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RURAL LAND VALUATION AND COMPENSATION PRACTICE IN OROMIA REGIONAL STATE WITH PARTICULAR EMPHASIS TO INVESTMENT: LAW AND PRACTICE

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ADDIS ABABA, ETHIOPIA

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I hereby declare that this paper is my Original work and I take full responsibility for any failure to observe the conventional rules of citation.

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I Would like to express my deepest gratitude to HOLLY SAVIOUR, the creator of the whole world and its inhabitants for protecting me and my family in every aspects of our life and for enabling and helping me every time at every where in all my activities.

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I. INTRODUCTION

The Rural Land valuation and Compensation practice in Oromia is very controversial issue and in most of the cases contradictory to laws that initiated the writer of this senior thesis for assessment. The problems and suppositions that led to the initiation of this study are mainly of two types. First, that various state and local governments and organizations are applying different valuation methods and compensation procedures to compensate rural landholders for land taken from them under the power of eminent domain, and secondly, lack of application of standardized methods and procedures have created situations of unfair valuation and compensation styles whereby equal rights of landholders provided under Federal and Regional constitutions have been infringed upon. Lack of perception by the valuation committees of different levels what laws and directives imply is one of the great problems.

In view of these problems, the study is designed to analyze an existing laws and directives on rural land taking and compensation procedures to identify whether the methods of valuation and procedures of compensation are consistent with federal and state constitutions and other subordinate laws.

The assessment would be made in three aspects; legal, institutional and technical and financial to show how laws are violated, haw un institutionalized, unstandardized and technically deficient valuation committees are affecting the rights of citizens and how the financial incapacity of the government is making the development desires inapplicable.

Finally, the study is designed to make recommendations on how improvements can be made and effected to rectify them where such inconsistencies and corruption prevail.

The paper has been designed to consist four chapters in which chapter one is dealing with the assessments of an expropriation and compensation laws, chapter two, institutional and technical arrangements of valuation committees and the related problems, chapter three, with financial aspects and the fourth chapter is concended to major findings and then it will be finalized by possible conclusions and recommendations.

CHAPTER ONE

1. ASSESSMENTS AND FINDINGS OF LEGAL ASPECTS
The Constitutions And The Laws Of Expropriation And Compensation

Under Article 40 of both the Federal and Regional Constitutions of 1995 and 2001 respectively, every citizen has the rights to the ownership of property. This right includes the right to acquire, to use and, in a manner compatible with the rights of other citizens, to dispose of such property by sale or bequest or transfer. However, this right can be limited or modified by law where "Public interest" so demands.[1]

Moreover, private property is defined as "any tangible or intangible product which has value and is produced by the labor, creativity, enterprise or capital of an individual citizen, associations which enjoy judicial personality under the law, or in appropriate circumstances, by communities specifically empowered by law to own property in common." Obviously, this does not include such naturally existing items as land and other natural resources, which cannot be created by labor, creativity enterprise etc; of man.[2]

The constitutions also stated that the right to ownership of rural and urban lands, as well as of all natural resources, is exclusively vested in the states and in peoples of Ethiopia in the sense of countrywide and of the residents of Oromia in the sense of regional wise. Land is the common property of the Nations, Nationalities and peoples of Ethiopia in accordance with the constitution of the Federal Democratic Republic of Ethiopia and, belongs to the people of the region according to the regional constitution, so that shall not subject to sale or to other means of exchange.[3]

Furthermore, the constitutions stipulate that every citizen shall have the right to the immovable property he builds, and to the permanent improvements he brings about, on land by his labor or capital including the right to alienate, bequeath and when the right of use expires, remove his property, transfer his title or claim compensation for it.[4]

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1. ***The FDRE Constitution, Proc No 1/1995, Year 1, and The, Revised Constitution of Oromia Regional State, Proc No 46/2001, year 8th , No 6, Art 40***
2. ***Id***
3. ***Id***
4. ***Id***

Finally as the supreme law, the constitutions empowered the governments to expropriate private property for public purposes subject to payment, in advance, of compensation commensurate to the value of the property situated on the land to be expropriated, but not to the land either communally or privately possessed. Note that compensation must be paid in advance and that it must be commensurate to the value of the property.[5]

The other empowering law is Article 1460 of the 1960 Civil Code of Ethiopia, as it is stated as expropriation proceedings are proceedings whereby the competent authorities compel an owner to surrender the owner ship of an immovable by such authorities for public purposes.[6]

This is already substituted by a new proclamation, do not know of you do not have a similar one in Oromia Region

Proclamation No 455/2005 is the recent legislation which governs expropriation and compensation in Ethiopia. Article 14 of this proclamation indicates that the councils of Ministers shall issue regulations and the regions shall issue directives for its implementation. Accordingly, the regulations No. 135/2007 has been issued after two years have been lapsed from the date of the enactment of the proclamation whereas the directives does not issued yet.[7]

Even though it seems that the provisions of the civil code are substituted by the new federal proclamation, Oromia cannot adopt it because the proclamation prohibits to do so other than issuing the directives only to implement the federal proclamation. There fore, it is a dilemma so as to use the civil code or not.

As a result, the region is making no attempt to implement that federal law, or where it tries, the lack of more elaborated regulations, for a long period of time, has forced the region to interpret and apply the provisions of the proclamation with out any developed regulations and directives which leads it to undertake the cases in wrong ways.[8]

The source of such a difficultly is the prohibition made by Article 14(2) of prac. No 455/2005 not to implement the proclamation without the isance of directives to be issued by the regional council

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5. Id
6. Civil Code of the empire of Ethiiopia, proc. No 165/1960, year 30th, Art. 1460
7. Abebe Mulatu & Senbeta Erata, Review of the Final Draft Report of the Rural land valuation and compensation practice in Ethiopia Study, (Ministry of Agriculture and Rural Development) August 6,2007,(un published), P.11
8. Id

The property to be expropriated and the provisions in the regional constitution are not significantly different other than the scope of application (geographical limitation). In any case, Regional Constitution cannot conflict with the Federal Constitution and, in case where such conflict exists, the Federal constitution supersedes.[9]

Other are Rural Land Administration laws of federal and regional levels. There are provisions regarding expropriation and compensation in the land administration and utilization law whose relationships with proclamation No 455/2005 needs to be discussed in terms of defining communally held lands and the existence of a legally defensible right of holding for purposes of expropriation and compensation; and, providing legally recognizable holdings for purposes of determining eligibility for compensation. At the federal level, the current governing Land Administration Law is proclamation No 456/2005. It is to be recalled that proclamation 31/1975 of the Derg period was repealed by Article 9 of proclamation 89/1997, which in turn was repealed by Article 20 of proclamation 456/2005.[10]

This Proclamation mentions expropriation and compensation matters. However, the only relevant provision is contained in Article 7(3), which states that a rural land holder who is evicted for purpose of public use shall be given compensation proportional to the development he has made on the land and the property acquired or shall be given substitutes land thereon. The proclamation also envisages different federal and regional laws on compensation. It defines communal holding as rural land given by the government to local residents. The proclamation gives the government the right to change communal holdings to private one. Article 8 of the same makes renting holdings conditional on having a holding certificate, but the details are left to the regions to deal with according to their own specific situations.[11]

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9. Id
10. Ibid.p-12
11. FDRE Rural Land Administration and use proclamation No 456/2005,11th year, No 44, Art.7(3)

The Oromia land administration and utilization laws, which were issued during the pro 455/2005 periods, are Proclamation No- 56/2002 Regulation 39/2003, proclamation 70/2003 and Proclamation 103/2005. According to these laws, the use right of an individual landholders can be a subject to termination, only if that land is required for more important public uses that are decided with the participation of the community as it has been stipulated under Article 6(4) and 3(6) of the proclamation 56/2002 and regulations 39/2003 respectively.[12]

The termination cannot occur unless compensation in cash or kind commensurate to the property taken is made in accordance with Articles 7(2) and 3(7) of regulation 39/2003 when the use right changes hands, an individual landholder, whose use right is terminated is guaranteed with the right to remove permanent works built or tree crops cultivated or collect the fruits there of on such land or to claim payment of compensation thereon or compensation of similar land as it is provided under Article 6(5) of proclamation No 56/2002.[13]

As can be seen from the above, the Oromia land administration proclamation and regulations are brief with regards to termination of land use right and determination of compensation. In addition, it is obvious that, since these regional proclamations and regulations were issued before the enactment of the federal proclamation No 455/2005, the opportunity to incorporate the relatively clearer concepts of expropriation and valuation of property thereon that emanate from that proclamation was not available.

On the other, it is mandatory to region to rely on the federal proclamation since has been prohibited to make its own proclamation of this type other than the only issuance of implementing directive of that of the federal proclamation.

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12. Oromia Rural Land use and Administration proclamation No 56/2002, 9th year, No 2, Art. 6(4) and Oromia Rural Land Administration and use Regulation No 39/2003, 9th year, No 12, Art. 3(6)
13. Ibid, Articles{7(2), 6(5)} and 3(7) respectively.

Moreover, the basis of the region's proclamation and regulations still remains to be the older Federal Land Administration and Utilization Proclamation No 89/1997 and not proclamation No-456/2005.[14] Currently Oromia issued a new proclamation No 130/2007 which amends the three pre-existing legislations- i.e.; proclamations No 56/2002, 70/2003 and 103/2005, and also in which those three proclamation repealed thereby. An examination of the provisions in this newly enacted proclamation has shown that no that much changes have been made to the provisions in the older laws except the entitlement of compensation for displacement in addition to the actual compensation for the properties on the land where the issuance of substitute land is impossible as it is stated under Article 6(12) which is matching with Article 8 of proclamation No 455/2005.[15] The main controversial concept is whether the communal land holder being compensated or not. Proclamation No 455/2005 defines landholder as "an individual, government or private organization or any other organ which has legal personality and has lawful possession over the land to be expropriated and owns property situated thereon."

As it can be inferred from the practice "any other organs having legal personality" has been intergraded by the regional authorities only as private investors and other contractors who acquired landholding rights by providing contractual agreements but not communities to whom land is given by the government.

If it can be taken for granted that this definition does not include those communities or groups of individuals who use land in common, even though acquired legally, then the direct conclusion that communities or groups of individuals cannot be compensated for lands held in such a manner may be reached. However, before we reach that conclusion, an examination of both federal and the Oromia region land administration and utilization proclamations and regulations under study being necessitated. Accordingly, Article 2(12) of proclamation No 456/2005 defines "Communal land" as rural land, which is given by the government to local residents for common grazing, forestry and other social services. It is not clear whether this definition creates a right enforceable by law or not. However, by reading this definition in connection with Article 5(3) of the same proclamation, which states "Government being the owner of rural land, communal rural landholdings can be changed to private holdings as may necessary."

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14. Supra note No 7, P.15.
15. Oromia Rural Land Administration and Use proclamation No 130/2007, (un published), Art. 6(2)

Even though this provision shows the sort of rights such a community have practically no compensation is due since the government organs having responsibility consider the lands of such kind is not subject to compensation. Hens one may conclude that communities do not have a right similar to an individual landholders if it is the government, and not community members, that make the decision regarding the transfer of use rights of communal holding to individuals.[16]

Even though the repealed legislations of Oromia Region lack such a definition, the newly enacted proclamation No 130/2007 of the same defines "Communal land" as land which the local community used for grazing, forestry and other social services in common. But it is not clear where this land acquired to claim for compensation or not. The other controversy is that the source of legality for land ownership or actual possessor right, because the federal land administration and utilization proclamation No 456/2005 does not define "Landholder" at all and there is no other definition in the proclamation that explains how a lawful right to a holding is acquired. However, Article 8 of the same proclamation stipulates that only farmers who have landholding certificates have the right to rent their holdings. Whether the requirement of certificates of holding applies only in the case of renting out holding or whether, by implication, certificates of holdings are the only prove of legal holding in all cases, can only be left for legislator to clarify.[17]

What has been seen in practice is, however, the persons who have not holding certificate cannot clean for compensation on the expropriation of their holdings.

But what I would like to stress on is that, clarity is very necessary in order to identify to whom compensation to be paid and to protect a competent authority from being cheated.

The Oromia Land Administration and Utilization proclamation No 130/2007 defines "Legal landholding" as the land acquired from the responsible body in accordance with the law, or the land which transferred through inheritance or donation. However, the mechanism of proof whether the land is acquired from such a responsible body or not, or whether the granting or transfer is lawful or not, does not stated in this proclamation. Under Article 2(6) of the same proclamation, "Private Landholding" is defined as the land occupied by farmer or partial pastoralist, or pastoralist, or the rural land under the holding of legally authorized organ. Certificate of landholding right is considered as the only prove of legal holding in all cases as it is provided under Article 15(4,6-12).[18]

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16. **Supra note No, 7,P.17**
17. **Ibid, P.7**
18. **Supra note No 15, Articles 2(36),15**

The other law of expropriation in Oromia is the City Administration Proclamation No 65/2003 (as amended). As it has been stated under its Article 8(2)(g), the city administrations are empowered to expropriate, without prejudice to Article 40(8) of the constitutions, private property for public purposes subject to paying equivalent compensation.[19] This power doesn't limit to the properties situate in city boundary. Rather, it extends to the lands and other permanent properties surrounding the city where the conditions demand to expand the delineation of the city.

EXPROPRIATION PURPOSES

Public Purpose/Domain

According to The American Heritage Dictionary of English Language, "Public domain" is defined as" Land owned and controlled by the state or federal government and/or the status of publications, products, and processes that are not protected under patent or copyright," whereas "public service" is defined as "a service performed for the benefit of the public, especially by a non-profit organization."

> ***Blacks Law Dictionary defines "public purpose" and public service as:-***
>
> Public purpose is public business has for its objective the promotion of the public health, safety, morals, general welfare, security, prosperity and containment of all the inhabitants or residents within a given political division, as for example, a state the sovereign powers of which are exercised to promote such public purpose or public business, whereas public service is a term applied to the objects and enterprises of certain kinds of the corporations, which specially serve the needs of the general public or conduce to the comfort and convenience of an entire community, such as railroad, gas, water, and electric light companies, and companies furnishing public transportation.

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19. Oromia City Administration Proclamation No 65/2003 (as amend) 9th year, No 12. Art. 8(2)(g)

According to Article 1445 of the 1960 Civil Code of Ethiopia "Public domain" is defined as the property belonging to the state or other administrative bodies which directly placed or left at the disposal of the public, or that destined to a public service and is, by its nature or by reason of adjustments, principally or exclusively adapted to the particular purpose of the public service concerned.[20]

Since courts apply this provision in their judgments relating to the expropriation purposes, it is doulstful where the provisions of the civil code are substituted by that of proclamation No 455/2005

As one can understand from these definitions, those properties are the properties which are expropriated for the purpose of construction or developments from which every citizen gain services or benefits openly such as roads, schools, health centers, market places, cities/towns, churches, mosques, waterways, and the like.

Proclamation No 455/2005 Article 2(5) defines "Public Purpose" as the use of land defined as such by the decision of the appropriate body in conformity with an urban structure plan or development plan in order to ensure the interest of the peoples to acquire direct or indirect benefit from the use of the land and to consolidate sustainable socio-economic development" This definition is quite broad so much so that if the authorities so desire, they may be able to deem any activity as serving the public purpose.[21]

Of cause, this proclamation is peculiar to Oromiya. But failure to issue directives by the Regional council makes its implementation inactive.

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20. Supra notes No 6, Art. 1445

21. Expropriation of land holdings for public purposes and payment of compensation proclamation No 455/2005. 11th year. No 43, Art. 2(5)

Therefore, Oromia although it does not have laws that define public purpose, i.e proclamation No 130/2007 says nothing with this regard, expropriate land from farmers, pastor lists and/ or partial pastor lists by using the above mentioned broad definition when so ever the land allocation for an investment demands. The basis for an investment authorities to expropriate land using the above definition by mutants is that the expression provided in the preambles of the repealed federal investment proclamation No 37/1996 and that of the alive proclamation No 280/2002 (as amended), of the same as "Whereas, the encouragement and promotion of investment has become necessary so as to accelerate the economic development of the country and to improve the living standard of its people.[22]

Economic Regeneration Enhancement

Nowadays, the main economic regeneration enhancement of our country next to agriculture, the way to improve and upgrade the living standard of the people is an investment. As different dictionaries and literatures define "investment" as "expenditure of wealth, capital or different assets, or conversion of money into claims in aiming for more profit to enable future production or other advantageous economic yield, or as it is an expenditure of capital by an investor to establish a new enterprise, or to expand or upgrade the already existing one, it is obvious that land is the basic necessity for its establishment or expansion.[23] Therefore, land allocation for investors upon request is vested in the regional governments as it has been provided under Article 35 of the investment proclamation of the FDRE as" where a Regional Government receives an application for the allocation of land for an approved investment, it shall, on the basis of the Federal and its own laws, deliver within sixty days, the requested land to the investor. In addition, the region is under duty bound to transmit information on such allocations to an appropriate investment Westmont organ so that such an appropriate organ being obliged to facilitate and follow up the concerned regional executive organs.[24]

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22. The FDRE Investment proclamation No 37/1996, 4th year No 43 and Re-enactment of the Investment proclamation No 280/2002, 8th year. No 27 preambles.
23. Tilaye Ayano, Ethiopian Investment law as Applicable in Oromia Region: The special emphasis on the law of the use of rural land for Investment in Oromia P.O.
24. Re-enactment of the Investment proclamation No 280/2002 (as amended) Art.35.

Accordingly, A proclamation To provide For The Use of Rural Land for Investment In The Oromia Region No 3/1995, under its Article 3 provides that "In accordance with Article 9 of the Investment proclamation, (federal government investment proclamation) (proclamation No 15/1992 of the Federal government) person who intends to invest in the Region shall be utilized in the manner cited in this proclamation." Moreover, the land allocation powers and duties are vested in Oromia Investment Commission as shown in proclamation No 115/2006, Article 10(8,9,10, and 12).[25]

Rapid Urbanization

Urbanization is occurring rapidly in many areas of the region due to the people's seeking for infrastructures and social services, for example, roads, electric light, telephone, pure water for drinking and the like. Regional and local officials are concerned at the unprecedented speed at which urbanization is occurring. According to intervals and focus group discussions held with government officials, especially urban development officials and Agriculture and rural development officials, Members of agriculture and rural development staff complain that fine agricultural lands are being swallowed up by urbanization. They claim that unless the urbanization is allowed to take its own course through a systematic process that does not hurt landholders (whether they have been incorporated into urban limits or are out side) it may not only lead to illegal ways of profiting from the phenomena but may also create political disgruntlement among the multitude of landholders that will be affected. They also argue that there must be a way of making persons whose landholdings are expropriated from beneficiary in a more sustainable manner from the urbanization is taking place. Giving landholders compensation is good but measures must be taken to prevent such landholders from descending to the bottom of the poverty ladder for lack of know how regarding to investing the compensation received in productive activities. They propose that emphasis should be made in the creation of institutional arrangements and mechanism for dealing with social impacts of expropriation caused displacements.[26]

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25. A. Proclamation to provide for the use of Rural land for Investment in the Oromia Region proc. No 3/1995, 3rd year, No 3. Art. 3 and the Re-establishment of Investment Administration of the Oromia Regional State, proc. No 115/2007. 14th year. No 11. Art 10 (8-10 & 12)
26. Supra note No 7. P.45

However, these groups of intellectuals cannot stop the on going situation because of so many controversial issues raised by other groups. The groups have their own opinions and feelings as far as the expansion or establishment of towns are concerned According to regional and local officials, the major problems caused by urbanization are due to existing regulatory gaps. For example.

- Land is expropriated from landholders fur urban expansion or establishment, but large perorations of such lands has not been used. So they point out the need to have an appropriate approach on how and when to displace the landholders and promote real estate development in order to lessen the uncontrollable expansion.
- Implementation between urban land administrations and rural land administrations is not coordinated, which results in problems arising between agriculture and rural development offices and municipalities.
- Woreda administrations do not have essential data and formations about landholding rights. Although the need for an information systems on landholding rights and procedures of expropriation and compensation there are no clear, comprehensive and coordinated systems and procedures available for administrators and valuation committees.
- Urban administrations believe that in cases where there are dispute regarding urban expansion including whether rural land should be expropriated for urban expansion or not between urban administrations and rural administrations there must be a mechanism for higher government organs to make a decision regarding the disputes. Lack of this mechanism and lack of coordination makes administrative acts very complicated and full of dispute.
- There are also no clear directives about rural landholders who become incarcerated in to the city or town limits. It is not clear whether the land holdings which have fallen within the new city or town limit should continue being considered as Woreda governed until actual taking of their farmlands, or as being under the jurisdiction of the respective urban administrations (municipalities). Sometimes members of rural farming communities may fall within a town's boundary and still be under their respective rural kebele administrations; and some times claim for right to be under the jurisdiction of urban administrations regarding their residences. The lack of clear directives creates great confusions as regard to determination. On the other hand, the practices shows that, as actual urban development expends the rural kebele administrative structures change into urban kebele administrations under the respective urban Administration.

The issues of compensation payment is made when the development of residence or other development activities reaches a given area on which landholders still reside and farm although already they are within the urban areas.

Expropriation Procedures

According to the 1960 civil code of Ethiopia five procedural steps were enumerated to effect expropriation among these procedures, the first is making inquiry (Art 1465) which needs consultation with people about the contemplated project with the people before the commencement of expropriation. The second step is making a declaration to the effect that the planned expropriation serves public interest (Art. 1463). The third step is identifying the immovable property subjected to expropriation to know the full owners, bare owners, bare owners and usufructuries in order to make sure to whom the compensation is to be paid. The fourth step is issuance of expropriation order (Art 1467). The basic function of the order is to transfer title to the competent authority free from any charge such as servitude, usufruct, habituation, right of preemption, promise of sate (if the property is building or tree intrinsic to land) and right of recovery. As it is stated in Article 1468(1) of the same code, the fifth step was service of expropriation order (warning). The order is to be given to the owners or possessors and/or to persons having interest on the property subject to expropriation if the letters' rights have been in the register of such a property.

According to the code, not only the interests of owners or possessors, but also the interests of third parties, particularly usufructuries and servitudes, shall be fulfilled, because they are intitled to demand compensation either from the competent arithorities or from the owners or possessors on the compensation paid to him/her or about to be paid to him/her for the improvement they brought to the expropriated land or any other private property (Art 1467(3). This is to protect the rights of every citizen and to prevent grievance by making the procedures clear and providing transparency. The owners or possessors and other interested parties to whom expropriation order has been served, on their sides, were expected to communicate with the competent authority for the amount of compensation they claim (if any) within one month to be calculated from the date of service of the order (Art. 1470). The competent authority may not accept the amount of compensation proposed by the owner or possessor and/ or persons having interest on the property to be

expropriated if they have justification about the fairness of the compensation they fixed prior.

Where such like grievance created between two parties, the compensation has to be fixed by the arbitration committee (Art-1472) for which the code does not clearly stipulate so as to who will establish such a committee or whether the complaining parties do have the right to appoint part of the members of this committee or not. The committee's sole juries diction is only to fix the amount of compensation that has to paid by the authority rather than deriving into the substantive aspect of the expropriation brought before it (Art. 1473(2and3)). The principle to be fallowed by the committee is also only to determine the actual compensation to be paid in cash to the properties situated on the expropriated land rather than dealing with substitution (compensation in kind). This was because at the time of the enactment of the civil code substitute land has been expected to be given together with the actual compensation commensurate to the property thereon. But at this moment, especially in Oromia, no substitute land expectation rather than reorganizing the peasants displaced from their possession to let them to there sectors of work through formation of private associations in the aid of Macro or Micro finances. Basically, however, since the peasants expecting their possession or preferring land to the compensation in cash justifying that land is the base of their life and the amount of compensation to be paid is limited only to the actual damage caused to their private properties as a result of expropriation by disregarding consequential damages, many of the communities either subjected to expropriation or out siders are aggrieved by the acts of the government. This is because the loss of profit expected in the future and cost of transportation and related expenses are not being considered. The permanent improvement to the land is also neglected.

As it is already discussed above these procedures are expected to be followed by the competent authority and, expropriation through payment of compensation shall be executed after all these preconditions are exhausted. Otherwise, taking over of the land and/or the property thereon was impossible. However, proclamation No 455/2005 does not require prior declaration of the existence of public purposes and does not give to the landholders and other interested third parties the opportunity to challenge the existence of such public purposes. Among the procedures stated in the civil code, the proclamation adopted only notification of expropriation order while four of them are rejected. In

accordance with Article 4 of the proclamation where a woreda or an urban administration decides to expropriate a landholding in accordance with Article 3 of the same proclamation, it shall notify the landholder, in writing, indicating the time when the land has to be vacated and the amount of compensation to be paid. The period of notification to be shall be determined by directives; provided however, that it may not, in any way, be less than ninety days. Any landholder who has been served with an expropriation order is duty bound to hand over the land to the woreda or urban administration within ninety days from the date of payment of compensation or, if he/she refuses to receive the payment, from the date of deposition of the compensation in a blocked bank account in the name of the woreda or urban administration as may be appropriate. The power of issuing the directives is given to the regional council for which the region has been kept silent in this respect. What is usly obviously understood is that Oromia takes over the property with out any authorizing gudideline.

As the conditions clearly reveal, the proclamation does not make any way to enable the aggrieved persons being claim their rights. The land or properties are to be expropriated without consulting the people about any thing concerning the expropriation or about the pros and cones of the planned project. Here the right to expression is also denied-which is contradicting the constitutions and the principles of democracy. The other surprising point is that, where there is no crop, perennial crop or other property on the expropriated land, the holder is under obligation to hand over the land to the woreda or urban administration within 30 days from the date of receipt of the expropriation order. One can clearly understand how the act is sudden to the persons from whom their holdings are to be expropriated without prior declaration of the act and merit and demerit of the planned project as well as the future fate of the persons. Where the landholders who have been served with the an expropriation order refuse to hand over the land within 90 or 30 days, the woreda or urban administration is empowered to use police force to take over their possession by displacing them by force.

These are the reasons why this writer opted to compare the two legislations. Legally speaking, laws in Ethiopian law-making process, can be repealed three ways: explicit repulsion, implicit repulsion and consolidation; i.e; by substituting certain section (s) by newly promulgated legislation. The promulgation of proclamation No 455/2005 implies the replacement of section 2 of title 9 (expropriation and compensation provisions) of the civil code. But this writer opted to make discussion on these provisions for three

purposes. First, for the purpose of comparison of the provisions of the two legislation in order to show how the process was serious in the past and how it is simplified at present; and how far the people deprived the right to expression and consultation. Second, to introduce the areas not covered by the newly issued proclamation, and third, as it is already discussed above, courts in Oromia region, especially those at woreda level applies the provisions of the civil code contending that, any section of the civil code cannot be repealed by a single proclamation. Therefore, to introduce how our courts at Woreda level are incompetent in understanding in what conditions one law prevails over the other and in what manner the laws can be repealed.

CHAPTER TWO

2. Institutional and Technical Aspects

2.1 Expropriation Power

According to both the Federal and Oromia Regional State Constitutions Article 40(8) the Governments, either the federal or regional or both, have the power to expropriate, in the public interest, private property.[27] That is the federal government who may expropriate lands where the projects intended to be done are monitored at the country level or under the control of federal government whereas the regional government may engage in this activity where the projects may run under the control and supervision of the region.

The 1960 Civil Code of Ethiopia assigns "Competent Authority" for such an activity as it is provided as "Expropriation proceedings are proceedings whereby the competent authorities compel an owner to surrender the ownership of an immovable required by such authorities for public proposes."[28] The organ assigned in the code is not a single; rather they are many which reveals the relevant government agencies can engage in taking over of the ownership on behalf of the people concerned in accordance with the laws when the interest of the community demand. Comparing to this for the purpose of making benchmark from the past to present, it is essential to analyze what the recently promulgated laws introduce.

Moreover, the Federal Investment Proclamation No 280/2002 Article 35 (1) stipulates that where Regional Government receives an application for the allocation of land for an approved investment it shall, on the basis of the Federal and its own laws, deliver within sixty days, the required land to the investor. Sub-Art 4 of the same Article states that, the appropriate investment organ shall in cooperation with the concerned regional executive organ facilitate and follows up the allocation of land for approved investement.[29]

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27. Supra note No. 11, Art 40(8) respectively
28. Supra note No. 6, Art 1445
29. Supra note No. 24

> Oromia Regional Government established an Investment Commission not only for facilitating and follow up land allocation but also to make decision, conclude contract and cancel the same in fulfillment of the provided conditions pursuant to proclamation No 115/2006. According to Article 10(2)(e), (7), it is sure that an Investment Commission of Oromia is empowered to allocate land for investors by expropriating the same from an individuals.[30]

Furthermore, in accordance with City Administration Proclamation No 65/2003 (as amended), of Oromia Regional Government Article 14(1) all powers of the city have been vested in the city council and the same is entitled to provide for the exercise of the powers and functions of the city including management of the land in the city boundary in accordance with law and approval of the city plan and to ensure its implementation.[31]

Such a plan may include expansion and upgrading. So, the City Administration is empowered to expropriate land situated within the city boundary and which is available surrounding the city in the farmers' holding as per this article. According to Article 3(1) of proclamation 455/2005, the power to expropriate is primarily vested in Woreda and Urban Administrations. These government organs have power to carry out the expropriation for public purposes "where they believe that it should be used for a better development of project to be carried out by public entities, private investors, cooperative or other organs…" However, as it is clearly understood from the same articles that, a decision to expropriate for the same purpose may also be made by the appropriate higher regional or federal government organs without any specific mentioning by law of these "higher Organs."[32] The writer is not clear with why the law kept silent with regard to make clear who they are but in the writers opinion, these organs may be federal government urban Administration Organs incase Addis Ababa and Dire-Dawa, Oromia City Administration Investment Commission and Regional Administration and also the Federal Affairs Ministry where the land is required for federal matters.

As the provisions of the laws reveal, expropriation can be carried out by the higher organs of either federal or regional governments under the approval of the executive councils, urban administrations, investment commission and other competent authorities, which the governments think fit.

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30. Supra note No 25
31. Supra note No 19. Art, 14(1)
32. Supra note No. 7. P.19

Thus, in Oromia the decision to accept an investment project and the action of instructing the investment offices at the zonal and Wereda levels to provide land for it may indicate an exercise of the power to expropriate, since there is no apparent mechanism which enables a rural administrations to set aside such decision. It is the same for federally financed infrastructure projects that require land taking.

No consutation have been made with communities to be affected by the implementation of a project before the decision to expropriate is exercised have been countered as interviewees have been responded during the field visits conducted in Akaki Woreda of East Shewa Zone, Sebeta-Hawas Woreda of South- West Shewa Zone and Wolmera Woreda of West Shewa Zone. However, after such a decision is made consultations with the concerned communities may be made in order to convince them even though there are instances where either no such consultations are made, or consultations are made only with the Kebele administrations, which are, after all, part of formal government structure. Where objection to the projects or the intended expropriations are made by some of the community members or those whose landholdings are going to be affected by the taking, the projects are nevertheless implemented, sometimes using various kinds of threats of force or actual use of force on the objectors such as imprisonments or punishments in terms of money, warning and harassment. This was what the community in these Woredas highly contested in the in-depth interview and focus group discussions conducted with them.

2.2 Land And Property Valuation power And Responsibility

Article 10 of Proclamation 455/2005 requires the establishment of a committee of not more than five experts having the relevant qualification by Woreda Administration. It also requires that, in the event that the property to be valued requires specialized knowledge, the valuation shall be made by a separate committee of experts to be designated by the same administration.[33]

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33. Expropriation of landholdings for public purposes, and payment of compensation proclamation No 455/2005, 11th year, No 43, Art. 10(3)

It is provided, under Article 10(4) that working procedure to be followed by these committees are to be established pursuant to directives to be issued by the Regional State in accordance with Article 14(2) of the proclamation. In addition since the proclamation does not offer further details about the kind of qualifications required and where they will be appointed from it may also reasonable that future details will be provided for, either in regulations to be issued by the Federal council of Ministers, or the directives issued by the Regional State itself in accordance with Article 14(1) and (2) respectively.[34]

Regulation No 135/2007 has been issued by the Federal Council of Ministers without any indication about the establishment of committee, the kind of qualification required and where from of the committee members to be appointed whereas the regional government does not issue the said directive. Therefore, its establishment criteria has been left subjective and open ended; and all the discretions are vested in Woreda Administrations. This is an indicator that the power and responsibility falls upon the committee and Worada Administrations.

According to the respondents of the questionnaires, the committees are to be established from the combinations of educated experts of any kind and laymen as the Woreda administrations think fit. Even though the educated person within committee members at diploma levels in other fields of discipline, they are laymen for law and so that they are in very much difficulty of interpretation. It is too surprising that, as the respondents stated, they are not furnished with the concerned laws but the committees carry out their activities traditionally through estimation.

2.3 Determination of Compensation

In proclamation No 455/2005, compensation is defined as payment to be made in cash, in kind or both to a person for his property situated on the expropriated holdings. Two broad types of situations for which compensation will be due in case of expropriation are envisaged under the federal proclamation. The first category of compensable is what may be considered as immoveable private property under Article 40 of the FDRE constitution. According to sub-Articles 2 and 3 of Article 40 of the constitution land cannot be included in the category of private property.

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34. Ibid Article, 10(4), 14(1&2)

Because under sub-Article 2 private property is defind as: any tangible or intangible product which has value and is produced by the labor, creativity, enterprise or capital of an individual citizen, associations which enjoy judicial personality under the law, or in appropriate circumstances, by communities specifically empowered to own property in common. Land cannot be produced in whatsoever the case by the labor or capital of an individual or of community or corporate body. What capital or labor can contribute to land is only to make permanent improvement only. What individuals or communities or corporate bodies have only use right but not ownership right, in accordance with sub-Article 3 too, the right to ownership of rural and urban land, as well as of all natural resources, is exclusively vested in the State and in the peoples of Ethiopia. Land is the common property of the Nations, Nationalities and peoples of Ethiopia and shall not be subject to sale or to other means of exchange. In the case private property however, one can freely dispose, exchange and transfer and also can dismiss or dimolish. But no one can take such like measure with regard to land except the government in terms of lease or rent. In general, taking land as private property is unconstitutional. The second category of compensation is for displacement and appears to be based on Article 8 of proclamation 455/2005, which requires payment for persons displaced by government programs. [35]

Articles 40 of the regional government Constitution is the direct reppilica of Articles 40 of the FDRE Constitution in which nothing has been provided about displacement compensation.[36] Of course constitutions left the details for other legislations. However, no law of the region appears with satisfactory priefs.

In the first instance, Article 7 of proclamation 455/2005 shows compensation is payable for each property situated on the land and for permanent improvements made to such land. While compensation for "Property" is to be fixed based on replacement cost of the property, compensation for permanent improvement is to be fixed based on, and equal to, the capital and labor expended on that land.[37]

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35. Supra note No 1
36. Ibid
37. Supra note No 7, P.21

In the second instance, as shown under Article 8 of the same proclamation, compensation is payable for displacement in addition to what is paid under Article7. Compensation for permanent displacement should be "equivalent to ten times the average annual income … secured during the five years preceding the expropriation of the land." However, in the case of temporary displacement, it is time bound and only payable as long as the displacement continues and should not exceed the amount that a person would have received had he has been permanently displaced (Article 8(2).[38]

Note that, in the case of displacement resulting from expropriation under the proclamation, the Woreda Administration may decide to compensate the displaced person by providing substitute land "which can be easily ploughed and generate a comparative income" (Article 8(3). In such cases, compensation payment due to the landholder in cash cannot exceed a one time payment of the average annual income secured during the five years proceedings the expropriation of the land.[39]

In addition, when the expropriated land is a lease holding and is being expropriated before the lease expiry date, the leaseholder has the right to be provided with similar land which he can use for the remaining lease period or longer if the new land is less than the former one.

However, if he does not want a substitute land, he still has the right to request for, and take, the balance of the lease payment for remaining lease period and in all cases, the detailed formulas for valuation that are going to be applied are left for regulations to be issued by the Federal Council of Ministers and directives to be issued by the Regional government for which regulations No 135/2007 appeares with certain formulas too late after the issuance of the proclamation while the regional government still kept silent. However, the Oromia Regional Investment Commission took a sort of measure with consultation of the president office to avert inconveniencies until the issuance of the formal directives. A guideline distributed to the 15 zones through a letter written on 30/01/2006 and signed by the president of the regional state stresses that proclamation No 455/2005 should apply and also provide same methodology i.e; factors of multiplication that is introduced by the proclamation-ten yers for valuation of various compasable and determining the amount of compensation that is receivable in case of expropriation.

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38. Id

39. Ibid P.22

But there is no clear differentiation made between compensation for property and permanent improvement to land as envisaged under Article 7 and 8 of proclamation No 455/2005. It stresses on the valuation of houses (including infrastructure lines and other structures such as septic tanks), live fences, annual crops, ecucalyptus trees, grass, minerals, etc; and also takes into account permanent improvements to houses but not to land, depreciation and cost of repairs. The guideline does not state anything specific about the payment of displacement compensation, but instead states that compensation for permanent crops and pasturelands shall be annual income based and multiplied by ten years' However, there is no clear provision that requires annual income from annual crops to be multiplied by ten.[40]

Note that, the laws do not have any provision stating about land valuation rather than valuation of various properties situated on the land to be expropriated. This is because of that the right to ownership of rural and urban lands as well as all natural recourses is exclusively vested in the state and Nations, Nationalities and peoples of Ethiopia.[41] Since the right of individuals to land is only use right, it seems correct to value and determine compensation of properties situated on the land subjected to expropriation.

However, according to the respondents to the questionnaires, the valuation does not accurately deals with the properties permanently situated on the land and the average quantity of yield. Instead land is valued and compensations have been determined in cash per square meters especially where rural lands are incorporated into towns. The respondents and in depth interviewees added that, displacement compensation and compensation for permanent improvement to the land are not practically appeared.

40. Supra note No 7, P.59

41. Ibid, P.23

2.4 Factors of Multiplication and Modalities of Compensation

At regional level, information regarding valuation methods and compensation practices was obtained form the officials of the Regional Investment commission and Urband Development officials. The Regional Investment Commission Public Relation official informed the writer that, before 1995 E.C. the multiplying factor on estimated average annual income was 10 years, but that was reduced to 5 during 1995-1999 E.C. Since then, it has gone up to 10 once again and this is creating grievances and controversies, as expropriated landholders who received compensation during 1995-1997 E.C. have been subjected to substantial and unfairly levied losses. Urban Development Bureau reported that there was no formula or methodology, as such, for valuations of properties and determination of compensation amounts on land expropriated regionally implemented projects. Rather, if funds are available, estimated market prices for materials used in construction are used to estimate compensation (replacement costs of materials, excluding labor costs), and compensation related to other properties situated on the land.

Discussions with officials in the sampled Woredas (West Shawa- Wolmera, North Shewa- Sululta, South-West Shewa- Sebeta-Hawas and East Shewa- Akaki) during field work confirmed that, the information regarding fluctuations in valuation methods that was obtained trough the consultations with regional authorities. The discussions conducted between the writer and stakeholders (farmers and investers) also revealed the commonly shared view that subjectivity and inconsistencies in valuation methods and compensation practices, and absence of clear guidelines/ directives on matters related to valuation and compensation are major problems.

In Akaki Woreda, for instance, officials indicated that the compensation practice and valuation methods used differe depending on the purpose of expropriation, institution involved, and time-periods. As to the officials, for land expropriated due to regional public development projects, only cash estimated per square meters has been paid. On the other hand, compensation in cash and up to 500 square meters of land was provided for land expropriated for township expansions.

In Wolmera Woreda of West Shewa Zone participants of the focus group discussions expressed their complaints to the wrtier that a multiplying factor of 10 is inadequate because the valuation is not practically based on the average amount of yield but land

is valued. A case was cited at Menagesha where holders of land expropriated for floriculture investment venture received the compensation determined 5.87/sq.m of land. Focus group discussions held in Sululta Woreda of North Shewa Zone highlighted a case involve expropriation of land for building a factory, where transparency in valuation methods is clearly lacking. Measurements of land to be expropriated were made in absence of the holders, who subsequently forwarded their complaints of lack of transparency. Participants of the discussion informed the writer that the response to the complaints was that the land would be expropriated with or without their consent, but that they should console themselves with the compensation amount that the committee members announce it is based on the average annual income and be multiply by 10 while practically compensations were due through valuation of land just like the case of Wolmera. The other point which is irritating the persons whose holdings were expropriated is the anticipation that job opportunities would be created. Orally announced but practically disappeared. Based on these, the expropriated landholders refused to accept the compensation amount determined as such and despite notification to the zone from the region that the landholders should participate in the valuation process to assure transparency but no further action (response) had been taken by the responsible bodies during the time of the study.

The specific information regarding inconsistent valuation methods and compensation practices in Sebeta-Hawas Wordea of South West Shewa Zone obtained through the focus group discussions and in-depth interviews is also worth mentioning and it is a clear violation of laws even constitutions. As participants mentioned, urban administrators, which used to pay Birr 5.5/square meters in previous for land expropriated for private investment, now pays only 0.72/Sq meters. The justifications for the reduced rates are unclear and the holders' appeals to the president of the Regional State have yet to get a response. Woreda officials admit all these problems but unabled to give solution because the system is unclear an unfamiliar even for them and the committees they established

In practice, there also appear to be no clear appreciation of the difference between compensation due to landholders under Article 7 of proclamation No 455/2005 for property situated on land subjected to expropriation and permanent improvements to land and the compensation required to be paid under Article 8 for displacement.[42]

42. Ibid, P.30

According to the federal constitution as well as the region's constitution the term property described in the context of private ownership includes immovable properties produced by the labor or capital of individuals or communities such as houses, fences permanent (perennial) crops, other annual crops, an expense incurred to make permanent improvement to the land and similar structures situated on the land. These any other properties include any tangible and intangible products, which have value and are produced with the labor, creativity enterprise or capital of an individual. Thus, under the circumstance, it would appear obviously that crops and perennials or any other product of value should also be legitimately compensable since it is not clearly indicated otherwise under Article 7 of proclamation No 455/2005. This, however, is not present in practice. One of the problems appears to be that of interpretation of the phrase "Property situated on the land." In almost all cases the valuators consider only houses, fences, and the similar structures, so that no compensation is being paid for permanent improvements to land, simply because the valuators do not know how to interpret the proclamations and do not have any detailed specification with them.[43]

In Oromia, there also appears to be a problem of perception. One justification presented is that, productivity based compensation (as in article 8(1) of proclamation 455/2005 but not necessarily with actual knowledge of what that article prescribes) is deemed to include the cost/value of permanent improvements to the land since any higher productivity is a result of such improvements.[44]

The response obtained from the respondents of the questionnaire in every Woreda, under the study also clearly imply this that they answered as the committees establish from the combination of experts at diploma level (not in law) and laymen even who cannot read what has been written either in Amharic or in English.

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43. Id

44. Id

According, to the argument goes, there is no need to make additional compensation in the name of permanent improvements to land. In accordance with Article 7(6) of proclamation 455/2005, compensation is to be based on valuation formulas expressly/ specifically developed for various types of properties in regulations. As it is provided in Regulations No 135/2007, the properties or holdings to be compensated are: buildings, fences, crops (seasonal), perennial crops, trees, protected grass, relocated property, and burial-ground. In addition, displacement compensation should be paid according to Article 16.[45]

Moreover, communal landholdings also considered compasable according to these regulations. The formulas for calculating the amount of compensation payable in accordance with proclamation 455/2005 and Regulations 135/2007 are as stated below.

1. Compensation for building = Cost of construction (current value).
   + Cost of permanent improvement to land
   + the amount of refundable money for the remaining term of leas contract.
2. Compensation for crops = the total area of land (in square meters)
   X value of the groups per kilogram
   X the amount of crops to be obtained per square meter.
   + cost of permanent improvement on land.
3. Compensation for unripe = number of plants (legs)
   Perennial crops X Cost incurred to grow an individual plant
   + Cost of permanent improvement on land
4. Compensation for ripe = the annual yield of the perennial crops (in kilo grams)
   Perennial crops
   + the current price of the produce perennial crops
   + Cost of permanent improvement on land.[46]
5. Compensation for relocated = Cost of removal
   Property + Cost of transferring
   + Cost of reinstallation

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45. Counicil of Ministers Regulation on the payment of compensation for property situated on Landholdings expropriated for public purposes, Reg. No 135/2007, 13th year, No 36, Articles:- 3-12&16
46. Ibid, Art. 13

6. Compensation for protected = area covered by the grass per square meter
   Grass X the current market price of the grass per square meter.

In addition, the compensation for a building shall include the current cost of constructing floor tiles of the compound, septic tank and other structures attached to the building; and the estimate cost of demolishing, lifting, reconstructing, installing and connecting utility lines of the building. The owner of a building has been entitled to claim compensation for the entire building by surrendering the total land in his possession where only part of the building is ordered to be removed at his feeling to leave the whole possession, and compensation shall be paid only for the demolished part of building where the condition of the part of a demolished building where the owner prefers to use the unwanted part of the land; provided, however, that such preference shall be acceptable only where the condition of the partly demolished building conforms with the requirements of the appropriate city plan at the condition where expansion demands and with the project intended to be carried out in case of rural investment. The owner of ripe crops may, in lieu of compensation, harvest and collect the crops within the period fixed pursuant to Article 4 of the proclamation (within ninety days). The amount of compensation for fence can be determined by calculating the current cost per square meter or the unit cost required for constructing a similar fence. Similarly, the method in which determination of the amount of compensation for trees takes place is dependent on the level of growth of the trees and the current local price per square meter or unit. Where the owner prefers to cut and collect trees in stead of compensation he will duty bound to do so within the fixed period of time.[47]

With regards to payment of compensation for improvement to land, the practices are not in accordance with the requirements of Article 8 of proclamation 455/2005 and the above-mentioned Articles of Regulations 135/2007 in Oromia region. These include the general practice of not taking into account permanent improvements in calculating compensation, the practice of deducting depreciation costs in calculating compensation relating to building and fences.

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47. Ibid, Articles 4 and 7

Mostly, the reason for the inconsistencies were attributed to the fact that the valuation methodologies were "primitive" and "rough" the lack of qualified personnel for carrying out the valuation, the lack of directives to be issued by the regional government and the lack of know how to interpret the already existing federal legislation, the unreliability of market information, the subjectivity of individuals and possible corruption.

These factors cause estimation results to very substantially, even under similar circumstances by two to three folds. It is important, however, to note that only variations that occur in situations that are similar in all respects should be questionable. Otherwise, one should expect variations to occur depending on the value of properties varying from place to place, from market to market as well as variations in yield and fertility of land. Moreover, the concern about leaked information appears to be rather displaced, in view of the need to make valuations and determination of compensation transparent.[48]

The other concern in payment of compensation is its modality. Since Article 2(1) of proclamation No 455/2005 defines compensation as "payment to be made in cash or in kind or in both…", substitute land should be given, as compensation in Oromia to the affected landholders.[49]

In the case of community development projects in rural areas the normal practice of compensating expropriated landholders is not the provision of substitute land. An effort to avoid the construction of such projects on individual holdings by making communal lands available for these activities is generally made and implementation of such projects on communal land is the preferred approach. However, there are plenty of cases where the sites required can only be found on private landholdings and hence, expropriation is required. In such cases the affected persons should be compensated in kind, but not the actual practice. The options ought to include adjustments to already existing holdings of other members of the community, by providing land from farm lands abandoned for various reasons by their holdings and, as a final resort in cases where it is impossible to compensate the affected as per the two approaches just mentioned, compensating the affected people by giving them substitute land from communal holdings.[50]

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48. Supra note No 7, P.31-32
49. Ibid. P.34
50. Ibid. P.37

But the greatest problem in Oromia is that the scarcity of communal and abandoned holdings because of the flowing up of numerous projects. It makes compensating in terms of substituting land very rare. This scarcity leads the appropriate bodies being affected person engaging in any other business woks through reorganization made to them by investing the compensation they received in cash.

Although it is available in a very rare conditions, the fairness and equitability of this approach, in practice has a lot of shortcomings as affected landholders in many cases are given, as substitute lands are not commensurate either in size, fertility or distance they have from the residence of persons whose holdings taken from.

The modality of payment of compensation both in cash and in kind may only take place where the substitute land is very small in size and less fertile than the expropriated land since it is very problematic in case of rehabilitating the life standard of persons whose holdings taken from. The Oromia Investment Commission appears with draft proclamation to provide for the re-determination of rural land utilization for investment.

According to this draft proclamation, compensation shall be made only in terms of money by changing factors of multiplication. Where the holding of a farmer or that of farmers association being given to investor the compensation to be paid for the properties situated thereon, shall be multiplied by ten years. The method of determination is by taking into account the average of each and every item of product gained in preceding five years in kilogram and the average market price of each product within the same interval of time, and then the average price of each product individually multiplied by ten. The total result from addition of all multiplications is presumed to be commensurate compensation. If the victim of expropriation use the land only for fattening or for Agro-Industry, the average income he gained in five preceding years shall be multiplied by ten whereas compensation for permanent properties, especially buildings shall be paid according to the determination made by qualified experts.[51]

Here, displacement compensation, compensation in kind (substitute land) and deduction of depreciation cost are disregarded. In case of urban expansion however, all these are still not in practice, rather, the urban administration simply fix compensation per square meter of the land and the unit of multiplication is not more than five to six birr.

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51. Draft proclamation Initiated by Orimia Investment Commission, Art, 20

Overall, a major comment and shared view regarding valuation methods and compensation practices among the representatives of regional institutions in Oromia (the investment commission officials and officials of Urban Development Bureau), which was also confirmed during meetings at Woredas and municipality levels, is that there is a lot of inconsistencies and subjectivity in the estimates and assumptions used for valuations. Generally, valuations of properties and compensation amounts in the region are made by committee members who do not have the relevant qualifications and no specific production (yield) estimates (valued) for the parcels and crop types of expropriated landholders are made while computing average annual income figures. Rather, only the current yield estimates of the major crops or in some instances high value crops (perennials, such as Mango, Papaya, Gesho, Ecualyptus tree and the like) are used. Another controversial issue related to valuation methodologies in the region (as samples reveal) is an assumption that the valuators employ with regard to an improvement on land. The contribution it has for land fertility and maintence always does not considered. So usually, no compensation is explicitly paid for improvements on the expropriated land such as soil conservation measures (bunds, terraces, etc), irrigation canals, rehabilitations of gorges and so on. It is not difficult to infer that these practices are contradictory with the existing federal laws and, in effect, reward unproductive farmers and punish productive and enterprising ones. Furthermore, valuations of buildings and their accessories are made without considering labor cost, with only estimating the materials used in construction in reducing depreciation costs.

2.5 Complaints And Appeals In Relation To Compensation

According to proclamation No 455/2005 the organ who has the final say in determining the compensation to be paid for properties of persons affected by expropriation and permanent improvements made on the land is the regular court.[52] However, in the case of community development project implemented by the Woreda and Kebele administration the practice indicates that the establishment of the determining committee is carried out by Woreda administration and the final authority of approving is vested in the same. This local administration organ involves some community elders from surrounding community members. Sometimes zonal administrations may have some sayings.

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52. Supra note No 33, Art.

The final approval of valuations, and hence the determination of compensation is given at the level of regional administrations either by the investment commission for private investment projects only or by urban administration/Bureau of Worrk and Urban Development) for the land incorporated within urban limits because of urban expansion. Although proclamation No 455/2005 envisages valuations to be eventually be carried out by certified private or public institutions or individuals, it also states that until such time as institutions of private or public nature as well as individuals with the required capacity/ability become available, the valuations will have to be made by committees to be established under Article 10 of the proclamation as stated under Article 9(2) or by owners of utility lines as provided under Article 6 of the same proclamation. Article 9(2) is dealing only with the specification of the organ that is entitled to determine compensation amounts for utility lines but no with regard to other properties. Thus, there is no legally organized committee appearce. At present, valuations are made by ad hoc committees established by the woreda administrations.

The members may consist of individuals from the sectoral offices, kebele representatives, representatives of implementing agencies, etc. However, these committees do not have any sort of comprehensive directives or guidelines that precisely providethe formula to be used and the procedures to be followed to effect of valuation of properties and determination of compensation.[53]

Valuation heavily dependent on experts from the offices of Agriculture and Rural Development Bureau at regional lever or offices at local levels. These experts are usually agronomists and land administration and utilization experts as well as, where required and available, foresters. Where necessary, however, other experts, such as the municipal engineer may be included (on loan), where expertise and equipment for land measurement is required.[54]

These committees, while they are carrying out such activities without deep knowledge and comprehensive directives and guidelines, make so many mistakes. Even if they are provided by proclamation No 455/2005 and Regulations No 135/2007 they are laymen for law to make proper interpretation and implementation.

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53. Supra note No 33. Articles 6 and 10

54. Supra note No 7. P.38

Therefore, all the above-mentioned problems raise grievance and make the proceeding complicated. In this case, although proclamation No 455/2005 specifies the organ having final say as it is the regular court, the aggrieved party is obliged to exhaust administrative organs before reaching to regular court.

Accordingly, the structures for dealing with grievances in proclamation No 455/2005 are dealt with as stated under Article 11, titled "Complaints and Appeals in Relation to Compensation". It is obvious from this Article that complaints and grievances can only be made regarding compensation amounts irrespective of its modality. Hence, the possibility of questioning the "public purpose," nature of the activity or project for which the expropriation is being carried out cannot be challenged by those who are the victims of an expropriation. It appears, from the structure of the language used in both the Amharic and English versions of proclamation No 455/2005, that in the case of expropriations in rural areas, grievances against the amount of compensation are to be submitted directly to a regular court of competent jurisdiction. If the expropriated landholder is still not satisfied, he may appeal to the "regular appellate court.[55]

In the same token, the Oromia Investment Commission draft proclamation provides that the grievance related to the amount of compensation, prior to go to regular court, shall be submitted to an Investment Board. If a complaint is not satisfied by decision of the Board he has been given the right to appeal to the high court presented at the place where the property or the land subjected to expropriation situates within thirty days from the date he/she is provided with the copy of the decision of the Board; and the decision made by the high court is final.[56] But, at this moment, this draft proclamation cannot apply in court procedings because it does acquire the status of law, rather, it is a presupposition in the future.

As the practice reveals, determination of compensation and complaints against it start in the committee at woreda level and end in the high court. This is too, still the practice which has no legal base.

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55. Supra note No. 33, Art. 11

56. Supra note No 51. Art 30 and 31

On the other hand, landholders are not yet well aware about compensation issues and how they are dealt with where not satisfactory. They do not know what their rights and obligations are in the events of expropriation. In the same token, the courts also do not have knowledge of proclamation No 455/2005 and the fact that the proclamation empowers them to specifically entertain cases concerning expropriation to be paid or amount in relation to expropriation. In fact interviewees, especially peasants who are residing in Woredas under study expressed the opinion that, since investment brings added value, expropriation of landholders should continue. But it should be with the payment of compensation commensurate to properties determined in accordance with provisions of the law even for the sake of justice.

A sub-group of landholders within the focus group of Akaki Woreda (Dalocha area of Gogecha rural kebele) explained that, with the advice of local lawyers who were aware of proclamation No 455/2005, they managed to get a decision from a court that their holdings should not be taken from them before compensation is paid and the authorities were instructed by court, to value their properties of the affected landholders and to pay compensation accordingly. The case is still pending in high courts and waiting for the execution of the court order.

CHAPTER THREE

3. Financial Aspects

The source of finance for compensation varies according to the nature of the development program or project and the cause and the financing institutions. The source of finance also influences the determination of compensation amounts and rates.[57]

Regional government finance development projects such as construction of small to medium scale dams and other development programs in rural areas. A good example of regional government financed projects which led to expropriation and compensation in Oromia region is Lekemt water reservoir project. The initially estimated budget was 6 million, but reached ETB 20 million. This includes compensation. The project is being executed by the region's Bureau of Water Resource Development. On the other hand, in the same region the same Bureau follows community participatory approach for small drinking water drilling projects, and in this case it gets land via negotiation without paying cash compensation nor providing land substitution.[58]

In case of investment land, Oromia Bureau of Finance and Economic Development allocated compensation budget for expropriated rural lands through the request made by the region's investment commission in view of those to be expropriated in line with the newly proposed calculation system. The deficiency arise due to lack of budget or problems related in the estimation of the budget and the subjectivity that might often be involved in estimating variables such as productivity, current market condition, variation of price, etc. Again it is important to note that the compensation budget appropriated is only for the request made by Investment Commission. Otherwise, any request for budget to pay compensation for expropriated rural land, whether emanating from Woreda Administration or Zonal level government offices, is not accepted.[59]

The payments to be made by investors for lease or rent has the nature contractual basis. In almost all cases, the due dates are at the end of the year from the date on which the contract is concluded. Compensations to be made for the farmers ought to be at the time when expropriations take place. It is also very difficult for investors to pay all payment needed at once. These complicated problems the proceedings almost impossible.

57. Supra note No 7, P.81
58. Id
59. Id

Because of the insuffiency of budget allocated for the request of the commission and to settle the problem arising from the refusal of requests from administrative organs of woreda and zonal levels, investors are being asked to pay the compensation subject to a reduction of the same from the lease amount paid to the government when the land is obtained. The negotiations made with investors are being conduct after lands have been taken from holders and even after the contractual agreement is signed. This practice, however, is not done on the basis of written directives from concerned bureaus but without any written agreement made between the investors and the government offices. Besides, even if the investors pay the compensation, they do not pay it directly to those whose land is expropriated. They make the payment to the regional treasury (Bureau of Finance and Economic Development) and those expropriated supposedly get it through Zone or Worda Finance Office.[60]

While this practice appears to work for a number of cases in the past, it is increasingly becoming difficult to apply as the compensation payments required are becoming larger and larger; and cannot be covered by the investors from the amounts they are obliged to pay to the regional government under their lease agreements. The writer was informed that in some cases there were investors who retreated because the advanced request of money for compensation prupose was not acceptable to them. For the purpose of clarity, this has happened in West Shew Zone by foreign investors who requested land to establish flouriculture. Particularly in major flower farm investment areas, like Wolmera, investors prefer to rent from farmers rather than to take the land which the regional government set aside to them after paying the compensation or depositing in regions or Woreda's treasury. As a result, in some cases, where the regional government cannot pay due to the lack of financial capacity and the investor is reluctant to pay more than the lease amount he would pay to the government have emerged, making the realization of the investment project impossible. The decision made by the government intending to ease such a problem by making investors pay compensation on the one hand and the failure to inforce timely payment because of the non-bind effect of Oral agreement made between government officials and investors on the other hand, is leading the community to go down below the poverty ladder.

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60. Ibid, P.82

CHAPTER FOUR

4. The Major Findings of the Study

In the three preceding chapters the major problems of the study, have been discussed on the basis of three aspects. Such problems entail different exigencies against the rights of the holders and are contradictory to the laws. In this chapter the major findings of the writer are addressed as much as possible

4.1 Denial of Displacement Compensation and Compensation for Permanent Improvement as a violation of Law.

As it has been discussed in chapter two, compensation is defined as payment to be made in three different modalities; in cash, in kind, or in both to a person for his property situated on the expropriated holdings. Compensable property is obviously the private property. As it has been defined under Article 40(2) of the FDRE constitation and the Revised constitution of Oromia Region respectively, "Private property" means any tangible or intangible product, which has value and is produced by the labor, creativity, enterprise or capital of an individual citizen or resident, or associations which enjoy judicial personality under the law, or in appropriate circumstances, by communities specifically empowered by law to own property in common. It is undeniable as to the compensation to this concern is being paid although it is not adequate because of the defect in valuation in accordance with the laws and inefficiency in determination in accordance with the average market price of the five preceding years for movable properties especially yields and the actual market price at present for construction materials for immovables; particularly buildings. This is the first category of compasable properties.

What has been practically denied while legally guaranteed are compensations listed under the second category such as displacement compensation and compensation for permanent improvement to the land subject to expropriation. According to Article 8(1) of proclamation No 455/2005, a rural landholder whose landholding has been permanently expropriated shall, in addition to the compensation payable under Article 7 of the same proclamation (that is compensation payable for property either movable or immoveable), be paid displacement compensation which shall be equivalent to ten times the average annual income he secured during the five years preceding the expropriation of the land. Nowadays expropriation has been made for the minimum of 20 and the maximum of 45

years. One can judge how long the years are. But as the responses for in-depth interview and focus group discussions reveal compensation in this concern has not be paid yet.

Another basic problem is the denial of compensation for the permanent improvements to the land. According to Article 7(4) proclamation No 455/2005 and 7(4) respectively, a rural landholder whose holding has been expropriated shall be entitled to payment of compensation for permanent improvements he made to such land; and such a compensation shall be equal to the value of capital and labor expended on the land. It is mandatory for a body authorized for expropriation to pay these compensation. However, this is practically denied while legally guaranteed. Such a denial is nothing but strictly specking, it is a violation of law.

4.2 Denial to Consider Transport Expenses as Unlawful Enrichment

Derivation of gain by everybody from the work or property; or capital of another without just cause is an unlawful act. Unlawful act is an act which is contrary to, prohibited, or unauthorized by law. In other words, any act of this character is an act, which is not lawful. For the matter of justification, it presupposes that there must be an existing law. The violation of such existing law, which is prohibitory and including any unwillful, actionable violations of civil rights entails civil liability. For Ethiopian civil case Article 2162 of the 1960 civil code is the pre-existing and governing provision of this regard.

The rural landholders whose their holdings are expropriated from, incur transport and related costs while they come to the Wordera or Zonal town to collect the amount of compensation fixed to them; or to explain their grievances in relation to the amount of money fixed or the modalities of compensation as well as the mistakes being committed by valuation committee at time the when valuation and determination conduct. However, even if the victims justify the causes of grievances as the causes emanated because of the mistake of the organ establish by the government institution, the body that is under the duty to pay compensation for whatsoever incurred by the appellant totally refuses to consider the expenses of these characters.

Since such expenses and related costs are resulted from the measures taken by the government bodies the government itself should make correct the faults created by its own institutions having responsibilities to perform their duties, The government has a vicarious liability for his employee's acts. Therefore, it is

subject to refund all the expenses being incurred in this respect. Refusal of this payment entails unlawful enrichment of the government. Practically however, because of the failure to consider the expenses of such character, no refund made to the victims. Refraining handing over any property that devolve over others and using the same for own benefit is unlawful enrichment. So, since the government is failed to refund the above-mentioned expenses, it is unlawfully enriched by dispensing the money belonging to victims.

4.3 Valuation of Land Instead of Property as a Lack of Perception

According to the second aleana of Article 40(3) of the FDRE constitution 'land is a common property of the Nations, Nationalities and peoples of Ethiopia and shall not be subject to sale or to other means of exchange' In the same token the regional constitution envisages, under the same Article and sub-article, 'land belongs to the people of the region and shall not be subject to sale or any mode of transfer of ownership.' On the other hand, as it can be understood from the provisions of Article 9 of proclamation No 455/2005, what is to be valued is the property situated on the land subjected to expropriation; but not land. The intention of the law-maker and the real interpretation of the provisions this article is to introduce the body to be empowered to undertake valuation practices in accordance with the Regulations No 135/2007 and the directives to be issued by the regional council. In Oromia, the problem of perception with this regard clearly appears. As the responses on interviews, and the results of focus group discussions conducted at the time of fieldwork shows, the valuation committees, especially where rural landholdings are compounded under the boundaries of towns, value land and determine compensation in terms of six-eight birr per M^2. This for the strongest reason is equivalent to sale of land. As long as the payable money is determined for the land per a unit, what makes it different from sale of the same? The act contradicts with the supreme law the land which entails an offence under the criminal law-which emates from the lack of perception of laws by the valuators. It results not only from a mere lack of perception but also from lack of education among the five or seven only one or probably two may educated, and that is moreover, not above diploma level. Most of them are illiterate elders those literally known as 'Shimagiles' who are nominated on the basis of expectation that they may apply equity even though interpretation of law is difficult at their level. In almost all cases even an educated person at

diploma program is also scarce and very commonly only certificate program learners are available. Even if educated persons are available, they are laymen for law and obviously faced difficulty for interpreter the provisions. This wrong interpretation leads the committee members to commit mistakes not only those at Woreda and Kebele levels but also these who are organized at regional level. This does not no compensation to be paid to the landholders whose their holdings are expropriated. But the valuations do not made in accordance the strictest meaning of the provisions of laws because lack of perception of laws on the side of valuators.

Conclusions And Recommendations

Conclusions:-

This study was designed (a) on the legal aspects, to assess the adequacy of regional state laws in relation with those of the federal government laws to dispense fair and equitable compensation to rural dwellers whose properties and holdings may be taken from or damaged by land taking under eminent domain powers due to public purposes, to answer the questions whether the laws are reliable and ensure enforcement of the rights of claimants; to what extent has the practice of valuation and compensations been consistent with the state and federal laws (b) on the institutional and technical aspects, to analyze the methods of valuation for rural land and property on the land, and to show if different methods of valuation are applied when compensating individuals and communities for land and property they lose. In addition, to indicate the organizational problems and qualification deficiencies appear in valuation committee. (c) on the financial aspects, to assess the sources of founds for payments of compensation and to explain whether deficiencies in the source of founds for compensation impair the payment.

Broadly, the assessment and the findings of the study ascertain that the problems associated with the legal, institutional and technical, and financial aspects of rural land valuation and compensation practice are numerous and the practice is full of inconsistencies, unfairness and are not standardized. The valuation methods/techniques/, compensation procedures and factors of multiplication as well as modes of compensation vary from Werda to Woreda, for that matter even within a given Worda due to various causes such as corruption, lack of ability and the like subjectivity and inconsistencies in valuation and compensation are apparent even for land expropriated for the same purpose, among and, at times depending on the situations involved and the committees established.

Generally, the valuators do not institutionally organized and equipped by consistent and reliable laws from regional to Woreda levels and even the governments do not make laws available in time. Technically, the committee members are not from the professionals with relevant and required qualifications; rather, the establishments take place as Woreda administrators think fit or emotionally. Financially the government is incapable to pay all the compensations because of the economically poorness and the scarcity or insufficiency of budget allocation for the regional investment commission and the refusal made for the requests of zonal and Woreda administrations. Furthermore, the failure to make clear

definition for the notion “public purpose” is creating problems in large and leading government agencies and valuation committees to wrongful ways, so that it opens the largest door for corruption and widening subjectivity. Lack of legal advisors within the committee makes the laws unenforceable.

The dispute resolution system also creates controversy since proclamation No 455/2005 provides as the grievance relating to the amount of compensation can be presented directly before regular courts whereas the draft law of Oromia gives the prior responsibility of entertainment to Investment Board. The other and main confusing one is that lack of clear statement as to what is to be valuated? (Land or private property on the land?).

Overall, the protection of private property rights and establishing fair, equitable, transparent, and efficient expropriation, valuation and determination, compensation procedures, clear explanations of “public purpose” and “what is to be valuated” shall be stated concede ring as fundamental basis in order to solve the problem.

Recommendations

1. The Regional Directive shall be issued urgently based on Regulations No 135/2007 and should be clear on the definition of “public purpose”
2. The formula stated in Regulations No 135/2007 and those provided in draft proclamation of Oromia regional investment commission should be harmonized and the draft proclamation should be urgently approved.
3. Synchronization of existing valuation methods and compensation procedures is necessary so that rural landholders are not disadvantaged due to inconsistent, unfair, non-standardized, and subjectively decided compensation rates and amounts inter regionally.
4. Valuation committees should be established comprising of appropriately qualified members in terms of relevant expertise. The committee should also institutionalized and well equipped with land measurement materials and laws and guidelines should be served upon it.
5. Capacity development at all levels, especially at woreda and kebele levels, is immediate task that should be embarked upon.
6. All inconsistencies among laws, especially among the civil code, proclamations and regulations regarding procedures of expropriation should be eliminated.
7. The Regional government should consider compensation budget appropriation for private investment activities.

8. Awareness creation on existing proclamations, regulations and directives on expropriation, valuation and compensation, and what is to be valuated and compensated should be considered, incorporated and clearly stated.
9. Dispute resolution mechanisms should be uniformly designated at every level and laws should be amended accordingly.
10. Several of the procedures provided in the civil code are not addressed by proclamation No 455/2005 which leads the legally empowered authorities to make serious mistakes while they perform taking over of landholdings and/or properties situated thereon; such as failure to prior declaration, consultation, identification of movables and immovables. Therefore, the government shall incorporate such provisions in the newly promulgated proclamation through formal amendment.
11. The provisions dealing with expropriation procedures and compensation process are simply substituted by consolidation method with out declaration of the repulsion of the section explicitly. This failure also endures the woreda courts to apply the provisions of the civil code. Therefore, the government should explicitly declare its repulsion.

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