

**EXPROPRIATION OF PERI-URBAN LANDS IN SNNPRS:  
EXPERIENCE FROM HADIYYA ZONE**



**LL.M IN LAND AND ENVIRONMENTAL LAW THESIS**

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**EXPROPRIATION OF PERI-URBAN LANDS IN SNNPRS:  
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**A THESIS SUBMITTED TO SCHOOL OF LAW, COLLEGE OF LAW  
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**ADVISORS' APPROVAL SHEET**

This is to certify that the thesis entitled 'EXPROPRIATION OF PERI-URBAN LANDS IN SNNPRS: EXPERIENCE FROM HADIYYA ZONE' is submitted in partial fulfillment of the requirements for the degree of masters with specialization in **Land and Environmental Law**, the post graduate program of the **School of Law**, and has been carried out by **Ashenafi Abreham, I.D.No ELLR/002/09** under my supervision. Therefore I recommend that the student has fulfilled the requirements and hence hereby can submit the thesis to the school.

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Name of Major Advisor	Signature	Date
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## **Examiners' Approval Sheet**

## **Declaration**

I, the undersigned hereby declare this thesis entitled ‘Expropriation of Peri-urban Lands in SNNPRS: Experience from Hadiyya Zone’ is my original work through the professional guidance my advisors. All sources of materials utilized in it have been dully acknowledged, and to the best of my knowledge, this thesis has never been presented for any award of degree in any university.

Name: Ashenafi Abreham

Signature:

Date of submission: May 14/2018

### **List of cases**

1. Mrs. Detame Galalo Vs Shone Municipality, Shone Town Administration First Instance Court, court file No.00211, Date, 14/02/2018 (unlawful decision against payment of compensation)
2. Mr. Addise Agafari and Mr. Molla Fanta Vs 1. Shone Town Municipality 2. Adise Agafari and one other defendant, attorney Ermias Makango) Shone Town Administration First instance Court, court file No.00120, Date 09/04/2010 E.C (court decision against Shone Municipality ordering payment of compensation)
3. Mrs. Detame Galalo Vs Shone Municipality, Hadiyya Zone High Court Shone Division, court file No.1082 (pending court case appealed against the decision of the lower court)
4. Ato Tariku Birega Vs Shone Town Municipality, Shone Town First Instance Court, (File No.00175) (court decision against Shone Municipality ordering payment of compensation)

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## Abstract

*This paper critically examines the laws applicable for expropriation of peri-urban lands in SNNPRS and the adequacy and fairness of the amount of compensation and the existence of public purpose. The paper also tried show the process of expropriation in existing laws and regulations in SNNPRS such as regulation No. 123/2015 and Directive No.08/2015, both laws were issued to implement the federal Lease holding proclamation No.721/2011. In conducting this empirical research, the author has utilized both case study and qualitative legal research, where one particular expropriation case is studied carefully. Among primary sources interviews, focus group discussions, and laws were utilized. And also relevant literatures were used as secondary sources. This paper also reveals the existence of great discontent by the evicted landholders due to payment of inadequate amount of compensation because of improper and unreasonable methods of calculating compensation. However, the FDRE Constitution and its counterpart of SNNPRS constitution provided for secured and lifetime use right over rural landholdings and also provides for payment of 'commensurate' amount of compensation in advance. In addition to this, this study has also revealed the circumstances in which public purposes are not implemented in harmony with time and manner agreed. The peri-urban farmers who were evicted of expropriation were unable to be reinstated to their former economic as well as social positions due to delay and inadequacy of compensation and absence of dedication by the expropriating authorities to help them rehabilitated. Moreover, the basis of calculation provided under the expropriation proclamation is unreasonable and could not be a basis for 'commensurate' amount of compensation.*

*The author suggested the regional state to issue implementing directive for the federal expropriation proclamation and require the government to pay interest for the evictees based on the delay in cases where possession is taken before compensation is paid.*

**Key words:** *peri-urban, expropriation, public interest, compensation*

# CHAPTER ONE

## INTRODUCTION

### 1.1. Background of the Study

Land serves as a basis for socio-economic foundation for the overwhelming majority of people in Ethiopia and it has far-reaching implications for the wider national economy and politics.<sup>1</sup>The SNNPRS (Southern Nations Nationalities and people's regional State) is one of the regional states of the Federal Democratic Republic of Ethiopia. The SNNP Regional State consists of more than fifty-six Nations Nationalities and peoples, whose livelihood is mainly based on agriculture. Therefore, the life of peasants and pastoralists of the region cannot be detached from land since there is no option available. Thus, the farmers of Hadiyya zone are also not an exception to this since land is the life and honor of the people. Therefore, any threat against the land is considered as a threat against the life and honor of the people. Urban centers in Ethiopia are growing rapidly. In Africa too, population projections show that by 2030, about 50% of Africa's population will inhabit urban centers.<sup>2</sup> This rapid growth of urban population is causing an exceptionally high increase in the demand for land and housing which in turn has been exerting a pressure on peri-urban land located next to the municipal boundaries.<sup>3</sup> Local peri-urban farmers around cities are more likely to be displaced from their land when such land is required for urban development.<sup>4</sup> Daniel W. Ambaye states that;

‘Expropriation is a compulsory taking of land from private owners for public purpose activities. In Ethiopia, expropriation is the chief method to acquire land for the government that shall in due time use it for development activities or transfer it to other users through lease arrangement. As land is not salable, individuals and

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<sup>1</sup> Muradu Abdo, ‘State Policy and Law in Relation to Land Alienation in Ethiopia’ A Thesis Submitted in Partial Fulfillment of the Requirements of the Degree of Doctor of Philosophy in Law, University of Warwick, School of Law, 2014, 1.

<sup>2</sup> UN-HABITAT, (United Nations Human Settlement Programme) Global Report on Human Settlements, Abridged Edition, EarthScan, London, 2010.

<sup>3</sup> Achamyelch Gashu, ‘Introducing Land Readjustment as an Alternative Land Development Tool for Peri-Urban Areas of Ethiopia,’ World Bank Conference on Land and Poverty, The World Bank Washington DC, March 14-18, 2016, 3.

<sup>4</sup> Achamyelch Gashu, ‘Peri-urban Land Rights in the Era of Urbanization in Ethiopia: A property Rights Approach,’ Institute of Land Administration, Bahir Dar University, AREF-2<sup>nd</sup> Proofs.indd, 120-121.

investors are heavily relied on the state to get land for construction of housing and investment activities.’<sup>5</sup>

The contentious element in today’s Ethiopia about expropriation is the inadequacy of compensation paid to farmers and inner city dwellers in the event of compensation.<sup>6</sup> The general agreement is that compensation is not enough.<sup>7</sup> As per the law, compensation is determined on the basis of cost replacement method of valuation approach where the state is obliged to pay replacement cost of the property on the land the improvement made to the land.<sup>8</sup> Thus, compensation must be commensurate, and at this point Dr. Daniel Behailu provides that, ‘It is important to note that the law states that ‘commensurate to the values of the property expropriated’ and if one reads this in conjunction with the spirit of the law which declares that land is the property of the government, it would give clear meaning of compensation under Ethiopian law.’<sup>9</sup> Since land is publicly owned in Ethiopia, the government may not be duty bound to compensate for taking back its own property and hence it takes land, which is its property.<sup>10</sup> However, the government is only obliged to compensate for the value of the property situated on the land but not the value of land per se.

Expropriation and compulsory purchase of farmland from small-scale farmers are important economic policy tools that enable governments to consolidate agricultural land and provide space for industry and urban expansion.<sup>11</sup> Expropriating farmland deprives peri-urban small-holders from one of their most important income generating assets and forces them to change

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<sup>5</sup> Daniel Weldegebriel, ‘Urban Land Transfer and State Monopoly in Value Capture in Ethiopia’ World Bank Conference on Land and Poverty, the World Bank Washington DC, March 14-18, 2016.

<sup>6</sup> Daniel Weldegebriel, ‘Land Rights and Expropriation in Ethiopia’, Springer International, New York 2015.

<sup>7</sup> Belachew Yirsaw, ‘Expropriation, Valuation and Compensation practice in Ethiopia: The Case of Bahir Dar City and Surrounding’, Property Management, Vol.31, Iss, 2013, 2, 132-158.

<sup>8</sup> The Federal Democratic Republic of Ethiopian Expropriation of Land Holdings for the Public Purpose and Payment of Compensation Proclamation No.455/2005, Negarit Gazette, year 11, art (2) (herein after, The FDRE Expropriation proclamation)

<sup>9</sup> Daniel Behailu ‘*Transfer of Land Rights in Ethiopia: Towards sustainable development policy Frameworks*’ (The Hague, eleven international publishing’s 2015), 72.

<sup>10</sup> *ibid.*

<sup>11</sup> Work by Adamopoulos and Restuccia 2014, highlights the effect of inefficient land market allocation on cross-country productivity differences.

their livelihoods.<sup>12</sup> Recognizing this, governments provide households with compensation, which in some cases takes the form of a lump-sum payment. However, the questions are, whether the implementation of public purpose is just or not? Are these lump-sum payments sufficient to compensate peri-urban households for the land that is taken? The assessment would be through determination of whether a household's permanent wealth has changed as a result of the intervention. Evaluating this requires some understanding of how those peri-urban households adjust their asset and activity assortment after losing land. It also requires an understanding of what households do with compensation given in large lump-sum payments.

In most developed countries private ownership is the main form of land ownership; however, developing countries including Ethiopia, who have socialist government in the past have adhered to public ownership of land. As the Constitution of the Federal democratic republic of Ethiopia, land is a common property of the Nations, Nationalities and Peoples of Ethiopia and shall not be subject to sale or other means of exchange.<sup>13</sup> Since land is publicly owned, expropriation of land only involves 'withdrawal' of land use rights. As per the provisions of the FDRE Expropriation Proclamation No. 455/2005, the government of Ethiopia may withdraw land use rights from the right holder for public interests, expiration of land lease contract terms without renewal or denial of the renewal application, and dissolution or relocation of the holder of administratively allocated land rights. However, a landholder is entitled to payment of compensation for his property situated on the land and for permanent improvements made on the land.<sup>14</sup>

In Ethiopia, property valuation is carried out for payment of compensation for both rural and urban development activities; private and government development projects. The government (a Woreda or an urban administration) may expropriate private property for public purposes where it believes that it should be used for a better development project to be carried out by public entities, private investors, cooperatives, societies or other organs with payment of compensation.<sup>15</sup> A land

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<sup>12</sup> Girma Kassa 'Issues of Expropriation: The Law and the Practice in Oromia', A Master's Thesis Submitted to School of Graduate Studies of Addis Ababa University in Partial Fulfillment of the Requirements of Masters of Law (LL.M) November, 2011, chilot.me, 2.

<sup>13</sup> The Federal Democratic Republic of Ethiopian Constitution, Proclamation Number 1/1995, Negarit Gazetta, Year 1, Number 1, article 40 (8) (herein after, The FDRE Constitution).

<sup>14</sup> The FDRE Expropriation Proclamation, Art.7 (1).

<sup>15</sup> *ibid.*

holder whose holding has been expropriated shall be entitled to payment of compensation for his property situated on the land and for permanent improvements he made to such land shall be equal to the value of capital and labor expended to the land. But in the constitution and proclamation, nothing is said about the significance of the benefit and the number of the people that benefit from the acquisition or expropriation of the property.

## 1.2. Literature Review

Those researchers who carried out research on land expropriation and compensation in Ethiopia and different regional states have indicated that there are various shortcomings regarding the legal frame work and practice. Moreover, none of them have ever conducted a study regarding expropriation of peri-urban Landholdings in Ethiopia.

Achamyeleh Gashu, alongside with Dessalegn Rahmato identified another challenge and gap on the peri-urban land rights as emanating from the omission of the duration of rural holding rights. Neither in the federal nor in the regional rural landholding arrangement legislation is any mention made of the duration of holding rights.<sup>16</sup> Achamyeleh Gashu also added that;

‘The omission of the duration of holding rights entitles the government/city administration to take land from peri-urban landholders for urban development purposes at any time, thus creating tenure insecurity. Landholders in peri-urban areas are never certain for how long they can keep their holding rights, thus creating the impression that they are temporary. Hence, land which is in high demanded (for improved, high-value urban development purposes) is taken and transferred to urbanites with thicker rights to practice. Local or indigenous peri-urban landholders, on the other hand, receive compensation calculated for agricultural land, without taking into consideration the value of any future development on the land.’<sup>17</sup>

Achamyeleh Gashu’s study also found that the land holding arrangement in Ethiopia favors urbanites, rather than people from the rural/peri-urban areas particularly as regards the transferability of land rights. He also adds that land rights in peri-urban areas cannot be sold or

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<sup>16</sup> Achamyeleh Gashu, ‘Introducing Land Readjustment as an Alternative Land Development Tool for Peri-Urban Areas of Ethiopia (n 3), 120-138

<sup>17</sup> *ibid.*

assigned a higher value by local peri-urban landholders themselves, except as a gift or an inheritance to family members, to use for the same agricultural purposes. Moreover, sooner or later land in peri-urban areas adjacent to municipal boundaries is expected to be expropriated by the municipal authority/government for development purposes.<sup>18</sup> Then, high-value urban land will be transferred to urban-oriented leaseholders with better and more relaxed land rights, which can be exercised through lease agreements.<sup>19</sup> Thus, his study mainly aims to examine and highlight the challenges and pressures imposed on the land rights of local peri-urban landholders, as a result of the growing demand for land due to urbanization.

Despite the contributions these studies made to the understanding of the concept of compensation for expropriation of rural lands in Ethiopia in general and regional states in particular, certain questions still remain unanswered. For instance, Daniel W/Gabriel conducted his research on the basis of the federal laws and Amhara Regional State only. Hence, his findings cannot fully represent the reality of entire country in general and the situation of SNNPR state in particular. None of them analyzed the laws of the SNNPR state in light of adequacy and fairness of compensation. Thus, the issue as to the fairness and adequacy of amount and mode of compensation in SNNPR state demands further research that will describe the practice and analyze the provisions of laws related to the issue, even though regional laws are derivatives of federal laws, the SNNPRS may have some difference according to its variety. Besides, the findings of the above researches failed to address whether there are really public purposes and genuine causes behind expropriation of the land.

In Ethiopia in general and SNNPRS in particular, implementation of the laws concerning expropriation, compensation and valuation has been failed due to lack of constitutional force coupled with government expropriation practice. These problems can be outlined in different ways: Who is allowed to get compensation? When and what kind of compensation is made to affected people and factors determining the amount of compensation? In addition to aforesaid problems, valuation and compensation practices vary greatly depending on the purpose for which

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<sup>18</sup> *ibid.*

<sup>19</sup> *ibid.*

land use rights is expropriated, the source of finance for compensation and the institutions involved in the expropriation.<sup>20</sup>

### **1.3. Statement of the problem**

Land in peri-urban areas is in high demand, specifically for urban development purposes.<sup>21</sup> In response to the growing demand for such land, the Ethiopian government has been largely expropriating land from peri-urban areas and reassigning it to urbanites.<sup>22</sup> This truth obliges the expropriation of peri-urban lands for such more valuable public purposes by the state.<sup>23</sup> In relation to compensation to be paid for rural land expropriation, it is argued that there is no uniform system of valuation of amount and mode of just compensation throughout the country.<sup>24</sup> Though the constitution has guaranteed the right against eviction of farmers from their use right without just cause and payment of commensurate compensation, other laws are criticized for lacking clear enforcement procedures regarding the payment of fair compensation to the farmers.<sup>25</sup>

The other vague issue is whether legislations adopted by the government both at the federal and regional levels effectively address the issue of just compensation for peri-urban land expropriation, and whether the practice is well-suited with the law concerning the amount of compensation to be paid and mode of valuation in SNNPRS. The other issue at hand is that, due to the absence of legal distinction among the rural and peri-urban lands in Ethiopia, there is also no distinction in payment of compensation at the time of expropriation. Since peri-urban areas are found adjacent to the cities and towns, the farmers of this area are advantageous of getting urban infrastructures, and market to sell their crops very easily. Moreover, the administration of peri-urban lands is also complex since these areas are very prone to expropriation and they were included to urban administration whenever these areas are needed for better development purposes. In addition to this, due to the complexity of peri-urban administration, it was often regarded as a gray area of land administration. In the meantime, displaced farmers of the peri-urban areas have

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<sup>20</sup> Southern Nations Nationalities and peoples Regional State Land Administration and Utilization Proclamation No 110/2007 art.7 (3 a & b) (herein after, The SNNPRS Land Administration and Utilization Proclamation).

<sup>21</sup> Achamyeleh Gashu, 'Peri-urban Land Rights in the Era of Urbanization in Ethiopia', (n 4) 121.

<sup>22</sup> *ibid.*

<sup>23</sup> Girma Kassa, 'Issues of Expropriation: The Law and the Practice in Oromia', (n 12) 2.

<sup>24</sup> *ibid.*

<sup>25</sup> The FDRE Constitution, (n 13) art.40 (8).

been given monetary compensation according to the Federal Expropriation and Compensation Proclamation and they were also entitled to 500 square meters of land from the urban administration to build their own residential house.<sup>26</sup> This is due to the fact that the municipalities have no excess land to be given as a substitute land. In addition to this, some peri-urban farmers are being driven out of their landholdings without prior payments of compensation which is against both the FDRE constitution and expropriation proclamations No.455/2005. Some others are also getting payments which are far lesser than what ought to be paid as per the FDRE constitution and the Expropriation proclamation since compensation is paid as pursuant to the provisions of regulation No.123/2015 and directive No.08/2015 both were issued to implement the federal Lease holding proclamation No.721/2011.

Using expropriation power, government organs have often justified the expropriation of peri-urban land for development projects on the grounds that such projects will stimulate local economic growth, create jobs, or otherwise serve a public purpose.<sup>27</sup> However, in many countries the law either does not precisely define what constitutes ‘public purpose’ or grants government authorities broad discretion to interpret what constitutes a ‘public purpose’.<sup>28</sup> It is also unclear whether the public will actually realize economic benefits from the project. Even when expropriation is used for genuine public purposes, one time, lump sum monetary compensation for expropriated land has proven to be insufficient in ensuring the livelihood reconstruction and long term socioeconomic stability of affected communities.<sup>29</sup> Therefore, it is crucial to critically examine the laws and the practices in SNNPRS with specific reference to matter of expropriation, i.e., the notion of public purpose and compensation paid during the termination of use rights over the rural and peri-urban landholdings.

Land tenure matters in the peri-urban areas are very complex and the system is constantly changing, either rapidly or gradually. Thus, it is essential to understand the complexity of peri-

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<sup>26</sup> Girma Kassa, ‘Issues of Expropriation: The Law and the Practice in Oromia’, (n 12), 111.

<sup>27</sup> World Bank, ‘Land Governance Assessment Framework Final Report,’ Nigeria, World Bank, Washington, DC, USA, 2011, 12.

<sup>28</sup> Tagliarino N, ‘Encroaching on Land and Livelihoods: How National Expropriation Laws Measure up against International Standards,’ World Resources Institute: Washington, DC, USA, 2016.

<sup>29</sup> Cernea M.M, ‘Reforming the foundations of involuntary resettlement: Introduction, In Can Compensation Prevent Impoverishment? Reforming Resettlement through Investments and Benefit-Sharing, Cernea, M.M., Mathur, H.M., Eds.; Oxford University Press: New Delhi, India, 2008; 1–8.

urban land issues and settlements in detail. While the nature and complexity of peri-urban land tenure situations require posing several research questions, the specific research questions from the perspective of this project are the following:

#### **1.4. Research questions**

This research has sought to answer the following core questions:

- What is the scope of farmers' right over their peri-urban landholdings in SNNPRS in general and Hadiyya Zone in particular?
- What land tenure security-related problems are currently facing the peri-urban landholdings in Hadiyya Zone?
- Do the laws adopted in relation to expropriation of rural landholdings in Ethiopia in general and SNNPRS in particular effectively address issues of expropriation and compensation in peri-urban lands?
- What are the challenges in implementing public purpose? Does its implementation in fact realizing public interest? What are the gaps thereof?

### **1.5. Objectives of the study**

#### **1.5.1. General objective**

The general objective of this paper is to critically examine the laws applicable for expropriation of peri-urban lands and its implementation in SNNPRS and the adequacy and fairness of the amount of compensation and the existence and realization of public interest.

#### **1.5.1. Specific Objectives**

The specific objectives of this paper, among others include the following;

- To determine the scope of farmers rights on landholdings in SNNPRS and the legitimacy of claiming of adequate amount of compensation;
- To examine the challenges and evils of peri-urban landholding rights of local peri-urban farmers as a consequence expropriation and the growing demand for land for urbanization;

- Analyze the applicable provisions of laws adopted in relation to compensation for expropriation of rural lands at the federal level and SNNPRS;
- Critically examine whether the practice regarding public purpose is going in line with the law; and identifying the gaps thereof.
- Suggest possible recommendations for the problems which could be revealed as research findings.

## **1.6. Methodology of the Study**

This empirical research is a combination of two methodologies, namely, a case study and qualitative legal research, where one particular expropriation case is studied carefully. While the qualitative legal research analyses the law and determines its nature and thereby helps one to understand the property right and expropriation procedure as they stand today, the case study method aims at investigating the existing practices on the ground and thereby identifying the conflict between laws and practices and the general implications of the laws.<sup>30</sup> In order to get a better comprehensive picture of the expropriation process, together with local varieties in practice, a more case studies have to be made. Thus, this case study will on the other hand give a good grip on how expropriation is experienced in peri-urban areas of the study area and it will intricate on the most common confrontations relating to this.

**Documents:** In addition, primary documentary sources including the FDRE constitution, SNNPRS constitutions, Federal Land Administration proclamation No. 455/2005, Federal Rural Land Administration and Use Proclamation No.456/2005, SNNPR Rural land use and Administration proclamation No.110/2007, SNNPRS regulation no.123/2015 and the implementing Directive No.08/2015 were analyzed in relation to compensation for rural land expropriation in SNNPR regional state.

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<sup>30</sup> Daniel Weldegebriel, 'Land Rights and Expropriation in Ethiopia' 2013, Doctoral Thesis in Land Law Real Estate Planning and Land Law Department of Real Estate and Construction Management School of Architecture and the Built Environment Royal Institute of Technology (KTH) Stockholm, 9.

**Interviews:** The method employed to obtain primary data was face to face interview with different people including farmers whose landholdings have been expropriated for the purposes of investment and urbanization mainly around Hadiyya zone Hossana and Shone Towns. The interviewees were randomly selected from purposively selected lists for they are those whose situations are devastating due to expropriation of their landholdings. Additionally, it is because the researcher's way of sampling is based on experience on government municipal offices and positions. From the peri-urban farmers of the two towns about twenty farmers has been interviewed. Six officials from concerned Town Municipality and Land Administration has been interviewed as well as four judges and two lawyers or attorneys were also interviewed and used as an input for the study. Additionally, two officials from office of ombudsman and SNNPRS Human Rights commission were interviewed. In sum, 34 individuals will be involved in an interview provided for this study. A focus group discussion has been held with the peri-urban farmers of Hossana and Shone town and respective Kebeles. Four focus group discussions have been conducted each consisting twelve participants and more from specified study areas.

### **1.7. Significance of the Study**

The author of this paper believes that this study will contribute to the effort of strengthening the legal framework and practical performance of government organs concerned with rural land administration and payment of compensation for rural land expropriation in the SNNPRS. Moreover, it will also be a base for potential researchers to conduct further studies on the issue.

### **1.8. Scope of the Study**

The scope of this study will be limited to Expropriation of peri-urban landholdings in SNNPRS, Hadiya Zone, Hossana and Shone Town Administrations, and respective kebeles. This is due to time and resource limitations.

### **1.9. Limitations**

Conducting a research is not an easy task: especially, obtaining information for the purpose of the study is highly demanding and burdensome owing to the tedious bureaucracy in the government offices. Worst of all, it was easier said than done to get relevant data used as an input to the study due to the absence of organized information on the issue. Generally, time, budget and

resource (reference material) constraints, unwillingness of informants were among the limitations the author of this research has been confronted.

### **1.10. Organization of the Study**

This paper is organized into five chapters. The first chapter introduces the reader with background of the study. It highlights the reasons that necessitated the research and the objectives that are intended to be achieved. It presents the statement of the problem, research questions, general as well as specific objectives of the research, literature review, significance and the research methodology briefly.

The second chapter deals with issues related to peri-urban land tenure security and use rights of those farmers on their landholding. A discussion on land tenure systems highlights the laws, policies and practices. The current land policy issues in Ethiopia in general and SNNPRS in particular have been emphasized under this part.

The third chapter deals with the conceptual framework of expropriation and compensation in general and in light of relevant laws of Ethiopia and SNNPRS. An attempt has also been made to raise and discuss the public purpose requirement as a limitation on the power of state to take property rights of private individuals.

In the fourth chapter, the laws and the practices regarding the adequacy of compensation for taking of landholding rights over peri-urban landholdings and the practice and implementation of public purpose in SNNPRS have been critically assessed. Finally, in the last chapter, but not certainly the least, the study closes with conclusions and possible recommendations.

## CHAPTER TWO

### 2.1. An Overview of Land Use Rights and Tenure Security in Ethiopia

It is crystal clear that in poor and agrarian countries like Ethiopia, land tenure system is interconnected with the people's culture and identity. In short, land is the pride and life of the peoples of Ethiopia. Thus, land related issues usually generate deep emotional reactions in both urban as well as rural areas of the country. Obviously in Ethiopia, land is the most important means of livelihood for a family. Land tenure, as an institution, not only governs access to and control over land and land based resources and the flow of the benefits thereof.<sup>31</sup> It is a basis of prospect, a foundation for actors to simulate and predict each other's behavior in the sphere of activity to which the regime applies and thus the fundamental role it plays in the people should not be overstated.

The kind of tenure system and security of landholding in a country is one of the most important issues to be examined, particularly, in developing countries.<sup>32</sup> This is because; it is a tenure system of a country that defines and regulates basic elements in any right to land like access to rural land, tenure security and rights and obligations of the land holders.<sup>33</sup> In Ethiopia, tenure security is one of the controversial issues particularly in relation to the extent of rights of farmers over their landholding in general and the adequacy and fairness of the amount of compensation paid during rural land expropriation that may emanate partly from state ownership of land in the country.<sup>34</sup> In this section, tenure security of peri-urban landholding and in the recent scenario and rights of landholders will be reviewed on the basis of Federal and SNNPR States rural land administration and land use laws.

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<sup>31</sup> Girma Kassa 'Issues of Expropriation: The Law and the Practice in Oromia', (n 12) 11.

<sup>32</sup> *ibid.*

<sup>33</sup> *ibid.*

<sup>34</sup> Klaus Deininger and et al, 'Land rental in Ethiopia: Marshallian Inefficiency or Factor Market Imperfections and Tenure Insecurity as Binding Constraints?' Selected Paper Prepared For Presentation at the American Agricultural Economics Association Annual Meeting, Portland, (July 29-August 1, 2007), 5.

## 2.2. A CONCEPTUAL FRAMEWORK: MEANINGS OF PERI-URBAN LANDS

The word peri-urban has many different manifestations in the current literature in terms of its definition, characteristics and delimitation. There is no single acceptable definition for peri urban interface and various definitions are understood to apply in different situations. Emphases, interpretations and conceptualizations have differed across regions.<sup>35</sup> They may even change in the same location over time as cities expand; for example as a medium-sized city becomes a large one, the spatial extent of the peri-urban zone also changes.<sup>36</sup> As the development of peri-urban area is closely related with the growth and expansion of a city, it is often difficult to delineate the peri-urban boundary in the era of rapid urbanization.<sup>37</sup> It is continuously shifting outward from the city and its development is an inevitable consequence of urbanization.<sup>38</sup>

The word ‘peri-urban’ could be used to denote a place, concept or process.<sup>39</sup> So we can understand the term as a place, it refers to agricultural areas surrounding cities or towns. It is also referred to us a transitional zone between fully urbanized land in cities or towns and areas mostly in agricultural use. It is a space in between fully urban built up area and rural agricultural hinterland areas.<sup>40</sup> It is a zone of transition between urban built up area and rural agricultural areas. As a concept or process, peri-urban could be seen as an interface of rural and urban activities and institutions where urban and rural development processes meet, mix and inter-react on the edge of the cities.<sup>41</sup> It is also characterized by mixed land uses and indeterminate inner and outer

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<sup>35</sup> Mbibaa Beacon and Marie Huchzermeyerb, ‘Contentious development: peri-urban studies in sub-Saharan Africa, Progress in Development Studies, 2002, 113-131.

<sup>36</sup> Carole Rakodi, ‘Review of the poverty relevance of the peri-urban interface production system research’, Report for the DFID Natural Resource Systems Programme (PD 70/7E0091), second draft, 1998.

<sup>37</sup> Achamyeleh Gashu, ‘Peri-urbanization and New Built-up Property Formation Process in the Peri-urban Areas of Ethiopia,’ Journal of Land Administration in Eastern Africa (JLAEA) Vol. 3 Issue 1, Jan 2015, Ardhi University, 330-335.

<sup>38</sup> German Adell, ‘Theories and models of the peri-urban interface, A changing conceptual landscape, strategic environmental planning and management for the peri-urban interface –research project, Development Planning Unit, University College, London, 1999, URI <http://discovery.ucl.ac.uk/id/eprint/43> accessed 20/2018 3:30 A.M LT

<sup>39</sup> Vishal Narain and Nischal S, ‘The Peri-urban interface in shahpur Khurd and Karnera, India Journal and Urbanization Vol.19, 2007, 261-273.

<sup>40</sup> Joe Ravets, Christian Fertner, and Thomas Sick Nielsen, ‘The Dynamics of Peri-Urbanization,’ Centre for Urban & Regional Ecology, University of Manchester, Oxford Road, Manchester M6 9PL, United Kingdom 2013.

<sup>41</sup> Achamyeleh Gashu, ‘Peri-urban Land Rights in the Era of Urbanization in Ethiopia’ (n 4), 121-128.

boundaries.<sup>42</sup> As a process, it could be thought of as the two-way flow of goods and services and a transitional stage between rural and urban.<sup>43</sup>

Urban areas in Ethiopia as well as in regions like SNNPRS are increasing and over spilling into the peri-urban areas in terms of space and population. Accompanying with rapid urbanization and the growing demand of land for urban built up property, peri-urban areas located adjacent to the municipal boundaries become the most dynamic areas in Ethiopia.<sup>44</sup> It is also there that all forms of lively competitions for land are fierce by people of diverse backgrounds and social status.<sup>45</sup> Due to the rural-urban dichotomy of land holding systems in Ethiopia, urbanization and urban development in peri-urban areas involves land holding right acquisition and transfer issues.<sup>46</sup>

In the process of urban expansion and development in Ethiopia, peri-urban landholders or farmers' land rights, are expected to be forcibly taken by the state and thereafter reallocated to urban residents, private developers through lease agreement.<sup>47</sup> Meanwhile the informal acquisition and development of land is a commonly seen phenomenon in the transitional peri-urban areas of Ethiopia.

### **2.3. Development of Land Tenure Policy in Ethiopia**

Different land tenure systems were practiced in Ethiopia. Even in the last one century Ethiopia experienced a feudal system where a mixture of private, government, church and communal land holdings coexisted. These land tenure systems had various kinds of landholding arrangements. The two famous kings of Ethiopia of the recent era, Emperor Minlik and Emperor Haile Silassie I, brought written laws which were believed to benefit certain landlords. However, the laws during the emperors' time allowed sale, exchange and mortgage of individual holdings. Next to this, the post 1974 period could also be characterized by public ownership of land. The Derg regime overthrew Emperor Haile Silassie and declared all rural and urban lands to be to state property abolishing all private and communal landholdings without compensation. The current

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<sup>42</sup> Achamyeleh Gashu, 'Peri-urbanization and New Built-up Property Formation Process in the Peri-urban Areas of Ethiopia,' (n 37)

<sup>43</sup> Achamyeleh Gashu, 'Peri-urban Land Rights in the Era of Urbanization in Ethiopia' (n 4), 120-138.

<sup>44</sup> Achamyeleh Gashu, 'Peri-urban Land Rights in the Era of Urbanization in Ethiopia', (n 4) 120-138.

<sup>45</sup> *ibid.*

<sup>46</sup> *ibid.*

<sup>47</sup> *ibid.*

EPRDF government came in to power in 1991 after defeating the Derg. Despite the introduced political and economic changes, land remained public property.<sup>48</sup> This section provides a brief historical overview of land policy contexts under the major previous governments of modern Ethiopia.

### **2.3.1. Pre-1974 Period**

In the imperial era, the rist and gult system dominated the Ethiopian land tenure systems. Southern Ethiopia was dominated by the gult system of land tenure. This system can be compared to the feudal system of fiefs, where land was granted to political leaders, successful soldiers and supporters of the emperor.<sup>49</sup> This led to a small elite of wealthy and powerful landowners, and a vast majority of the people, especially the indigenous tribes, lost land and was forced to become peasants working for the landowners.<sup>50</sup> The landowners also had the right to claim taxes from the people living on their land.<sup>51</sup>

The rist system was the dominant land tenure system in the northern highlands of Ethiopia such as Tigray, Gojjam, Gonder and part of Shewa provinces. The descendants to the person who supposedly was the original settler in a specific area collectively own the rist land.<sup>52</sup> In the rist system, both men and women can inherit the rist right through proving their descent from their original settler. This right was a rather strong form of tenure and provided security of land to a large number of people. One major challenge with the rist system was the exponential growth of the number of rist right holders; any person descending from the original settler could claim their right to the rist.<sup>53</sup> In communal land ownership, land was collectively owned and exploited by a member of a certain lineage. During the reign of Emperor Haile Selassie, a modernization of the

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<sup>48</sup> Zemen Haddis, 'Towards Improved Transaction of Land Use Rights in Ethiopia', Annual World Bank Conference on Land and Poverty, 2013, USAID, Ethiopia, 2-3.

<sup>49</sup> Jemma Hussien, 'the politics of land tenure in Ethiopian history: Experience from the south', XI World Congress of Rural Sociology, Trondheim, Norway, 25–30 July 2004.

<sup>50</sup> Martin Persson, 'Compensation Practices in the Expropriation Process: A case study from Amhara National Regional State', Ethiopia, Lund, December 2015, 26-27.

<sup>51</sup> Bereket Kebede, 'Land Tenure and Common Pool Resources in Rural Ethiopia,' Oxford: Blackwell Publishers 2002.

<sup>52</sup> *ibid.*

<sup>53</sup> Achamyeleh Gashu, 'Peri-urban Land Rights in the Era of Urbanization in Ethiopia' (n 21), 26.

land tenure system was under development.<sup>54</sup> This development however ended with downfall of the emperor in 1974.

### **2.3.2. Post 1975**

The Derg regime laid the foundation to the present Ethiopian land tenure system which is still in place. In 1975, just after the Derg gained power over the country, a new law called ‘Public Ownership of Rural Land Proclamation (No. 31/1975)’ was implemented.<sup>55</sup> As the manifestation of the new land reform, the government took control of all land in the country and started redistribution. Peasants associations were formed all over the country with the task to distribute land to farmers, each granted up to ten hectares of land for the family to utilize.<sup>56</sup> This reform abolished all sale, lease and mortgage of land prohibited hiring people for agriculture work as established. The system with state owned land prevailed the fall of the Derg regime in 1991 and is still in use today. Following the downfall of the Derg regime a new constitution, the current one, was adapted in 1995. The FDRE constitution of 1995 provides that:

‘The right to ownership of rural and urban land, as well as of all-natural resources, is exclusively vested in the State and in the peoples of Ethiopia. Land is a common property of the Nations, Nationalities and Peoples of Ethiopia and shall not be subject to sale or to other means of exchange.’<sup>57</sup>

In Ethiopia, the system with state ownership of land has created a heavy dispute over time. The government has stated that privatization of land would lead to massive eviction of the rural farming population, since they would be forced to sell their land to private investors.<sup>58</sup> Conversely, the lack of private ownership is criticized for the lack of tenure security for the land holders, which affects the incentive to make investments in the land and thereby increase the productivity of the

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<sup>54</sup> *ibid.*

<sup>55</sup> Martin Persson, ‘Compensation Practices in the Expropriation Process, (n 50) 26-27.

<sup>56</sup> *ibid.*

<sup>57</sup> The FDRE Constitution, (n 12) art.40(3).

<sup>58</sup> Daniel Weldegebriel, ‘Land Rights and Expropriation in Ethiopia,’ Stockholm: Royal Institute of Technology 2013, 200.

land. The system also prevents farmers from using land as collateral, thus access to credit and mortgages for farmers is almost non-existent.<sup>59</sup>

## **2.4. Rural Land Use Rights and Tenure Security**

The SNNPRS adopted different laws relevant to the administration and use of rural lands which are drafted in light of the federal rural land laws since 2002. These laws have been amended with a view to accommodate with changing circumstances. In the upcoming discussions, the SNNPRS land administration and utilization laws will be reviewed in light of landholder's tenure security and land users rights and obligations over their landholdings.

### **2.4.1. Land Use Rights for Indefinite period**

Land use right refers to the right of any peasant farmer or semi-pastoralist and pastoralist shall have to use rural land for purpose of agriculture and natural resource development, lease and bequeath to members of his family or other lawful heirs, and includes the right to acquire property produced on his land thereon by his labour or capital and to sale, exchange and bequeath same.<sup>60</sup> Some basic legal reform and improvements are incorporated in the current law in relation to defining the rights of landholders in a way that promotes tenure security. The proclamation predominantly states about the major right of landholders and provides that the right to use ones holding without any time limit, the right to lease out, the right to transfer use right over ones parcel of land to one's family members through inheritance or donation, the right to acquire property produced thereon and the right to sell, exchange and transfer such property and the right to claim compensation up on the expropriation of the holding rights for public purposes.<sup>61</sup> However, the right to dispose property produced on ones holding does not include the sale of land. Thus, land is exclusively owned by state and peoples of Ethiopia, transfer of land by sale or any other means of exchange is prohibited. It is worth noting that use rights are guaranteed during the lifetime of the holder and it cannot be terminated unless the land is required for more vital public purpose.

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<sup>59</sup> Crewett Wibke and Korf Benedict, 'Reforming Land Tenure,' London Review of African Political Economy, Vol.35, 2008, 203-220.

<sup>60</sup> The Federal Democratic Republic of Ethiopian Rural Land Administration and Land Use Proclamation Number 456/2005, Federal Negarit Gazette, 11<sup>th</sup> year Number 44, article 2(4) (herein after, The FDRE Rural Land Administration and Land Use Proclamation).

<sup>61</sup> The FDRE Rural Land Administration and Land Use Proclamation Number 456/2005, art.6(1).

#### **2.4.2. Rural Land Use Right under SNNPRS Rural Land Administration and Utilization Proclamation No. 110/2007**

The regional government land administration and use proclamation No 53/2003 was repealed by the SNNPR state Rural Land Administration and Use Proclamation No.110/2007. As per the provisions of the SNNPR state Rural Land Administration and Use proclamation the rural land use right of peasant farmers, Semi pastoralists and pastoralists shall have no time limit.<sup>62</sup> The duration of others rural land users right shall have time limit. Holder of rural land who is evicted for purpose of public benefit shall be given compensation in advance proportional to the development he has made on the land and the property acquired and shall be given other land.<sup>63</sup> Thus, the state is duty bound to pay compensation in advance to the farmers whose landholdings were expropriated and such compensation shall encompass the value of the property on that land and calculation of the benefits obtained there from as well as replacement of similar plot of land. When the rural land holder is evicted by the federal government, the rate of compensation would be determined based on the federal land administration law.<sup>64</sup> When the rural land holder is evicted by regional governments, the rate of compensation would be determined based on the rural land administration regulation of the region.<sup>65</sup> Thus, the proclamation is silent about cases where replacement of land is impossible. For instance, the Oromia state land administration and use proclamation No.130/2007 under its article 6(12) states that in case where replacement of land is not possible, the holder displaced from his parcel of land will be entitled to payment of compensation for rehabilitation.<sup>66</sup>

Consequently, it is possible to conclude that proclamation No.130/2007 has tried to effectively address the issue of expropriation and compensation in relation to landholdings in the Oromia regional state. However, the SNNPRS proc.No.110/2007 does not tried to effectively address issues of expropriation and compensation because it seems to create a gap in this regard because it says nothing in cases where replacement land is impossible.

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<sup>62</sup> The SNNPRS Land Administration and Utilization Proclamation, art.7 (1).

<sup>63</sup> The SNNPRS Land Administration and Utilization Proclamation, art, 7(2).

<sup>64</sup> The SNNPRS Land Administration and Utilization Proclamation (n 20) art.7 (3) (a).

<sup>65</sup> The SNNPRS Land Administration and Utilization Proclamation (n 20) art.7 (3) (b).

<sup>66</sup> The Oromia regional state Land administration and use proclamation no.130/2007, art.6 (12).

### 2.4.3. Private property rights on holding

The FDRE Constitution recognize private property whose contents include the right to acquire, to use and to dispose of such property by sale or bequest or other means of transfer subject to public interest and the rights of other persons.<sup>67</sup> Thus, private property is defined under the Constitution as a tangible or intangible product which has value and is produced by the labour, creativity, enterprise or capital of a person.<sup>68</sup> The constitution also empowers the government to provide private investors with use right over land on the basis of payment arrangements.<sup>69</sup> The investors have full right to the immovable property they build and to the permanent improvements they bring about on the land by their labour or capital including the right to alienate, to bequeath, and, where the right of use expires, to remove their property, transfer their title, or claim compensation for it.<sup>70</sup> At the same time, private property can be subject to expropriation for public purposes subject to payment in advance compensation commensurate to the value of the property.<sup>71</sup>

The use of the words ‘labour’ and ‘permanent improvements’ in the Constitution indicate that private property in connection with land is defined and justified in terms of labour or capital.<sup>72</sup> This suggests that use right over land perse is not a transferable economic right by private persons. In effect, the phrase land ‘shall not be subject to sale or to other means of exchange’ is being interpreted to engulf both ownership and rights less than ownership such as use right over land, meaning land laws prohibit some landholders from selling or mortgaging use right.<sup>73</sup>

A general reading of the Expropriation Proclamation and the Compensation Regulation reveals that the following interests are compensable<sup>74</sup>

- A property situated on the land

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<sup>67</sup> The FDRE Constitution (n 13), Art.40 (1).

<sup>68</sup> The FDRE Constitution (n 13), Art.40 (2).

<sup>69</sup> The FDRE Constitution (n 13), Art.40 (3).

<sup>70</sup> The FDRE Constitution (n 13) Art.40 (7).

<sup>71</sup> The FDRE Constitution (n 13) Art.40 (8).

<sup>72</sup> Muradu Abdo, ‘Legislative Protection of Property Rights in Ethiopia: An Overview,’Mizan Law Review Vol. 7 No.2, December 2013, 165-206.

<sup>73</sup> *ibid.*

<sup>74</sup> Daniel Weldegebriel, ‘Compensation for Expropriation in Ethiopia and the UK: A Comparative Analysis,’ (6821), FIG Congress, 2014 Engaging the Challenges-Enhancing the Relevance Kuala-Lumpur, Malaysia 16-21, June/2014, 1-25

- Permanent improvements to the land
- Loss of land
- Relocation of property
- Lost income, in case of temporary loss of land

While property situated on the land refers to building, structure or plants of any kind that have value, improvement to the land refers to any work made on the land that increases the value, productivity, or fertility of the land.<sup>75</sup> In rural areas, residential houses, farm houses, storage houses, livestock sheds and shelters, fence, trees, crops and grass are considered as properties situated on the land. This can be inferred from the readings of the Compensation Regulation 135/2007.<sup>76</sup> In rural areas, land terracing, clearance and leveling works, irrigation canals and ducts, and water wells and reservoirs are examples of improvements to the land which cost the holder for their construction.<sup>77</sup>

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<sup>75</sup> *ibid.*

<sup>76</sup> *ibid*

<sup>77</sup> *ibid*

## CHAPTER THREE

### 2.5. EXPROPRIATION: CONCEPTUAL FRAMEWORK

#### 3.1. Introduction

The term expropriation is used in its widest sense to include all forms of taking of private property by a State for public use, in time of peace, war or national emergency.<sup>78</sup> Thus, term expropriation is understood as a compulsory taking of private property. The owner of the property<sup>79</sup> need not want to sell and in fact, he does not sell his property is taken away from him by compulsion, and against his will.<sup>80</sup> Therefore, the owner of the property will be compensated in accordance with the law of the state. The government and the expropriatee or the affected people may come to an agreement with regard the amount of compensation. The underlying principle of expropriation by a statutory power is generally not aimed at acquisition but rather to serve some or other public need.<sup>81</sup>

Expropriation or compulsorily acquisition refers to government's power to force a person to sell his home, his business, or other property to the government at a price it deems 'just compensation' is one of the most extreme forms of government coercion, and today among the

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<sup>78</sup> Richard Epstein, 'Takings: Private property and the power of Eminent Domain,' Cambridge, (1985), Harvard University press.

<sup>79</sup> Property may be categorized in various ways. Recognized legal categories include real property (land and related fixtures attached to and connected to the land), personal property (movables such as equipment, inventory, and personal goods), intangible property (contract rights and insurance), intellectual property (copyrights, patents, trademarks), and cultural property (traditional medicines and goods or products identified to a specific cultural community and context). In this paper, the term property is used to mean land and related permanent fixtures attached to and connected to the land.

<sup>80</sup> Belachew Yirsaw, 'Expropriation Valuation and Compensation in Ethiopia,' Royal Institute of Technology (KTH) Stockholm, Sweden, 2013, 13.

<sup>81</sup> Searles S.Z, 'Eminent Domain: A kaleidoscopic view.' (1974), The Appraisal Journal, 538-548.

most common.<sup>82</sup> Powers of ‘expropriation’ have been practiced in various societies for a very long time but often characterized by infrequent procedural irregularity.<sup>83</sup> This power of property taking is referred to as ‘eminent domain’ in America, Some US states including New York and Louisiana use the term ‘appropriation’ as a synonym for the exercising of eminent domain powers, ‘Compulsory purchase’ in United Kingdom, New Zealand, and Nigeria, ‘resumption and ‘expropriation’ in South Africa and Canada.<sup>84</sup> This is an action of government to snatch individuals’ private property to be expropriated, or seize an individual’s rights in property with due monetary compensation without considering the consent of the owner of the property. The property is taken either for government use or by delegation to third parties who will devote it to public or civic use or, in some cases, economic development.<sup>85</sup>

The implementation of expropriation is not limited to real property and it may also condemn personal property such as supplies for the military in wartime or franchises. Governments can even condemn intangible property such as contract rights, patents, trade secrets and copyrights.<sup>86</sup> With the development of the concept in the contemporary world, many democratic states have provided legal flexibility of land acquisition methods in their compulsory purchase statutes.<sup>87</sup> The traditional use of force is no longer necessary and land could either be acquired compulsorily or by agreement.<sup>88</sup> When such an agreeable purchase is done, it is said to have been done under the shadow of compulsory purchase.<sup>89</sup> This agreement option, used where the number of properties required is small and the ‘need’ is less urgent, is quicker, friendlier, and less expensive.<sup>90</sup>

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<sup>82</sup> Timothy Sanderfur, ‘Corner stone of liberty: property rights in 21<sup>st</sup> century America, 2006

<sup>83</sup> *ibid*

<sup>84</sup> Belachew Yirsaw, ‘Expropriation Valuation and Compensation in Ethiopia,’ (n 80) 13.

<sup>85</sup> Nelson Chan, ‘Land Acquisition Compensation in china, Problems and answers’, (2003), *International Real State Review*, Vol.6, No.1, 136.

<sup>86</sup> Denyer Green, ‘Compulsory Purchase and Compensation’, fifth edition ed. (1994), London, East Gazette

<sup>87</sup> Belachew Yirsaw, ‘Expropriation Valuation and Compensation in Ethiopia,’ (n 80) 13.

<sup>88</sup> Nigel Almond and Plimmer F, ‘An Investigation into the use of Compulsory Acquisition by Agreement’, *Property management* (1967), vol.15 (1) 38-48.

<sup>89</sup> Moore V, ‘compulsory purchase in the United Kingdom’, In Erasms, Gavin M, *Compensation for Expropriation: A Comparative Study*, Vol.1, Proceedings of Conference of the UK National Committee of Comparative Law, University of Oxford, August 2<sup>nd</sup>-4<sup>th</sup>, 1990 (herein after, Moore V, ‘compulsory purchase in the United Kingdom’)

<sup>90</sup> Belachew Yirsaw, ‘Expropriation Valuation and Compensation in Ethiopia,’ (n 80) 13.

Customarily, compulsory purchase has entailed an enforced transfer of property from private to public hands using legal compulsion whereby property owners have no freedom to choose the buyer nor to decide or influence the price of the property concerned. The modern and democratic constitutions attempted to justify it socially, politically and most importantly legally where the use of force is imminent in taking over the property concerned. If such purchases, affected by the government have some social justification then compensation claims arise.<sup>91</sup>

In the present world, many states have provided legal flexibility of land acquisition methods in their expropriation statutes. The traditional use of force is no longer mandatory and land could either be acquired compulsorily or by agreement.<sup>92</sup> Where, the government and the real property owner would negotiate to reach an efficient solution where no one is made worse off and no government intervention would therefore be required. However, if property owners hold out against the acquisition and the parties do not agree on the take-over, then the hidden powers of eminent domain are applied as the tool of the last resort.<sup>93</sup> Expropriation is therefore an exception from the general civil principles of ownership transfer; real property can be expropriated only if public purposes cannot be achieved in any other way but by depriving someone of their rights to a real property or restricting such rights.<sup>94</sup> Another condition to be met is that the rights to the real property cannot be acquired by concluding a relevant contract.<sup>95</sup> Application of this form of ownership right transfer by the state or local administrative bodies is subject to many limitations and procedures which have to be strictly pursued. If the real property, which is necessary for public purpose, cannot be acquired by purchase the expropriation procedure is the last resort.<sup>96</sup>

To exercise the power of expropriation, in the first place there should be defined competent authorities of the government. To this effect, the FDRE ‘Expropriation of landholding for public

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<sup>91</sup> Michelman F, ‘property, Utility & Farness: Comments on the Ethical foundations of ‘just compensation’ Law’, (1967), 80 Harvard Law Review 65.

<sup>92</sup> Nigel Almond and Plimmer F, ‘An Investigation into the use of Compulsory Acquisition by Agreement’, ( n 82), 38-48.

<sup>93</sup> Zrobek S. and Zrobek R, ‘An assessment and proposed changes to the principles and procedures of real estate expropriation after 1945’, paper presented at the Seminar held at the Helsinki University of Technology TKK September 6-9, 2007, In K.V.I. Kakulu (Ed.), Compulsory purchase and Compensation in Land acquisition and takings Helsinki: Multi-print Oy Otamedia.

<sup>94</sup> Belachew Yirsaw, ‘Expropriation Valuation and Compensation in Ethiopia,’ (n 80), 15.

<sup>95</sup> *ibid.*

<sup>96</sup> Moore V, ‘compulsory purchase in the United Kingdom’, (n 88).

purposes and payment of compensation proclamation No.455/2005 provides for power to expropriate landholdings under provides that

‘A woreda or an urban administration shall, upon payment in advance of compensation in accordance with this Proclamation, have the power to expropriate rural or urban landholdings for public purpose where it believes that it should be used for a better development project to be carried out by public entities, private investors, cooperative societies or other organs, or where' such expropriation has been decided by the appropriate higher regional or federal government organ for the same purpose.’<sup>97</sup>

Thus, it is not clear as to what constitutes better development project. The procedure is also shallow in that it authorizes these organs of the government to expropriate individual land holdings merely on their belief that the land would be used for ‘better development project.’<sup>98</sup> There is also no declaration as to review mechanism by regular courts or other semi-judicial body in case the competent authorities abused power of expropriation. The Amhara Regional State Rural Land Administration and Use Proclamation exceptionally defined expropriation as follows:

‘Expropriating land holding means taking the rural land from the holder or user for the sake of public interest paying compensation in advance by government bodies, private investors, cooperative societies, or other bodies to undertake development activities by the decision of government body vested with power.’<sup>99</sup>

More importantly, this definition is inclusive of important elements of expropriation than that of the civil code. For example, it encloses the principles of ‘public interest’, ‘compensation’, and the prerogative power of the state and other delegated bodies to expropriate rural landholding. Accordingly, the user of the land is a mere possessor not an owner. Thus, expropriation is a right exercised by the state itself or its sub-branches such as municipalities and public companies and people legally authorized by the legislature, that the state or the organs authorized to take such

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<sup>97</sup> The FDRE Expropriation proclamation (n 8) Art.3 (1).

<sup>98</sup> Girma Kassa ‘Issues of Expropriation (n 12) 49.

<sup>99</sup> Amhara National Regional State Rural Land Administration and Use Proclamation No.133/2006, art.2 (18).

lands must follow some procedure, notably pay compensation to the owner/possessor of private property; and it precisely encompasses the issue of ‘public purpose.’<sup>100</sup> In the coming sections of this paper, for a better understanding of the concept of expropriation, the two basic requirements involved in laws, i.e. public purpose and compensation under the Ethiopian laws will be discussed.

### **3.2. Requirements of Expropriation**

Now a day, countries constitutions and other legislations refer to compulsory acquisition being used for public purposes, for public uses and in the public interest. In practice these terms are often not clearly distinguished and they tend to be used interchangeably.<sup>101</sup> As per the provisions of the FDRE constitution, it is provided that without prejudice to the right to private property, the government can expropriate private property for public purposes subject to payment in advance of compensation commensurate to the value of the property. The federal expropriation proclamation No.455/2005, provides that a woreda or urban administration have been given the power to expropriate rural or urban land holdings for public interests<sup>102</sup> through paying in advance of compensation where it believes that it should be used for better development projects to be carried out by public entities, private investors, cooperative societies or other organs, or where such expropriation has been decided by the appropriate higher regional or federal government organs for the same purpose.

As Proclamation No. 455/2005, A woreda or urban administration have been given the power to expropriate rural or urban land holdings for public purposes through paying in advance of compensation where it believes that it should be used for better development projects to be carried out by public entities, private investors, cooperative societies or other organs, or where such expropriation has been decided by the appropriate higher regional or federal government organs for the same purpose. Proclamation No.401/2004 ‘Appropriation of Land for Government Works and Payment of Compensation for property’ is the federal proclamation enacted to govern

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<sup>100</sup> Girma Kassa ‘Issues of Expropriation (n 12) 50.

<sup>101</sup> FAO, ‘Compulsory Acquisition of Land and Compensation’, 2008, Land Tenure Studies, 10.

<sup>102</sup> See Art.5 of the Proclamation No.455/2005 which provides ‘public purpose’ means the use of land defined as such by the decision of the appropriate body in conformity with urban plan or development plan in order to ensure the interest of the peoples to acquire direct or indirect benefits from the use of the land and to consolidate sustainable socio-economic development.

expropriation and related compensation matters however, it was subsequently repealed by proclamation No.455/2005.

What was interesting about Proclamation No.401/2004 is that it appears to have narrowly circumscribed the occasions when expropriation may take place.<sup>103</sup> The title of the proclamation itself clearly provides that, the law pertained only to appropriation and payment of compensation for government works. One can reasonably argue that the Proclamation has attempted to narrow the meaning of public interest and hence the power of appropriation only to government works which are defined as ‘the construction or installation, as appropriate, for public use of highway, power generating plant, building, airport, dam, railway, fuel depot, water and sewerage, telephone and electrical works and the carrying out of maintenance and improvement of these and related works, and comprises civil, mechanical and electrical works.’<sup>104</sup> Proclamation No.455/2005 uses the phrase ‘public purpose’ instead of ‘public use’ and ‘expropriation’ instead of ‘appropriation.’ Note that the fact that these works must be for ‘public use’ can be interpreted to mean that works for the sole use of the government or private entities may not be considered of public use and, therefore, appropriation of a holding may not be made in such circumstances.<sup>105</sup> Thus, proclamation No.455/2005 on the other end stretches the meaning public interest or public purpose very widely that it can practically be deemed unrestricted. The demand for land for the city administrations have been increasing from time to time in providing public facilities and infrastructures that ensure safety and security, health and welfare, social and economic enhancement of the society.<sup>106</sup>

Acquisition of appropriate land is the first step in the process of provision of facilities and infrastructures. In some cases, specific land parcels are required, for example, in order to accommodate the route of a new road, to construct dwelling houses for resettling slum dwellers or the fulfillment of requirements of redistributive land reform.<sup>107</sup> In cases where land is not available in government’s land Bank at the time it is needed. Therefore, in order to obtain land when and

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<sup>103</sup> Belachew yirsaw, ‘Expropriation, Valuation and Compensation practice in Amhara National Regional State ANRS, the case of two cities (Bahir-Dar and Gonder), Nordic Journal of Surveying and Real Estate Research Volume 9, Number 1, 2012, 39.

<sup>104</sup> *ibid.*

<sup>105</sup> FAO, ‘Compulsory Acquisition of Land and Compensation’, 2008 (n 101), 39.

<sup>106</sup> *ibid.*

<sup>107</sup> *ibid.*

where it is required, the government uses its power expropriation<sup>108</sup> to acquire land, thus it can compel landholders to transfer their land use rights in order for it to be used for specific purposes.

According to a broad survey of FAO, in both developed and developing countries reveals the commonly accepted purposes for compulsory acquisition are transportation uses including roads, canals, highways, railways, bridges, wharves and airports; public buildings including schools, libraries, hospitals, factories, religious institutions and public housing; public utilities for water, sewage, electricity, gas, communication, irrigation and drainage, dams and reservoirs; public parks, playgrounds, gardens, sports facilities and cemeteries; and defense purposes.<sup>109</sup>

The legitimate exercise of power of expropriation involves land taking for a clearly identified reason under the legislations of the state. Thus, providing exclusive lists of purposes minimizes ambiguity by providing a comprehensive, nonnegotiable inventory beyond which the government may not compulsorily acquire land. However exclusive may be too rigid to provide for the full range of public needs, thus the government may one day need to consider to acquire land for a public purpose that was not considered when the law was enacted. The cumulative readings of the provisions of the FDRE constitution of 1995 and the Expropriation Proclamation No.455/2005, does not reveal the clear definitions of the purposes of expropriation. However, it is said that public purpose is used as the main reason for expropriation. Even the term public purpose is not defined explicitly in such a way that it is clear to both the expropriator government agents and the expropriatee.<sup>110</sup> Proclamation No.455/2005 seems flexible to acquire land for public purpose that was not considered when the law was written since it gives a power to the higher regional or federal government organ to expropriate urban or rural land holding for better development projects to be undertaken by private investors, investors, cooperatives societies or other organs.<sup>111</sup>

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<sup>108</sup> See also art.40(8) of the FDRE constitution says that without prejudice to the right to private property, the government may expropriate private property for public purposes subject to payment in advance of compensation commensurate to the value of the property. As the Federal Negarit Gazeta, proclamation No. 455/2005, says the government (a Woreda or an urban administration) may expropriate private property for public purposes where it believes that it should be used for a better development project to be carried out by public entities, private investors, cooperatives, societies or other organs.

<sup>109</sup> FAO, 'Compulsory Acquisition of Land and Compensation', 2008 (n 101), 39.

<sup>110</sup> Belachew yirsaw, 'Expropriation, Valuation and Compensation (n 103) 40.

<sup>111</sup> The FDRE Expropriation proclamation (n 8) Art.3.

The rationale for expropriation may be straightforward when land is acquired by the government for use by a public entity, for example for a public school or hospital, or for a new public road or airport. The rationale for acquiring land for a public purpose or in the public interest may be also clear where the land will be held by a private entity but used for a public purpose. For example, in countries where the generation and transmission of electricity is privatized, the government may support private electricity companies to acquire land for the infrastructure needed to ensure service to their customers. More controversial are cases where private land holding is acquired by government and then transferred to private developers and large businesses on the justification that the change in possession and use will benefit the public.<sup>112</sup>

In a number of countries, like Ethiopia expropriation has been used as a tool to help assemble land in order to promote urban renewal and attract commercial investment in areas where buildings and infrastructure have deteriorated substantially.<sup>113</sup> It may also be used on behalf of developers, i.e. both private and public-private ventures and enterprises in order to change the land use of an area, for instance, from residential to commercial purposes. In such instances, it is argued that the development benefits the larger public through creating economic growth and jobs, and by increasing the tax base which in turn allows both the federal and regional governments to improve the delivery of public services. Thus, expropriation of land for private development should undergo a public scrutiny that ensures the balance between the public need for land and the protection of private property rights is properly considered, and that the compensation reflects the profit potential of the land to be acquired.

### **3.2.1. Substantive Requirements of Expropriation**

In Ethiopia, proclamation No.455/2005 provided a number of different legal requirements that needs to be fulfilled in order to go through with expropriation. In this section, most of these requirements will be discussed.

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<sup>112</sup> Belachew yirsaw, 'Expropriation, Valuation and Compensation (n 103) 40.

<sup>113</sup> *ibid.*

### 3.2.1.1. Public purpose requirement

As per the provisions of the FDRE constitution and the expropriation proclamation all kinds of compulsory acquisition should be done for public purpose. When we see the concept of public purpose under the Ethiopian expropriation laws the concept of public purpose is however vaguely explained. The expropriation proclamation defines the term as

‘public purpose means the use of land defined as such by the decision of the appropriate body in conformity with urban structure plan or development in order to ensure the interest of the people to acquire direct or indirect benefits from the use of the land and to consolidate sustainable socio-economic development.’<sup>114</sup>

As per the meaning of public purpose provided under the proclamation we can generalize that for an expropriation to undertake expropriation there should be some kind of benefit, direct or indirect, for the people and a sustainable socio-economic development.

The current Ethiopian constitution recognizes public purpose as a limitation on the power of the government. Thus, the FDRE Constitution allows the expropriation of private property provided that the taking should be for ‘public purpose’ activities:

‘Without prejudice to the right to private property, the government may expropriate private property for public purposes subject to payment in advance of compensation commensurate to the value of the property’.<sup>115</sup>

The term public purpose is neither defined nor indicated the activities that might constitute public purpose activities under the FDRE constitution. The FDRE Constitution reads:

‘Every Ethiopian citizen has the right to the ownership of private property. Unless prescribed otherwise by law on account of public interest, this right shall include

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<sup>114</sup> The FDRE Expropriation proclamation (n 8) Art.2 (5).

<sup>115</sup> The FDRE Constitution (n 12) Art.40 (8).

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 to transfer it otherwise'.<sup>116</sup>

Hence, it is obvious that this provision puts a general restriction on the use and enjoyment as well as disposition of private property 'on account of public interest'. Thus, the use and enjoyment of private property may be restricted by the state for various reasons such as public health, public safety, environmental concern, or urban aesthetics.<sup>117</sup> The inference is that 'public interest' in this provision of the constitution is used to justify all restrictions imposed on private properties including expropriation. For this reason, it seems, Article 40(8) of the Constitution that deals with the expropriation aspect employs a different terminology, 'public purpose' instead of 'public interest' to indicate the wider and comprehensive nature of the second terminology.<sup>118</sup> In other words, under the FDRE constitution, 'public interest' has a wider application than 'public purpose.'

### **3.2.2. Procedural Requirements of expropriation**

In the US, it is known as 'condemnation proceeding' while in other countries, mainly European, it is referred to as an 'expropriation procedure.'<sup>119</sup> The main idea is that the state must ensure due process of law before appropriating the property.<sup>120</sup> The expropriation proclamation has not given clear procedural steps that to be followed by the administrative authorities in the occasion of expropriation of landholdings. Consequently, we have to make one from the reading of different provisions of the expropriation proclamation and the implementing regulations and directives. Thus, the expropriation proclamation provides one clear step concerning the issuance of notice of expropriation order,

'where a woreda or urban administration decides to expropriate a landholding... 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.'<sup>121</sup>

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<sup>116</sup> Daniel Weldegebriel, 'Land Rights and Expropriation in Ethiopia,' Royal Institute of Technology (KYH) Stockholm Sweden, 200.

<sup>117</sup> *ibid*

<sup>118</sup> *ibid* 201.

<sup>119</sup> Daniel W/Gebriel, 'The History of Expropriation in Ethiopian Law' Mizan Law Review Vol. 7 No.2, December 2013, 283-308.

<sup>120</sup> *ibid*.

<sup>121</sup> The FDRE Expropriation proclamation (n 8) Art.4(1)

This step by itself does not provide for other activities that should be fulfilled and the priority levels existing among them. An inkling that we find here is that notice would be issued after the completion of valuation, since the notice is thought to mention the amount of compensation. Using the very provisions and others, we can provide basic steps to be followed before expropriation of landholdings are: public discussion, serving notice, taking inventory and assessing value of property and effecting payment of compensation.

### **3.2.2.1. Notice of Expropriation Order**

Eventually, the expropriation process can commence as long as these legal requirements are fulfilled. Notice of expropriation order must be distributed to those affected 90 days before the commencement of expropriation. Where a woreda or an urban administration decides to expropriate a landholding in accordance with article 3 of this proclamation, it shall notify the landholder in writing, indicating in the time when the land has to be vacated and the amount of compensation to be paid.<sup>122</sup> Eventually, the expropriation can start as long as these requirements are fulfilled. The options available for the landholder who has received expropriation order are very limited. The law only gives the landholder the possibility to appeal if the decision on the amount of compensation is unsatisfactory.<sup>123</sup> However, the proclamation does not give any opportunity to appeal against the decision to expropriate the property.

It obviously established rule that expropriation for public purpose is possible. This means that the government cannot take the established right of a private individuals property arbitrarily other than public purpose justification. Therefore, public purpose is a requirement that limits government's power to expropriate private individual's property arbitrarily. Many countries of the present world have provided public purpose requirement as a limitation on power of expropriation under their constitution and other subsidiary legislations. For example, we can see USA's experience, the Fifth Amendment of the United States Constitution, states in its pertinent part that 'private property shall not be taken for public use without just compensation.'<sup>124</sup> This provision has been interpreted as requiring that the power of eminent domain not to be invoked except to

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<sup>122</sup> *ibid* art.4 (1).

<sup>123</sup> *ibid* art.11.

<sup>124</sup> Jamie Burger, 'Land Ownership and Use,' Boston, Little Brown and Com, 1983, 3<sup>rd</sup> ed., 1018.

further a public use or purpose.<sup>125</sup> Conversely, unless the expropriation of land is for the public purpose, that action instantly becomes unlawful.

The expropriation proclamation provided a very limited option for the land holder who is a victim of expropriation order. Thus, the proclamation only gives the individual who received the expropriation order or the landholder the possibility to appeal if the decision on the amount of compensation is unsatisfactory.<sup>126</sup> Hence, there is no chance to appeal to the decision to expropriate the property in itself which is ultimate.

As can be understood from the provision,<sup>127</sup> the notification order is not aimed at securing the consent of the farmer or a landholder; rather it is simply to tell him that his landholding is going to be expropriated and he must get ready to vacate the land on the specified time and notifying that he will be paid the amount of compensation specified on the notification order. And also, we can understand from the text of the provision, the landholder will not be given a chance to participate in the process of assessment of the amount of compensation. Accordingly, the law has also provided the period of notification should not be less than ninety days or three months.<sup>128</sup> Thus, a rural landholder who receives notification of expropriation order must hand over the land to the woreda or urban administration within 90 days from the date of payment of compensation or, if he refuses to receive the payment, from the date of deposit of the compensation in a blocked account in the name of the woreda or urban administration as may be appropriate.<sup>129</sup> But, the landholder should hand over the land to the woreda or urban administration will be reduced to 30 days from the date of receipt of the expropriation order where there is no crop or other property on the expropriated land.<sup>130</sup> The provision of the proclamation No.455/2005 is silent on the issue whether the landholder should handover his landholding before accepting compensation or not once he receives the expropriation order. Moreover, the proclamation also provides that the woreda or urban administration may use police force to take over the land where a landholder who has been

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<sup>125</sup> *ibid.*

<sup>126</sup> The FDRE Expropriation proclamation (n 8) Art.11.

<sup>127</sup> *ibid* art.4(1)

<sup>128</sup> *ibid* art.4(2)

<sup>129</sup> *ibid* art.4(3)

<sup>130</sup> *ibid* art.4(4)

served with an expropriation order refuses to handover the land within the period specified under sub-article 3 & 4 of this article.<sup>131</sup>

### **3.2.3. Phases expropriation**

This section of the thesis will briefly explain how the expropriation process should be carried out in relation to the legislations.

#### **3.2.3.1. The preparatory phase**

The proposal for an expropriation should come from what the law defines as an ‘implementing agency’; a government agency or a public enterprise with the interest to undertake development work.<sup>132</sup> Thus, this implementing agency is responsible to provide detailed data about the land needed in the development at least one year in advance to the expropriation.<sup>133</sup> The data should be provided to the woreda or urban administration, which are responsible for the expropriation and valuation process.<sup>134</sup>

#### **3.2.3.2. The valuation phase**

As per the legislation described above, all the expropriated property must be valued before any expropriation takes place. A valuation committee consisting of up to five appointing officials generally does the valuation in rural areas. The full text of the provision states as,

‘Where the land to be expropriated is located in a rural area, the property situated thereon shall be valued by a committee of not more than five experts having the relevant qualification and to be designated by the woreda administration.’<sup>135</sup>

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<sup>131</sup> *ibid* art.4 (5).

<sup>132</sup> *ibid* art.2 (7).

<sup>133</sup> *ibid* art.5 (1).

<sup>134</sup> *ibid* art.3(1).

<sup>135</sup> *ibid* art.10 (1).

As per the expropriation proclamation these appointed officials should be ‘experts having the exact qualification but these qualifications are not further defined in the legislations. In addition to this, the valuation committee is responsible for keeping the records of the valued properties.’<sup>136</sup>

### **3.2.3.3. The Hand-over phase**

The notification for expropriation must be notified to the affected individuals before at least three months in advance before the expropriation starts. It should also be made public how much compensation each individual is entitled based on the work of the valuation committee.<sup>137</sup> Thus, each land holder must evacuate from land within these 90 days, and at this time the compensation should be paid. If any landholder not has evacuated the land within the time provided, the Woreda or urban administration is allowed to use police force to make this occur.<sup>138</sup>

## **3.4. Compensation**

### **3.4.1. Countries Best Experience**

The constitutions of many countries to which Ethiopia is not an exception contain compensation clauses. But the procedure, determination of the amount and payment of compensation differ from country to country depending on circumstances existed within the country. In some countries, compensation is paid only when property is taken away from an individual with the state acquiring the property and also in some other countries compensation is also paid for injurious affection and other damages in addition to the compensation paid for compulsorily taken property.<sup>139</sup> For instance, according to the courts of the United States of America, compensation is not restricted to instances where property is taken away from an individual with the state acquiring the property.<sup>140</sup> It is also paid when an individual’s property suffers from a permanent physical invasion, lost all economically viable use or is deprived of a core property entitlement.<sup>141</sup> These contrasts with the Australian approach, where the state needs

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<sup>136</sup> Payment of compensation for property situated on Land Holding Expropriated for Public Purposes, Council of Ministers Regulation No.135/2007, Negarit Gazette, Year, 13, No.36, art.21.(herein after, Payment of compensation for property situated on Land Holding Expropriated for Public Purposes, Council of Ministers Regulation)

<sup>137</sup> The FDRE Expropriation proclamation, Art.4 (2).

<sup>138</sup> *ibid* art.4 (5).

<sup>139</sup> Belachew yirsaw, ‘Expropriation, Valuation and Compensation (n 103) 19.

<sup>140</sup> *ibid*

<sup>141</sup> Emlen du Plesis, ‘Compensation for Expropriation under the constitution.’ Dissertation presented for the degree of Doctor of Law at Stellenbosch 2009, 251-265.

to acquire a benefit or advantage before compensation is due.<sup>142</sup> However, once it is found that there was an expropriation and that compensation is due, the question that remains is whether compensation was calculated correctly, focusing on the proportionality principle.<sup>143</sup> In most cases, this would mean market value compensation, but it is flexible enough to allow for cases where market value compensation would not be proportional.<sup>144</sup>

In order to afford the necessity of public services and other economic and social needs of the society, the state uses compulsory acquisition as a means to secure land for development. It is an undeniable fact that expropriation of land for development may eventually bring benefits to the society, however, it is troublesome to people whose property is taken. Thus, compensation is compulsory for the owner of property expropriated to cover the losses sustained. In other words, the affected property owner shall be in the same economic position as if the compulsory acquisition had never happened.<sup>145</sup> Compensation is to repay the affected people for the losses they suffered, and should be based on principles of equity and equivalence.<sup>146</sup>

The principle of equivalence is crucial to determining compensation 'affected owners and occupants shall be neither enriched nor impoverished as a result of the compulsory acquisition.'<sup>147</sup> Financial compensation on the basis of equivalence of only the loss of land rarely achieves the aim of putting those affected in the same position as they were before the acquisition; the money paid cannot fully replace what is lost i.e. in some circumstances monetary compensation is either inadequate or inappropriate.<sup>148</sup> Some countries recognized this in the form of additional compensation to reflect the compulsory nature of acquisition.

For example, in Romanian law 33/ 94 provides for compensation to be payable for the value of the property taken and any other losses caused to the owner or any other party with an

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<sup>142</sup> Belachew yirsaw, 'Expropriation, Valuation and Compensation (n 103) 18.

<sup>143</sup> *ibid.*

<sup>144</sup> *ibid.*

<sup>145</sup> *ibid.* 19.

<sup>146</sup> See. Daniel Weldegebriel, 'the term equivalence refers the affected people should receive compensation that is no more or no less than the loss resulting from the compulsory acquisition of their land. Appropriate measures should ensure that those affected, and particularly the vulnerable, are not disadvantaged.

<sup>147</sup> Emlen du Plessis, Compensation for Expropriation under the constitution (n 136) 20.

<sup>148</sup> Crawford A.J. 'Compulsory Acquisition of Land in South East Queensland Australia,' in K. Viitanen & i. kakulu (eds.), Compulsory purchase and Compensation in land acquisition and takings, Helsinki, Multi print Oy Otamrdia.

interest in the property.<sup>149</sup> According to Article 14(3) of the German Basic law, the compensation is intended to offer a full balance for the loss that was imposed upon them by the expropriation interference. Other property losses due to the expropriation (consequential damages) are also compensated, too.<sup>150</sup> According to Keith (2007), in developing countries where there is the financial resource limitation, less emphasis should be put on monetary compensation where resettlement or reinstatement are often the best means of putting the claimant back in the same position as if his/her land had not been taken from him /her.<sup>151</sup> In practice, given that the aim of the acquisition is to support development, there are strong arguments for compensation to improve the position of those affected wherever possible.<sup>152</sup>

### **3.4.2. Reasons of Compensation**

In the course of expropriation, payment of compensation is the most critical issue to be settled. Thus, payment of compensation is justified in so many grounds such as economic and socio-political. To begin with economic justifications, it is argued that payment of compensation can encourage the governments to make wise decisions.<sup>153</sup> Because of the cost of compensation, it is argued that, 'it will always strive to make rational economic decisions that will bring beneficial development to all parties.'<sup>154</sup> The owners might not be willing to take risks and invest on their properties, for the benefit may be reaped by others. Moreover, banks would not be eager to lend money for such risky business unless the law gives protection to the reasonable expectations of those who have relied on it.<sup>155</sup> Payment of compensation is further justified with the principle of distributing the burden of public improvements.

The other justification rests up on the principle of distributing the burden of public improvements. If property of an individual is taken for public purpose without payment of any

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<sup>149</sup> Belachew yirsaw, 'Expropriation, Valuation and Compensation (n 103) 20.

<sup>150</sup> *ibid.*

<sup>151</sup> Keith S. 'Critical Valuation issues on Compensation in Compulsory Purchase.' In K. Viitanen and Kakulu (eds.), *Compulsory Purchase and compensation in Land Acquisition and takings*, Helsinki University of Technology, Helsinki, Multiprint Oy Otamedia.

<sup>152</sup> *ibid.*

<sup>153</sup> C.E Ndjovu, 'Compulsory Purchase in Tanzania,' *Doctoral Thesis*, Royal Institute of Technology, Stockholm, 2003, ISSN, 1651-0216, 21.

<sup>154</sup> Daniel W/Gebriel, 'Compensation during Expropriation,' in Muradu Abdo's (Eds.) *Land Law and Policy in Ethiopia since 1991, Continuities and Changes*, Ethiopian Business Law Series, Vol. III (2010), 191-234.

<sup>155</sup> *ibid.*

form of compensation, the individual whose property has been taken would be compelled to contribute a disproportionate share to the common good, where there is no strong reason to single him out and compel him to bear all the expenses the society requires to satisfy its needs of development.<sup>156</sup> This means, if the owner is compensated, the burden of public improvement which was to be imposed on him would be shifted from his shoulder to the tax payers at large of which he is associated. Accordingly, compensation is a means to keep the balance of social justice.<sup>157</sup> It requires the government to bear the inconveniences resulting from expropriation. Hence, it is argued that no single individual should bear the costs of government projects that are intended to be for the common good as there is no justifiable *raison d'être* to single out an individual and oblige him to bear the entire burden for the benefit of the society at large.<sup>158</sup>

The last, but not surely the least, justification for compensation is to protect private property from arbitrary and unauthorized takings of the government organs that exercise the power of expropriation. To this end, Marcus stated that 'it is not by accident that provisions for compensation are found in the basic laws of some countries, rather than left to the will of the legislature or the executive, but to protect private property from the latter's arbitrary actions.'<sup>159</sup> Therefore, the need of compensation as per this argument is to serve as a shelter for private property against the strong power of the government.

In a nutshell, even though the constitutional right to private property can be restricted for the protection and advancement of public interest, the owner should be compensated for what he is dispossessed because it is not fair to single him out to bear the costs of society alone. Hence, the procedure of expropriation should be lawful and has to guarantee the right of compensation. In this way, individual's private property will be protected from the arbitrary and unauthorized actions of the legislature or the executive branches of the government. In respect of land,

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<sup>156</sup> Philip Marcus, 'The Taking and Destruction of Property under a defense and War Programme, Cornell Law Quarterly, (1942), Vol.27, 508.

<sup>157</sup> Daniel W/Gebriel, 'Compensation during Expropriation,' in Muradu Abdo's (Eds.) Land Law and Policy in Ethiopia since 1991 (n 154) 200.

<sup>158</sup> Epstein R.A, (1993) 'Bargaining with the State,' Princeton University Press, Princeton, New Jersey, (1993) ISBN069104273X, Available

at <http://site.ebrary.com.focus.lib.kth.se/lib/kth/Top?channelName=kth&cpage=1&f00=text&frm=smp.x&hitsPerPage=10&id=10031897&layout=document&p00=eminent+domain&sch=%A0%A0%A0%A0Search%A0%A0%A0%A0&sortBy=score&sortOrder=desc-accessed> 12/03/2018

<sup>159</sup> *ibid.*

expropriation is exercised only in cases where designated land is used for a public purpose and accompanied by payment of compensation as per federal and regional land laws of Ethiopia.<sup>160</sup>

### **3.5. Theories on Compensation**

It is undisputable fact that compensation paid upon the expropriation is vital to remedy to protect private owner's property. Additionally, it is also central to discipline the government branches to exercise their powers only for legally and economically proven reasons. Since it is agreed that payment of compensation should be made upon the proceedings of expropriation, and then it is common to decide and agree on how to compensate the owner. The manners of determining compensation may be debatable since the terms used in legislations often create confusion among valuers.<sup>161</sup> In this respect, there are two conflicting theories: principle of indemnity ('Owner's Loss') theory and the 'Taker's Gain' theory, which will be discussed below.

#### **3.5.1. Owner's Loss Theory/Indemnity Principle**

This theory is commonly used in the bulk of western countries save the slight differences. The main thesis of this theory is that 'the owner whose property is expropriated should be entitled to be put as good a pecuniary position as he would have been if his property had not been taken.'<sup>162</sup> Thus, it is beleaguered that the reinstatement of the owner to the original position he would have had his property had not been taken so that, the dispossessed owner would go out into the market and purchase with his compensation money a property roughly similar to that which had been acquired, any incidental loss or expense being met from the proceeds of the disturbance claims.<sup>163</sup>

In countries like the United States and France compensation does not reflect what the taker has gained, rather what the owner has lost.<sup>164</sup> Besides, according to theory of 'owner's loss,' the goal is not to directly pay the cost of equivalent reinstatement, but to compensate for the taking.<sup>165</sup>

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<sup>160</sup> The FDRE Constitution Art.40 (8) and SNNPRS Constitution.

<sup>161</sup> See Daniel Weldegebriel, different countries use phrases like 'Just compensation,' 'Fair Compensation,' 'Indemnification,' and so on. The Ethiopian Constitution provides, for its part, the word 'commensurate' compensation, without further explanation.

<sup>162</sup> Robert Kratovil and France Harrison Jr., 'Eminent Domain: policy and concept,' California Law Review Vol.42, (1954), 615.

<sup>163</sup> C.E Ndjovu, 'Compulsory Purchase in Tanzania (n 153), 20.

<sup>164</sup> C.T. McCormick, 'The Measure of Compensation in Eminent Domain,' Minnesota Law Review, Vol.XVII No.5, (1933), 465.

<sup>165</sup> *ibid.*

Due to this fact, in France although the taker has got nothing from it, loss of rent, trading loss, moving expenses, dismissal benefits, severance damages, and the like are also coverable, in addition to the market value of the deprived property.<sup>166</sup> Similarly, in Sweden, the gain made by the expropriator does not affect the amount of damages that the land owner and other parties affected by an expropriation are compensated on the basis of their loss.<sup>167</sup> The experience of England a little bit differs from that of aforementioned countries in that the state is obliged to pay compensation for disturbance of interests and compensation for severance<sup>168</sup> and injurious affection<sup>169</sup> in addition to the full compensation of the land acquired.<sup>170</sup>

Accordingly, the laws of the countries which follow the indemnity principle/Owner's Loss Theory, takes the loss of property owner into consideration in the process of valuation of compensation, irrespective of the benefit of expropriating organ. The main purpose of compensation, as per this theory, is to reinstate the owner of the expropriated property in the same economic position at the time when the property was taken.<sup>171</sup> Thus, the principle of indemnity provided that any claim for increased compensation due to the value of expropriated property should not be allowed. This is so, according to this theory, if the owner/possessor is to be compensated for the increased value of expropriated property which was not the case had taking was not happened, it can be tantamount to compensating him/her for the loss he/she has not suffered.<sup>172</sup>

### **3.5.2. Taker's Gain Theory**

As opposed to the principle of indemnity, Takers gain theory maintains that 'the government should pay only for what it gets. This argument emanates from the concern that the

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<sup>166</sup> Daniel Weldegebriel, 'Compensation for Expropriation in Ethiopia and the UK (n 74), 9.

<sup>167</sup> T. Bjerken, 'Expropriation in Sweden', In Erasmus, G.M. (Ed.) 'Compensation for Expropriation: A comparative Study,' St. Edmund Hall, University of Oxford, Vol. I, (1990), 129 (The only exception is during forced re allotment, in which the owner may, in addition to the compensation for the injury of property, be awarded a share of profit the lost property may give to the future owner. See also Kalbro 2004:59)

<sup>168</sup> See *ibid* T. Bjerken, Severance occurs when the physical taking of the part of a parcel of land depreciates the value of the remaining land,

<sup>169</sup> Injurious affection applies to the depreciation in the value of the remaining land caused by the construction of and use of the works for which the part was taken.

<sup>170</sup> V. Moore, 'Compulsory Purchase in the United Kingdom', In G.M Erasmus, (Ed.), Compensation for Expropriation: A Comparative Study, St. Edmond Hall, University of Oxford, Vol.1, (1990), 6.

<sup>171</sup> Girma Kassa, Issues of Expropriation (n 12) 69.

<sup>172</sup> Charlles George, 'The Law Of Expropriation', (2<sup>nd</sup> ed. 1963), 88

discrepancy between the value of the thing taken by the government and the loss suffered by the owner is caused because of disturbance of a business on the land or other similar remote damages, which would drain the purse of the government or other beneficiary for that matter.<sup>173</sup> Consequently, compensation for ‘consequential damages’ like the future loss of profits, expenses of moving fixtures and personal property, the loss of goodwill that inherent in the location, must be denied because as it is not a benefit goes to the government’s pocket.<sup>174</sup> For instance, when the land which a business was carried on is taken by the government without making use of that business, it is expected to only what it gets, apparently, the market value of the land.<sup>175</sup> Thus, these two contradicting theories try to answer a single question of how to evaluate the compensation to be paid to the Owner/possessor in case of compulsory acquisition. Yet, despite their operation in countries those accept them, currently, with certain important qualifications; the principle of indemnity (the owner’s loss theory) has received predominance recognition over the taker’s gain theory.<sup>176</sup>

As far as the approach followed in Ethiopia is concerned, Daniel (2009) argued that principle of indemnity has also been introduced under the Ethiopian laws.<sup>177</sup> In addition, George Krzeczunowicz asserts that, as a rule, principle of ‘compensation equivalent to damage’ is incorporated under the Civil Code of Ethiopia.<sup>178</sup> He explains the Ethiopian system as ‘in the Ethiopian system, harm is, as a rule, compensated by the award of an equivalent sum of money to the victim.’<sup>179</sup> Among the provisions of the civil code art.2090 and 2091 are the most important provisions dealing with the mode and extent of compensation. Accordingly, art.2091 of the civil code states that, ‘the compensation due by the person legally liable is equivalent to the damage caused by the fact giving rise to the liability.’ However, in the Civil Code, there are five exceptional cases in which assessment of compensation departs from the rule of ‘compensation equivalent to damage’. These are, the case of non-compensation, compulsory mitigation, discretionary

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<sup>173</sup> Crawford A.J. ‘Compulsory Acquisition of Land in South East Queens Land Australia (n 148) 520.

<sup>174</sup> *ibid.*

<sup>175</sup> *ibid.*

<sup>176</sup> Keith S. ‘Critical Valuation issues on Compensation in Compulsory Purchase (n 151), 616.

<sup>177</sup> Daniel W/Gebriel, ‘Land Valuation for Expropriation in Ethiopia: Valuation Methods and Adequacy of Compensation,’ 7th FIG Regional Conference, Spatial Data Serving People, Land Governance and the Environment, Building the Capacity Hanoi, Vietnam, (October 2009).

<sup>178</sup> George Krzeczunowicz, ‘The Ethiopian Law of Compensation for Damage’, (Addis Ababa University, Faculty of Law, 1977), 41.

<sup>179</sup> *ibid* 34.

mitigation, optional limitation and ‘penalty’ aggravation.<sup>180</sup> It has been said that ‘The Ethiopian system tackles these exceptions, which are qualified by various policy reasons, by legislations rather than leave them to the certain judicial experiments characteristic of many foreign jurisdictions.’<sup>181</sup> In the words of George Krzeczunowicz, expropriation is one of the instances where the law provides for compulsory mitigation. Although the Civil Code’s section on expropriation (Arts. 1460-1488) protects the expropriated owner’s rights to compensation, ‘the amount of compensation is restricted by the three sub articles (Arts 1474(1), 1475(1), and 1476), which seem to be neither well understood nor fully applied.’<sup>182</sup> In the first place, Art. 1474 (1) of the C.C which reads ‘The compensation is equal to the amount of the present and certain damage caused the expropriation.’<sup>183</sup> Thus it limits compensation to present and certain damage.

This in turn has implication that, future loss is not compensable although certain to occur, and (ii) uncertain harm (loss of a likely opportunity for a higher price sale) is not compensable although presently incurred.<sup>184</sup> Secondly, Art 1475 (1), which said to be incomplete and distorted in its English version by G. Krzeczunowicz and suggested the French master-text to be better as quoted ‘In its Valuation, the committee takes into account the party’s prior consent declarations to the administration regarding the value of the property or rights expropriated’<sup>185</sup> said to have the following limitation. If in prior declaration made to the administration the claimant valued his property at less than its normal price, he is no more entitled to the latter. It is argued that ‘the Appraisement committee or the court can, in its valuation, take him at his own word despite that his prior declaration was not made for expropriation purposes but, e.g., in order to pay a low rate or transaction tax which, of course indicates unaware of foreign legal systems.’<sup>186</sup>

In the third place, (art.1476 (2)), this provides that ‘the appraisement committee takes no account of the speculative appreciation of the property caused by the announcement of the public works.’ After a ‘declaration of public utility’ (art.1463) is made with respect to a public works

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<sup>180</sup> Girma Kassa, Issues of expropriation, (n 12) 70.

<sup>181</sup> Ibid 79.

<sup>182</sup> George Krzeczunowicz, ‘The Ethiopian Law of Compensation for Damage’ (n 178), 172.

<sup>183</sup> George Krzeczunowicz believes that the English Version of this sub article is partly distorted and he quoted the French master text of the part.

<sup>184</sup> George Krzeczunowicz, ‘The Ethiopian Law of Compensation for Damage’ (n 172), 173.

<sup>185</sup> ibid 174.

<sup>186</sup> In foreign systems, the rules regarding expropriation are found in public rather than private law legislations

project requiring expropriation, the price of contiguous properties often increases before the condemned immovable are determined art.1466, appropriated art.1467 and appraised (art.1473). On the other hand, it's on the immovable's value before the initial declaration announcing the public works that the compensation of the expropriated owner is based. Therefore, the latter loses the added value which the non-expropriated contiguous owners retain.

On the other hand, the FDRE Constitution requires the government to pay compensation 'commensurate to the value of the property'<sup>187</sup> taken of course, without defining what constitutes 'commensurate.'<sup>188</sup> The Civil Code of Ethiopia adopts principle of indemnity by stating that 'the amount of compensation or the value of the land that may be given to replace the expropriated land shall be equal to the amount of the actual damage caused by expropriation.'<sup>189</sup> Thus, the implication of this provision is that the holder must be indemnified for the whole loss he has suffered due to expropriation save the limitation discussed so far.

In this regard the current rural and urban land proclamations tried to give significant concerns as to the issue of compensation and the principle of market value in Ethiopia. As per the provisions of the federal rural land administration and use proclamation the holder of rural land who is evicted for public purpose shall be given compensation proportionate to the development he has made on the land or property acquired or shall be given substitute land thereon.<sup>190</sup> Likewise, the former lease proclamation also states that the lease-hold possessor shall be paid commensurate compensation.<sup>191</sup> In similar vein, the federal expropriation proclamation states that 'the amount of compensation for property situated on the expropriated land shall be determined on the basis of replacement cost of the property.'<sup>192</sup> At the same time as per the regulation No.135/2007 the amount of compensation for a building shall be determined on the basis of the current the current cost per square meter or unit for constructing a comparable building.<sup>193</sup> Therefore, it is understood

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<sup>187</sup> The FDRE Constitution, art.40 (8).

<sup>188</sup> The common dictionary meaning of the word commensurate is 'equal', 'appropriate' or 'adequate.'

<sup>189</sup> The Civil Code of Empire of Ethiopia, Negarit Gazette Extraordinary, Proclamation No.165/1960, Art.1474 (1) and see also 1475 (2). (herein after, The Civil Code of Ethiopia)

<sup>190</sup> The FDRE Rural Land Administration and Land Use Proclamation (n 58) Art.7 (3).

<sup>191</sup> The Federal Lease holding Proclamation No.272/2002, art.15 (3).

<sup>192</sup> The FDRE Expropriation Proclamation, art.7 (2).

<sup>193</sup> Payment of compensation for property situated on Land Holding Expropriated for Public Purposes, Council of Ministers Regulation No.135/2007, (n 134) Art.33(1).

that the cumulative readings of the words and phrases used in these legislations such as ‘commensurate’, ‘proportionate to’, ‘replacement cost’ and ‘on the basis of the current’ envisages the fact that the land holder should be indemnified on the basis of market value.<sup>194</sup>

Accordingly, the SNNPRS Constitution states that, ‘subject to the right of private ownership of property, the government may expropriate, on account of public purpose, private property subject to advance payment of compensation commensurate to the value of the expropriated property.’<sup>195</sup> In addition to this the SNNPRS rural land proclamation No.110/2007, which is a proclamation to amend the regional government land administration and use proclamation No.53/2003, also provides ‘Holder of rural land who is evicted for purpose of public benefit shall be given compensation in advance proportional to the development he has made on the land and the property acquired and shall be given other land.’<sup>196</sup> In sum, the wordings of the above legislations affirm the argument that the principle of indemnity is employed under the federal as well as regional laws.

### **3.6. The Notions of ‘Just’ and ‘Commensurate’ Compensation**

It is a common fact that payment of compensation is the most important precondition for expropriation in laws governing the subject of expropriation in different countries of the world. However, the terms used in different legislations differ according to the type of the legislations and the question rests on the amount of compensation.<sup>197</sup> For instance, compensation, fair compensation, just compensation, reasonable compensation, adequate compensation or commensurate compensation are among the common terms used to refer to the compensation payable up on expropriation.<sup>198</sup>

The phrase ‘just compensation’ is used in the Fifth Amendment of the United States constitution. It states in its relevant part that ‘private property shall not be taken for public use

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<sup>194</sup> *ibid* (n 12), 72

<sup>195</sup> The Southern Nations Nationalities Peoples Regional States Constitution, Debub Nigat Gazetta, Year 1, Number 1, Art.40(8) (herein after, The SNNPRS Constitution)

<sup>196</sup> *ibid* (n 19) Art.7(3)

<sup>197</sup> Girma Kassa ‘Issues of Expropriation, (n 12) 73.

<sup>198</sup> Daniel W/Gebriel, ‘Compensation during Expropriation,’ in Muradu Abdo’s (Eds. (n 154) 203.

without just compensation.<sup>199</sup> However, this provision does not forbid expropriation of private property rather it is designated to secure in the event of expropriation. Then what does just compensation mean? The fundamental principle that guides valuations under expropriation laws in all Western countries and most developing countries is the payment of ‘fair market price’ (or market value).<sup>200</sup> Thus, ‘Just compensation’ is the market value of the property taken, or so the courts have held; the owner ordinarily receives nothing for inconvenience and sentiment.<sup>201</sup> In USA, compensation as a principle paid in money while Market value is generally taken as a test for the existence of just compensation.<sup>202</sup> Thus, Market value is defined as:

‘the most probable price, as of a specified date, in cash, or in terms equivalent to cash, or in other precisely revealed terms, for which the specified property rights should sell after reasonable exposure in a competitive market under all conditions requisite to a fair sale, with the buyer and seller each acting prudently, knowledgeably, and for self-interest, and assuming that neither is under undue duress.’<sup>203</sup>

We have seen that under the indemnity principle, the measure of compensation where all of the person’s land is taken is the fair market value of the property as of the time of the taking.<sup>204</sup> yet, the measure may be modified where only a part of the land is taken, which is as follows, Fair market value of the portion taken plus damages to the part not taken less any special benefits to the land not taken, this is the ‘value plus damages’ rule.<sup>205</sup>

As to the practice and experience of the United States’ courts shows that market value can be seen from two points. Firstly, in what it is termed as the ‘willing buyer-willing seller,’ test, the market value of land is the amount that the property would be reasonably worth on the market in

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<sup>199</sup> B. Burke, A.M. Burkert and R.H.Hermhoz, ‘Fundamentals Law of Property,’ (2<sup>nd</sup> ed. Lexis nexis), Bathew Bender and Company Inc., 2004) 770.

<sup>200</sup> Kitay M.G ‘Land Acquisition in Developing Countries: Policies and Procedures of the Public Sector,’ A Lincoln Institute of Land Policy Book, Oelgeschager, Gunn & Hain, Publishers, Inc. (1985), USA ISBN0-89946-192-1, 50

<sup>201</sup> Harvey Yates, ‘Condemnation in the USA and Venezuela: Comparative legal study,’ Lawyer of the America cites Roberts, Land Use Planning, (1971), 7-157.

<sup>202</sup> *ibid.*

<sup>203</sup> Appraisal Institute, ‘The Appraisal of Real Estate,’ (2001), Appraisal Institute, Chicago, Illinois, 12th ed. ISBN 0-922154-67-8, p.22 also cited in Daniel Weldegebriel, ‘Land Rights and Expropriation in Ethiopia 203-204.

<sup>204</sup> Daniel W/Gebriel, ‘Compensation during Expropriation,’ in Muradu Abdo’s (Eds.), (n 154) 204.

<sup>205</sup> R.W Wright and M. Gitelman, ‘Land Use in a Nut Shell’, 2000, 4<sup>th</sup> ed., West Group, St. Paul, Minn, ISBN, 157

a cash sale to a willing buyer if offered for sale by a prudent and willing seller and as such the buyer would not pay more than the value of his expectation from the use of the land.<sup>206</sup> Secondly, according to ‘the highest and best use’ rule, the price offered must be what a reasonable buyer would pay for the highest and best use of the land.<sup>207</sup> Accordingly, at present, in the United States, the fair market value of the land for its highest and best available use is said to be the standard measure of compensation, which indicate the payment of high amount of compensation.<sup>208</sup> Hence, just compensation means the fair market value of the property taken at the time of taking. It is worth noting that market value is not the sole measure of just compensation for there are situations where this standard is inappropriate; particularly, when the market value becomes too difficult to find or its application results in manifest injustice to the owner of the property or the public.<sup>209</sup>

Under the Ethiopian laws, the phrase ‘commensurate compensation’<sup>210</sup> is employed instead of ‘just compensation. The ordinary dictionary meaning of this word ‘commensurate’ is ‘equal’, ‘proportionate’ or ‘adequate’, which nearly means ‘just’. On the other hand, it is argued that the absence or presence of words like ‘just’, ‘fair’ or ‘commensurate’ cannot cause any substantive change on the concept of compensation and the word ‘compensation’ can fully stand without such adjectives.’<sup>211</sup>

In a similar vein, it has been asserted that ‘since the idea of compensation itself implies a full and complete recompense, the word ‘just’ apparently was added in order to emphasize the equality required of the exchange’<sup>212</sup> and ‘these words are merely epithets rather than qualifications and add nothing to meaning.’<sup>213</sup> Thus, accordingly, different adjectives added to the word compensation are there to give emphasis, rather than having separate legal significance. Similarly, some scholars argued that ‘In the Ethiopian laws also, omission from or addition to the

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<sup>206</sup> Daniel W/Gebriel, ‘Compensation during Expropriation,’ in Muradu Abdo’s (Eds. (n 154), 204.

<sup>207</sup> Harvey Yates, ‘Condemnation in the USA and Venezuela: Comparative legal study, (n 201) 157.

<sup>208</sup> Robert Kratovil and France Harrison Jr., ‘Eminent Domain: policy and concept, (n 162), 616.

<sup>209</sup> *ibid.*

<sup>210</sup> The FDRE Constitution, art.40 (8).

<sup>211</sup> Daniel W/Gebriel, ‘Compensation during Expropriation,’ in Muradu Abdo’s Eds. (n 154) 206.

<sup>212</sup> Alabama Section, Eminent Domain: A Survey of Alabama Law’, Alabama Law Review, Vol. 28, (1976), 418.

<sup>213</sup> Sullivan R.M, ‘Eminent Domain in the United States: An Overview of Federal Condemnation Proceedings’, In G.M. Erasmus (Ed.), ‘Compensation for Expropriation: A comparative Study’, St. Edmund Hall, University of Oxford Vol. I, (1990), 166.

term ‘compensation’ words like appropriate, commensurate, fair or just would not change the meaning of compensation as it is understood elsewhere.’<sup>214</sup> Some writers argue that, however, that the presence of the adjectives like ‘just,’ ‘fair’, ‘adequate’ or ‘commensurate’ before the word compensation plays crucial role in setting a benchmark to determine the amount, mode and even time of payment of compensation. This is because it qualifies the word ‘compensation’ in such a way that compensation should be ‘just’ not only in case of payment (i.e. in cash or in kind) but also in the case of timely payment for both parties.

To take an example, how could the payment of compensation be ‘just’ if it is not paid timely or promptly? After all, if the adjectives such as ‘just’, ‘commensurate’, ‘appropriate’, ‘fair’ are there only to add emphasis, then why the constitutions of many countries<sup>215</sup> employ such terms? Are such adjectives there only to emphasize that compensation should be paid? It doesn’t seem so. To a certain extent, however, these words have their own roles in determining the amount, mode and time of payment of compensation which go beyond adding mere emphasis.

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<sup>214</sup> Daniel W/Gebriel, ‘Compensation during Expropriation,’ in Muradu Abdo’s Eds. (n 154) (n 152), 206.

<sup>215</sup>For instance, the US Constitution requires ‘just compensation’ for all takings of private property (US Constitution, Amendment V). The Philippine Constitution similarly requires that ‘payment of just compensation must be made’ (Philippine Constitution, Art. III & 9). Brazil’s Constitution also contains a ‘just compensation’ clause (Brazil Constitution, Art. 153, Para. 22 (amendment 1). In Cambodia, the Constitution mandates that the state make “fair and just compensation” for taking possession of land from any person (Cambodian Constitution, Art. 44). Some countries have what appears to be a milder constitutional requirement. In the Peoples’ Republic of China, not until 2004 was the Constitution amended to require the state to make ‘reasonable compensation’ for land expropriation (The People’s Republic of China Constitution amendment, art. 10 (2004)). Before the amendment, the Constitution merely required the state to provide ‘compensation’ for land takings. Based on constitutional requirements, many countries have developed standards for determining ‘just compensation.’ Most high and middle-income countries with well-functioning legal systems have adopted ‘fair market value’ of the expropriated asset as the standard for determining compensation for state expropriations. See also Girma Kassa, Issues of expropriation.

## **CHAPTER FOUR**

### **EXPROPRIATION OF PERI-URBAN LANDS IN SNNPRS: EXPERIENCE FROM HADIYYA ZONE**

#### **4.1. Introduction**

This chapter examines the experiences regarding expropriation of peri-urban lands and the assessment and adequacy of compensation. In addition to this, the author also tried to address issues in relation to the application of public purpose. This chapter also begins with the brief review of relevant laws for valuation and assessment of compensation for peri-urban lands compulsorily taken for public purpose in Hadiyya Zone Hossana and Shone Towns respectively. It follows through the analysis of some cases of expropriation with specific reference to exercise of the power of expropriation of peri-urban landholdings, the concept and application of public purpose by the authorities and its determination, judicial review mechanism, if any, the tasks and duties of competent authorities, and procedures for expropriation of landholdings. Next to this, this paper critically analyses issues related to assessment of compensation for expropriation of peri-urban landholdings with reference to the rights of compensation for expropriation of use right and its determination i.e. valuation system, mandate to value and the basis of compensation. In addition to this, this chapter deals with issues related to calculation of displacement compensation in peri-urban landholdings and the determination of monetary compensation for permanent and temporary termination of use rights the complexity of land to land compensation in SNNP Regional State in General and Hadiyya Zone in particular.

## **4.2. Expropriation of Peri-urban Landholdings in Hadiyya Zone Hosanna and Shone Towns**

This section of the paper analyzes the issues related to the manner and causes of expropriation in light of the applicable laws and the practice in Hadiyya Zone.

### **4.2.1. The power to expropriate landholdings**

Expropriation of landholdings for public purposes and payment of compensation proclamation authorizes Woreda or urban administration to expropriate landholdings in SNNPRS in general and Hadiyya Zone in particular. The proclamation states that ‘A woreda or an urban administration shall, upon payment in advance of compensation in accordance with this proclamation, have the power to expropriate rural or urban landholdings for public purpose where it believes that it should be used for a better development project to be carried out by public entities, private investors, cooperative societies or other organs or where such expropriation has been decided by the appropriate higher regional or federal government organ for the same purpose’.<sup>216</sup> In accordance to this law, the Hossana and Shone town municipality have been authorized to expropriate rural landholding for public purpose where it believes that such land should be used for a better development projects to be carried out by public entities, private investors, cooperative societies or other organs, or where such expropriation has been decided by the appropriate higher regional or federal government organ for the same purpose. These competent authorities determine and decide the expropriation to be in the public interest when they believe that a land should be used for a better development project to be carried out by public entities, private investors, cooperative societies, or other organs.<sup>217</sup> In the same manner, expropriation of property right can be decided by the appropriate regional or federal government organs.<sup>218</sup> This can be further explained as a decision to expropriate property right of private individuals is passed by either of these organs, no one may question the purpose as to whether or not to constitute ‘public purpose’ in fact, as it is simply presumed that taking is for ‘public purpose’.<sup>219</sup>

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<sup>216</sup> The FDRE Expropriation proclamation, (n 8) Art.3 (1).

<sup>217</sup> *ibid.*

<sup>218</sup> *ibid.*

<sup>219</sup> *ibid.*

Nonetheless, it would not be wrong to assume that this power could be abused since public officials are not free of wrong. The determination that solely based on the ‘belief of the competent authorities’ and the fact that it is for carrying out of ‘better development project’ is susceptible to abuse of such power. This is because; the law doesn’t provide a clear standard or meaning as to what truly constitutes ‘a better development project.’ Hence, the question possibly be whether or not regular courts in Ethiopia have the power to determine what has been decided by the competent authorities in fact constitute a public purpose or not. It is also better to ask whether there is a prohibition of such a matter to be heard by courts in the relevant laws of the country. The current federal as well as the regional land laws are silent on the jurisdiction of courts to review the administrative decisions with respect to public purpose requirement. Thus the civil code gives the high court exclusive jurisdiction to entertain suits regarding ‘expropriation and collective exploitation of property.’<sup>220</sup> Since this provision is not conflicting with the proclamation nor does it deal with the matters provided for under the proclamation, its applicability cannot be challenged.<sup>221</sup>

It has also been discussed that land should not be expropriated except for genuine causes of public purposes. Hence, the jurisdiction of courts must be extended to determine whether what has been decided by the public officials really comprises public purpose to serve the interest of justice. This will be very important in protecting the rights of citizens against abuse of power by the government authorities. Since, article 15(2) (e) of the civil procedure code is not expressly repealed by the subsequent legislation, its applicability should not be challenged. However, the government authorities believe that the decision of the competent authorities will be final and regular courts do not have any legitimate power to review such decision.<sup>222</sup> The practice on the ground also shows that farmers whose landholdings have been expropriated do not believe they have the right to appeal against decision of the administrative authorities in relation with public purpose and its implementation before regular courts.<sup>223</sup> The authorities also believe that allowing courts to entertain such cases may bring delay of the development projects which in turn affects

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<sup>220</sup> The Civil Code of Ethiopia, (n 189)

<sup>221</sup> The Federal Courts Proclamation No.25/1996, art.37 (2).

<sup>222</sup> Interview with Desta Tesfaye, Mayor of Shone Town Municipality, (Shone, March 12/2018).

<sup>223</sup> Focus Group Discussion, two, held at Arancha sub city, Shone Town Municipality, (Shone, Arancha, March 13/2018).

the investors.<sup>224</sup> However, this may not a strong reason since it is possible to facilitate a separate bench within the regular courts so as to give speedy justice.<sup>225</sup>

The other problem regarding public purpose and expropriation of peri-urban landholdings in Hadiyya zone Hossana and Shone Towns is that the land taken from the Farmers and given to the private individuals under the guise of investment is not cultivated in the time provided.<sup>226</sup> A number of private individuals have taken land from Hossana and Shone town administration for different investment purposes but in most cases the expropriated land has not been utilized for the intended projects in the manner and time agreed in the lease agreements.<sup>227</sup> The limitations on the financial capacities of the investors are attributable for the improper implementation of the lease agreement.<sup>228</sup> Therefore, the capacity of the investors is not properly questioned by the government.<sup>229</sup> The expropriation was made under the guise of fulfillment of more important purposes by the decision of the government authorities. There have been great corruption and abuse of power in relation to expropriation and public purpose. The investors take the land not to the development purpose as agreed, but they sale it for a better price.<sup>230</sup> Thus, the practice shows the existence of land sale which against the provisions of the constitution which strictly prohibits sale and exchange of land. Some evidences also show that the lease agreements concluded among the Hossana Municipality and Hayida Licha Real State which the real state project was committed to construct houses was terminated before performance of the contract.<sup>231</sup> The implementing agency did not take any measure against the investors.<sup>232</sup> This could be one of the failures of expropriation purposes.

Some information taken from the authorities of Hossana municipality shows the lack of supervising capacity. According to the affected farmers in Hadiyya zone, the government has been

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<sup>224</sup> Interview with Desalegn Shamebo, the president of Shone Town Municipality First Instance Court and Judge, (Shone, March 20/2018).

<sup>225</sup> Interview with Belete Bachore, A civil Bench judge of the High Court, (Hossana, March 22/2018).

<sup>226</sup> Confidential Interview with Hossana Municipal officers, (Hossana, March 23/2018).

<sup>227</sup> *ibid.*

<sup>228</sup> *ibid.*

<sup>229</sup> Interview with Lailago Somano, a Farmer in Ambicho Gode Kebele, (Hossana, Ambicho Gode kebele, March 23/2018).

<sup>230</sup> Confidential Interview with Hossana Municipal officers, (n 224).

<sup>231</sup> *ibid.*

<sup>232</sup> *ibid.*

selling their landholding in the form of lease and they observed the land taken from them as little as 80,000 birr is resold for more than 800,000 birr by the individuals who took them under the guise of undertaking the development projects.<sup>233</sup> The farmers also stated that the government officials working under the issue of rural land expropriation have been corrupted by individuals who exploited the land expropriated for public purposes.<sup>234</sup> The farmers say that they are displaced from their land holdings without sufficient compensation that may help them reinstate to their original life they lived before.<sup>235</sup> Some affected farmers were highly aggrieved and sadly expressed as they are left without anything while many individual investors became rich by trading on their landholding expropriated.<sup>236</sup> Due to the growing discontents, almost all peri-urban farmers have reacted to the situation by preemptory informal sale of their Landholding.<sup>237</sup>

### **4.3. Right to Compensation for Expropriation of Rural Land Use Rights**

#### **a) The case of Mola Fanta Vs Shone Town Municipality and Adissie Agafari(court File No.00120)<sup>238</sup>**

This case started in the first instance court of Shone Municipality, the claimant Mr. Mola Fanta accused the Defendant Shone Town Municipality and Mr. Adissie Agafari for failing to pay compensation for his lost land and the for his permanent improvement made on the land and the properties situated on the land. Thus, the Shone Municipal First Instance Court, after hearing the evidences and allegations of the claimant, ordered the defendant Shone Town Municipality to pay compensation as per the provisions of SNNPRS regulation No.123/2015 and Directive No.08/2015.<sup>239</sup>

#### **b) W/ro Detame Vs Shone Municipality Shone First Instance (Court File No.00211)<sup>240</sup>**

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<sup>233</sup> Focus Group discussion one, held at Ambicho Gode kebele, Hossana Town Municipality, and Arancha Kifle Ketema, March 25/2018 and March 13/2018, respectively

<sup>234</sup> *ibid.*

<sup>235</sup> *ibid.*

<sup>236</sup> *ibid.*

<sup>237</sup> *ibid.*

<sup>238</sup> Mola Fanta Vs Shone Town Municipality and Ato Adissie Agafari, Shone Town First Instant Court, File No.00120.

<sup>239</sup> *ibid.*

<sup>240</sup> W/ro Detame Galalo Vs Shone Town Municipality, Shone First Instance Court, File No.00211.

In this case Claimant W/ro Detame Galalo asked the court enforce payment of compensation which she is denied by the Shone Town Municipality. Thus, W/ro Detame claims that ‘I have more than half hectares of Land registered as a rural land in my name which I succeeded from my deceased father.’ However, the Shone Town Municipality denied payment of compensation for the reason they have compensated my husband for the land they expropriated which is registered on his own name as a rural land. But, the court dismissed the claims of W/ro Detame declaring that the claim is against the SNNPRS Directive No.08/2015.<sup>241</sup> However, the defendant immediately appealed to higher court aggrieved the decisions of the lower court.

**c) W/ro Detame Galalo Vs Shone Town Municipality Hadiyya Zone High Court Shone Division (Court File No.1082)<sup>242</sup>**

This case is an appeal provided against the decision of the lower court which is decided in favor of the defendant. At this time the case is pending in the High Court, in case the claimant was ordered to bring the evidences showing her right over the expropriated property such as evidences showing she has succeeded the peri-urban land in question.<sup>243</sup>

**d) Ato Tariku Birega Vs Shone Municipality, Shone First Instance Court (Court File No.00175)<sup>244</sup>**

Ato Tariku Birega claimed the court to enforce adequate payment of compensation in which Shone Municipality expropriated 629 square meters of his holding denied of payment of compensation. In this case Shone Town First instance court ruled out the expropriation decision of the Shone Municipality as a trespass because the defendant couldn’t take part in the court proceedings and doesn’t brought any evidences showing payment of compensation to the claimant. So, court decided in support of the claimant.

**e) Pending cases in the first instance court of Hossana Town**

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<sup>241</sup> Ibid.

<sup>242</sup> W/ro Detame Galalo Vs Shone Town Municipality, Hadiyya Zone High Court Shone Division, court file No.1082.

<sup>243</sup> ibid.

<sup>244</sup> Ato Tariku Birega Vs Shone Town Municipality, Licha Sub City, Shone Town First Instance Court, File No.00175.

➤ **Abayneh Desta Vs Hossana Town Municipality Gofer Meda SubCity Court File No.18063<sup>245</sup>**

The case of Abayneh Desta Vs Hossana Municipality shows that the Hossana town Municipality expropriated the holding of the claimant without paying adequate amount of compensation for the permanent improvements made by the individual and the lost land. At this time the case is pending in which court ordered the claimant relevant evidences to be heard.

➤ **Serkalem Mekonin Vs Hossana Town Municipality Court File No.18164<sup>246</sup>**

The case of Serkalem Vs Hossana Town Municipality is also a pending case in which the claimant in her pleadings provided that she was not even compensated let alone the issue of adequate compensation. Thus, court again ordered both parties to bring their respective evidences in front of court.

➤ **Bidiko Sadamo Vs Hossana Town Municipality Court File No.17824<sup>247</sup>**

The case of Bidiko Vs Hossana Town Municipality is also the one in which the claimant asked the court to enforce payment of commensurate compensation for the property he has lost due to expropriation. Thus, the case is pending and adjourned for the courts final decision.

➤ **Wendimu Tsegaye Vs Hoassana Town Municipality Court File No.17328<sup>248</sup>**

The other case is Wemdimu Tsegaye Vs Hossana Town Municipality, the claimant asked the court to enforce payment of adequate amount of compensation which the denied to pay for labour and improvements made on the land. The case is also pending for hearing the evidences of respective parties.

The FDRE constitution has explicitly guaranteed the owner of property that compensation ‘commensurate’ to the value of property must be due in advance when government expropriates private property for public purpose.<sup>249</sup> This is also in line with the principle of compensation which states Damages equal to Damage.<sup>250</sup> Since private ownership of land is clearly prohibited by the

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<sup>245</sup> Abayneh Desta Vs Hossana Town Municipality, Goffer Meda Sub City, Hossana Town First Instance Court File No. 18063.

<sup>246</sup> W/ro Serkalem Mekonen Vs Hossana Town Municipality, Hossana Town First Instance Court File, No.18164.

<sup>247</sup> Ato Bidiko Sadamo Vs Hossana Town Municipality, Hossana Town First Instance Court, File No.17824.

<sup>248</sup> Ato Wendimu Tsegaye Vs Hossana Town Municipality, Hossana Town First Instance Court, File No.17328.

<sup>249</sup> The FDRE Constitution, Art.40 (8).

<sup>250</sup> The Civil Code of Ethiopia, Art.2090 (1) and 2091.

constitution,<sup>251</sup> it seems to exclude to exclude land from the sphere of compensable interest. According to the provisions of the constitution,<sup>252</sup> it might be said that the right to compensation for the expropriation of landholding may not extend to land itself except to immovable property one builds on it and to the permanent improvements s/he brings about on it by her/his labour or capital.<sup>253</sup> Accordingly, the FDRE Rural Land Administration and Land Use Proclamation No.456/2005 provide for the duration of rural land use right in such a way that ‘the rural land use right of peasant farmers, pastoralists and semi-pastoralists shall have no time limit.’<sup>254</sup> Consequently, the life time use right over the rural lands may not be restricted except in case where the land is required for more important public uses.<sup>255</sup> Even though the rural and urban land is owned by the public, it does not mean that private holders have no right over their possession.

In addition to this, the proclamation also provides that ‘Holder of rural land who is evicted for purpose of public use shall be given compensation proportional to the development he has made on the land and the property acquired, or shall be given substitute land thereon.’<sup>256</sup> This provision gives inference that it does not entail the implication that landholder may claim compensation for termination of use right itself as the provision states that compensation might be claimed for the development made on the land by the holder and property acquired on the land. Moreover, the right to claim substitute land in form of compensation is given as an alternative to the development made on the land and private property acquired on the land. It is also vague whether the law provides for the right to compensation for the termination of use right like in the case of expropriation of private property for the public purposes. Additionally, it does not give an implication that rural landholders have the right to claim compensation commensurate to the use right terminated due to expropriation.

The current relevant legislation of SNNPRS Proclamation 110/2007 provides that ‘Holder of rural land who is evicted for purpose of public benefit shall be given compensation in advance

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<sup>251</sup> The FDRE Constitution, Art.40 (3).

<sup>252</sup> *ibid* Art.40 (2 & 8).

<sup>253</sup> *ibid* Art.40 (7).

<sup>254</sup> *ibid* Art.7 (1).

<sup>255</sup> The SNNPRS Land Administration and Utilization Proclamation, art.7 (3).

<sup>256</sup> The FDRE Rural Land Administration and Land Use Proclamation, Art.7(3).

proportional to the development he has made on the land and the property acquired and shall be given other land.<sup>257</sup> As per the provision of the law, the right to compensation is provide for the development he has made on the land and the property acquired and the law provides for equivalent land to be awarded for the dispossessed.<sup>258</sup> However, it is not noticeable whether compensation should be paid for the termination of lifelong use rights and in light of the constitutional guarantee against dispossession of such right. Furthermore, the mode of compensation provided in the provision may also support this argument in that the right to substitute land may fully compensate the dispossessed rural landholder including the use right terminated beforehand.

Accordingly, the SNNPRS rural land administration and use proclamation provides for land to land compensation as a matter of principle to be a major form of compensation in case of rural land expropriation in the region.<sup>259</sup> Nevertheless, this form of compensation may not be possible due to the absence of substitutable land in the region. The law also states that compensation for rehabilitation must be paid if it is not possible to compensate dispossessed landholders by giving substitute land.<sup>260</sup> Accordingly, compensation for rehabilitation is the last resort where it is difficult to compensate rural landholders dispossessed due to expropriation. It seems that this form of compensation is provided as an alternative to land to land compensation, and we can argue that such compensation should be based on the indemnity principle with an objective of fully reinstating the dispossessed landholder to their original position.

In broad sense, the provisions of the FDRE and the SNNPRS constitution is not clear as whether they recognize use right over rural land as a compensable interest during expropriation of such land. Thus, it seems plausible to argue that peasants and pastoralists may claim compensation not only for private properties on the land and for the permanent improvements but also for the termination of use right itself. In addition to this, despite the vagueness of the issue whether the use rights is compensable interest or not, both regional and federal rural land laws provide for the right to compensation for termination of rural landholding. In accordance to the FDRE Constitution, the federal government is vested the power to enact laws for the utilization and

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<sup>257</sup> The SNNPRS Land Administration and Utilization Proclamation, art.7 (3).

<sup>258</sup> *ibid.*

<sup>259</sup> *ibid.*

<sup>260</sup> The FDRE Rural Land Administration and Land Use Proclamation (n 58) art.7(3)

conservation of land and other natural resources<sup>261</sup> while states are authorized to administer land and other natural resources in accordance with federal laws.<sup>262</sup> In addition to this, the rural land administration proclamation is applicable to any rural land in Ethiopia.<sup>263</sup> It also further provided that ‘where the rural landholder is evicted by federal government, the rate of compensation would be determined by the federal land administration<sup>264</sup> and where the rural landholder is evicted by regional governments, the rate of compensation would be determined based on the rural land administration laws of regions.’<sup>265</sup> In this manner, the law presupposes the enactment of the regional expropriation laws which will be modeled after the federal laws. However, the SNNPRS has not issued such regulation for the implementation of the federal expropriation proclamation, even though the proclamation empowers the regions to issue such regulation.<sup>266</sup>

In addition to this, the preamble of the regulation No.135/2007 provides it is sought to achieve the purpose of not only paying compensation in accordance with proclamation No.455/2005 but also to assist displaced persons to restore their livelihood.<sup>267</sup> Yet, the compensation to be paid for the expropriation of landholdings under the expropriation proclamation and its implementing regulation appears to be restricted to property situated on the land as the term compensation is defined as ‘payment to be made in cash or in kind or in both to a person for his property situated on his expropriated landholding.’<sup>268</sup> Therefore, this definition seems to exclude compensation for termination of use rights over rural landholdings. But, this proclamation also provides for ‘displacement compensation’ in such a way that ‘A rural landholder whose landholding has been permanently expropriated shall 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.’<sup>269</sup> This provision obviously points out that compensation must be paid not only for property situated on the land taken and permanent improvement made to the land but also for use right terminated which may constitute the third category of compensable

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<sup>261</sup> The FDRE Constitution, art.51(5).

<sup>262</sup> *ibid* art.52 (2) (d).

<sup>263</sup> The FDRE Rural Land Administration and Land Use Proclamation, art.4.

<sup>264</sup> *ibid*.

<sup>265</sup> *ibid*.

<sup>266</sup> The FDRE Expropriation Proclamation, art.14(2).

<sup>267</sup> Payment of compensation for property situated on Land Holding Expropriated for Public Purposes, Council of Ministers Regulation, Preamble.

<sup>268</sup> The FDRE Expropriation Proclamation art.2 (1).

<sup>269</sup> *ibid* Art.8(1).

interest during expropriation of rural landholding. One the concerned public official in Hadiyya zone provided that;

‘Because the SNNPRS has not yet issued an implementing regulation for proclamation No.455/2005, the payment of compensation for rural landholding in the regional state is being effected in accordance with relevant federal laws and Regulation No.135/2007 and basically regulation No.123/2015 and its implementing Directive No.08/2015 which is issued to implement the federal Lease holding proclamation no.721/2011.’<sup>270</sup>

The provisions of the civil code also provides that ‘the right to compensation is not only provided for the owner, but also the bare owner and usufructuary as well as any person who benefits by servitude on an immovable.’<sup>271</sup> The interview conducted with farmers adjacent to the Hossana and Shone town shows that there have been cases where the landholders were forced to relinquish their landholdings even before compensation is paid.<sup>272</sup> The practice in these areas reveals that some peasants have been forced to handover their landholding and they have been denied payment of compensation on time.<sup>273</sup> There are also times where farmers whose landholdings rights have been terminated have resisted the taking of their land; however, they were taken to jail being considered as anti-development.<sup>274</sup> In the mean time, such disputes were brought before Shone urban administration Court in which the court ordered the government authorities to pay the assessed amount of compensation immediately.<sup>275</sup> Provided that, peasants have a lifetime use right over their landholding and such right cannot be terminated except in case of expropriation for public interests upon payment of commensurate compensation. Thus, it sounds loud to conclude that, the rural as well as peri-urban landholding may not be terminated without advance payment of compensation.

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<sup>270</sup> Interview with Hossana and Shone Town municipal officials, Engineer Tekle Ayele, Shone Town Municipality Land Administration and Management, chief processor, (Shone, April 2/2018).

<sup>271</sup> The Civil Code of Ethiopia, (n 189) Art.1470.

<sup>272</sup> Interview with Desalegn Shamebo (n 224).

<sup>273</sup> W/ro Serkalem Mekonen Vs Hossana Town Municipality, see also the case of Bidiko Sadamo Vs Hossana Town Municipality.

<sup>274</sup> Interview with Desalegn Shamebo (n 224).

<sup>275</sup> *ibid.*

In a nutshell, the sole fact that land is publicly owned does not mean that its loss is not compensable. The cumulative readings of the FDRE Constitution,<sup>276</sup> relevant provisions of the Federal Rural Land Proclamation No.456/2005, the provisions<sup>277</sup> of Federal Expropriation of Landholdings for Public Purpose Proclamation, and the implementing regulations elucidate compensable interests are that a property situated on the land, permanent improvements on the land termination of use rights whether permanent or temporary.

#### **4.3.1. Basis and Amount of compensation**

In Ethiopia, some basics of valuating expropriated property is well defined in the expropriation proclamation 455/2005 and regulation number 135/2007. Thus, the expropriation proclamation tries to define for what a landholder is eligible to compensation.<sup>278</sup> Hence, the landholder is entitled to have the right to be compensated for the property situated on the land and permanent development to the land. The developments to the land may be any improvements like coffee trees that have been planted for permanent improvements. As per the expropriation proclamation the basis of compensation should be the replacement cost of the property<sup>279</sup>, which means the compensation given should cover the costs of reproducing an equivalent property. This can be further explained as factors such as the location of the property, access to infrastructure or other market conditions are not considered during the valuation of the property. Compensation paid for the termination of use right on the rural landholdings is assessed for three main compensable interests i.e. a landholder whose holding has been expropriated must be entitled to payment of compensation for his property situated on the land and for permanent improvements he has made to such land as well as for the termination of use rights itself.<sup>280</sup>

Thus, the law provides that, the amount of compensation for property situated on the expropriated land must be determined on the basis of replacement cost of the property.<sup>281</sup> In general, the replacement cost method values the expropriated property by determining the

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<sup>276</sup> The FDRE Constitution, Art.40 (8).

<sup>277</sup> The FDRE Expropriation Proclamation, cumulative reading of Art.7&8.

<sup>278</sup> The FDRE Expropriation Proclamation, art.7.

<sup>279</sup> *ibid* art.7(2).

<sup>280</sup> *ibid* cumulative reading of art.7(1) & art.8(1).

<sup>281</sup> *ibid* art.7(2).

replacement or reproduction cost of improvements and the market value of the land.<sup>282</sup> Therefore, this predominantly serves to value buildings as well as utilities, but not the land itself.<sup>283</sup> Accordingly, compensation for permanent improvement to land shall be equal to the value of capital and labour expended on the land.<sup>284</sup> Again it is stated as, ‘the cost of removal, transportation and erection shall be paid as compensation for a property that could be relocated and continue its service as before.’<sup>285</sup> in addition to this, the valuation formula for determining compensation for various properties and detail of prescription applicable there has been provided under regulation 135/2007.

Furthermore, in SNNPRS woreda and urban administrations have been adopted valuation formula for the assessment of the compensation for the expropriation of properties situated on the land on the basis of principles provided in the federal laws and the SNNPRS Regulation No.123/2015 and the implementing Directive No.08/2015 which were issued by the regional government to implement the federal Lease holding Proclamation No.721/2011. The last but not the least category of compensable interest to be analyzed under this section is displacement compensation which constitutes compensation for the termination of use right over rural landholding. Thus, the main objective of this section the paper is to analyze the adequacy of the amount of compensation paid for farmers in the peri-urban areas as they are highly affected by intensive expropriation of landholdings in the SNNP Regional State.

#### **4.3.2. Determination of Compensation**

The law has laid down the mechanisms and methods that facilitate the enforcement of constitutional right to compensation when it recognizes the expropriation of private property. On the other hand, it has enough enforcement mechanism in place with respect to expropriation and issue of adequate, effective and prompt compensation. Thus, the coming section is dedicated to show the techniques used to enforce the right of compensation i.e. valuation methods, modes and

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<sup>282</sup> Daniel W/Gebriel, ‘Compensation during Expropriation,’ in Muradu Abdo’s (Eds.) (n 154), 209.

<sup>283</sup> *ibid.*

<sup>284</sup> The FDRE Expropriation Proclamation, art.7 (2).

<sup>285</sup> *ibid* art.7 (5).

amount of payment of compensation during the expropriation rural landholdings in Hadiyya zone with specific reference to Hossana and Shone towns peri-urban areas.

#### **4.3.3. Valuation system and mandate to value**

The practices in Ethiopia, indicates that there is no independent and developed valuation system as well as professionals in the field of land valuation. The valuation process whereby compensation is fixed according to law is generally the most difficult, time consuming and litigated part of the expropriation process.<sup>286</sup> The federal landholding and expropriation proclamation states that ‘The valuation of property situated on land to be expropriated shall be carried out by certified private or public institutions or individual consultants on the basis of valuation formula adopted at the national level.’<sup>287</sup> The law assumes the existence of certified assessment professionals and a nationally adopted uniform formula for valuation, but it is a difficult task to find professional experts and uniform valuation formula in practice. In the interim, ‘the Ministry of Federal Affairs has been authorized to develop the capacity of a valuation committee, in collaboration with appropriate federal and regional government organs, until valuation experts and a nationally adopted uniform formula for valuation of property come in to existence in the country.’<sup>288</sup> Thus, provisionally, valuation should be carried out by committees composed of different experts of different backgrounds who have the relevant qualifications.<sup>289</sup> Although the Ministry of Federal Affairs has not given a clear direction in this regard, regions and federal governments have adopted or are adopting their own valuation formulas.

The federal, Expropriation and Valuation of Compensation Proclamation provides that ‘where the land to be expropriated is located in a rural area, the property situated thereon shall be valued by a committee of not more than five experts having the relevant qualification and to be designated by the woreda administration.’<sup>290</sup> Likewise, in SNNPRS, the valuation of property is being carried out by a committee of people. Similarly, the practice in Hossana and Shone Municipality shows that the compensation committee comprises five members constituting resident of the kebele who well knows the local situation, one expert (it could be surveyor,

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<sup>286</sup> Daniel W/Gabriel, ‘Compensation during Expropriation,’ in Muradu Abdo (Eds), 207.

<sup>287</sup> The FDRE Expropriation Proclamation, art.9 (1).

<sup>288</sup> *ibid* art.9(2).

<sup>289</sup> *ibid* art.9(2) .

<sup>290</sup> *ibid* art.10(1).

agronomist, civil engineer and economist), agricultural expert, and representative from bureau of land administration and kebele chairman.<sup>291</sup> Witnesses of uninterested party may also be present during the valuation of compensation.<sup>292</sup> Accordingly, the regional rural land administration authorities have been given a mandate to constitute members of the committee and to value the property. Likewise, the urban administration, municipality, is given the same power to designate members of a committee to value the property.<sup>293</sup>

#### **4.4. Compensation for displacement and loss of land in Rural and Peri-urban Areas**

The expropriation proclamation provides that people who are displaced due to expropriation in rural areas have the right to be compensated for loss of income from the land if they do not receive replacement land. Displacement compensation refers to a compensation to be paid for permanent or temporary expropriation of use rights over landholdings itself.<sup>294</sup> In SNNP Regional State displacement compensation is the most controversial issue in rural and peri-urban areas in the termination of use rights of over their landholdings i.e. the adequacy of the amount of compensation. This section analyzes the kinds of compensations given in the event of expropriation and its adequacy.

Thus, the basis of compensation is 10 times the yearly income from the land based on the average income from the last 5 years.<sup>295</sup> Therefore, our legislation does not consider the compensation for the value of land per se. this is due to the fact that all land in Ethiopia is publicly owned and there is no private ownership of the land and there is no land owner to be compensated. Preferably the landholder should be compensated with replacement land for the land lost in the expropriation process

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<sup>291</sup> Interview with Hossana and Shone Town municipal officials, (n 270).

<sup>292</sup> *ibid.*

<sup>293</sup> The FDRE Expropriation Proclamation, art.10 (2).

<sup>294</sup> Girma Kassa, Issues of Expropriation, (n 12), 99.

<sup>295</sup> The FDRE Expropriation Proclamation, art.8(1).

‘Where land used for growing crops or a protected grass or pastoral land is expropriated for public purpose, the possessor of such land shall, as much as possible, be provided with a plot of land capable of serving a similar purpose.’<sup>296</sup>

However, terms such as ‘as much as possible’ and ‘similar purpose’ make the definition vague. But still, the principal rule provides that expropriated land should be compensated with new land. On top of this, the landholder shall be compensated for the loss of income for the time it takes to get the new land to generate income.<sup>297</sup> On the other side, if it is not possible to get replacement land, the compensation should be determined according to the rule of ten times the average annual income from the land.<sup>298</sup>

#### **4.4.1. Mode of payment**

The current applicable laws and practices reveal that displacement compensation may be given in terms of money, full or partial, or in terms of land-to-land compensation. Likewise, Proclamation No.455/2005 defines ‘compensation’ as payment to be made in cash or in kind or in both to a person for his property situated on his expropriated landholding.<sup>299</sup> Therefore, this section of the paper tries to see the basis and amount of compensation payable in cash (monetary) and or in kind (land to land compensation).

#### **4.4.2. Monetary compensation**

Monetary compensation is accepted as the formal mode of compensation in the legislations and highly practiced in the Peri-urban areas of Hadiyya Zone specifically, Hossana and Shone towns. Thus, monetary compensation is payable to termination of use rights, in addition to the property situated on the land and permanent improvements made to the land, in two cases; for permanent and temporary termination of such rights as will be valued in the coming section of the paper.

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<sup>296</sup> Payment of compensation for property situated on Land Holding Expropriated for Public Purposes, Council of Ministers Regulation, art.15.

<sup>297</sup> *ibid* art.16(1b).

<sup>298</sup> *ibid* art.16(2).

<sup>299</sup> The FDRE Expropriation Proclamation, art.2(1).

#### **4.4.3. Monetary compensation for permanent and temporary termination of use rights**

As per the land legislations of Ethiopia, compensation is paid to a landholder in respect of the property s/he owned on the land and the improvements s/he brought on the land, and a person who loses his/her holding rights on land perpetually because of the expropriation process is entitled to monetary compensation for his/her loss. Accordingly, the expropriation proclamation and its implementing regulations provided that, ‘A rural land holder whose land holding has been permanently expropriated shall, in addition to the compensation payable (for property and improvements made on the land) 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.’<sup>300</sup>

Rural and peri-urban lands may be required temporarily and might be expropriated accordingly by competent authorities. The instances of that may require temporary expropriation of landholdings could be for workers camp or transporting quarries during road construction, and a land close by big projects may prohibit a landholder from using it for farming and opening of alternative roads during the construction of the main road. Thus, the law provides the amount of compensation to be paid will be calculated in the following manner.

A rural landowner or holders of common land whose land holding has been provisionally expropriated shall, in addition to the compensation payable under article 7 of this proclamation, be paid until repossession of the land, compensation for lost income based on the average annual income secured during the five years preceding the expropriation of the land; provided, however, that such payment shall not exceed the amount of compensation payable under sub article (1) of this article.<sup>301</sup> There are also discontents as to the inadequacy of the amount of compensation in such conditions. The common problem facing the practice is that the expropriating body may not give it back in the same situation as it was before.<sup>302</sup> This difficulty is always prevalent in road

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<sup>300</sup> The FDRE Expropriation Proclamation, art.8(1) and Payment of compensation for property situated on Land Holding Expropriated for Public Purposes, Council of Ministers Regulation, art.16(3).

<sup>301</sup> The FDRE Expropriation Proclamation, art.8(2).

<sup>302</sup> Interview with Dr. Moges Eriso, agronomist in Hadiyya zone Badewacho Wereda, (Shone, April 10/2018).

construction companies since they tend to spoil and destroy the normal fertility of the land by mixing asphalt and other toxic substances that they used during the construction of the road.<sup>303</sup>

In SNNP regional state, particularly, Hossana and Shone Town Municipality, the peri-urban lands have been intensively expropriated for establishment of huge projects like Wachamo University and Industry Zone in Hossana and Dwelling areas in Shone Town. In such situations, farmers of the areas inevitably lose their landholding and the use right over it. Accordingly, the practice in SNNPRS shows the amount of compensation is fixed at ten years annual income, based on the average annual income of the previous five years.<sup>304</sup> Such form of fixing compensation has no reasonable legal justification and seems arbitrary and it does not conform to any established practices and widely accepted valuation methods and practices.<sup>305</sup> Because of lack economic or legal justification, this provision became a source of discontent, complaint and frustration for most of the farmers who lose their landholding because of expropriation.<sup>306</sup>

Accordingly, it has been said that the arbitrary selection of ten years annual income is taken as a source of discontent is explained as ‘the life expectancy in Ethiopia is more than 50-60 years as per the recent reports but not limited to ten years.’<sup>307</sup> Hence, it seems reasonable to argue that the perpetual rights should not be less than a half of 60 years.<sup>308</sup> Consequently, this amount of compensation is not adequate enough when compared to the loss sustained by the farmers.<sup>309</sup> Hence, assuming land is the life blood of the farmer, and the use right is for life time, the calculation of compensation should be comparable with the benefit lost for lifelong time.<sup>310</sup>

In addition to this, calculation of compensation is measured on the basis of the average annual income over the past five years is also another vague term.<sup>311</sup> It is not also clear as to why not the average annual income over the past five years will be calculated on the basis of the present

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<sup>303</sup> *ibid.*

<sup>304</sup> The FDRE Expropriation Proclamation, art.8(1)

<sup>305</sup> Interview with Ermias Mekango, Lawyer and Attorney in all Regional and Federal Courts, (Shone, April 3/2018).

<sup>306</sup> Interview with Belete Bachore, A civil Bench judge of the High Court (n 225).

<sup>307</sup> *ibid.*

<sup>308</sup> *ibid.*

<sup>309</sup> Interview with Tamirat Usamo, Lawyer and attorney in all Regional and Federal Courts, (Shone, April 4/2018).

<sup>310</sup> *ibid.*

<sup>311</sup> *ibid.*

market price or at least in favor of the farmers.<sup>312</sup> In a nutshell, this practice resulted in payment of very low amount of compensation.<sup>313</sup> This is the result of present mode of compensation which is not based on the present market value.<sup>314</sup> This situation can be better explained as forcing the farmer to sell his crops today and tomorrow at yesterday's price and the current should consider future increases in price.<sup>315</sup> And compensation in this form, i.e. displacement compensation paid to the farmers cannot be adequate in any measurement.<sup>316</sup> In this regard, interviewed concerned public officials in the research area said that 'the government is trying to improve the amount of compensation from time to time after understanding the inadequacy of payments.'<sup>317</sup> One of the women farmer said that showing her discontent with regard to the amount of compensation, said that;

'I had two plots of land, one is the common property with my husband and the other one is my own land which I got through inheritance from my deceased father 25 years ago. However, in 2009 E.C. both lands were subjected to expropriation in the need for construction of urban dwelling houses by Shone Municipalities. Shone town municipality has paid nothing as a compensation and doesn't gave me a substitute land for the second plot of land which is registered in my own name saying that the 'compensation paid for the first plot of land i.e. the common property with my husband,' is enough and we are not duty bound to pay compensation for you. Thus, the Shone town municipality is unwilling to pay me compensation insisting that you have taken compensation for your which is common property with your husband.'<sup>318</sup>

The other farmer showing his discontent over the valuation of property and absence of substitute land said that, 'I have one hectares of land at the outskirts of shone Town municipality, which is registered in Licha kebele, i.e. nearly included to Shone Town

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<sup>312</sup> Daniel W/Gabriel, 'Compensation during Expropriation,' in Muradu Abdo (Eds), (n 286), 207.

<sup>313</sup> *ibid.*

<sup>314</sup> *ibid.*

<sup>315</sup> *ibid.*

<sup>316</sup> *ibid.*

<sup>317</sup> Interview with Desta Tesfaye, Mayor of Shone Town Municipality, (n 222).

<sup>318</sup> Interview with w/ro Detame Galalo a woman farmer in Arancha, Shone Town Municipality, April 5/2018, see also the case of Detame Galalo Vs Shone Municipality

Municipality.<sup>319</sup> He insists that, the government expropriated all of his landholdings for urban dwelling purposes and I have been paid 90,000 birr and two parcels of land from my landholding.<sup>320</sup> He adds that, I have 10 families and the payment I have got cannot even buy a food for the next two years for households.<sup>321</sup> But, the government is leasing my land for more than 200,000 birr per year.<sup>322</sup> Thus, the question will be can this amount of money is practically to restore the farmer's life? The concerned authorities interviewed on this question said that the farmers can rehabilitate to their life only when they wisely use the money they as a compensation.<sup>323</sup> He also advises the displaced farmers to pool their money together and to start alternative business.<sup>324</sup> For example, the peri-urban farmers whose landholdings were expropriated may engage in some other agro-business activities.<sup>325</sup> For example, if they form a group of ten farmers and collect the money together and they can establish a small or medium size economic activity in rural areas which may enable them to start new life.<sup>326</sup> He also insists that the farmers were unwilling to accept advises forwarded to them and resist efforts made to support them to start new life.<sup>327</sup>

On the other hand, the interviewed farmers disclosed that they have never been advised to invest the money in other successful business that can generate incomes to their livelihoods.<sup>328</sup> Rather they were advised to leave or relinquish the landholding without trouble.<sup>329</sup> He also added that there is not concrete contribution in rehabilitating the displaced farmers in practice.<sup>330</sup> Among the displace farmers interviewed in the focus group discussion said that, there are a number of failures from the government in giving successful rehabilitation support. For example, the case of W/ro Ashame best explains the situation how other farmers live. She is 75 years old and administers seven families without

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<sup>319</sup> Interview with Ato Hibiso Mola, farmer in Arancha kifle ketema, Wera Gere Kebele, (Shone, April 5/2018).

<sup>320</sup> *ibid.*

<sup>321</sup> *ibid.*

<sup>322</sup> *ibid.*

<sup>323</sup> Confidential Interview with Hossana Municipal officers, (n 226).

<sup>324</sup> *ibid.*

<sup>325</sup> *ibid.*

<sup>326</sup> *ibid.*

<sup>327</sup> *ibid.*

<sup>328</sup> Interview with Abebe Dutamo, a Farmer in Arancha Sub City, wera gere Kebele, (Shone, February 28/2018).

<sup>329</sup> *ibid.*

<sup>330</sup> *ibid.*

a husband. Five of the children were her grandsons who lost their father. She has lost her landholding equivalent to 1.5 hectares due to expropriation. She has now saying the following; ‘I was paid 75,000 birrs, as what is not known to be valued. I have spent almost all the money by building a house to make a shelter for my family on the 25m/10m land. Now we have nothing to eat since the source food i.e. my land has been taken with little compensation. And now I have started begging on the streets while my son works on labour and my daughters also left the being as a maid servant suspending their school.

Thus, in a nutshell, the position and conditions of the ex-farmers shows that the expropriation of the landholdings has caused food insecurity. The amount of compensation paid is insignificant and ruined their life. Thus, for the peri-urban farmers of Hadiyya zone the situation is going from bad to worse in addition to the existing poverty, expropriation is affecting the farmers irrespective of sex and age by ruining the families as a whole. Hence, the displacement compensation payable to the farmers in Hadiyya zone is established to be inadequate both in law and practice.

#### **4.4.4. Compensation in Kind**

In Ethiopia, all the relevant legislations provide for the payment of compensation to be made either in cash or in kind or both. For example, the SNNPRS Rural Land Administration and Utility Proclamation No.110/2007 provides that;

‘Holder of rural land who is evicted for purpose o f public benefit shall be given compensation in advance proportional to the development he has made on the land and the property acquired and shall be given other land’<sup>331</sup>

Therefore, compensation in kind or Land to land is encouraging and it has been introduced in almost all land legislations of the regions as well as the federal governments. Furthermore, the federal Landholding Expropriation and Compensation Proclamation provides for the existence of land to land compensation in the following way;

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<sup>331</sup> The SNNPRS Land Administration and Utilization Proclamation, art.7(3).

‘where the Woreda Administration confirms that a substitute land which can be easily ploughed and generate comparable income is available for the land holder, the compensation to be paid under sub article (1) and (2) of this article shall be only be equivalent to the average annual income secured during the five years preceding the expropriation of the land.’<sup>332</sup>

In practice, land to land compensation is effected when the woreda or kebele administration possesses extra land in vicinity. In Hadiyya zone, particularly in the peri-urban areas of Hossana and Shone Towns, due to the absence of extra land compensation in kind or land to land compensation is almost nonexistent.<sup>333</sup> As per the interviewed farmers, land to land compensation is the most preferable one since it better reinstates the displaced farmers.<sup>334</sup> In addition to this, farming is the only skill they know, most farmers fear the success of changing their livelihood in to another business for being unfamiliar with life in the cities.<sup>335</sup> Moreover, beyond economic value, land is the lifeblood of the peoples of Hadiyya.<sup>336</sup>

Compensation in kind or land to land compensation is also preferable in the perspective of the government since they don’t want to pay monetary compensation for which they are not ready to adequately do that. However, this looks like to operate at the expense of the society since it obliges the society to pay instead of the organ who benefited by taking the land. Moreover, it also undermines the possibility that the land that is given as land to land compensation could have been given to landless or unemployed youth in the area. This situation may be compromised when the land to be taken was directly used for development purposes which directly benefit the society such as schools, health centers, rural roads and irrigation works. On the other hand, the problem lies when the land taken is used for private investments like private farms. The other problem in case of compensation in kind is that the substitute land may not be similar in terms of size, fertility and location to facilities.<sup>337</sup>

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<sup>332</sup> The FDRE Expropriation Proclamation, art. 8.

<sup>333</sup> Confidential Interview with Hossana Municipal officers, (n 226).

<sup>334</sup> Focus Group Discussion two, Ambicho Gode kebele evicted Farmers, (Hossana, Ambico Gode March 14/2018).

<sup>335</sup> *ibid.*

<sup>336</sup> *ibid.*

<sup>337</sup> Confidential Interview with Hossana Municipal officers, (n 226).

However, due to the absence of vacant land in Hadiyya zone, and particularly in the peri-urban areas of Hossana Shone towns, where investment and expropriation is highly recurrent, the practice of compensation in kind is not attainable.<sup>338</sup> Exceptionally, the Hadiyya Zone administration tried to enforce land to land compensation for the evictees of Ambicho Gode Kebele, by resettling them to a place called ‘Hayise’ in Limu Woreda (one of the Woreda Administration in Hadiyya Zone).<sup>339</sup> However, the substituted land was not comfortable for farming.<sup>340</sup> Moreover, the evictees who are 149 in number have brought petition to the Government administration at all level in including SNNPRS Human rights Commission and bureau of Ombudsman.<sup>341</sup> Thus, their claim is to get either comfortable agricultural land or an adequate compensation.<sup>342</sup>

Accordingly, there is no hope of compensating the land holder in the form of land to land compensation in Hadiyya Zone unless land redistribution is made. Thus, however, before a couple of years i.e. 15 years ago there has been both monetary and land to land compensation in SNNPRS and IN Hadiyya zone in particular.<sup>343</sup> However, now a day, displaced farmers have been given a monetary compensation pursuant to the Federal Expropriation Proclamation and Compensation Proclamation and they were given 500 Carre meters of land from the urban administration to build their own residential house. Additionally, each member of the displaced family whose age is 18 years and above has been given at least 200 Carre meter square of land. But also for unknown reasons, only monetary compensation is being paid for the peri-urban farmers of the Hossana and Shone surroundings. In a nutshell, the compensation paid for displacing farmers from the peri-urban areas is effected on the basis of replacement cost valuation system for property situated on the land such buildings, permanent improvements made to the land and for temporary or permanent displacement.

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<sup>338</sup> Interview with Hossana and Shone Town municipal officials, Engineer Tekle Ayele, (n 270).

<sup>339</sup> Confidential interview with Hadiyya Zone Administration authorities, February 24/2018, 3:00 A.M, Local Time

<sup>340</sup> *ibid.*

<sup>341</sup> Confidential interview with officers of Human Rights Commission, (Hawassa, February, 24/2018).

<sup>342</sup> Confidential Interview with officers of SNNPRS Bureau of Ombudsman, (Hawassa, February, 23/2018).

<sup>343</sup> Interview with Ato Hankebo, former mayor of Shone town, (Shone, April 9/2018).

## 4.5. Complaints and Appeals

As per the provisions of the civil code of Ethiopia, any individual who did not accept the decision of the arbitration appraisal committee can lodge an appeal to court if he has grievance on the amount of compensation. It reads that ‘In rural areas and in an urban center where an administrative organ to hear grievances related to urban landholding is not yet established, a complaint relating to the amount of compensation shall be submitted to the regular court having jurisdiction.’<sup>344</sup> However, the Federal Expropriation and Compensation Proclamation reads ‘Where the holder of an expropriated urban landholding is dissatisfied with the amount of compensation, he may lodge his complaint to the administrative organ established by the urban administration to hear grievances related to urban landholdings.’<sup>345</sup> This is widely practice in the research areas, Hossana and Shone Town peri-urban areas. Accordingly, any landholder, who is aggrieved on the amount of compensation, can lodge a complaint to the administrative organ established by the Hossana and Shone Town Municipality. Thus, the difficulty with this provision is that the right to appeal is limited only to the amount of compensation and other complaints related to expropriation such as validity of procedures of expropriation and factors that necessitate expropriation i.e. public purpose and its application are not appealable. This administrative tribunal is required to examine the complaint and give its decision within such short period as specified by directives issued by the region and communicate its decision to the parties in writing.<sup>346</sup>

Thus, the decision of the administrative tribunal is not final and any party aggrieved by the decisions of the tribunal may appeal, as may be appropriate, to the regular court or municipal appellate court within 30 days of from the date of the decision and the decision of the court shall be final.<sup>347</sup> Nevertheless, an appeal submitted in the aforementioned manner by any landholder served with an expropriation order may be admitted only if it is accompanied with a document that proofs the handover of the land to the urban or woreda administration.<sup>348</sup> In accordance to this, the law presupposes relinquishing the expropriated property or the landholding in order, with a rational to exercise the right to appeal against the administrative decision on the amount of compensation

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<sup>344</sup> The Civil Code of Ethiopia, art.1471 (1).

<sup>345</sup> The FDRE Expropriation Proclamation, art.11 (2).

<sup>346</sup> *ibid* art.11(3).

<sup>347</sup> *ibid* art.11(4).

<sup>348</sup> *ibid* art.11(6).

and the execution of an expropriation order may not be delayed due to a complaint regarding the amount of compensation.<sup>349</sup>

Nevertheless, due to awareness problem, economic reasons and difficulty of getting justice due to corruption most peri-urban farmers are unable to appeal against the decisions of the administrative tribunals although they may be aggrieved with the decisions of the administrative agency on the amount of compensation.<sup>350</sup> Thus, the interviewed farmers said that ‘whenever we were asking what we were are deserving, the officials send the police and we were jailed, even the prosecutors accused as a criminal and we were considered as anti-development by the government officials.<sup>351</sup> We also fear revenge from the government officials for not obeying their decisions and appealing.<sup>352</sup> Moreover, we have no adequate resource to hire an attorney to appeal against the decision of the government. And also we don’t believe the courts will give decisions in or favor.<sup>353</sup>

In addition to this, the law also favors the interest of the government or the expropriating organ over the farmers as it empowers the taking of landholdings irrespective of complaints on the adequacy of amount of compensation in this regard.<sup>354</sup> Moreover, it does not seem logical as to why the law limits the right to appeal on expropriation only to the amount of compensation. There is logical as well as legal reason that helps the law disregarding the possibility of appeal regarding the existence of public purpose in fact and its subsequent implementation. Thus, it not fair to block the farmers right to ask and question the administrative agencies the existence of genuine case of expropriation and expropriation procedures and the constitutional right to appeal against any judicial or quasi judicial decisions.

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<sup>349</sup> *ibid* art.11(7)

<sup>350</sup> Interview with legal consultant and Attorney at all regional and Federal Courts, Tesema Semeles, (Shone, February 22/2018).

<sup>351</sup> Focus Group Discussion one, at Ambicho Gode, Hossana, March 14/2018, 4:00 A.M and Arancha Sub city in Shone, (Hossana, Ambicho Gode, March 13/2018).

<sup>352</sup> *ibid*.

<sup>353</sup> *ibid*.

<sup>354</sup> The FDRE Expropriation Proclamation, cumulative reading of Art.4(1,2, & 3).

## CHAPTER FIVE

### RESEARCH FINDINGS, CONCLUSION AND RECOMMENDATIONS

#### 5.1. Key research findings

- Despite the constitutional provision for payment of commensurate compensation, there is unending controversy over the amount of compensation and its adequacy over the provisions of subsidiary rural land legislations in both regional and federal government. Thus, this study has found that neither the federal nor the regional land legislations indicate the amount of compensation to be commensurate to the rights lost due to expropriation. Moreover, the basis of compensation provided to be five years back and ten years whilst the rural landholders have lifetime use rights over their landholdings. Thus, this methodology is highly criticized for being baseless as it has no significant justification and it is not fair, just and does not provide for adequate amount of compensation to reinstate the displaced farmers. In similar vein, the compensation being paid in SNNPRS and Hadiyya Zone in particular is found to be inadequate to effectively reinstate the displaced farmers when seen in light of rights that land users are granted by law.
- The peri-urban lands are a high value lands which are very susceptible for illegal land deals and corruption and highly needed for various development projects. Thus, experiences in Hadiyya zone showed us land is taken in the absence of sufficient expropriation procedures and payment of inadequate compensation to the displaced farmers. Almost in all cases, the peri-urban farmers whose land is expropriated for public purposes are compensated in cash only because of the absence of vacant lands in the urbanities. Thus, this situation created discontent among the farmers due to the difficulty of urban life and inadequacy of compensation.
- Moreover, the study also found that, in Hadiyya zone the government uses regulation No.123/2015 and it's implementing Directive No.08/2015 to assess compensation for the displaced landholders. However, both Regulation No.123/2015 and Directive No.08/2015 were issued by the SNNPRS to implement the federal Lease Holding Proclamation No.721/2011. Thus, these implementing regulations and directives were issued to implement the federal Lease Holding Proclamation and this study has showed the

implementation of this directive and regulation does not effectively address the scenarios of expropriation proclamation. Thus, compensation calculated in this manner was unfair and can affect tenure security of these peri-urban Landholders and the farmers were put off with making additional investment. Therefore, this is a circumstance which calls for improvement of laws to fill the gap on urban land speculation specifically on expropriation of peri-urban landholdings.

- The other problem seen in the expropriation of peri-urban lands in relation to public purposes is that the anticipated public purposes were not implemented in the time and agreements proposed initially. Furthermore, individuals who take the land usually change the originally agreed purpose and sell the land for a far better price. Hence, it has been asserted that public purpose has become a visible disaster where farmers were displaced from their life whilst the anticipated purposes become far from being realized.

## **5.2. Concluding Remarks**

The SNNP Regional State is a home for more than 56 Nations Nationalities and peoples of whose livelihood principally depend on agriculture. Thus, land is not the only source for their livelihood, but also it is the prime source of pride especially in Hadiyya Zone. Therefore, any encroachment to this social, economic, cultural as well as psychological asset should be reconsidered in wisdom. In Ethiopia in General and SNNPRS in particular, expropriation is the principal means of obtaining land for the government that shall in due time use it for development activities or transfer it to other users through lease arrangement. Since, in Ethiopia, any form of land sale is illegal, individuals and investors are highly dependent on the state to acquire land for construction of housing and other investment activities. Thus, the state has no other means to acquire land except expropriation even though the farmers of Ethiopia have guaranteed free access to rural land and rights against dispossession under the FDRE Constitution and all other land legislation of the regions as well as the federal government. In addition, both FDRE and the SNNPRS Constitutions clearly provided that the rural landholders have guaranteed a lifetime use right over their landholdings and they will not be dispossessed except in cases of expropriation for genuine purposes of realizing public interests subject to payment of compensation which is commensurate to the value of private property taken through expropriation. The controversial issue here is that whether land is compensable interest in light of both federal and regional constitutions

keeping in mind that land is owned by the state. If land is considered as compensable interest as per the provisions of the both federal and SNNP regional state constitutions, the other controversy will be the applicability of those principles of compensation enshrined in the constitutions for the termination of use right.

Even though land is publicly owned in Ethiopia, the constitutions and other land legislations in the federal and regions guaranteed life time use rights for the farmers and pastoralists of Ethiopia, and do not provide for the prohibitions of claims and says over such land rights. Provided that, farmers and pastoralists of the country may not be dispossessed from their landholding except in cases of expropriation subject to the payment of commensurate payment of compensation in advance. Furthermore, the Civil Code of Ethiopia provided that expropriation proceedings can be extended not only to ownership right but also to other claims that a person may have over buildings including usufruct, servitude and so on.

In a nutshell, the SNNP regional state and particularly the Municipalities of Hadiyya zone are using the SNNPRS Regulation No.123/2015 and Directive No.08/2015 which were issued to implement the federal Lease Holding Proclamation No.721/2011 and sometimes use proclamation No.455/2005 for the purpose of assessing compensation for the displaced peri-urban farmers. Thus, lack of standardized valuation and compensation methods and procedures has resulted in different compensation values for similar lands. This is due to the fact that the SNNP regional government does not issued its own land expropriation and compensation regulations. In general, it is a common fact that peri-urban farmers were evicted from their landholding without priorely receiving compensation fees let alone the discontents of inadequacy of compensation.

### **5.3. Recommendations**

The writer of this paper, based on the abovementioned discussions and findings, would like to recommend few points to be critically considered by the concerned government organs.

- 1) Both the SNNP Regional State Constitutions and the FDRE Constitutions provides for the payment of compensation in advance ‘commensurate’ to the life time use rights given to the farmers and pastoralists upon expropriation of their landholdings. However, the existing expropriation proclamation and other implementing legislations should consider

the constitutional guarantee against eviction in a way that should not undermine the life of the farmers even though the government has the privilege to expropriate landholding rights of the farmers for genuine public purpose. Most importantly, the FDRE Constitution and its counterpart of SNNP Regional State Constitution similarly provided for payment of compensation in advance ‘commensurate’ to the ‘lifetime use rights given to the peasants and pastoralists’ yet the expropriation proclamation provides basis for calculation of payment of compensation ‘average income of the past five years considered only for the coming ten years’. Therefore, this is illogical and unfair enough to protect the lifetime use rights of farmers under their landholdings guaranteed under the Constitution. Hence, the expropriation proclamations and the implementing regulations should be re-amended in light of the constitutional provision.

- 2) The government should provide a mechanism to follow up the implementation and genuine cause of public purpose. Thus, the findings of this paper show that implementation of public purpose alongside with the laws of the country, has opened a wide whole for corrupt practices. Therefore, the law should define what kind of projects should be considered to be a genuine cause for public purpose. In addition to this, empowering the courts to determine the decisions of the expropriating government authorities and the proper implementations thereof. This would better protect the rights of the rural as well as peri-urban farmers from being manipulated under the guise of public purpose.
- 3) Thus, as it has been said above in the discussion and findings, the basis of calculation provided under law added to the corrupt practices by the government authorities in valuation and decisions of public purpose have created towering worries and tenure insecurity along with farmers. As a result, farmers of the peri-urban areas chose to deal with illegal land dealers and unlawful sale of land. Therefore, it is better to adopt the means to follow up the decisions of the concerned public authorities in the implementation of the laws in a fair and equitable way is vital to enhance tenure security of the peri-urban as well as rural landholders.
- 4) The SNNP Regional Government should give serious attention in issuing implementing directive according to its variety. Thus, in the course of valuation of payment of compensation, the SNNP Regional Government uses Regulation No.123/2015 and it’s implementing Directive No.08/2015 and both the regulation and directives were issued to

implement the federal Lease Holding Proclamation No.721/2011. As has been observed on the discussion part of this paper, this regional regulation and directive lacked certainty and consistency in payment of compensation to the evicted landholders and opens a side road for corruption. Due to this fact, the government authorities are violating the constitutional rights of the farmers to get in advance payment compensation commensurate to the rights lost.

- 5) It's better to pay compensation prior to the moment at which the government or other private companies take the possession of the land. In cases where possession is taken before compensation is paid for the evictees, it is better to require the government to pay interest based on the delay.
- 6) It better to require investment and benefit sharing arrangements whereby companies must allow affected landholders to own equity in development projects and invest in different facilities such as education and health care, and other basic amenities for affected landholders.

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### **Biography**

The author of this Research, Ashenafi Abreham was born in Shone Town in 1990. He attended his primary and secondary school in Shone Town elementary and preparatory school respectively. And also, He graduated L.L.B Degree of Law from Wolayita Sodo University in a regular basis in 2013. Till now on, He is working as a Zonal Public Prosecutor in Hadiyya Zone and Joined Hawassa University Land and Environmental Law Stream in LLM program in 2016-2017 academic year.

## **ANNEXES**

### **Hawassa University School of Law and Governance LLM Thesis Research Interview and Focus Group Discussion Guidelines**

#### **1. Interview Questions to peri-urban farmers**

Name ..... Number of Family..... Address .....

#### **Questions**

- 1) Does your land been expropriated? What type of land was expropriated from you? Farmland? Pasture land? Built up land? Do you have any remaining land?
- 2) What was the government's purpose behind expropriation of your land? Investment, urbanization, Road Construction
- 3) When the government does expropriate your land?
- 4) Have you received any compensation for your land? What was the mode of compensation? In Cash or land to land? Which mode of compensation is preferred for you?
- 5) Have you been given an opportunity to make choice for the amount and mode of compensation?
- 6) Do you think that the amount of compensation was adequate? How do you complain against the amount and mode of compensation?
- 7) Have you made any appeal against the decision of administrative tribunals?
- 8) Who is compensated under your land and property?
- 9) How is the property on the land and the land use rights of farmers conceived by the authorities? And what is compensated?
- 10) Do you feel insecure regarding your peri-urban landholding?

**1. An Interview questions provided for concerned government officials**

Name-----Government office/Organization-----position..... address----

**Questions**

- 1) Did your organization expropriate peri-urban lands for public purpose?
- 2) How do you understand the term public interest?
- 3) What are the most important reasons considered to be public purpose?

- 4) Do laws and policies adopted in relation to compensation upon expropriation of peri-urban lands in Ethiopia in general and SNNPRS in particular, effectively provide procedures for expropriation and just compensation?
- 5) Do you think that you have enough knowledge concerning the existing expropriation laws of the region and the federal government?
- 6) Do the farmers have adequate knowledge and awareness about the purposes of expropriation?
- 7) How does your organization value the amount of compensation?
- 8) Which mode of compensation is commonly used? Cash or land to land?
- 9) When do your office/organization pay compensation? Before or after dispossession?
- 10) Do you have a clear and uniform guideline of law on how to value the amount of compensation?
- 11) What are the determining factors in valuation of the amount of compensation?
- 12) Do you think the amount of compensation paid for the farmers is adequate?
- 13) How do the farmers appeal against the decision of your organization?
- 14) How do you follow up whether the expropriated land is used for the projected or intended purposes on time?
- 15) How do the officials decide whether the use of the land will be better if transferred to others?

## **6. Focus Group Discussion (FGD) Guideline**

- 1) Does your land been expropriated?
- 2) Who is empowered to undertake the power of expropriation?
- 3) Do you know why private property is expropriated by the government?
- 4) What are the procedures to be followed during expropriation of private property?
- 5) Are you satisfied with the reasons of expropriation?
- 6) What land tenure related evils were you have faced under your peri-urban landholding?
- 7) How do the authorities assess the amount and mode of compensation?
- 8) For whom do you bring your complaints against the decisions of authorities?
- 9) Have you received adequate amount of compensation from the government?

## **7. An interview question provided for judges**

Name ..... Position ..... Address .....

### **Questions**

- 1) Have you ever entertained or gave decisions on cases regarding expropriation? What were the complaints brought to court regarding expropriation?
- 2) What is the scope of farmer's right over their landholdings?
- 3) Who is empowered to undertake the power of expropriation?
- 4) What are the procedures to be followed during expropriation of private property under the laws of SNNP Regional State?
- 5) What are the standards that should be used in determining the public purpose nature of the project?
- 6) Do you think that the compensation paid by the government authorities is adequate?

## **8. An interview questions provided for Lawyers**

Name ..... Address .....

### **Questions**

- 1) Have you ever brought cases regarding expropriation to courts?
- 2) What were the main sources complaints you have brought to court?
- 3) How do you assess the decision of courts?
- 4) What are the procedures to be followed during expropriation under the laws of SNNP Regional State?
- 5) Do you think that compensation paid to the farmers is adequate?

- 6) What do you think about the public purpose implementation by the authorities?
- 7) Have you succeeded by bringing your case to courts?
- 8) What land tenure security related evils were the farmers are facing over their peri-urban land holdings?

**9. An interview questions provided for SNNPRS Human Rights Commission and Office of Ombudsman**

Name .....Position ..... Address .....

**Questions**

- 1) Do the farmers of the region; particularly from Hadiyya Zone bring complaints regarding expropriation of landholding to your office?
- 2) What do you understand about expropriation, public purpose and compensation?
- 3) What were the main complaints of the farmers?
- 4) What do you think about the mode and amount of compensation in SNNPRS?
- 5) How do you see the decisions of administrative organs and courts regarding cases of expropriation?