adaptive and flexible interview questions. CHB and AT Members with legal education and experience background have been selected purposively for interviews.

1.5.3 Method of Analysis

The accuracy and credibility of research findings rely heavily on the analysis methods employed. Therefore, choosing the right methods for analysis is crucial to ensure the reliability and validity of the research findings. As the study is qualitative, the collected data were analyzed through narration, description, and logical reasoning approaches.

1.5.4 Ethical Issues

During the data collection phase of the study, it is crucial to obtain the informed consent of the informants. This involves ensuring that the participants fully understand the purpose and objectives

of the research before agreeing to provide data. Furthermore, informants who preferred to remain anonymous were anonymized in all research outputs. This practice is essential to uphold the privacy and confidentiality of the participants and maintain the ethical standards of the study.

1.6 Literature Review

Land disputes significantly burden the Ethiopian judicial system.¹² While expropriation is widely practiced, related disputes are less common than other land conflicts in courts. Nevertheless, grievances are frequent,¹³ highlighting the need for an effective grievance and dispute resolution framework. Despite extensive academic exploration of Ethiopian expropriation, the dispute settlement aspect appears neglected,¹⁴ making dedicated literature challenging to find, although some studies address the issue.

In his thesis that explored urban land disputes, Rabira¹⁵ explored causes and types of urban land disputes and assessed the effectiveness of the legal and institutional frameworks for resolving these disputes. He asserted that legislative lacunas, corruption, inconsistent implementation, and a lack of clear adjudication procedure, alongside weak institutional capacity, weakened the effectiveness of the DRM. Similarly, Endadelew¹⁶ contends that the effectiveness of DRM in ANRS is undermined by the absence of CHB and AT in some urban centers, thereby resulting in a negative conflict of jurisdiction, the limited statutory period for lodging complaints with tribunals, and the inappropriate composition of tribunal members.

¹² Mekonnen Firew Ayano, 'Law and land conflict in emerging market economies: Ethiopia, 2014–2018' (2020) Vol. 18 No. 3 I•CON 1000.

¹³ Girma Kassa Kumsa, *Issues of Expropriation: The Law and the Practice in Oromia*, LLM thesis (Addis Ababa University 2011); Daniel (Note 5 above)

¹⁴ Jetu Edosa, 'Urban Land Disputes Resolution Methods in Ethiopia' in Muradu Abdo's (Ed), *Ethiopia's Urban Land Question: Focus on Access to Justice and Dispute Resolutions* (2020) vol. 10. Ethiopian civil and commercial law series 322.

¹⁵ Rebira Kibret Beyene, 'The Power of Administrative Agencies Concerning Urban Land Dispute Settlement: The Case Study on Dukem and Burayou City Administrations' (LLM Thesis, Addis Ababa University 2019).

¹⁶ Endadelew Aytenfisu, 'Critical Examination of Urban Land Clearance and Compensatory Cases Grievance Handling Mechanism in Amhara Region: The Case of Debre Birhan City Administration' (Master's Thesis, Bahir Dar University 2020).

Muhammed¹⁷ strengthens Endadelew's critique by stating that the appointment of members of tribunals by the expropriating governmental agency encumbers competency, impartiality, and independence as it may prioritize political loyalty over meritocracy. Moreover, Muhammed had also argued that the legislative framework limited the subject matters of justiciable matters before both administrative tribunals and regular courts to compensation only.

Jetu¹⁸ has also uncovered dodges in the legislation governing dispute resolution in urban land matters. Specifically, Jetu points out contradictions in the Urban Land Lease Proclamation and Expropriation Proclamation regarding the timing of surrendering landholdings after administrative tribunal decisions in order to bring a grievance to regular courts through appeal. Demelash¹⁹ also mentioned administrative means of DRM as known to citizens, thereby resulting in a violation of the rights of vulnerable groups.

Existing studies have illuminated shortcomings in the DRM for urban land disputes in Ethiopia. However, with the exception of Jetu's work, these investigations predate the new expropriation legislation. Furthermore, their geographical scope has been confined primarily to the ANRS and the Oromia regional state, thus lacking comprehensive representation of AAC. While Jetu's study broadly addresses urban land dispute resolution, it offers limited focus on the specific role of administrative tribunals in expropriation disputes. Despite the valuable contributions of this existing body of literature, the institutional and legal framework of tribunals remains a significantly under-researched area, underscoring the necessity for further scholarly inquiry. Consequently, this study endeavors to address this lacuna by examining the institutional and legal framework of expropriation tribunals within the AACG.

1.7 Scope of the Study

The study places its primary goal on exploring and assessing the institutional and legal framework of CHB and AT in AACG entrusted with the power to entertain urban land grievances, including but not limited to expropriation, with a view to examining their effectiveness. In doing so, the

¹⁷ Muhammed Kebie Hillo, 'Individual and State Land Dispute Management System in Ethiopia: An Appraisal of the Legislative Framework' (2017) Vol. 36 Journal of Resources Development and Management 24-31.

¹⁸Jetu, (Note 14 above)

¹⁹ Demelash Fentahun Yismaw, 'Comparative Analysis on Regional Laws Governing Rural Land Dispute Settlement Through Grievance Handling Mechanism. The Case of Amhara, Tigray and Oromia Regional State' (LLM Thesis, Bahir Dar University 2018).

study will limit itself to expropriation-related grievances. The focus of the study will be on CHB and AT. Geographically, the study confines itself to AACG.

1.8 Significance of the Study

Effective land rights enforcement, particularly through robust judicial and quasi-judicial mechanisms, is fundamental to a well-defined private property system, human rights realization, and sustainable development. This study focuses on the AACG land rights enforcement apparatus concerning expropriation. By identifying problems and proposing recommendations, this research contributes to the betterment of expropriation-related enforcement, thereby supporting the development of a more effective property system. The findings are significant for stakeholders involved in expropriation adjudication, offering practical insights. Furthermore, the study provides a valuable academic resource, serving as a basis for future research on expropriation DRM and offering foundational knowledge for students and academics in the field.

1.9 Organization of the Paper

The first Chapter introduces the study, and it includes the background, statement of the problem, research questions, objectives, scope, methodology, significance, limitations, and organization. The second chapter briefly covers concepts relating to expropriation and expropriation DRM. It highlights limitations on expropriation power and tribunals' characteristics. The third chapter evaluates the legal and institutional frameworks of CHB and AT. The chapter discusses that the impartiality and independence of CHB and AT are eroded as a result of legislative lacuna and improper implementations. Further, it suggests that their effectiveness is compromised by the shorter period of limitation, inconsistency of procedural rules, and vague rules regarding their scope of power. The final chapter provides a conclusion and calls for legislative reviews, provision of training for members of tribunals, proper implementation of laws, and capacity-building initiatives of the tribunals by way of recommendations.

Chapter Two

2 Overview of Expropriation and Expropriation DRM

2.1 Introduction

Comprehending the notion of expropriation and disputes related to it is irrefutably vital in understanding expropriation DRM and evaluating its effectiveness. Accordingly, this chapter aims to provide a brief account of expropriation and expropriation disputes along with the mechanisms for resolving such disputes, with a focus on administrative tribunals.

2.2 An Overview of Expropriation

States frequently require land for various purposes, inter alia, the construction of public infrastructure, the establishment of governmental facilities, and the implementation of development projects.²⁰ To this end, governments employ diverse mechanisms, with expropriation standing as a chief method.²¹

Expropriation is an inherent²² or constitutional power²³ of the state to compulsorily acquire private property for the public interest.²⁴ This process entails the involuntary transfer of ownership or possession rights of private property for various initiatives deemed to benefit the public, in exchange for commensurate compensation.²⁵ Expropriation, which is termed as Compulsory

²⁰ Daniel Weldegebriel Ambaye, 'Compensation for Expropriation in Ethiopia and the UK: A Comparative Analysis' (2013) Vol.3 Bahir Dar University Journal of Law 255; Achamyelch Gashu Adam, 'Peri-Urban Land Tenure in Ethiopia' (Doctoral Thesis, Royal Institute of Technology (KTH) 2014) 1.

²¹ Gashew Tenna Alemu, 'Land expropriation and compensation payment in Ethiopia: review' (2015) vol. 6 *Journal of Economics and Sustainable Development* 93.

²² Brightman Gebremichael Ganta, 'The Power of Land Expropriation in the Federation of Ethiopia' (2016) Vol. 7 (1) Bahir Dar University Journal of Law 1; DW Ambaye, 'Expropriation of Urban Property: A Reflection on the New Expropriation Laws' 231; See also Daniel W. Ambaye, 'Land Rights and Expropriation in Ethiopia' Doctoral Thesis (Royal Institute of Technology (KTH) 2015) 103

²³ Brightman Gebremichael Ganta, 'The Power of Land Expropriation in the Federation of Ethiopia' (2016) Vol. 7 (1) Bahir Dar University Journal of Law 1

²⁴The Constitution of the Federal Democratic Republic of Ethiopia Proclamation No. 1 1995 (article 40(8))

²⁵ The definition of expropriation is a reflection of the diverse theoretical underpinnings that seek to legitimize state intervention in private property rights. Nevertheless, practical applications and legal interpretations converge on a set

purchase, eminent domain, or simply “taking” across different legal traditions,²⁶ is utilized by governments of almost all states.²⁷

In Ethiopia, expropriation has been practiced at least since the early 20th century. Similarly, legislation that addressed expropriation came into being in the early 20th century. Before the early 20th century, due to limited need for land acquisition, expropriation was not well known. The 1908 Addis Ababa Land Charter was the first law that addressed expropriation and introduced the principle of compensation. This was followed by constitutional developments in 1931 and 1955, which gradually incorporated stipulations for public necessity, due process, and just compensation, notably detailed in the 1955 Revised Imperial Constitution and further systematized in the 1960 Civil Code.

The 1974 revolution and the subsequent military regime fundamentally reshaped Ethiopia's tenure system. All lands were nationalized, and expropriation laws that align with its socialist ideology were introduced, albeit with less clarity and protection than its predecessor.²⁸ Although the State land ownership was maintained, despite the change in government in 1991, changes were made concerning expropriation laws. The 1995 FDRE Constitution, while maintaining the requirements for, fundamentally altered the compensation framework. By making compensation is typically for improvements on land rather than the land per se.

of key features: the necessity of a demonstrable public interest, the involuntary transfer of ownership, the obligation to provide just compensation, and the adherence to procedural due process; See Daniel (Note 5 above) 98-103; Brightman (Note 5 above) 1.

²⁶Antonio Azuela and Carlos Herrera, ‘Taking Land Around the World: International Trends in the Expropriation for Urban and Infrastructure Projects’ (Lincoln Institute of Land Policy 2007) 2.

²⁷ Michael G. Kitay, *Land Acquisition in Developing Countries: Policies and Procedures of the Public Sector* (Oelgeochlagcr, Gunn & Hain in association with the Lincoln Institute of Land Policy 1985) 13; Nicholas K. Tagliarino, ‘Legal Limits on Government Authority to Expropriate Land: An Assessment of Expropriation Procedures in 50 Countries Across Asia, Africa, and Latin America’ (2018) World Bank Conference on Land and Poverty 3.

²⁸ Ibid

2.3 Protection in Expropriation

The protection of land rights is central to life.²⁹ Yet expropriation, an intrusive state power, more often than not, increases tenure insecurity and diminishes the enjoyment of property rights.³⁰ Thus, robust legal and institutional frameworks imposing limitations are crucial to balance landholder rights and public needs. Globally and in Ethiopia, constitutional and legal protections typically restrict expropriation to public purposes, adequate compensation, and due process.

2.3.1 Public Purpose

The concept of "public purpose" is crucial in limiting expropriation, which nearly all countries require to be justified by it. However, "public purpose" lacks a clear, universally accepted definition. International organizations like the VGGT emphasize that expropriation should only be for public purposes and stress the need for a clear definition of "public purpose" to enable judicial review. Yet, the VGGT does not provide a specific definition, leaving it to individual states.

Public purposes vary across jurisdictions. Definitions can be narrow (a clear and exhaustive listing qualifying as public purposes), partially clear (listing with open-ended clauses), or broad (granting significant discretion to the expropriating authority). Broad definitions can lead to abuse of power.

In Ethiopia, while the Constitution limits expropriation to "public purposes," it doesn't define the term. Subsequent legislation defines it broadly, as any land use that the government believes will "directly or indirectly" bring about "better economic and social development to the public." This has resulted in extensive land acquisition, often for private investors, potentially undermining landholders' rights.

The reviewability of expropriation decisions, especially concerning the justification of public purpose, is another key aspect. Judicial review serves as a check on governmental authority. Unlike previous laws, Ethiopia's new expropriation proclamation allows for judicial review of public purpose decisions.

²⁹ Montgomery Wray Witten, 'The Protection of Land Rights in Ethiopia' (2007) Vol. 20 Afrika Focus 154.

³⁰ Nicholas K. Tagliarino, 'Legal Limits on Government Authority to Expropriate Land: An Assessment of Expropriation Procedures in 50 Countries Across Asia, Africa, and Latin America' (2018) World Bank Conference on Land and Poverty 5.

2.3.2 Commensurate Compensation

At the heart of expropriation is the provision of adequate compensation,³¹ a principle widely recognized in national laws and mandated by the VGGT³². Many countries specify "just and equitable" or adequate and prompt compensation,³³ where prompt means without undue delay, and adequate means reasonably proportionate to market value.³⁴

The FDRE constitution and subsidiary legislation also require "commensurate" compensation.³⁵ However, the effective implementation of this right in Ethiopia faces challenges, including valuation inconsistencies and complexities, inadequate implementation, compensation delays, lack of transparency, and corruption.³⁶ These issues have significantly eroded landholders' rights.

2.3.3 Expropriation Procedure

Due process protects tenure security, property rights, and prevents arbitrary expropriation.³⁷ Many jurisdictions mandate due process in expropriation,³⁸ and the VGGT emphasizes transparent, participatory processes.³⁹ Ethiopian expropriation law enshrines procedures for notification, public inquiry, consultation, inventory, compensation payment, and grievance redress. This

³¹ Richard A Epstein, 'Takings: private property and power of eminent domain' (Harvard University press 1985); Kauko Viitanen, 'Just Compensation in Expropriation?' (FIG XXII International Congress, 2002) 3; Daniel (note 5 above) 204.

³² See section 16.3 of VGGT.

³³ Ryszard róbek and Sabina róbek, 'Expropriation as an Exceptional Tool of Acquisition of Land for Public Purposes' (2008) Vo 2(1) Geomatics and Environmental Engineering 90.

³⁴ United Nations Conference on Trade and Development (UNCTAD), Expropriation: UNCTAD Series on Issues in International Investment Agreements II' UNCTAD, 2012) 40.

³⁵ See article 40(8) of the FDRE Constitution; article 11 of the Expropriation Proclamation No. 1161/2019; Section 4 of the Expropriation Regulation No. 472/2020.

³⁶ Daniel (Note 5 above) 201-243; Girma Kassa (Note 13 above) 88-98.

³⁷ Muradu, Reforming Ethiopia's Expropriation Law (note 6 above) 323; Nicholas (note 30 above) 22.

³⁸ Hoops Björn, 'Expropriation Procedures in Germany and the Netherlands' (2016) 5(3) European Property Law Journal 237; Nicholas K. (note 30 above) 22.

³⁹ See section 16.2 of VGGT.

enhances trust and protects property rights.⁴⁰ Participatory, transparent procedures promote predictability, equitable treatment, and reduce grievances.⁴¹

Effective review of judicial and quasi-judicial bodies is crucial for legislative adherence.⁴² While expropriation is mainly administrative,⁴³ judicial oversight is needed to assure adherence to the procedure, review public purpose decisions, and handle compensation grievances.⁴⁴ Historically limited in Ethiopia,⁴⁵ judicial involvement has expanded under recent proclamations, clarifying ambiguities and broadening oversight.⁴⁶

2.4 Expropriation Grievances

Disputes impede both societal well-being and economic development by amplifying losses, deterring investment, and diminishing fiscal revenues.⁴⁷ The efficacy of DRMs is therefore of paramount importance.⁴⁸ Expropriation often engenders substantial grievances as it often threatens property rights and tenure security.⁴⁹ These grievances primarily arise from the clash between state

⁴⁰ Hoops Björn (Note 38 above) 248-249.

⁴¹ Nicholas (note 30 above) 25.

⁴² Ibid; Michael G. Kitay, 'Land Acquisition in Developing Countries: Policies and Procedures of the Public Sector' (Oelgeochlagcr, Gunn & Hain in association with the Lincoln Institute of Land Policy, 1985) 64; Food and Agriculture Organization of the United Nations (FAO), '*Compulsory Acquisition of Land and Compensation*' (FAO Land Tenure studies 10, 2008) 50.

⁴³ Michael G. Kitay, 'Land Acquisition in Developing Countries: Policies and Procedures of the Public Sector' (Oelgeochlagcr, Gunn & Hain in association with the Lincoln Institute of Land Policy, 1985) 60.

⁴⁴ Ibid 61.

⁴⁵ Daniel (Note 5 above) 194; Muradu, Reforming Ethiopia's Expropriation Law (note 6 above) 330;

⁴⁶ See article 5(4) of Proclamation 1161/2019.

⁴⁷ Babette Wehrmann, '*Land Conflicts A Practical Guide to Dealing with Land Disputes*' (Deutsche Gesellschaft für 2008) 33.

⁴⁸ Ibid 13.

⁴⁹ Ibid 10.

developmental needs and individual property rights,⁵⁰ giving rise to a range of socio-economic and legal challenges.⁵¹ Grievances are inevitable in expropriation that takes place in any legal system.⁵²

Key factors contributing to these grievances in Ethiopia include: denial or provision of inadequate compensation; insufficient rehabilitation measures; disregard for pre-existing development rights; lack of procedural transparency; absence of consultation; inconsistent valuation; non-adherence to prescribed expropriation procedures; and improper implementation of relevant legislation. Furthermore, corruption and abuse of power exacerbate these challenges.

2.5 Institutional Framework of Grievance Handling

2.5.1 Dispute Resolution Mechanisms

Effective grievance and complaint handling are crucial components of procedural safeguards in expropriation. Addressing grievances arising from expropriation in a fair, timely, and efficient manner is therefore imperative.⁵³ Various jurisdictions have adopted diverse resolution mechanisms to achieve this objective.⁵⁴

Dispute resolution mechanisms can be categorized into two primary types: consensual and non-consensual.⁵⁵ Consensual dispute resolution mechanisms, including negotiation, mediation, conciliation, and customary resolution practices, aim to achieve mutually acceptable compromises among involved parties.⁵⁶ These methods are often favored due to their inherent flexibility, cost-effectiveness, and potential to facilitate amicable settlements.⁵⁷ Conversely, non-consensual

⁵⁰ Muhammed Kebie Hillo, 'Individual and State Land Dispute Management A system in Ethiopia: Appraisal of the Legislative Framework' (2008) 7(2) *Universitepark Bülten*, 101.

⁵¹ *Ibid*, Fekede (note 8 above) 1.

⁵² Aberu Demsew, 'Assessment of Land Expropriation and Compensation in Ethiopia: The Law, Practice and Policy Implementation in Case of Wolkite Town of Gurage Zone' (Master's Thesis, Bahir Dar University 2023) 10.

⁵³ Food and Agriculture Organization of the United Nations (FAO), '*Compulsory Acquisition of Land and Compensation*' (FAO Land Tenure studies 10, 2008) 48.

⁵⁴ *Ibid* 50.

⁵⁵ Muhammed (note 50 above) 98.

⁵⁶ *Ibid* 99; Claudia Williamson and Carrie Kerekes, 'Securing Private Property: Formal Versus Informal Institutions' (2011) 54 *Journal of Law and Economics*, University of Chicago 546.

⁵⁷ Jetu (note 14 above) 329.

dispute resolution mechanisms, such as adjudication in regular courts or tribunals and arbitration, are characterized by their formal nature.⁵⁸ These processes frequently result in outcomes where one party prevails, as resolutions are imposed on disputants by a third-party decision-maker.⁵⁹

Consensual dispute resolution mechanisms are employed to address a wide range of disputes across various legal systems, including in Ethiopia. Their inherent flexibility, informality, and other advantages are often cited in promoting amicable resolutions.⁶⁰ However, legislative restrictions impede the application of consensual dispute resolution mechanisms in expropriation disputes within Ethiopia.⁶¹

2.6 Expropriation DRM in Ethiopia

Most legal systems gravitate towards non-consensual dispute resolution mechanisms. To put in place effective DRM, various legal systems have developed mechanisms tailored to their specific contexts. Some jurisdictions rely on administrative tribunals, limiting regular court involvement,⁶² while others empower only regular courts.⁶³ Most countries employ a hybrid model, using both regular courts and administrative tribunals with varying scope and jurisdiction.⁶⁴

Ethiopia has had modern DRMs since the early 20th Century, particularly post-Italian invasion.⁶⁵ Previously, disputes, including land-related ones, were adjudicated through a decentralized system

⁵⁸ Temesgen Solomon Wabelo, 'Approaches to Rural Land Dispute Resolution Mechanisms in the Ethiopian Rural Land Legislations: Regional States Based Analysis' (2020) 16(2) Law, Environment and Development Journal 97.

⁵⁹ Ibid; Muhammed (note 50 above) 99.

⁶⁰ Jetu (note 14 above) 329.

⁶¹ Ibid 230-232.

⁶² FAO (note 53 above) 48.

⁶³ Ibid

⁶⁴ Endadelew (note 16 above)

⁶⁵ Muradu Abdo, 'Legal History and Traditions: Teaching Material' (Justice and Legal System Research Institute 2009) 301-302.

involving local authorities, with appeals potentially reaching the emperor.⁶⁶ Emperor Haile Selassie's modernization introduced a more formalized approach.⁶⁷

The 1907 Addis Ababa Land Charter, a pioneering legislation in Ethiopian land administration, lacked a framework for addressing land grievances.⁶⁸ Nonetheless, the 1931 Constitution granted regular courts authority over expropriation disputes,⁶⁹ a precedent upheld by the 1955 Constitution.⁷⁰ The 1960 Civil Code established a hybrid model, designating the arbitration appraisal committee with first-instance jurisdiction over compensation disputes,⁷¹ and allowing appeals to regular courts.⁷² The code also sets time limits for the filing of claims,⁷³ promoting procedural efficiency.

Post-1974 revolution, urban land tenure changed significantly.⁷⁴ Proclamation No. 47/1975, which provided for public ownership of urban lands and extra houses, restricted regular court involvement in urban land and housing disputes.⁷⁵ Specialized three-tier tribunals (judicial, higher judicial, and central) were established with jurisdiction over disputes involving urban dwellers' cooperative societies and individuals. Though disputes involving government expropriation were not explicitly specified, the tribunals likely had broader jurisdiction, supported by the proclamation's prohibition of regular courts from adjudicating urban land disputes.⁷⁶

⁶⁶ Ibid.

⁶⁷ After the Italian occupation as part of the endeavor to modernize the Ethiopian legal system, Emperor Haile Selassie, through Proclamation No 2/1942 put in place a unitary four-tier court system by limiting the number of appeals to one.

⁶⁸ Daniel (note 5 above) 119-121; Endadelaw (note 16 above) 45.

⁶⁹ See the Cumulative reading of articles 27 and 28 of the 1931 imperial constitution.

⁷⁰ See the Cumulative reading of articles 44, 108 and 110 of the 1955 revised imperial constitution.

⁷¹ See article 1472 and 1473 of the 1960 Imperial Civil Code.

⁷² See article 1477(1) of the 1960 Imperial Civil Code.

⁷³ See articles 1470 and 1477(2) of the 1960 Imperial Civil Code.

⁷⁴ John W. Bruce, Allan Hoben and Dessalegn Rahmato, 'After the Derg: An Assessment of Rural Land Tenure Issues in Ethiopia' (Ford Foundation, 1994) 2-5.

⁷⁵ See article 24(2), 25(2)d, 26(2)b of proclamation no. 47/1975.

⁷⁶ See Article 27 of Proclamation no. 47/1975.

After the Derg regime's collapse, Ethiopia transitioned to a market-oriented economy, slightly altering land tenure,⁷⁷ particularly urban land. Urban land lease holding was introduced in 1993 and further strengthened in 2002, which provided a more comprehensive framework for land clearance and dispute resolution. Expropriation was mentioned incidentally in both, as a means to terminate a lease, with the 2002 proclamation introducing urban land clearance as an alternative.

The 2002 lease re-enactment proclamation provided for clearance order appeals commissions in regional states and city administrations.⁷⁸ AAC established the Urban Land Clearance Matters and Compensation Appeal Commission through regulation No. 30/2002 to handle grievances from urban land clearance orders, including compensation disputes.⁷⁹ Appeals to regular courts were allowed only for compensation matters after land handover.⁸⁰

The 2004 expropriation proclamation contradicted the lease proclamation by designating regular courts as the sole DRM.⁸¹ The 2005 expropriation proclamation resolved this, stipulating that in urban areas with established administrative organs for urban land disputes,⁸² grievances should be brought to those organs.⁸³ In areas without such organs, compensation claims were to be submitted to regular courts.⁸⁴

The new expropriation proclamation establishes a two-tier tribunal system: urban land-complaint hearing bodies and urban land appeal tribunals.⁸⁵ Thus, the post-Derg era uses a hybrid model, with both tribunals and regular courts adjudicating urban land-related disputes, in contrast with the Derg regime's 'tribunals-only' approach. The role of administrative tribunals in the adjudication of

⁷⁷ Daniel (note 5 above) 63.

⁷⁸ See articles 18 and 19 of Proclamation no. 272/2002.

⁷⁹ See the cumulative reading of articles 17 and 18 of Proclamation number 272/2002.

⁸⁰ See article 18(3) proclamation number 272/2002.

⁸¹ Appropriation of Land for Government Works and Compensation for Property Proclamation number 401/2004.

⁸² See 11 of Proclamation number 455/2005.

⁸³ Ibid; While the legislation appears to establish a two-tiered tribunal system, this is fallacious. Hence, the first tier is merely an internal body within the decision-making organization and lacks the power to issue binding decisions. Thus, adjudication was operated with single-tier tribunal system.

⁸⁴ See 11 of Proclamation number 455/2005.

⁸⁵ See article 19(1) and 20(1) of Expropriation Proclamation no. 1161/2019 and article 39 (1), 39(3), 42 and 43 of Expropriation Regulation no. 472/2020.

expropriation disputes is immense, particularly in ensuring equitable access to justice; hence, they exercise first-instance and appeal jurisdiction.⁸⁶ Regular courts possess appellate jurisdiction,⁸⁷ including grievances concerning decisions made for public purposes.⁸⁸

2.7 Administrative Tribunals

Administrative tribunals, otherwise known as administrative courts or simply tribunals, are specialized adjudicating bodies established in order to ensure prompt, effective, inexpensive, flexible, and expert adjudication as well as expeditious disposal of disputes outside the regular courts.⁸⁹ In other words, they can be defined as administrative agencies or quasi-judicial bodies before which a matter may be heard or tried as distinguished from a judicial forum.

The administrative tribunals are distinct from the judicial courts, and they are established under the auspices of the executive branch of the government. Nevertheless, they are independent from the executive in their adjudicatory functions.⁹⁰ Though they are distinct from the regular court system, functionally, they resemble the regular courts.⁹¹ Hence, they examine facts and make decisions by applying laws set by the legislature.⁹² In addition to their creation, tribunals vary from the regular courts in their procedural rule, composition, membership requirements, and permanence.⁹³

While regular courts typically derive their authority from constitutional provisions,⁹⁴ Administrative tribunals, in numerous jurisdictions, including Ethiopia, are established through

⁸⁶ Ibid.

⁸⁷ See article 20 (2) of Expropriation Proclamation no. 1161/2019 and article 43 of Expropriation Regulation no. 472

⁸⁸ See article 5(4) of Expropriation Proclamation no. 1161/2019.

⁸⁹ Chris Taylor, *Constitutional and Administrative Law* (Pearson Education Limited 2008) 127.

⁹⁰ Mark Ryan, *Unlocking Constitutional and Administrative Law* (Third Edition, Routledge, 2014) 571.

⁹¹ Abraham Yohanes and Endryas Tekalign, *Ethiopian Administrative Law: A Text Book* (Ethiopian Law School's Association 2022) 239.

⁹² Ibid 243; Mark (note 90 above) 570.

⁹³ M. Olu Adediran, 'Characterization and Classification of Tribunals and Inquiries in Nigeria' (1995) Vol 28 Law and Politics in Africa, Asia, and Latin America 525.

⁹⁴ See Article 78 of FDRE Constitution; See also K I Vibhute, 'The Judicial System of Ethiopia: From 'Empire' to 'Military Junta' to 'Federal Democratic Republic': A Legacy Perspective' (2015) 4(1) Christ University Law Journal; Yashomati Ghosh, 'A Textbook on Administrative Law' (Lexis Nexis 2016) 570.

legislative enactments.⁹⁵ The reliance on legislative enactments for the establishment of administrative tribunals offers several potential advantages. Notably, it allows for greater flexibility and adaptability⁹⁶ in creating tribunals tailored to specific administrative needs and evolving societal requirements. However, this legislative dependence also presents potential challenges. The risk of political influence on the establishment and functioning of these bodies cannot be entirely dismissed,⁹⁷ as their existence and powers remain subject to the discretion of the legislator.

Another crucial distinction between administrative tribunals and regular courts lies in their approach to procedural rules.⁹⁸ While regular courts are typically bound by strict adherence to civil and criminal procedure rules, administrative tribunals exhibit greater flexibility in their procedure.⁹⁹ This divergence is evident in numerous jurisdictions, including Ethiopia. Regular courts are firmly rooted in adherence to established procedural rules, meticulously following prescribed rules in adjudicating all matters brought before them. Conversely, administrative tribunals enjoy a degree of discretion in their procedural approach.¹⁰⁰ This flexibility allows for a more adaptable and potentially expedited resolution of disputes.

Unlike regular courts, administrative tribunals are frequently established to address specific facets.¹⁰¹ This targeted approach enables tribunals to focus on distinct domains of expertise,¹⁰² fostering the development of specialized knowledge and a deeper understanding of the intricacies inherent in those fields. Such specialization contributes to more informed and consistent decision-

⁹⁵ Abraham Yohanes (note 91 above) 243.

⁹⁶ Peter Cane, *Administrative Law* (Fifth Edition, Oxford University Press, 2011) 321.

⁹⁷ Tamirat Malefiya, 'Judicial review and competency of administrative tribunals to give a final decision in Ethiopia: a comparative study with South Africa and the UK' (LLM Thesis, Central European University 2013)

⁹⁸ M. Olu Adediran (Note 93 above) 528; Abraham Yohanes (note 91 above) 243.

⁹⁹ Peter Cane, *Administrative Law* (note 96 above).

¹⁰⁰ Ibid 319; Abraham Yohanes (note 91 above) 246.

¹⁰¹ Peter Cane, *Administrative Tribunals and Adjudication* (Hart Publishing 2009) 271.

¹⁰² Ibid 91-92.

making, as tribunal members leverage their expertise to evaluate cases and render judgments effectively.¹⁰³

2.7.1 Independence of Tribunals

Independence constitutes the foundational principle of any entity vested with judicial authority.¹⁰⁴ The legitimacy and efficacy of administrative tribunals are intrinsically contingent upon their independence.¹⁰⁵ Consequently, independence is not merely a desirable characteristic but an essential prerequisite for the proper functioning of tribunals, ensuring their effectiveness and upholding the rule of law.¹⁰⁶

Independence, in broad terms, refers to the autonomy of judges and the judiciary as an institution in the exercise of their judicial functions.¹⁰⁷ It is a multifaceted concept encompassing two distinct yet interconnected dimensions: institutional and functional independence. Institutional independence refers to the autonomy of the tribunal.¹⁰⁸ This autonomy safeguards the tribunal from undue external pressures and influences.¹⁰⁹ Functional independence, conversely, focuses on the autonomy of individual judges in their adjudicative role.¹¹⁰ It ensures that judges are free to render judgments based solely on the applicable law and the specific facts presented in each case, without fear of reprisal, coercion, or any other form of external influence.¹¹¹ This freedom from

¹⁰³ Ibid.

¹⁰⁴ The FDRE Constitution enshrines judicial independence across multiple provisions. *Article 78(1)* declares the judiciary "independent," while *Article 79(2)* mandates courts to operate free from interference. *Article 79(3)* requires judges to exercise "full independence," guided solely by the law, and *Article 79(4)* guarantees tenure and safeguards against arbitrary removal, ensuring impartial adjudication.

¹⁰⁵ Peter Cane, 'Administrative Tribunals (note 101 above) 113.

¹⁰⁶ Tamirat Malefiya (note 97 above) 39.

¹⁰⁷ K I Vibhute, 'The Judicial System of Ethiopia: From 'Empire' to 'Military Junta' to 'Federal Democratic Republic': A Legacy Perspective' (2015) 4(1) Christ University Law Journal 25.

¹⁰⁸ Aron Dagol, 'Institutional independence of federal courts in Ethiopia: an observation' (2020) 14(2) Mizan Law Review 314.

¹⁰⁹ Ayana Simachew Bekele, 'Administrative tribunals in Ethiopia: exploring the Accessibility and Independence of the Federal Civil Servants Administrative Tribunal' (2019) vol.8 Haramaya Law Review 67.

¹¹⁰ Aron Dagol (note 108 above).

¹¹¹ Melaku Getachew Hailemariam, 'The Ouster of Judicial Jurisdiction by The Legislature in Ethiopia: Inventory Of Causes and Effects' (LLM Thesis, Addis Ababa University 2022) 21.

external pressure is essential for judges to exercise their judicial discretion impartially and objectively.¹¹²

Historically, in Ethiopia, the judiciary and quasi-judicial bodies have been attached to the executive branch of the government.¹¹³ Despite the constitution's recognition of the independence of the judiciary, particularly in relation to cases that are deemed or perceived to matter to the authorities, it is still in question by many,¹¹⁴ particularly in relation to expropriation grievances.¹¹⁵ This necessitates scrutinization of the independence of tribunals including those established to deal with expropriation disputes.

Another significant issue affecting the effectiveness and public trust in tribunals is their impartiality, which encompasses a comprehensive concept that includes both subjective and objective elements.¹¹⁶ Subjective Impartiality refers to the tribunal member's actual mental state, requiring an open mind free from personal biases or prejudices.¹¹⁷ In contrast, Objective Impartiality focuses on the appearance of impartiality to a reasonable observer, ensuring that the circumstances surrounding the tribunal's proceedings do not create a reasonable apprehension of bias.¹¹⁸ This includes factors such as prior involvement in the case, relationships with the parties, and any public statements made by tribunal members,¹¹⁹ all of which influence perceptions of fairness and integrity within the tribunal

¹¹² Barron J. David, 'Judicial Independence: Origins and Contemporary Challenges' (2020) Vol. 25 (1) Roger Williams University Law Review 7.

¹¹³ Mekonnen Firew Ayano, 'Law and land conflict in emerging market economies: Ethiopia, 2014–2018' (2020) Vol. 18 (3) I•CON 99; Muradu, Reforming Ethiopia's Expropriation Law (note 6 above) 332.

¹¹⁴ Hailu Burayu, Elias N. Stebek & Muradu Abdo, 'Judicial Protection of Private Property Rights in Ethiopia: Selected Themes' (2013) Vol. 7 (2) Mizan Law Review 361.

¹¹⁵ Muradu, Reforming Ethiopia's Expropriation Law (note 6 above) 332; Daniel (note 5 above) 194.

¹¹⁶ Ledi Bianku and Hannah Smith, 'Independence and Impartiality of the Judiciary: An overview of relevant jurisprudence of the European Court of Human Rights' (AIRE Centre, 2021) 50-53.

¹¹⁷ Ibid.

¹¹⁸ Ibid.

¹¹⁹ Ibid.

2.8 Chapter Summary

Expropriation is an inherent and constitutional power of governments, exercisable in every country. This power is not arbitrary; most jurisdictions limit it. Ethiopia, since the early 20th century, has legislation requiring public purpose, commensurate compensation, and procedural safeguards to limit governmental expropriation of private property. Effective dispute-resolution mechanisms are critical for enforcing these principles.

Disputes over expropriation in Ethiopia are resolved through nonconsensual mechanisms, primarily quasi-judicial bodies or administrative tribunals. These tribunals, established by the executive branch, offer efficient, expert, and flexible adjudication, differing from regular courts in their legislative establishment, procedures, composition, and permanence. Their effectiveness hinges on their independence (institutional and functional) and impartiality (subjective and objective), which are critical for public trust, though historically, both have been questioned in Ethiopia, particularly in expropriation cases.

Chapter Three

3 The institutional and legal framework of CHB and AT

3.1 Introduction

The preceding chapter provided a concise overview of the DRM available for addressing expropriation-related disputes in AACG. More specifically, the chapter undertakes a more detailed examination of the two tribunals' institutional and legal framework put in place to adjudicate expropriation disputes in AAC.

3.2 *Raison d'être* of the Tribunals

As stated in the second chapter, the new expropriation proclamation dictates the establishment of two tiers of administrative tribunals. Accordingly, the AAC has established the Land Tenure Expropriation and Compensation Affairs hearing assembly (hereinafter referred to as the Assembly) as its first-tier tribunal and empowered an already established Urban Land Clearance Matters Appeals Commission (hereinafter referred to as the Commission) as its second-tier appellate tribunal. In this sub-section, we will be exploring the *raisons d'être* of these tribunals.

The *raisons d'être* of tribunals exert a determinative influence in delineating the functional parameters of such bodies. These foundational rationales not only establish the tribunals' institutional objectives but also critically inform their *modes operandi*.¹²⁰ By furnishing normative clarity, these rationales serve a prescriptive function, ensuring tribunals discharge their mandates with both efficacy and equity. Furthermore, they underpin the tribunals' adjudicatory logic, guiding decision-making paradigms and structuring interactions with stakeholders.

The establishment of administrative tribunals, including the Assembly and the Commission, is grounded in quite a few justifications¹²¹ that align with the general features of administrative adjudication. Broadly, administrative tribunals are justified by their ability to resolve disputes

¹²⁰ Ayana (note 109 above) 60.

¹²¹ Ibid.

through specialized expertise, procedural flexibility, and cost-effective timeliness, ensuring accessibility and efficiency.¹²²

However, in the context of the above two tribunals established to deal with expropriation disputes, it can be safely said that their creation is driven by a distinct rationale tied to accelerating urban development and circumventing systemic inefficiencies inherent in regular judicial processes, among others. Although this is not explicitly articulated in the establishing regulations as such, inferences could be made from the preamble and provisions of the establishing regulations to this end. Additionally, the data the researcher obtained from key informant interviews draws the same picture regarding the *raisons d'être* of the tribunals.

The preamble of the enabling regulation of the Commission¹²³ stipulates that

“The Commission is established to provide decisions on appeals brought before it, to help make the process of permitting land by lease free from awkward engagement by smoothing the transfer of urban land to developers, thereby continuously enhancing urban development.” (Emphasis added).

This preambular justification indicates vividly that the *raisons d'être* of the establishment of the Commission incline toward the facilitation of the swift transfer of urban land to developers with a view to amplifying urban development. This justification is further amplified in Article 5 of the same regulation, which enshrines “*expeditious justice*” as a core objective. This streamlined from the perception that prolonged litigation in regular courts, burdened by procedural formalities and injunctions, delays land transfers critical to state-led infrastructure projects.¹²⁴

¹²² Ibid; Neil Hawke and Neil Parpworth, ‘*Introduction to Administrative Law*’ (Cavendish Publishing Limited 1998) 67-68.

¹²³ Addis Ababa City Government Urban Land Clearance Matters Appeals Commission Establishing Regulation No. 30/2002.

¹²⁴ Interview with Ato Zegeye Yemanebrihan, President of The Addis Ababa City Government Urban Land Clearance Matters and Compensation Appeal Commission, May 2024; Interview made with Ato Melese Tegenu, Judge at The Addis Ababa City Government Urban Land Clearance Matters and Compensation Appeal Commission and Head of the legal service department at Addis Ababa City Government Land Development and Administration Bureau, May 2024, Addis Ababa.

Empirical evidence from key informant interviews corroborates that the need for expeditious adjudication had frequently resulted in poor investigation of grievances and violation of the landholders' right to be heard before the tribunals.¹²⁵ This, of course, has to do with what the tribunal establishing regulation provides in its preamble and the practical prioritization of project timelines over thorough scrutiny of grievances. In particular, this has frequently been observed in relation to a high-value development project deemed “essential” by the state.¹²⁶ Key informants, interviewed by the researcher, have further stated that cases have been decided expeditiously or expropriated lands have been transferred to developers before the final decision is given, so as not to disrupt development being carried out on expropriated land by momentarily disregarding the rights of the affected landholders,¹²⁷ exacerbating the tenure insecurity of urban landholders. The provision of expeditious justice is a common feature of tribunals across many jurisdictions.¹²⁸ The same shall hold true for the commission and the assembly. Nonetheless, this should not mean that justice has to be rushed, and parties should not exercise their right to be heard. Tribunals should strike a balance between these two competing interests in their adjudication process.

A secondary rationale lies in the tribunals' reliance on adjudicators with sector-specific expertise, as mandated by Article 4(3) of the Commission's establishing regulation. The stipulation provides that the president and judges of the commission shall be selected and appointed from appropriate bodies. Practically, Tribunal members are appointed from technical bodies such as the Land Development and Administration Bureau, Finance Bureau, Housing and Development Agency, Trade and Industry Bureau, Bureau of Justice, and the like,¹²⁹ ensuring decisions are informed by bureaucratic and socioeconomic insights pertinent to urban expropriation. Since 2002, this

¹²⁵ Interview with Ato Fufa Kejela Hinsermu, Legal expert at The Addis Ababa City Government Urban Land Clearance Matters and Compensation Appeal Commission, May 2024.

¹²⁶ Ibid

¹²⁷ Ibid

¹²⁸ Neil Hawke and Neil Parpworth, 'Introduction to Administrative Law' (Cavendish Publishing Limited 1998) 67-68.

¹²⁹ Interview with Ato Zegeye (note 124 above); Interview with Wyo Fikerte Negussie, Registrar at The Addis Ababa City Government Urban Land Clearance Matters and Compensation Appeal Commission, May 2024; Interview with Ato Ayalew Melaku, Chairman of the Addis Ababa City administration Land Tenure Expropriation and Compensation Affairs hearing assembly, December 2024

expertise-driven model has aimed to enhance adjudicatory accuracy and contextual relevance, reducing reliance on generalist judges in regular courts. However, critics argue that this structure risks institutionalizing pro-development biases, as tribunal members often originate from agencies directly invested in expropriation outcomes.¹³⁰ The same holds true for the newly established assembly.

3.3 Institutional Framework for Resolution of Expropriation Disputes in Addis Ababa

Proper implementation of legislation relies on a robust institutional framework.¹³¹ Without it, legislation cannot be effectively implemented. Moreover, the right to recourse justice before impartial and independent tribunals is enshrined as a fundamental right in major international human rights treaties¹³² and the FDRE constitution.¹³³

As mentioned earlier, the new expropriation proclamation has given the responsibility to entertain expropriation disputes to CHB, AT, the federal first instance court, and regional state high courts.¹³⁴ Accordingly, the AAC has the Assembly as a first-tier tribunal as a complaint hearing body and has empowered the existing Commission to exercise appellate jurisdiction over matters decided by the Assembly.

To ensure the impartiality and independence of the tribunals and the effective implementation of the laws, scrutinizing the institutional framework of these institutions is imperative. Accordingly, in this subsection, an attempt is made to discuss the institutional framework of the two administrative tribunals.

¹³⁰ Interview with Ato Fufa (note 125 above)

¹³¹ Turimubumwe Prosper, ‘Challenging institutional frameworks in land administration Many institutions, but less property rights (Case of Burundi)’ (2021) *African Journal on Land Policy and Geospatial Sciences* 17; Temesgen Solomon Wabelo, ‘Legal and Institutional Frameworks Regulating Rural Land Governance in Ethiopia: Towards a Comparative Analysis on the Best Practices of Other African Countries’ (2020) *Beijing Law Review*, 72.

¹³² See article 10 of UDHR, article 14(1) of ICCPR, and articles 7 and 26 of the Banjul charter, or ACHPR.

¹³³ See article 37 of the FDRE Constitution.

¹³⁴ See articles 19 and 20 of the Expropriation Proclamation 1161/2019 and article 39 of Expropriation Regulation 472/2020.

3.3.1 The Assembly

3.3.1.1 Establishment

The Assembly is established to conduct an independent, merit-based review of administrative decisions relating to expropriation. The assembly is an organ established as per the new expropriation proclamation and assumes the power of the CHB as it is enshrined in the new expropriation proclamation and regulation.¹³⁵ The assembly is established through AACG Regulation No. 6/2020. The Assembly is vested with the authority to adjudicate grievances concerning expropriation-related decisions issued by the Land Development and Administration Bureau or other competent governmental entities, exercising its jurisdiction to affirm, revoke, or amend such decisions or give any other order necessary.¹³⁶

Unlike the Appeal Commission, which was established in 2002 in response to the re-enactment of the urban lease holding proclamation, the Assembly represents a new and significant addition to the adjudicatory framework for handling expropriation disputes. This development is primarily a result of the new expropriation legislation's shift towards a two-tier tribunal system from the previous single-tier tribunal system.

Although the enabling regulation for the Assembly was promulgated in February 2020, it has faced delays that prevented it from being fully functional until late 2023.¹³⁷ This lengthy gap has implications for the resolution of expropriation disputes, as affected landholders have had to navigate the transitional period without the benefit of the Assembly's intended adjudicatory protection. The establishment of the Assembly is expected to enhance access to justice for the affected landholders by providing avenues for speedy, informal, and less costly justice.

Many regard the role of institutional accountability mechanisms in tribunals as elemental to ensuring their independence and autonomy.¹³⁸ Accountability is vital because tribunals are entrusted with the important responsibility of reviewing administrative decisions made by the

¹³⁵ See article 18(1) of the Expropriation Proclamation 1161/2019 and articles 40 and 42 of Expropriation Regulation 472/2020.

¹³⁶ See article 5 of Regulation No 6/2022 of the Addis Ababa City Government and article 42 of Expropriation Regulation 472/2020

¹³⁷ Interview with Ato Ayalew (note 129 above).

¹³⁸ Peter Cane, *Administrative Tribunals* (note 101 above) 255-257.

executive. Given this momentous function, the selection of the body to which these tribunals are accountable must be approached with great caution and consideration. Otherwise, the possibility of weakening the independence and autonomy of the tribunals as a result of potential undue influence and conflicts of interest is apparent.

The establishing regulation of the Assembly has designated the AAC Council as the body to which the Assembly is accountable.¹³⁹ In this regard, interviews opined that the fact that the assembly is made accountable to the legislator has immensely amplified the autonomy and independence of the assembly by reducing potential interferences from the executive branch of the city administration.¹⁴⁰ Given that expropriation decisions are predominantly made by the cabinet, which oversees the executive committee, the assertion made by interviewees is discernibly valid.

Nonetheless, one could argue that holding the assembly accountable to the executive is acceptable, provided that there exists an adequate legal framework and a strong political commitment in place to protect the autonomy and independence of the tribunals.¹⁴¹ This perspective suggests that with the right frameworks, flexibility can enhance tribunal functions by ensuring that it works in alignment with the executive's objectives while still maintaining its legislative responsibilities.¹⁴² However, considering the historical fusion between the executive and the judiciary, alongside the weak autonomy of the judiciary observed over the years,¹⁴³ The argument doesn't seem feasible to the Ethiopian case. Many interviewees also do not agree with this viewpoint.¹⁴⁴

¹³⁹ See Article 3 (2) Expropriation of land holding for public purpose and compensation affairs complaint hearing assembly establishment Regulation No 6/2022.

¹⁴⁰ Interview with Ato Ayalew (note 129 above); Interview with Ato Geleta Boru, Judge at the Addis Ababa City administration Land Tenure Expropriation and Compensation Affairs hearing assembly, May 2024.

¹⁴¹ Interview with Ato Zegeye (note 124 above); Interview with Ato Melese (note 124 above)

¹⁴² Ibid.

¹⁴³ Assefa Fiseha, *Federalism and the Accommodation of Diversity in Ethiopia: A Comparative Study*, (Netherlands, Wolf Legal Publishers, 2005/06) 390; Elias N, Muradu Abdo and Hailu Burayu, '*Property Rights Protection and Private Sector Development in Ethiopia*' (Private Sector Development Hub, Ethiopian Chamber of Commerce and Sectoral Associations, 2013) 82.

¹⁴⁴ Interview with Ato Fufa (note 125 above); Interview made with Wyo Almaze Tilahun, Legal Expert at The Addis Ababa City Government Urban Land Clearance Matters and Compensation Appeal Commission, May 2024, Addis Ababa.

3.3.1.2 Composition

The efficacy of administrative tribunals is considerably contingent upon the tribunal's composition *per se*.¹⁴⁵ As previously enunciated, the rationale for establishing such tribunals arises, *inter alia*, from the imperative to adjudicate disputes through adjudicators possessing specialized knowledge and sector-specific expertise.¹⁴⁶ This specialization is critical to ensuring that determinations are grounded in a nuanced, informed comprehension of the subject matter.¹⁴⁷ Consequently, the selection and composition of tribunal members constitute a fundamental determinant in preserving the requisite depth of expertise. Equally, a judiciously organized tribunal, characterized by a multidisciplinary composition that integrates members with heterogeneous professional backgrounds and complementary domains of proficiency, is indispensable for the effectiveness of tribunals.¹⁴⁸

The composition of the assembly, as outlined in its establishing regulations and the new expropriation laws, demonstrates substantive inadequacies. Specifically, they omit critical stipulations regarding requisite disciplinary diversity and mandated specialized expertise, failing even to ensure the inclusion of legal professionals. This omission weakens the tribunal's ability to deliver informed and well-adjudicated judgments, as the lack of multidisciplinary representation impedes the incorporation of diverse expertise crucial for comprehensive and contextually nuanced adjudication.

The new expropriation regulation establishes a minimum membership threshold of three for the assembly,¹⁴⁹ while the establishing regulation prescribes a more specific composition encompassing five members, including the leadership roles of a chairman and vice-chairman.¹⁵⁰ Nomination and Appointment authority for these positions is vested in the mayor, the city council, and the speaker of the city council.¹⁵¹ Furthermore, the establishing regulation endows the chairman with discretionary power to nominate members for an additional bench whenever

¹⁴⁵ Peter Cane, Administrative Tribunals (note 101 above) 91-92.

¹⁴⁶ Ibid.

¹⁴⁷ Ibid.

¹⁴⁸ Ibid.

¹⁴⁹ See article 40(2) of Expropriation Regulation 472/2020.

¹⁵⁰ See Article 4 (1) of Addis Ababa City Government Regulation No. 6/2020.

¹⁵¹ Ibid.

required, subject to approval by the mayor whenever operational exigencies dictate.¹⁵² This evinces a deliberate legislative design to enhance the assembly's institutional capacity to handle caseloads.

While the potential to form additional benches is not inherently problematic and indeed serves a practical purpose, one could argue that the nomination and appointment process outlined in the establishing regulations of the assembly is somewhat incongruous; hence, the regulations allocate the power of nomination and appointment to different entities. As provided above, members appointed to the initial bench formed during the assembly's establishment are nominated by the mayor and appointed by the speaker of the council. In contrast, for any subsequent benches, the members are nominated by the chairman of the assembly and appointed by the mayor. This disparity raises questions regarding the consistency of the nomination and appointment process.

Another critical lacuna in the assembly's composition lies in its failure to integrate the representation of urban landholders. Typically, tribunals are composed of members with both legal and non-legal expertise,¹⁵³ allowing for a well-rounded approach to decision-making. Furthermore, to enhance inclusion and ensure that the interests of major stakeholders are adequately considered, it is not uncommon for tribunals to include laypersons who represent the concerned public.¹⁵⁴ In the expropriation process in general and grievances handling in particular, the exclusion of urban landholders affects the protection provided to landholders.

Given that expropriation has a profound impact on the property rights and livelihoods of urban landholders, their representation in the tribunal established to adjudicate expropriation disputes is not merely beneficial; it is essential. Including urban landholders in the assembly would significantly bolster the protection of their property and tenure security rights, providing them with a necessary voice in decisions that directly affect their lives and investments. Moreover, such inclusion would contribute to fostering greater public trust and transparency within the assembly.

¹⁵² Ibid.

¹⁵³ Peter Cane, *Administrative Tribunals* (note 101 above) 97; Tamirat Malefiya (note 97 above) 40.

¹⁵⁴ Tamirat Malefiya (note 97 above) 40.

When urban landholders see their interests represented, their confidence in the process would be enhanced, and promote a sense of accountability among decision-makers.

However, despite the importance of the representation of urban landholders, both the establishing regulations and the current practical composition of the assembly have regrettably overlooked the inclusion of landholders.¹⁵⁵ This oversight raises significant concerns about the assembly's ability to effectively address the diverse needs and perspectives of the urban landholders it serves, ultimately undermining the efficacy of its operations. Without the voices of urban landholders, the assembly risks becoming disconnected from the realities faced by those it is meant to serve.

3.3.1.3 Membership Requirements

The independence and Impartiality of judicial and quasi-judicial bodies are one of the building blocks of the rule of law.¹⁵⁶ The effectiveness of these institutions in maintaining independence and impartiality is contingent upon a variety of factors. A range of Political, social, economic, cultural, and legal elements play a significant role in shaping the state of independence and impartiality of such institutions.¹⁵⁷ The competency of the members and membership requirements of such institutions are among the critical factors in fostering their impartiality and independence.¹⁵⁸ A robust combination of expertise, experience, and integrity among the members significantly enhances the institution's capacity to maintain independence and impartiality. To achieve this, it is essential to establish appropriate criteria for membership selection.

However, the new expropriation legislation and the enabling regulation of the assembly are diminutive in this respect, aside from merely delineating a vague general requirement without providing clear criteria for the selection and appointment of members. Article 4, sub-article 1 of the enabling regulation of the assembly stipulates that those individuals appointed as chairman, vice chairman, and members of the assembly must possess the requisite competence and experience. However, nothing has been provided as to what constitutes the requested competence and experience for membership of the assembly. Moreover, the phrase *'requested competence and*

¹⁵⁵ Interview with Ato Ayalew (note 129 above).

¹⁵⁶ Abdalrazak Alsheban, 'Judicial Impartiality and Independence of the Judiciary (Comparative Study)' (2017) 22(5) IOSR Journal of Humanities and Social Science 37; Ledi Bianku (note 116 above) 24.

¹⁵⁷ Ledi Bianku (note 116 above) 36-49.

¹⁵⁸ Ibid.

experience’ is inherently subjective and open to interpretation, and can't stand by itself to be a requirement for the selection of members.

This not only complicates the nomination and appointment process but also renders it vulnerable to potential political exploitation and inconsistency in the process of selection.¹⁵⁹ Such vulnerabilities could lead to the appointment of individuals based on political affiliations rather than merit, ultimately undermining the competencies of both the members and the assembly as a whole. Furthermore, this lack of clarity and uniformity may contribute to a perception of bias,¹⁶⁰ which could erode public trust in the assembly’s decision-making processes. Moreover, the absence of stringent criteria for assessing competence and experience may result in appointments that do not reflect the diverse expertise necessary for addressing the complex issues related to expropriation. Consequently, the assembly may struggle to fulfill its mandate effectively, leading to a diminished capacity to serve the interests of the public.

In practice, interviewees conveyed to the author that the nomination and appointment of members are conducted at the discretion of the appointing official, the city’s executive committee,¹⁶¹ rather than adhering to merit-based criteria such as educational qualifications and relevant experience. Interviewees indicated that the appointment process has been predominantly influenced by factors such as political affiliations, loyalty to the ruling party, and patronage.¹⁶² This reliance on non-meritocratic considerations raises significant concerns regarding the integrity and effectiveness of the Assembly,¹⁶³ as it may result in appointments that do not adequately reflect the necessary competencies and expertise required to fulfill the assembly’s critical functions.

Another significant issue that should be raised in relation to membership is the tenure and removal of members. The standard for the tenure and removal of judges in judicial bodies is characterized by lifetime appointments or fixed retirement ages, with removal solely by the legislature and only

¹⁵⁹ Interview with Ato Fufa (note 125 above); Interview made with Wyo Rihanna Ebrahim, attorney and consultant, May 2024, Addis Ababa.

¹⁶⁰ Ibid.

¹⁶¹ Interview with Ato Ayalew (note 129 above); Interview with Ato Geleta (note 140 above).

¹⁶² Interview with Ato Fufa (note 125 above); Interview made with Wyo Rihanna Ebrahim (note 159 above)

¹⁶³ Ibid.

on very limited grounds, such as incapacity or misconduct.¹⁶⁴ Quasi-judicial appointees do not enjoy the standard set for the traditional judiciary regarding the tenure or term of members.¹⁶⁵ This disparity underscores the need for mechanisms that safeguard the independence of quasi-judicial appointees. Such mechanisms should encompass the appointment process and the membership requirements discussed earlier in this sub-section.

However, as far as the removal of quasi-judicial appointees is concerned, a similar pattern to the judicial standard is followed in different jurisdictions.¹⁶⁶ For instance, in the US, Administrative law judges can be removed only after a hearing and only ‘for good cause’ as established by an independent agency.¹⁶⁷ In England, only inability or misbehavior can be grounds for the removal of Tribunal Judges and Members.¹⁶⁸ The same holds true for the French and Australian legal systems, with a meager disparity.¹⁶⁹

In Ethiopia, most tribunals established so far did not explicitly provide for the manner of removal apart from providing for the term of office of their members. The assembly is not an exception in this regard. Although the new expropriation regulation provides details about the term of office of the assembly judges to be provided by a directive, in a subpar manner, the establishing regulation of the assembly has failed to provide for terms of office and manner of removal. The absence of clear provisions regarding the tenure and removal of members and chairmen of the assembly creates an environment in which the members and the chairman are rendered vulnerable to arbitrary dismissal. This not only jeopardizes the stability of the assembly but also raises concerns about the independence and impartiality of the tribunal.¹⁷⁰

¹⁶⁴ See article 79 of the FDRE Constitution.

¹⁶⁵ Peter Cane, Administrative Tribunals (note 101 above) 101.

¹⁶⁶ Ibid 101-103.

¹⁶⁷ Ibid 101.

¹⁶⁸ Ibid.

¹⁶⁹ Ibid 102.

¹⁷⁰ Interview with Ato Ayalew (note 129 above).

3.3.2 The Commission

3.3.2.1 Establishment

The Addis Ababa City Government Urban Land Clearance Matters and Compensation Appeal Commission was established with the primary objective of adjudicating complaints brought before the commission against a decision passed by the concerned administrative organ. The commission was established in 2002 following the re-enactment of the lease regulation through Addis Ababa city regulation No 30/2002. It is also recognized in the city charter's proclamation as one of the city administration's institutions endowed with judicial authority.¹⁷¹ The commission has been the only tribunal to entertain expropriation, land clearance, and compensation disputes in Addis Ababa until early 2023,¹⁷² apart from the internal review mechanisms. The commission was empowered to review the decision passed by the internal dispute settlement body of the Land Development and Administration Bureau.

Since the enactment of urban land lease and expropriation legislation in 2002, the commission has been endowed with significant adjudicative powers, allowing it to address a range of critical issues related to land clearance and expropriation. In 2019, a new expropriation legislation was enacted, which further refined the commission's role by establishing a two-tier tribunal system. This system enhances the commission's capacity by providing a structured process for appeals, thereby enabling it to exercise appellate authority over decisions made by the first-tier tribunal.¹⁷³ However, despite the amendments to legislation governing urban land lease and expropriation, the regulation that originally established the commission has not yet been amended. This casts doubt on the commission framework's sufficiency to adjudicate matters per the amended legislation.

Following the enactment of the new expropriation laws, the commission is empowered to receive and adjudicate appeals related to decisions made by the Assembly concerning land clearance and expropriation.

As indicated under section 3.4.1.1 above, the accountability of both administrative and judicial tribunals exercises paramount influence in the maintenance of the autonomy and independence of

¹⁷¹ See article 40 of Addis Ababa City Government Revised Charter Proclamation no 361/2003.

¹⁷² Interview with Ato Zegeye (note 124 above); Interview with Wyo Fikerte Negussie (note 129 above)

¹⁷³ Ibid.

the tribunals. In a similar fashion, the commission is made accountable to the legislator, the Addis Ababa City Council.¹⁷⁴ Thus, it is safe to say that the commission and assembly have adopted virtually the same standing in this regard. Accordingly, the discussion and analyses made in this study regarding the assembly are equally relevant to have a clear picture regarding the accountability of the commission.

3.3.2.2 Composition

As previously indicated in this paper, the composition of any tribunal is critically important to its overall effectiveness,¹⁷⁵ as it ensures the requisite expertise and specialized knowledge necessary for functioning as a specialized adjudicatory body.¹⁷⁶ The specialized nature of cases that tribunals are called upon to adjudicate demands a carefully considered assembly of individuals who possess the appropriate expertise and specialized knowledge.

To this end, it has become a common practice to compose tribunals with members drawn from the legal field, disciplines outside of the legal field, and other alternative areas like laymen's usually to ensure representation.¹⁷⁷ Members drawn from the legal field ensure the constitutionality and legality of the proceedings and decisions since they are expected to have a solid grounding in the law and can navigate complex legal frameworks.¹⁷⁸ On the other hand, members drawn from outside the legal disciplines bring the needed specialized knowledge and expertise.

As far as the composition of the commission is concerned, the provisions of the commission's establishing regulations are scanty. The regulation stipulates that the commission should be composed of a president to be appointed by the city council¹⁷⁹ and four judges to be appointed by the executive committee of the city.¹⁸⁰ Among them, the president and another judge must be drawn from the legal field.¹⁸¹ The establishing regulation of the commission also states that the

¹⁷⁴ Addis Ababa City Government Land Clearance Matters Appeal Commission enabling Regulation No 30/2002 Article 3 (2) (hereinafter establishing Regulation No 30/2002).

¹⁷⁵ Peter Cane, *Administrative Tribunals* (note 101 above) 91-92.

¹⁷⁶ *Ibid.*

¹⁷⁷ Tamirat Malefiya (note 97 above) 40; Peter Cane, *Administrative Tribunals* (note 101 above) 103.

¹⁷⁸ Peter Cane, *Administrative Tribunals* (note 101 above) 91-92.

¹⁷⁹ See article 4(1) of Addis Ababa Regulation No. 30/2002.

¹⁸⁰ *Ibid.*

¹⁸¹ *Ibid* article 4(5).

president and judges of the commission should be selected and appointed from appropriate bodies.¹⁸² Apart from this, nothing is provided by the establishing regulation in relation to the manner of composition or mix of professions in the commission.

Thus, one can safely say that the availability of the needed specialized knowledge and expertise is under threat, hence the inclusion of experts from disciplines outside the legal field is left to the discretion of the executive committee of the city administration. This broad discretion granted to the executive committee may lead to the determination of the composition of the commission in an arbitrary manner, considering political affiliation rather than educational background and experience and expertise, thereby undermining the availability of the needed specialized knowledge and expertise in the commission.¹⁸³ Moreover, the absence of clarity regarding the professional mix of the judges may result in a lack of necessary diversity, which is crucial for addressing the complex issues that the commission is tasked with adjudicating.¹⁸⁴

Conversely, some contend that the discretion granted to the executive committee would not be problematic, indicating that there exists a genuine commitment on the part of the executive committee to appoint individuals possessing the requisite expertise and knowledge to the commission.¹⁸⁵ They assert that the executive committee recognizes the critical importance of having qualified judges who are capable of effectively navigating the complexities inherent in the cases presented before the commission.¹⁸⁶ This perspective suggests that, notwithstanding the absence of explicit regulations, the executive is inclined to prioritize qualifications and professional experience in its appointment process.

However, reliance on the benevolence of the executive committee to make judicious appointments may not be sufficient to guarantee the availability of the needed specialized knowledge and expertise. Establishing clear and transparent criteria for the selection of judges, along with a defined composition that reflects a range of professional backgrounds and composition matrix would enhance the commission's diversity and its capacity to deliver fair and just decisions.

¹⁸² Ibid article 4(3).

¹⁸³ Interview with Ato Fufa (note 125 above); Interview made with Wyo. Rihanna Ebrahim (159)

¹⁸⁴ Ibid.

¹⁸⁵ Interview with Ato Zegeye (note 124 above).

¹⁸⁶ Ibid.

In Practice, the commission judges have been picked from the city administration Bureau of Finance, Land Development, and Administration Bureau, Housing and Development Corporation, Trade and Investment Bureau, and Justice Bureau.¹⁸⁷ Consequently, it can be asserted that this practice had identified the above governmental organs as appropriate bodies. One way or another, the above governmental entities are directly or indirectly connected to the expropriation process and are considered as stakeholders. Thus, their inclusion would not be contentious. Nonetheless, the existence of legislative dictation ensures the availability of expertise and brings uniformity.

Another important issue overlooked by the establishing regulation as well as the practice relates to the inclusion of the main stakeholder in the expropriation procedure, the landholders. As provided above the inclusion of lay members in the composition of tribunals is common practice across jurisdictions.¹⁸⁸ However, in a manner similar to that of the Assembly, the composition of the commission has overlooked the representation of landholders.

3.3.2.3 Membership requirements

Establishing appropriate criteria for membership is indispensable for any tribunal¹⁸⁹, as previously discussed in this paper. The establishing regulations of the commission bestowed the city council and the executive committee with the power to appoint the president and judges of the commission.¹⁹⁰ However, it fails to enumerate any criteria for the appointment of judges or the president of the commission.

To ensure that the members of tribunals possess the necessary integrity and competency, it is vital to delineate positive and negative requirements that must be satisfied by individuals who assume membership.¹⁹¹ Mostly, negative requirements, such as the absence of criminal convictions or records, are implemented to safeguard the integrity of appointees in numerous tribunals.¹⁹² Conversely, to ensure competency, criteria such as educational qualifications and relevant

¹⁸⁷ Interview with Wyo Fikerte (note 129 above).

¹⁸⁸ Tamirat Malefiya (note 97 above) 40; Peter Cane, Administrative Tribunals (note 101 above) 103

¹⁸⁹ Tamirat Malefiya (note 97 above) 40;

¹⁹⁰ See article 4(1) of Regulation No 30/2002.

¹⁹¹ Peter Cane, Administrative Tribunals (note 101 above) 92-93.

¹⁹² Ibid.

experience are typically employed.¹⁹³ Nonetheless, the establishing regulation of the commission omits these critical requirements in the appointment process for judges and the president of the commission. Interviewees interviewed by the author argue that this has resulted in the appointment of members with poor competency.¹⁹⁴ Besides this, it has left room for the executive committee to undermine both the integrity and competency of judges and the president of the commission,¹⁹⁵ ultimately affecting the tribunal's effectiveness and public trust.

The term of office for the president and judges of the commission is set to be five years,¹⁹⁶ with the possibility of extension for more terms,¹⁹⁷ contingent upon approval by the executive committee of the city administration.¹⁹⁸ The incorporation of a determined period for the term of office of the commission's members affords commission members greater protection and certainty in their positions, thereby contributing to a more stable and independent institutional framework.¹⁹⁹ However, the absence of explicit provisions regarding the removal of members introduces significant vulnerabilities. This lack of clarity not only leaves members uncertain about the conditions under which they might be removed but also hampers their independence and impartiality.

3.4 Scope of Power and Reviewable Matters

The scope of power of tribunals pertains to the extent of authority and jurisdiction granted to these entities to perform adjudicatory functions.²⁰⁰ Specifically, it encompasses the existence of authority conferred upon them to render binding decisions that may significantly affect the rights and interests of the involved parties.²⁰¹

¹⁹³ Ibid.

¹⁹⁴ Interview with Ato Fufa (note 125 above); Interview made with Ato Rihanna Ebrahim (note 153 above)

¹⁹⁵ Ibid

¹⁹⁶ See article 4(6) of Regulation No 30/2002.

¹⁹⁷ Ibid

¹⁹⁸ Ibid

¹⁹⁹ Interview with Ato Melese (note 124 above); Interview with Ato Zegeye (note 124 above).

²⁰⁰ Aschalew Ashagre Byness, 'Adjudication of Tax Disputes within the Tax Authority in Ethiopia: Critical Reflections on the Law and the Practice' (2020) vol. 11(1) Bahir Dar University Journal of Law 42.

²⁰¹ Ibid 47.

The scope of power of quasi-judicial bodies can vary considerably based on the specific legal framework governing their operations. Certain administrative tribunals possess broad authority to adjudicate a diverse array of matters, while others are constrained to particular types of cases or issues.²⁰² Administrative tribunals characterized by their extensive jurisdiction to address a wide range of administrative matters are termed generalist or multipurpose tribunals,²⁰³ whereas those confined to specific subject areas are referred to as specialist tribunals.²⁰⁴

The administrative tribunal system in the United Kingdom and Australia as well as the US Administrative Appeal Tribunal²⁰⁵ Serve as a prominent example of generalist tribunals. Conversely, in Ethiopia, all tribunals established so far are classified as specialist tribunals.²⁰⁶

The assembly and the commission are specialized tribunals established to adjudicate expropriation disputes. Accordingly, their scope of power is regulated under the new expropriation legislation. The legislation has empowered the tribunals to entertain complaints submitted concerning removal, replacement, compensation, and other related matters arising from expropriation.²⁰⁷

The phrase ‘*other related matters*’ indicated under Article 42 of the new expropriation regulations left room for interpretation, which may potentially result in a conflict of jurisdiction. Given that a wide range of matters giving rise to expropriation disputes other than removal, replacement, and compensation are not explicitly indicated; narrow interpretations taken by tribunals may result in

²⁰² Abraham Yohanes (note 91 above) 251.

²⁰³ Ibid

²⁰⁴ Ibid

²⁰⁵ Peter Cane, Administrative Tribunals (note 101 above) 69; Administrative Appeal Tribunal In the US, the General Regulatory Chamber in the UK, and the Administrative Appeals Tribunal (AAT) in Australia adjudicate General Administrative matters. However, the Veterans’ Appeals Division and Taxation & Commercial Division in Australia, the Tax Chamber and Property Chamber in the UK, and the *Board of Veterans’ Appeals and Civilian Board of Contract Appeals* In the US are specialist tribunals. Thus, the tribunal system is not generalist in any of the above states.

²⁰⁶ Abraham Yohanes (note 91 above) 251.

²⁰⁷ See articles 19 and 20 of the Expropriation Proclamation 1161/2019 and articles 42, 43, and 39 of the Expropriation Regulation no 472/2020.

negative conflict of jurisdiction.²⁰⁸ Similarly, when the tribunals widely interpret the phrase to adjudicate disputes brought before them, positive conflict jurisdiction may arise.²⁰⁹

For instance, the new expropriation proclamation under Article 5(4) has expressly provided that landholders have a right to file an objection on the public purpose decision made where their land is expropriated in the absence of the fulfillment of the requirements provided by law. It is clear that this is under the auspicious of the two tribunals' adjudicative power. However, the commission's president argues that scrutinizing whether the decision of the concerned body fulfills the requirements set forth by law is not their duty.²¹⁰ On the contrary, the members and chairman of the newly established assembly assert that the law is clear in this regard and accordingly, they entertain if such a kind of complaint is brought.²¹¹

In practice, the assembly and the commission have been confined to adjudication of complaints relating to compensation, replacement, and prior development rights, largely.²¹² On both tribunals, notably, no complaints have yet been submitted to challenge the decisions regarding land expropriation or any other similar matter.²¹³ However, the lodging of complaints challenging the decision of expropriation is Inevitable.

Thus, standardizing the positions of two tribunals in this regard and establishing a clear distinction between the jurisdictions of administrative tribunals and those of ordinary courts is imperative, so as to ensure that they operate strictly within their designated areas of authority.

Regular courts more often than not consider both questions of fact and questions of law.²¹⁴ While tribunals differ from regular courts in several ways, including their capacity to interpret legislation (as their members may not be trained lawyers), they are generally authorized to address both factual and legal questions. Similarly, the tribunals responsible for adjudicating expropriation disputes in Ethiopia also possess the authority to examine both types of questions.²¹⁵ This is

²⁰⁸ Interview with Wyo Fikerte (note 129 above).

²⁰⁹ Ibid.

²¹⁰ Interview with Ato Zegeye (note 124 above).

²¹¹ Interview with Ato Ayalew (note 129 above); Interview with Geleta (note 140 above).

²¹² Interview with Ato Zegeye (note 124 above); Interview with Ato Ayalew (note 129 above).

²¹³ Interview with Ato Zegeye (note 124 above); Interview with Ato Ayalew (note 129 above); Interview with Wyo Fikerte (note 129 above).

²¹⁴ Peter Cane, 'Administrative Law' (note 96 above) 321

²¹⁵ Interview with Ato Zegeye (note 124 above); Interview with Ato Ayalew (note 129 above).

evident from the provisions outlined in the new expropriation proclamation, regulations, as well as the establishment regulations of the tribunals enacted by the city administration.

The practice in both tribunals is also consistent with the above assertion. Judges, chairman, and president of the tribunals interviewed by the research unequivocally assert that the adjudication involves finding facts and applying the law to those facts.²¹⁶

3.5 Procedural Rules and Landholders' Rights

Procedures set the manner through which rights, privileges, and duties are enforced. In particular, it refers to the methods by which claims of persons are adjudicated before judicial or quasi-judicial organs.²¹⁷ To make adjudicative processes fair and just, ordinary courts follow rigid procedural rules.²¹⁸ However, as indicated repeatedly, the objectives of administrative Tribunals are the provision of a mechanism of review that is fair, just, economical, informal, and quick. Rigid procedural rules set back the attainment of this objective. Thus, tribunals are expected to apply flexible procedural rules.²¹⁹

Nonetheless, due process of law, in particular the right to be heard and impartial adjudication, calls for the application of uniform procedural rules to whatever extent it is.²²⁰ Besides, as procedural rules play a pivotal role in the decision-making process by facilitating the rendering of accurate decisions that serve the substantive rule objectives, their application in the administrative tribunal is inevitable. Thus, balancing these two conflicting interests then requires close and careful consideration.

The new expropriation law regime provides substantial discretion to the tribunals in this regard. Moreover, the establishment of regulations of the assembly and the commission, which closely align with the provisions of the new expropriation legislation, further expands this discretionary authority. The new expropriation regulation under article 43 (4) provides that the tribunals, when deemed necessary, may apply the procedural rules and principles enshrined under the imperial Civil Procedure Code.

²¹⁶ Interview with Ato Zegeye (note 124 above); Interview with Ato Melese (note 124 above); Interview with Ato Ayalew (note 129 above); Interview with Ato Geleta (note 140 above).

²¹⁷ Robert Alen Sedler, *'Ethiopian Civil Procedure'* (Faculty of Law, Haile Selassie I University, 1968) 1

²¹⁸ Peter Cane, 'Administrative Law' (note 96 above) 319-325

²¹⁹ Ibid; Tamirat Malefiya (note 97 above) 43.

²²⁰ Tamirat Malefiya (note 97 above) 43

Thus, it is up to the members of the tribunals to choose the principles and procedural rules to be applied in adjudication.²²¹ In tribunals, the adjudication procedure is expected to be flexible to enhance their accessibility, which requires no or minimal application of civil procedure provisions. Nonetheless, it could be argued that some basic principles relating to due process and the right to be heard must be applied at all times, as it is everyone's right recognized under the FDRE constitution²²² and major international human rights instruments.²²³

In practice, both tribunals largely adhere to the rules of the Civil Procedure Code with minimal flexibility.²²⁴ The procedural phases, extending from the pre-trial to the trial stage, closely resemble those of ordinary court procedures applied in civil litigation. The procedural rules governing both tribunals concerning the lodging of claims, submission of defenses, oral hearings, examination of parties and evidence, and the weighing of evidence are analogous to those utilized in conventional civil court proceedings.²²⁵

Moreover, all pleadings submitted to the tribunals must comply with the legal and technical requirements established by the Civil Procedure Code.²²⁶ Such Practices significantly affect the accessibility of the tribunals. Hence the preparation of formal pleadings as well as the trial and pre-trial procedures necessitates individuals possessing both legal education and practical experience in the legal field.²²⁷ Consequently, this requirement creates substantial barriers for landholders who may lack the requisite resources or expertise to effectively navigate these complex procedures. As a result, numerous individuals may find themselves unable to adequately present their cases, thereby undermining their capacity to seek justice and the protection of their rights within the established tribunal system. This apparently stands contrary to one of the basic

²²¹ Interview with Ato Zegeye (note 124 above); Interview with Ato Ayalew (note 129 above).

²²² See Article 37 of the FDRE Constitution.

²²³ See article 10 of the UDHR, article 14(1) of the ICCPR, article 7 and 26 of the Banjul charter or ACHPR.

²²⁴ Note 221 above.

²²⁵ Ibid.

²²⁶ Interview with Wyo Fikerte (note 129 above); Regulation no 30/2002 under article 10 stipulates more or less similar technical formalities for appeal and defense memorandums.

²²⁷ Interview with Wyo Fikerte (note 129 above).

essences of the establishment of the tribunals, flexibility, and accessibility of justice.²²⁸ This situation not only perpetuates inequalities in access to legal recourse but also raises serious concerns regarding the fair administration of expropriation grievances of affected landholders.

In addition to the above dissimilarity, the procedural rule of the tribunals also has a modest distinction from the procedural rules employed in regular civil courts, regarding, *Inter alia*, the Effect of the Absence of parties to the dispute, the manner of production of evidence, period of limitation, and rules of third-party intervention practiced.²²⁹

The period provided to lodge a case before both tribunals is set to be 30 days.²³⁰ The civil procedure code provides for longer periods of time in this regard. The justification behind such a short period of limitation could be attributed to the need to swiftly transfer the land required for developmental purposes that are deemed to benefit the public at large.²³¹ The period of limitation provided for the assembly is 30 days,²³² whereas the commission has two months.²³³

Nevertheless, due to a number of factors, the practice on the ground does not align with the stipulations outlined in the legislation. Judges, registrars, and legal experts from the two tribunals interviewed for this research indicated that the majority of matters brought before the tribunals require significantly more time than the prescribed period by the regulations.²³⁴ This delay is primarily attributed to the futile exchanges of orders and letters between the tribunals and the Land Development and Administration Bureau and the Housing Development and Administration Bureau regarding the production of requisite documentary evidence.²³⁵

Furthermore, the requirement for representation of the sued governmental bureaus by public prosecutors assigned from the Justice Bureau exacerbates the delays, necessitating communication

²²⁸ Peter Cane, 'Administrative Law' (note 96 above) 327; Peter Cane, Administrative Tribunals (note 101 above) 92-93.

²²⁹ Note 221 above; Interview with Ato Melese (note 124 above); Interview with Ato Geleta (note 140 above).

²³⁰ See article 39 of Expropriation Regulation no 472/2020.

²³¹ Interview with Ato Ayalew (note 129 above); Interview with Ato Melese (note 124 above); Interview with Ato Geleta (note 140 above); Interview with Ato Zegeye (note 124 above).

²³² See article 6(5) of Addis Ababa Regulation no 6/2020.

²³³ See article 10 (5) of Addis Ababa Regulation no 30/2002.

²³⁴ Interview with Ato Ayalew (note 129 above); Interview with Ato Melese (note 124 above); Interview with Wyo Fikerte (note 129 above); Interview with Ato Zegeye (note 124 above).

²³⁵ Ibid.

between two distinct governmental entities.²³⁶ Compounding this issue, the Justice Bureau has notified the tribunals and the governmental bodies that they will not represent these entities before any quasi-judicial or judicial organs if the case is submitted to the public prosecutor fewer than ten days prior to the adjourned date.²³⁷

Additionally, the limited working days of the commission contribute to the delays experienced in cases presented before it.²³⁸ The commission convenes only two days a week for half-day sessions,²³⁹ as its members are part-time appointees. Furthermore, interviews indicate that the part-time status of commission members has adversely affected the right to be heard for aggrieved landholders,²⁴⁰ hence, the proceedings are often brief, and judges arrive only after being fatigued by their full-time occupations.²⁴¹

Members of the tribunal assert that, under no circumstances, can the timeframe stipulated by the legislation be met, citing the involvement of various parties and the inherent complexity of expropriation disputes as significant factors contributing to these delays.²⁴² They maintain that the legislation necessitates an amendment to provide for extended periods of limitation.²⁴³ However, the recent amendment to the expropriation proclamation has regrettably overlooked this critical issue, although feedback as to the problem was provided during the drafting stage.²⁴⁴

The exhaustion remedies before the Tribunals prior to lodging a complaint in regular courts constitute a significant issue to be examined in this sub-section. Although the new expropriation regulation does not explicitly stipulate that exhaustion of remedies before the Tribunals is

²³⁶ Ibid

²³⁷ Ibid

²³⁸ Interview with Ato Fufa (note 125 above); Interview with Wyo Almaze (note 144 above)

²³⁹ Ibid; Interview with Ato Zegeye (note 124 above).

²⁴⁰ Interview with Ato Fufa (note 125 above).

²⁴¹ Ibid

²⁴² Ibid.; Interview with Ato Ayalew (note 129 above); Interview with Ato Melese (note 124 above); Interview with Wyo Fikerte (note 129 above); Interview with Ato Zegeye (note 124 above);

²⁴³ Ibid.

²⁴⁴ Interview with Ato Ayalew (note 129 above).

mandatory before approaching regular courts, one may reasonably infer such a conclusion from Article 39(6) of the new expropriation regulation. The provision indicates that in regional states where tribunals are not established, aggrieved landholders may directly present their complaints before a competent regular court. This provision clearly implies that, once tribunals are established, the exhaustion of remedies before them becomes obligatory. Consequently, in Addis Ababa, exhaustion remedies before the Tribunals prior to lodging a complaint in regular courts are mandatory.²⁴⁵ This requirement ensures that all administrative avenues for resolving disputes are thoroughly explored before seeking judicial intervention. With regard to the reviewability of decisions made by the Appeals Tribunal, these decisions are generally subject to judicial review by regular courts as plainly provided by the legislator.²⁴⁶ This allows aggrieved parties to challenge the tribunal's decisions in court, provided they have first exhausted all available remedies as outlined above. The practice in Addis Ababa is also in line with the above assertions.²⁴⁷

Another point worthy of discussion in this sub-section pertains to jurisdictional issues that have arisen in areas bordering the city of Addis Ababa and the regional state of Oromia, particularly in regions that have recently undergone the re-establishment of borders. Following this re-establishment, certain areas previously under the administrative jurisdiction of Addis Ababa have been delineated as falling under the administrative zone of the Oromia regional state.²⁴⁸ This change has adversely affected a handful of cases being considered by the commission, resulting in a negative conflict of jurisdiction.²⁴⁹

Cases that the commission gives a final decision prior to the re-establishment of the borders have failed to be executed as non is provided for the transition of such circumstances. Consequently,

²⁴⁵ Interview made with Ato Fasika Dagne, Judge at the Federal First Instance Bole Bench, May 2024, Addis Ababa; Interview made with Ato Abdurahman Hussien, Judge at the Federal First Instance Ledet Bench, May 2024, Addis Ababa; Interview made with Ato Asinake Anito, Registrar at the Federal First Instance Bole Bench, May 2024, Addis Ababa; Interview made with Ato Taddesse Garedaw, head of Registrar at Federal First Instance Court Kirkose sub-city bench, May 2024, Addis Ababa; Interview with Wyo Fikerte (note 129 above).

²⁴⁶ See article 39(5) of the Expropriation Regulation no 472/2020

²⁴⁷ Note 245 above

²⁴⁸ Interview with Ato Fufa (note 125 above); Interview with Ato Zegeye (note 124 above)

²⁴⁹ Ibid

the Oromia regional state has refused to execute the decisions of the commission,²⁵⁰ while the city administration concerned organs assert that it is no longer within its jurisdiction to implement these decisions.²⁵¹ This situation has led to significant complications in the administration of justice and the enforcement of legal rulings in areas re-established to be under the administrative zone of the Oromia regional state.

3.6 Challenges

As quasi-judicial bodies tasked with resolving expropriation disputes, both the assembly and the commission are expected to play pivotal roles in facilitating effective dispute resolution through flexible and informal processes, while concurrently minimizing time and cost. Their contributions to the safeguarding of private property rights are unquestionably substantial. Notwithstanding, empirical evidence derived from interviews and field observations underscores several impediments to the efficacy of these tribunals, ultimately eroding public trust in their operations.

A fundamental challenge facing expropriation tribunals is the dearth of adequate resources. This encompasses insufficient funding, a shortage of qualified personnel, and inadequate infrastructure.²⁵² Given the multidisciplinary composition of tribunal members, the presence of legal experts is imperative to provide the requisite guidance and legal counsel. The lack of qualified staff can hinder the ability to render consistent decisions across comparable cases, potentially leading to outcomes that deviate from existing legislation. The expropriation legislation and the establishing regulations of the two tribunals empower them to hire necessary staff, including legal experts and registrars.²⁵³ However, the current staffing levels of legal experts and registrars in both tribunals are insufficient relative to their mandate.²⁵⁴ Notably, the assembly has not employed any legal experts.²⁵⁵ This deficiency in qualified personnel can impede the delivery of consistent

²⁵⁰ Ibid

²⁵¹ Ibid

²⁵² Interview with Ato Zegeye (note 124 above); Interview with Ato Geleta (note 140 above); Interview with Ato Ayalew Melaku (note 129 above).

²⁵³ Interview with Ato Ayalew Melaku (note 129 above).

²⁵⁴ Interview with Ato Ayalew Melaku (note 129 above); Interview with Ato Zegeye (note 124 above).

²⁵⁵ Interview with Ato Ayalew Melaku (note 129 above).

decisions across similar cases, potentially resulting in outcomes that are incongruent with existing legislation.

A lack of finance and infrastructure constitutes another formidable challenge hindering the effectiveness of the tribunals.²⁵⁶ Finance plays a crucial role in the functioning of tribunals, impacting their accessibility and overall effectiveness. Particularly, Adequate financial resources are essential for the day-to-day operations of tribunals to cover administrative costs, staff salaries, and the maintenance of facilities. Furthermore, financial resources are necessary for the tribunals to conduct necessary investigations and research, which includes gathering evidence, expert testimonies, and other information that are essential to informing decision-making.²⁵⁷ Training its members and other staff, and raising public awareness through facilitating outreach programs that inform the public about their rights and available resources are other matters that would not go any further in the absence of required finance.²⁵⁸ Nevertheless, the members and staff of the two tribunals unequivocally state that due to financial constraints, their respective institutions have not engaged in the above activities, which is critical in determining the accessibility and overall effectiveness of the tribunals.²⁵⁹

Lack of infrastructure, which to some extent depends on financial capacity, is another encumbrance challenging tribunals.²⁶⁰ Both tribunals are affected by this. However, the newly established assembly is more affected. Lack of necessary equipment and absence of a suitable bench for adjudication are among the main bottlenecks that hamper the assembly's effectiveness.²⁶¹ Unsuitable or poorly located benches (courtrooms) are restricting the public's right to access the adjudication, undermining the principle of open justice.²⁶² Moreover, A lack of conducive environments has affected the quality of deliberations and decision-making, as

²⁵⁶ Interview with Ato Ayalew Melaku (note 129 above); Interview with Ato Zegeye (note 124 above).

²⁵⁷ Ibid; Interview with Ato Geleta (note 140 above).

²⁵⁸ Ibid

²⁵⁹ Ibid

²⁶⁰ Interview with Ato Ayalew Melaku (note 129 above); Interview with Ato Geleta (note 140 above).

²⁶¹ Ibid

²⁶² Ibid

members and litigants do not have the necessary space and resources to thoroughly consider cases.²⁶³

Another challenge that the tribunals face relates to a lack of public awareness regarding their existence and functions.²⁶⁴ Many persons affected by expropriation are unaware of their rights or the avenues available to them for seeking redress. It is not infrequent that people go to regular courts before exhausting the remedies available before the tribunals, only to be sent back to the tribunals.²⁶⁵ Registrars of the tribunals assert that it is not few that loses their rights due to the time wasted in the process, as the period of limitation to bring a complaint before the tribunals is only 30 days.²⁶⁶ The president of the commission and chairman of the assembly assert that an attempt is being made to create awareness; however, due to financial and manpower constraints, much has not been done.²⁶⁷ As a result, the case flow the tribunals get is much lower compared to the redevelopment and expropriation the city observes.²⁶⁸

Inadequacy of training and capacity-building endeavors is also among the main hindrances challenging the tribunals. To enhance legal skills and knowledge, Develop Dispute Resolution Skills, enhance public Communication and trial presiding skills, and enhance other technical knowledge and skills, training tribunal members and staff is pivotal.²⁶⁹ As tribunal members are drawn from different backgrounds, their expertise is limited to one area; it could be valuation, law, or another area. If not shaped through pieces of training and other mechanisms, this can lead to inconsistent decisions, delays in proceedings, diminished fairness, and public confidence as a result of an observable lack of uniformity. As provided above, due to financial constraints and

²⁶³ Ibid

²⁶⁴ Interview with Wyo Fikerte (note 129 above); Interview with Wyo Almaze (note 144 above); Interview with Ato Ayalew Melaku (note 129 above).

²⁶⁵ Interview with Wyo Fikerte (note 129 above); Interview made with Ato Asinake (note 245 above); Interview made with Ato Taddesse (note 245 above).

²⁶⁶ Ibid

²⁶⁷ Interview with Ato Ayalew Melaku (note 129 above); Interview with Ato Zegeye (note 124 above).

²⁶⁸ Ibid; Interview with Wyo Fikerte (note 129 above);

²⁶⁹ Interview with Ato Ayalew Melaku (note 129 above); Interview with Ato Zegeye (note 124 above).

other factors, training has never been delivered to members and staff of the commission.²⁷⁰ However, though it is perceived as insufficient, the newly established assembly has delivered training for its members as well as its staff.²⁷¹

3.7 Chapter Summary

This chapter critically examines the institutional and legal framework underpinning the resolution of expropriation disputes within tribunals established in Addis Ababa. It delves into the purported rationales for their creation, highlighting the ambition to accelerate expropriation processes and address the protracted nature of litigation in conventional courts through specialized adjudication. However, the study reveals a lack of explicit legislative articulation regarding the specific *raison d'être* of these tribunals.

The analysis extends to the institutional architecture of these bodies, scrutinizing their establishment, accountability mechanisms, composition, and membership criteria. While the intent behind their formation is ostensibly to achieve effective resolution of expropriation disputes, the chapter identifies existing deficiencies within their frameworks. These include issues related to a lack of diversity in tribunal composition, the absence of representation of landholders, the absence of clear membership prerequisites, vague scope of power, and inconsistent procedural rules.

Furthermore, the chapter elucidates key challenges impeding the overall effectiveness of the tribunals. These obstacles encompass the absence of technical training, lack of public awareness, and the constraints imposed by limited resource allocation.

²⁷⁰ Ibid.

²⁷¹ Ibid.

Chapter Four

4 Conclusion, Findings, and Recommendations

4.1 Key Findings

The findings of the study reveal that the *raison d'être* of the tribunals established in AAC to adjudicate expropriation disputes prioritize development over effective adjudication and proper scrutiny of cases brought before them.

The study also reveals that the composition of the assembly and the commission is fraught with uncertainty and solely relies upon nominating and appointing authorities. Furthermore, the study had also unearthed that urban landholders were excluded implicitly by law and explicitly in practice.

The study has also shown that the establishing of regulations of tribunals does not provide for a negative and positive requirement for membership in tribunals. The practice also did not establish a requirement. The nominating and appointing authorities enjoy wide discretion. The loophole pertains to the manner of removal as well. The study indicated that the potential for political interference in the appointment of tribunal members is enumerated as dodges undermining the independence and impartiality of these bodies.

The study also reveals that the provisions regarding the scope of powers are shallow and ambiguous and leaving room for interpretation (misinterpretation) and a lack of uniform applicability, particularly in delineating the scope of power of the tribunals from that of regular courts. The bewilderment regarding where to file a petition for possessory action stemming from expropriation is a good example in this regard. Moreover, the incongruity observed in relation to the reviewability of the concerned body's decision of expropriation is another instance that depicts the dodges relating to the scope of power of the tribunals (hence, members of the commission did not agree on whether public purpose assessments fall under their mandate). The findings of this study have also revealed that the recent border reconfigurations between the Addis Ababa city administration and the Oromia regional state have created enforcement challenges on decisions given by tribunals.

The study has also shown that both tribunals review both questions of fact and questions of law.

The study has also identified that exhaustion of remedies before the tribunals is mandatory in regular courts to lodge a complaint regarding expropriation claims

The study demonstrates that both tribunals partially adopt certain provisions of the Civil Procedure Code. Specifically, procedural aspects such as the filing of complaints, the determination of legal and technical prerequisites for pleadings, the summoning of defendants, the production of evidence, and the examination of disputing parties adhere to the procedural framework outlined in the Civil Procedure Code. This adherence underscores a procedural rigidity that may impede the tribunals' accessibility to litigants. In contrast, procedural rules pertaining to the effect of parties' non-appearance and periods of limitation for initiating complaints and appeals deviate significantly from the provisions Civil Procedure Code. Additionally, the provisions of the new expropriation laws provide a limited period for tribunals to adjudicate and render decisions on cases brought before them. Per the new expropriation laws, the tribunals are expected to issue judgments within a one-month timeframe. However, empirical observations indicate a significant divergence between this prescribed duration and the actual length of adjudication processes.

The study also unearthed that the decision given by the two tribunals is not final. It is appealable before the federal first instance court. The finding has also revealed that for filing a complaint before the federal first instance court, exhausting remedies available to the tribunals is a mandatory requirement.

Finally, the findings of this research showed that the lack of sufficient legal experts and registrars, poorly equipped courtrooms, limited operational hours (the Commission's half-day sessions), lack of awareness by many affected landholders regarding the very existence of the tribunals and its procedure, Limited capacity-building initiatives for tribunal members result in uneven adjudicatory quality, particularly among non-legal appointees, political interference, and resource limitations have challenged the tribunal's effectiveness and efficiency.

4.2 Conclusion

The steadily growing demand for urban land in Ethiopia has necessitated the use of expropriation as a primary mechanism. Given that expropriation is not a power used arbitrarily, the government is obligated to demonstrate a legitimate public purpose and provide commensurate compensation. Furthermore, it must adhere to established procedural safeguards stipulated in relevant legislation.

This protects private property rights. The FDRE constitution and subsidiary legislations have also incorporated these principles.

However, expropriation remains a source of grievance for both rural and urban landowners and poses a threat to tenure security. This underscores the necessity for the establishment of robust dispute resolution mechanisms to effectively address the grievances stemming from expropriation. The newly enacted expropriation law regime stipulates that quasi-judicial bodies established by the Addis Ababa and Dire Dawa city administrations and regional states, along with regional state high courts, and the federal first instance court are empowered to adjudicate expropriation disputes.

Quasi-judicial bodies serve as indispensable institutions in the adjudication of disputes that may arise between private individuals and the state, particularly those stemming from administrative decisions. These tribunals offer mechanisms for the provision of cost-effective, timely, and accessible justice, primarily through flexible procedures and specialized expertise. Such institutions are employed to resolve a diverse range of disputes across various jurisdictions. In Ethiopia, special tribunals have been established to adjudicate a variety of disputes, encompassing tax, intellectual property, and civil servant administration and expropriation, among others.

In adjudication of expropriation disputes the role Quasi-judicial institution are immense. These administrative tribunals exercise the first instance and appeal jurisdiction over expropriation disputes. As provided by the new expropriation legislation, the AACG has established a two-tier tribunal system for adjudication of expropriation disputes; The assembly as the first-tier tribunal and the already established commission as its second-tier tribunal.

This study offers a comprehensive examination of the legal and institutional frameworks underpinning these tribunals, assessing their effectiveness. In doing so, the study delves into *raison d'être*, composition, membership requirements, the scope of power, and procedural rules of the tribunals.

The *raison d'être* of these tribunals was to expedite the expropriation grievance handling and resolve the lengthy litigation often encountered in traditional courts, to smooth the land transfer to developers.

The tribunals encountered substantial challenges, primarily attributable to legislative lacunae and irregularities in practice characterized by mercurial application and improper implementation of legislation. This primer relates to the absence of clear rules regarding composition and membership requirements, the scope of power, and procedural rules. Moreover, a lack of diversity among tribunal members, the absence of landholder representation, and inconsistent procedural rules in practice pose significant challenges. Furthermore, the study highlights key challenges that hinder the tribunals' overall effectiveness. These challenges include insufficient technical training, low public awareness, and limited resource allocation."

4.3 Recommendation

Based on the preceding discussions, the researcher proposes the following recommendations for consideration and implementation by the relevant authorities.

4.3.1 Recommendation on Legislative Measures

Raisons d'être of adjudicative institution exerts formidable influence on its *modes operandi*. It is imperative for the establishing legislation to have a clear objective that shows its *raisons d'être*. The objective should also strike a balance between the state's developmental needs and private property rights, and more particularly, the effective resolution of disputes.

A diverse composition of members is monumental to ascertain specialization and expertise. Equally, the representation of landholders brings public trust and confidence. Therefore, the establishing regulations of the tribunal need to be reviewed accordingly.

The establishing regulations of the Commission and Assembly suffer from critical lacunae concerning qualification criteria and removal mechanisms of their members. It is imperative to clearly provide for negative and positive requirements and the manner, and the grounds of removing members of the tribunals. Thus, the establishing regulation needs to be amended in such a way.

The Commission's reliance on part-time members risks due process, particularly the parties' right to be heard, and delays the timely resolution of disputes, undermining expeditiousness. Amending the establishing regulation of the commission to mandate full-time tribunal appointments is imperative

The establishing regulations of the Commission and Assembly are shallow and ambiguous and leaving room for interpretation (misinterpretation) and a lack of uniform applicability reading scope of power. Thus, the regulations should be reviewed to clarify the scope of power of the tribunals.

The tribunals apply the civil procedure code provisions partially in an inconsistent manner. Particularly, the requirement for technical compliance in pleadings disproportionately disadvantages marginalized landholders with limited legal literacy. To enhance access to justice, the establishing regulations should repeal such prerequisites that prioritize formalistic compliance over substantive claims.

While the new expropriation legislation mandates expeditious resolution of disputes, the stipulated timelines fail to account for the complexity of the disputes and procurement evidence, particularly documentary evidence from various governmental entities. To reconcile expeditious resolution of disputes with due process, the legislation should be amended to permit tribunals' *discretionary extensions* of adjudication periods, contingent on case-specific complexities.

4.3.2 Recommendation for Improved Implementation

To ensure the accessibility of the tribunal's informality is a key prerequisite. Thus, it would be imperative for both tribunals to apply the provisions of the Civil Procedure Code minimally.

Efforts should be undertaken to raise awareness among affected landholders through public outreach programs by the tribunals as well as in Collaboration with civil society organizations. Utilizing mass media, including social media, should also be considered.

In order to raise members' expertise, the tribunals, as well as other stakeholders, including NGOs, should organize and provide training to members of the tribunals and administrative staff.

To mitigate overlaps with the Oromia Regional State, a bilateral framework should be established.

The tribunal's operational effectiveness hinges on finance and infrastructure as well. Therefore, refurbishing physical facilities to ensure secure, dignified spaces for adjudication, including ergonomic benches and accessible documentation archives, is imperative.

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Interviews

Interview made with Ato Fufa Kejela Hinsermu, Legal expert at The Addis Ababa City Government Urban Land Clearance Matters and Compensation Appeal Commission, May 2024, Addis Ababa

Interview made with Wyo Fikerte Negussie, Registrar at The Addis Ababa City Government Urban Land Clearance Matters and Compensation Appeal Commission, May 2024, Addis Ababa

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Interview made with Ato Zegeye Yemanebrihan, president of The Addis Ababa City Government Urban Land Clearance Matters and Compensation Appeal Commission, May 2024, Addis Ababa

Interview made with Ato Melese Tegenu, Judge at The Addis Ababa City Government Urban Land Clearance Matters and Compensation Appeal Commission and Head of the legal service department at Addis Ababa City Government Land Development and Administration Bureau, May 2024, Addis Ababa

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Interview made with Ato Abdurahman Hussien, Judge at the Federal First Instance Ledet Bench, May 2024, Addis Ababa

Interview made with Ato Rihanna Ebrahim, attorney and consultant, May 2024, Addis Ababa

Interview made with Asinake Anito, Registrar at the Federal First Instance Bole Bench, May 2024,
Addis Ababa

Annex A: Interview Guiding Questions

1. Interview questions for members of (AT) and CHB

Name Experience

Questions

Introductory and questions relating to the rationale for the establishment of CHB and AT

1. What are the main causes for grievance brought before the tribunal?
2. What necessitates the establishment of CHB and AT in Addis Ababa?
3. Does the establishment of CHB and AT benefit landholders whose land is expropriated?

Questions relating to the independence of CHB and AT and the competency of its members

4. Is the composition of CHB and AT sufficient and appropriate to achieve an effective resolution of the grievance brought before it? If not in, in what way should it be composed?
5. Do the membership requirements set for the selection of CHB and AT members enable the selection of competent members with the required specialization?
6. Did the structural organization of CHB and AT leave room for the intervention of the executive in the adjudication of grievances?
7. Have you experienced any intervention in your tenure at CHB and AT?
8. Do you have any technical expertise on Expropriation matters?
9. Have you ever given any training in expropriation?

Questions relating to the Scope of power of CHB and AT

10. What is the scope of the power of CHB and AT?
11. What are the matters reviewable before the CHB and AT?
12. Are there any Matters that fall short of the scope of the power of CHB and AT? If there are, what are those matters?

Questions relating to Procedural Rules

13. Do you adhere to any procedural rules in adjudicating grievances brought before CHB and AT?
14. To what extent do you adhere to the provisions of the Civil Procedure Code?
15. Do you apply any other procedural rule? If yes, what are they?
16. To what extent are the aggrieved landholders represented by an attorney?
17. Does the government provide an attorney for those who can't afford one?
18. What is the estimated time frame for finalizing adjudication on a case brought before the tribunal/CHBs?
19. Is the 30 days provided by the proclamation enough to adjudicate a case brought and serve justice?
20. Any other remarks, observations, or suggestions you would like to make?

Specific question to the president/Head of AT and CHB

1. What are the requirements you utilize in selecting members of AT and CHB?
2. Who plays a vital role in the selection process of members of AT and CHB?
3. Do the composition and selection process of members of AT and CHB influence the independence of AT and CHB?
4. To what extent are AT and CHB institutional independence respected?

2. Interview Questions for Practicing Attorneys

Name Experience

Introductory and questions relating to independence

1. Does the establishment of AT and CHB play a constructive role in the effective adjudication of expropriation grievances? If yes, what are the Benefits, and who benefited more?
2. What do you think of the competency of members of AT and CHB?
3. Does the composition of AT and CHB affect its role in any way?
4. Have you ever come across any intervention whatsoever from the executive body?

Questions relating to the Scope of power of CHB and AT

5. What is the scope of power of CHB and AT?
6. Is there any matter that is not reviewable before AT and CHB concerning expropriation?
If yes, what are they?

Questions relating to Procedural Rules and Miscellaneous questions

7. Do CHB and AT apply any procedural rules? What are they?
8. To what extent did the CHB and AT civil procedure code?
9. Is the procedure easy and understandable to any layman?
10. How often are affected landholders represented by an attorney?
11. Is exhaustion before CHB and AT mandatory?
12. What are the problems you faced in litigating before AT or CHB?
13. Are you satisfied with the service the AT and CHB provide?
14. Do affected individuals have enough awareness about CHB and AT?
15. Any other remarks, observations, or suggestions you would like to make?

3. Interview questions for judges and registrar of federal first instance courts

Name Experience

Questions

1. Are expropriation cases treated separately at these courts?
2. What is the proportion of expropriation cases from the total number of cases brought before these courts?
3. Is exhaustion of remedy before CHB and AT mandatory to lodge a case in your court?
4. Have you ever gained any training on expropriation disputes?

Annex B: A Note on Data Collection

The data collection for this study was systematically conducted between May 6 and May 29, 2024. The research adopted a qualitative methodological approach, designed to facilitate an in-depth understanding of the subject matter. This approach was realized through a combination of structured and unstructured interviews with key informants, complemented by personal observations carried out within the designated tribunals established to address expropriation grievances in Addis Ababa (AA).

Data Collection Sites or Institutions

Data was meticulously gathered from several pertinent legal institutions within Addis Ababa. Specifically, fieldwork was undertaken at the two tribunals: the Land Tenure Expropriation and Compensation Affairs Hearing Assembly, situated near Riche, and the Urban Land Clearance Matters Appeals Commission, located near Mexico Square. The tribunals served as critical sites for direct engagement with key informants and field observation by the researcher. The data collected here played an immense role in the search for reliability for the research questions of the study.

Furthermore, the Federal First Instance Courts of Qirqos, Lideta, and Bole sub-cities benches were also instrumental in the data collection process. Interviews with key informants constituted the primary mode of data collection at the Federal First Instance Courts. Interviews were conducted with judges and registrars of Qirqos, Lideta, and Bole sub-cities of the Federal First Instance Courts, and the study benefited from the insights provided.

Themes of the interviews conducted with Key Informants

Key informant interviews formed the cornerstone of the data collection strategy, serving as the principal source of empirical evidence for this study. These interviews were, to a significant extent, structured around a pre-prepared set of guiding questions and thematic areas outlined in Annex A. The thematic focus of these discussions was meticulously designed to explore several critical dimensions pertaining to the tribunals, including:

- ❖ The rationale underlying their establishment.
- ❖ Their independence and impartiality.
- ❖ The competency of their members.
- ❖ The scope of their jurisdictional powers.
- ❖ The procedural rules applied during adjudication processes before these bodies.

The duration of interviews varied considerably among key informants, ranging from a concise 8 minutes to a comprehensive 1.5 hours. All interviews were conducted in person by the researcher, fostering an environment conducive to detailed and nuanced responses. To encourage thorough and expansive feedback, interviews largely adopted an unstructured format, albeit guided by the comprehensive set of questions detailed in Annex A. In select instances, these questions were proactively shared with interviewees prior to the scheduled discussion, allowing for advanced preparation and more considered responses.

Information from Tribunal Members and Judges

Interviews conducted with members and presiding judges, and the chairman of the two tribunals, proved to be exceptionally insightful. These discussions elucidated the fundamental rationale behind the establishment of these specialized bodies, shedding light on their unique roles within the legal landscape. Furthermore, valuable information was garnered regarding their organizational structures, the criteria for membership appointments, their jurisdictional scope of power, the specific procedural regulations that govern their operations, and the multifaceted challenges encountered in their day-to-day functioning.

Information from Legal Experts and Registrars

Similarly, perspectives obtained from legal experts and registrars affiliated with these tribunals provided invaluable data. Their insights specifically pertained to the composition of the tribunals, the detailed procedural rules guiding their proceedings, the precise extent of their delegated authority, and the various obstacles impeding their overall effectiveness. These accounts offered a nuanced and administrative-level view of the tribunals' operational dynamics.

Insights from Practicing Attorneys and Federal First Instance Court Judges

Furthermore, interviews with practicing attorneys and judges from the federal first instance courts furnished critical perspectives, particularly concerning the procedural rules employed by the tribunals and the principle of exhaustion of remedies. This latter aspect was explored as a prerequisite for initiating subsequent legal actions in regular courts, providing a crucial understanding of the interrelationship between the specialized tribunals and the regular courts. These discussions also contributed to a more holistic comprehension of the tribunals' composition and membership requirements, thereby facilitating a comparative analysis between the operational paradigms of the tribunals and the established regular court system.