

**ST. MARY'S UNIVERSITY COLLEGE
FACULTY OF LAW**

LL.B THESIS

**EXPROPRIATION PROCESS IN ROAD
CONSTRUCTION
THE LAW AND PRACTICE**

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ADDIS ABABA, ETHIOPIA

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ACRONYMS

ART	Articles
CCCC	China Consultants Contracture Company
DHV	Dawars, Hedric and Verhay
ERA	Ethiopian Roads Authority
EC	European Commission
EEPCO	Ethiopian Electric Power Corporation
E.C	Ethiopian Calander
i.e.	That is
JICA	Japan International Cooperation Agency
J & P	Jon and Petor
N _o	Number
OD	Operational Directives
OM	Operational Manual
PAP	Project Affected Peoples
ROW	right of Ways
RAP	Resettlement Action Plan
RRP	Road Rehabilitation project
Vs	Versus
WB	World Bank

INTRODUCTION

Modern road construction in Ethiopia started in earlier 20th century. It is difficult to trace it has begun. However, it is believed that it had been related with the Italian invasion around the beginning of 20th century. The Italian started the road construction from the northern highland part of Ethiopia towards the capital city. Consequently, the construction expanded to north western, northeastern and southern part of Ethiopia. At that time, there was no central power to take ownership, control and run the road construction.

After the defeat of the Italian fascist rule, in the 1st quarter of the 20th century, the present Ethiopian Roads Authority had been established as organization by the then so-called Imperial High way Authority under the Ethiopian government. The organization as an owner had a responsibility to build, administer and maintain the road network all over the country. The Imperial Highway Authority has passed various development stages and was re-established by proclamation No 80/89 as Ethiopian Roads Authority responsible to plan, build, maintain and administer the federal road network. One of the organization's development is, power sharing and establishing a different hierarchical level and system. For instance, the authority had organized branch and sub-branch offices under its direct control in different regional states.

The expropriation process is very much interlinked with the road construction process. From the 1st commencement day of the project extra land is required not only for the road side area, but also for activities related with the construction like materials production which includes selected materials, borrow pits, residential camp site, plant area, and quarry sites. These expropriation processes have had highly affected private or public property and citizens' livelihood.

The expropriation process is very much complicated and problematic. Despite the fact that expropriation process is a long period phenomenon, there had not been clear rules and regulations as such to handle the process. However, at the end of the 1950s, the legal frame work came to the scene. The Civil Code was promulgated in 1960. The code had devoted some provisions to regulate the expropriation process. However, provisions in the Civil Code were not sufficient enough for the implementation of the huge road development programmes' complicated situations with regard to land and other property ownership or possession rights.

Further the land holding system was completely changed by 1975, 15 years after the promulgation of the 1960 Civil Code. The current government after considering the problem and with the push from donors and lenders adopted a new law by Proclamation No 455/2005 and regulation 135/2007. The adoption of the law does not solve the issue completely.

Research Objective

The research has the following basic objectives:-

- i. To analytically discuss the legal regime governing expropriation vis-à-vis the FDRE constitution and international covenants.
- ii. To identify and analytically discusses issues raised in expropriation related disputes before courts of law and administrative tribunals.
- iii. To show the legal gaps in the expropriation process.
- iv. To identify the legal rules and practical application in the expropriation process.

Methods of Data Collection and Research Methodology

i. Methods of Data Collection

Both primary and secondary data sources are employed to get the relevant data for the paper. Different data sources are used to ensure the reliability of the information used in this paper. Among others; different books, internet sources, court cases, statutes, and interviews etc are consulted. Besides, the writer's long period practical experience on the area of expropriation is used to balance the reliability gap as to the information sources. Questionnaire, interview, case study and literature review methods are utilized to gather the information for the paper.

ii. Methodology

The researcher employed different research methodologies. Dominantly; descriptive and analytical methodologies are utilized. Laws governing expropriation and selected cases on expropriation are analyzed.

Organization of the research paper

In addition to this introductory, conclusion and recommendation parts, the paper is organized in four chapters. Chapter one discusses general principles of property rights and expropriation with particular reference to the Ethiopian Civil Code of 1960, the FDRE Constitution of 1995 and Others relevant laws.

Chapter two deals with the laws governing expropriation in the Ethiopian case which includes the FDRE Constitution of 1995, the Ethiopian Civil Code 1960, the proclamation for expropriation No 455/2005 and regulation No 135/2007.

Chapter three is devoted to discuss on expropriation procedures with reference to the legal frame work and the practice within the context of Ethiopia, While Chapter four deals with disputes on expropriation processes. To this effect, selected expropriation cases have been analyzed in detail vis-a-vis the governing law.

CHAPTER ONE

An Overview on Property Right and Expropriation in the Ethiopian Road Construction

1.1. The Concept of Property in General

The concept of property in general has varied definitions. Property could be defined as any object, thing or a virtual right that can be possessed or owned. This entail that the right to possess or to own presupposes the existence of property. Regardless of the fact that the level of right varies between ownership and possession rights, ownership or possession in general is a bundle of rights to be exercised on the thing or object a virtual entity. An owner of property has the right to consume, sell, rent mortgage, transfer and exchange his/her property. Possessor or owner of property has rights that can be extended to actual controlling in order to protect from any other trespass against the right to use or dispose such property.

Property in general can be divided into different classifications. ***"In the English legal tradition, property is classified into two parts, which is the real and personal property."***¹ Based on these basic categories, the real property is the land and anything situated on it. Such things include buildings, minerals and others attached with it permanently or temporarily. On the other hand, personal property can be tangible or intangible property. Tangible property having physical existence can be touched and seen easily. While intangible property is the reverse of tangible property, like intellectual property.

The concept of property is not a recent phenomenon. Human kind began realizing the concept of property as earlier as the origin of society.

¹ Microsoft ® Encarta ® 2006© 1993-2005 Microsoft Corporation

Ownership and possessory right as concepts are claimed to be emerged at once with the origin of the society and private property.

In the history of human life, family is a very essential element to the emergence of community as well as a state. The group of family formed a clan which protected it from other clans. That group of clan would form tribal-community association formulated for their advantage. During that period, each clan would have belongings of a certain things as a property like, weapon to protect it from other enemies. As we learned from history, across different places and different countries, land or territory, has been the basic source of conflicts as between people and nation. The strong clan used to demarcate territory of the weaker ones.²

Among limitless kinds of properties, land remains most important and essential type of property, not only in the earlier periods of society but also in the modern time. In ancient times, territorial dispute was the basic cause of conflict between clans or tribes as well as the community. It is also a similar manifestation in modern era where land use to be possessed by the dominating tribe in the society.

The value land has to the making of livelihood of human kind be it in the ancient and even in modern times makes land to remain as among the things that always gets focus in dealing with the concept of property. People strive to get control of this important property and use to pay all prices to the ensure ownership of this resource. Thus as the livelihood of human being is very much attached to this property, detachment or losing ownership of this property without the sole interest of the owner is a tough one. The next section will give a highlight on the concept of expropriation.

² The world history of law and legal institution, ancient, modern and contemporary Girma Gizaw (Dr.)pp 49

1.2. Expropriation

The concept of expropriation had been having differing meanings in different times. But what resembles similar is the performance of expropriation action. What the concept entails theoretically, have never been same with the practice of expropriation manifests.

Even in the early Roman times, the process of expropriation had not been in agreement with the Roman laws of the time. As a matter of this fact majority of writers on the subject have preferred to reflect the similarities of the principles of expropriation than the statutes in different countries for the laws reflect differing meanings. Thus; “... **majority of writers have concluded in favor of expropriation as an existing fact if not an established principle**”.³

History tells us that, the Roman Empire used to have had expropriated private properties for the purpose of public interest in order to build roads, camps, fortifications and aqueducts. At that time, the rule of law or any acceptable principle was not established. The process had been done in forceful manner. The land from the private owner used to have been expropriated forcefully. The principle of expropriation had not been addressed in the general law of the Roman Empire. It would a certain authorized special statutes. There had been only some provision with regard to the manner of compensation payment.⁴

During that period, in France too, the right of the individual and the state has had legal provision that a clear borderline on the individual owner of a property and the authorities running the expropriation process on the name of public interest. George S. Challies has put his observation as follows:

³ The Law of expropriation by the honorable George S. Challies M.A.M.C.L second edition in 1963. PP.1

⁴ ID

*"In the old French Law expropriation was known as 'retrait d' utilitie' publique' and it was in the exercise of this right that lauis XV acquired the land necessary for some of the main roads in France and that an extensive system of canals was built the reign of lauis XIV."*⁵

Regardless of such big expropriation processes manifested in France, there were no as such detailed rules set forth to protect rights of the owners of the property, land and buildings. The only remedy set forth to the individual owner had been to get some compensation, while the state had a wide and full forcible power to dispose the individual property.

On the same period of time, expropriation process in the United States was anchored on clear legal principles unlike France and Roman Empire. The right of individuals was fully guaranteed. The individual property rights in relation to expropriation have had better protection in the USA. To this effect specific provisions had been incorporated in the Constitution of the USA.⁶

The constitution of the United States had been amended repeatedly. However, regardless of such repeated amendments, the protection given to individual citizens towards their property remain intact in the constitution.

*"The fifth amendment declares that private property shall not be taken for public use without just compensation, while the fourteenth amendment prohibits a state from depriving a citizen of his property without due process of law."*⁷

This clearly tells us that individual property right is safeguarded in the United States since expropriation is possible only through going under the due process of law.

⁵ Ibid pp. 2

⁶ Ibid pp. 10

⁷ ID

The United States in its constitutional amendments had declared two basic legal elements that would guarantee citizen's right to private property while expropriating their property. These principles are:-

1. The state to pay a compensation if needs to take individual property for public purpose.
2. No state power to deprive a citizen property right without due process of law.

These basic legal elements are very essential to undergo through expropriation process with due respect of individual citizens property right. As per the principles, the state is obliged to pay justified compensation as valued fairly by reasonable man standard or expertise decision. It is also required to follow and ensure a rule of law.

As discussed here above we have learned that expropriation in the earlier period in many countries with the exception of the USA and the like had been a phenomenon of states' forcible action in the name of public interest without giving individual property owners the due legal protection. Gradually, however, states begin to take accountability and have started to pay a fair compensation. To this effect many states have included provisions protecting individual property right in their constitutions. In the context of Ethiopia property right is made a constitutional right. The next section deals with essence of property right in general and property right under the condition of expropriation.

1.3. Property Right in Ethiopia

The concept of property right in Ethiopia as a legal concept started to develop in Ethiopia in the 1st quarter of the 20th century during the Regime of Emperor Hailesilasse. The origin of the concept of property right in Ethiopia has very much connected with the social and political

structure overriding in that period. The concept of property right was associated with the history of periods' leadership; clan, leaders, kings and others. During that period emphasis of property issue was particularly related with the land⁸. All the land and its fruits were owned by leaders and kings in the name of 'rist', 'gult' etc. until the Derg Regime appeared in 1974.⁹ However, the Derg had declared, the land to under state ownership and individuals citizens to have only possessory right.¹⁰

1.3.1. Constitutional Guarantees of Ownership or Possession Right

The 1995 FDRE constitution which is the supreme law of the land had empowered full guarantees of ownership or possessory property rights which accountable to one of the fundamental Human Rights and freedoms.¹¹ The constitution on its preamble stated that its objective is the fulfillment and full respect individual and people's fundamental freedoms and rights.¹² Whereas, as it is mentioned in the preamble of the Constitution, one of the people's fundamental freedom and right is, the right to own property commonly or individually. The Constitution empowered an appropriate condition for the citizens in exclusive manner. The constitution on unequivocal manner guaranteed which the right entitled the peoples who residing in the country every one doesn't affected his privacy right which committed the act of seizure or search the one who entitled a property right and administered, controlled under his personal possession or ownership rights.¹³

The constitution stipulated protective provision to safeguard the right to privacy. It is a strong legal protection peoples who a property. As per the

⁸ The world history of law and legal institution, ancient, modern and contemporary Giram Gizaw (D.R) pp. 212

⁹ Corresponding Author. Grewettw@agrar.hu-berlin.de pp:9, visited on March 20, 2009

¹⁰ Ibid pp-12

¹¹ FDRE 1995 Constitution Art. 9

¹² Ibid preamble parag.(2)

¹³ Ibid Art (26)

constitution, one cannot enter into another domicile or residential premises without the permission of the owner/possessor or search of warranty permitted by the rule of law.

Property right in the constitution is strongly confirmed as fundamental rights and freedoms under chapter three. Property right is made to be among the basic Human Rights. The part of the constitution dealing with the general principles of Human Rights, has given focus to property rights.¹⁴

The Constitution under the part which deals on democratic rights enshrined, citizens' property right therein. As per the provision therein in this part of the constitution, an Ethiopian citizen is entitled to the right of ownership a private property; the right to use, to dispose, and transfer for other.¹⁵ What is discussed above is a highlight of the constitutional frame work of property right under the Ethiopian constitution. The next section highlights on the legal provisions provided under the Ethiopian civil code.

1.3.2. Property Right Under the 1960 Ethiopian Civil Code

Property right had been fully covered under the 1960 Civil Code. As per article 1126 of the Ethiopian Civil Code, property in general is divided into two; Movable and Immovable properties. Movable goods or Corporeal Chattels are defined under article 1127 of the civil code as; “... **things which have a material existence and can move themselves or be moved by man without losing their individual character.**” While article 1130 defines Immovable goods as: “**Goods that constitute lands and buildings.**”¹⁶

¹⁴ Ibid Art (26)(1)

¹⁵ Ibid Art 40(1)

¹⁶ The 1960 civil Code. Art 1130

Property Right under the 1960 Civil Code requires the person first to acquire the possession or ownership title as referred in the law. Possessor is the person who possessed the thing directly or indirectly. As per article 1140 of the Civil Code, possession refers to the actual control, a person exercises over a thing.¹⁷ The code protects possessions on the property they possess. The protection of possessors from any intervention for the purpose of the civil code goes to the extent of giving the right to use force on the part of the possessor to use a reasonable force against any intervention or usurpation.¹⁸ The possessor is entitled to bring a legal action against the intervening body. This is clearly stipulated under sub-article 1 of article 1149 as presented here:

*“The possessor or holder who is deprived of his possession or whose possession is interfered with may require the restoration of the thing or cessation of the interference and claim compensation for damages”.*¹⁹

The other property right mentioned in the 1960 Civil Code is ownership. This right is the very widest and broad among property rights. A person with ownership title has the right to exercise the right to use, collect the fruits, dispose and transfer the ownership title and also other bundle of rights over the thing she/he owns.²⁰ The civil code has a well defined protection to private property. Article 1204 (2) of the code stipulates that: **“[ownership] right may neither be divided nor restricted except in accordance with the law”.**²¹ This means as per the code it is only through the due process of law that the ownership right of a person be restricted or alienated for good causes. Among others expropriation is one of the grounds legally accepted a cause by which ownership right is deprived. The next discussion is about expropriation in relation to donor policy.

¹⁷ Ibid Art 1140 And the following Articles

¹⁸ Ibid Art 1148, 1142

¹⁹ The 1960 civil Code Art. 1149

²⁰ Ibid art 1204,1205

²¹ Ibid

1.4. Expropriation and International Donor Policy

The international donors which provide loan, grants and aid for the country require development projects to be formulated and implemented in accordance with their policies and strategies. Among international donors; World Bank, EC, JICA are the famous ones in the world.²² The World Bank provides a big loan and grant to Ethiopia for different development programmes. The bank among others, highly participated in the last ten consecutive years in the Ethiopian road construction programmes. As the contributions of the Bank to the country's road development programs have been so significant, Bank's programs have got big attention.

The World Bank has set clear policies and procedures for the borrower countries to follow in implementing projects. The borrowing countries are strictly required to follow and implement. The policies and procedures in this regard includes expropriation process and managing mechanism therein. The World Bank provides two important documents as guidelines which apply to the borrowers. These documents are the operational manual (O.M) and operational directives (O.D).²³

The (O.M) stipulates mechanisms to involuntary resettlement as a result of implementation of development projects. In such development projects, people are affected from diverse prospects. Among others:

"...people are relocated to environments where their productive skills may be less applicable and the competition for resources is greater, community institutions and social networks are weakened, kin groups are dispersed, and cultural identities, traditional authorities and the potential for mutual help are diminished or lost.

²² Modjo-Awash , Arba road project donated by world Bank, signed on January 2000 , Addis modjo Awassa Road project donated by EC, signed on Sept. 1998 , Addis-Goha tsion Road project donated by Jica. signed on March 1999

²³ The world Bank operational manual, operational policies op4.12, December 2000, and The W.B.O.M, operational directive, OD4.1, Dec. 1999.

This policy includes safeguards to address and mitigate these impoverishments of risks.²⁴

The term ‘involuntary settlement’ in this context is to mean “... **actions that may be taken without the displaced person's informed consent or power of choice**”.²⁵ Such displacements have been common manifestation of road construction projects through the expropriation process.

The World Bank requires the borrower to take preventive measures to mitigate the damage on the part of the displaced. The donor policy of the World Bank addresses the damage the displaced people face through development projects. As per the Bank’s policy, first, the borrower is required to take possible alternatives starting from designing stage to minimize the problem on the people there. The next solution stated therein in the Bank’s policy is if the borrower doesn't avoid displacement, the displaced person should be meaningfully consulted and make clear the plans of the borrower for the resettlement program.²⁶

On the basis of the donor policy, Ethiopian Roads Authority prepared a resettlement action plan for the project affected peoples (PAP) on the road construction program.²⁷ As a borrower, the Ethiopian Road Authority needs to make the RAP (Resettlement Action Plan) to minimize the effects of the expropriation. In this regard, the Ethiopian Roads Authority has been doing arrangements to align itself with the donor requirements with respective on going projects.²⁸

²⁴ Ibid pp. 1

²⁵ Ibid Art. 7

²⁶ Ibid Art 2(A)

²⁷ Ethiopian Roads Authority Resettlement/Rehabilitation Policy Frame work February 2002

²⁸ Nazrate Asslla-Dodoolla, and Shassemene Goba RAP report March 2003 pan African Consultants in Association with Afro-consult, Werta Weldia, Mekanajo-Nejo projects

CHAPTER TWO

Law of Expropriation in Ethiopia

2.1. Expropriation in Ethiopia

Expropriation is very much related to immovable properties. Immovable property in turn commonly refers land and attachments to it. In Ethiopia the expropriation process were interrelated with the land tenure system. At the present time, land is not a private property. A citizen who possesses the land is entitled to a possessory right only and not an ownership title on the land. Land policy and expropriation in Ethiopia is a controversial issue.

The essence of property right in Ethiopia varies from government to government. Hence, government's practical and legal guarantees for the private property right widely differ during the Imperial, Derg and the FDRE periods of leadership. During the imperial regime: ***"The Ethiopian empire accommodated a land tenure system that is described as one of the most complex compilations of different land use systems in Africa (Joireman, 2000)".***²⁹ The tenure system in this regime among others is commonly classified into; communal (rist), grant land (gult), private (gebbar), church (samon) and state mederia (mengist).³⁰ This land tenure system had been characterized with the rules and regulations dominated by imbalance of power between landlords and peasantry.³¹

As the very tenure system overriding in that period was discriminatory among peoples living in the same community for the class difference they have, the expropriation process at the time of the Emperor had not described clearly the conditions to be followed. Some classes, upper and

²⁹ Corresponding Author: Crewttw@agrart.hu-berlin.de PP:7, visited on June, 10,2009

³⁰ ID

³¹ ID

middle classes of the community had a widest right on the land while others had very limited rights towards the land as per the land tenure. Accordingly, the upper and middle classes had the right to fully use, transfer or withdraw, while the remaining lower class of community had only the right to use and the rights of usufructs. However, the overall sovereign right over all the land had been reserved under the authority of the Emperor.³²

The land tenure system was completely different during the Derg regime. The Derg announced the agrarian reform program through proclamation No 31/1975. It proclaimed all rural lands as to be state property without any compensation to the previous right holders.³³ A number of restrictions on the property right of the holders had been introduced. The proclamation provided the rural families only a usufruct right on the land they possessed.

Regardless of the restrictions made on the land ownership, the period ascertained a new phenomena and a radical change in the country, i.e., the expropriation processes were made by the leadership of peasant associations of each community. ***"The leadership of peasant associations was entitled to expropriate land from the land holders and distribute it equally among its members..."***³⁴ No one ruler land holder had been entitled to claim ownership right over the land as it was made to be state property.

Similar to the Derg, the FDRE has made land a public property. The 1995 constitution of FDRE confirmed ownership right land is vested on the state. This means that, land is made a common property of the nations, nationals and the peoples of Ethiopia.³⁵ Besides, the FDRE

³² Ibid pp. 12

³³ ID

³⁴ Ibid pp. 13

³⁵ Ibid PP: 15

constitution confirmed, that the expropriation process is subject to compensation payment for the land possessor who is exploiting a certain property upon the land having a legal protection to the possession right one has. The intent of the constitution on expropriation is the subject of discussion in the next section.

2.1.1. Expropriation Under 1995 FDRE Constitution

The new Ethiopian constitution adopted on August 21, 1995 provides protection of rights for the citizens of the country and people residing therein. One of the rights ensuring that private and co-owners rights which protected by the government.

As it is stipulated under the preamble of the constitution, one of the basic objectives of the constitution is to assure full respect of individual and people's fundamental freedoms and rights. Peoples and individual rights constitutes among others property ownership right. Hence the state is responsible to protect those rights in appropriate condition from any encroachment against the rights. The right to a private property is as stipulated constitutionally protected right. However, the protection on this regard is not an absolute one. There are some exceptions where individual's private ownership right is restricted for public interest.³⁶

Expropriation process is applied for public interest. It happens under a condition where a certain development project is not possible the private owners of the property are evicted from. In this regard public interests are overriding over individual rights under specific justifiable grounds like the case of expropriation. Still, the constitution granted the individual private property owner with the right to get a fairly reasonable compensation for the damage she/he encountered.³⁷

³⁶ The 1995 Ethiopian Constitution Art. 40(1)

³⁷ Ibid art. 40(8)

2.1.2. Expropriation Under the 1960 Civil Code

Private Property right under the 1960 Civil Code is widely addressed. The code deals with the issues related to the type of property, ownership, possessor and beneficiary right or obligation. On the other hand, the code governs public ownership right too. A property can be owned by the government in the name of public interest.³⁸ Roads and streets are among the public domains. Roads and streets are very much related with land.

The government with the intention of constructing or upgrading the roads construction needs a construction input of selected materials from the land. This usually results expropriation of land owners in that specific area. By this process of expropriation properties which were under private ownership will be changed to public domain through the legal action of the appropriate authority.³⁹ Expropriation process as it is mentioned in the code shall follow certain process and necessary steps to arrive at a final decision. Hence, the government should follow a certain procedure that mentioned in the code, such as, declaration, inquiry and order before the property expropriating for public interest.⁴⁰

The expropriation proceeding process entitles a compensation payment to affected owners or possessor by the expropriation process. Compensation is one of the remedies to mitigate the effects of expropriation. It is also established rights the affected property owners or possessor would claim it.⁴¹ Procedurally, compensation evaluation during the expropriation process should be done by arbitration appraisal committee. The committee empowered to award the compensation within the described procedures stated in the code.⁴²

³⁸ The 1960 Civil Code Art. 1444

³⁹ Ibid Art. 1460

⁴⁰ Ibid Art. 1463, 1465, 1467

⁴¹ Ibid Art. 1470

⁴² Ibid Art. 1473

2.1.3. Expropriation Under Proclamation No 455/2005

The government to fill the gap with regard to development projects and to facilitate speedy expropriation for widened public domain has promulgated a specialized law, expropriation law has adopted detailed regulation. Land redevelopment, preparation and provision of rural areas for infrastructure works is among the issues focused on the preamble of the expropriation proclamation. Besides, the preamble also focused on the necessary principles to decide compensation packages.⁴³

The proclamation clearly stipulated the roles and powers of the different level authorities in executing the expropriation. Accordingly; Wereda and urban administration are stated as expropriating organs,⁴⁴ while project or development programmes implementing. Which the implementing agencies have the responsibility of compensation payment to the affected property owners or possessors.⁴⁵

2.1.4. Expropriation Under the Regulation No 135/2007

This regulation is a subsidiary law issued as per proclamation No. 455/2005. The main purpose of this regulation is to facilitate payment of compensation and to extend the support to the affected ones to restore their livelihood.⁴⁶ The regulation classified the type of property to be compensated. As per the regulation assessment of the value of the property is to rely on the current price of the property under valuation.⁴⁷

⁴³ Expropriation of land handlings for public purpose and payment of compensation proclamation No 455/2005/preamble para-2/

⁴⁴ Ibid Art. 3(1)

⁴⁵ Ibid Art. 4(1)

⁴⁶ Regulation No 135/2007 (Preamble)

⁴⁷ Ibid Art. 3-13

2.1.5. Expropriation in Road Construction Under Federal Level

The Ethiopian Roads Authority is one of the federal government organizations reestablished by Proclamation No 80/89. The authority is basically established to undertake the obligations and duties of road construction and development, starting from feasibility study to construction stage. It administers, maintains and constructs the roads all over the country.

Land is among the crucial element for the Ethiopian Roads authority as it gets its important inputs (to erect camp site, borrow area/ to get selected soil, quarry site/to get crushed stone, etc) for the road construction. Thus, expropriation process is a central lock and inevitable processes in the road construction sector regardless the period of construction.

The proclamation empowered, the Ethiopian Roads Authority to decide on the land to be expropriated for the required property situated on the land for construction. It also empowers the Authority to decide on the right of ways limit and third parties right to use along the side of the road.⁴⁸

⁴⁸ Ethiopian Roads Authority re-establishment proclamation No 80/89 Art. 6(17,18)

CHAPTER THREE

Procedures of Expropriation of Property

3.1 Expropriation Procedures

The 1960 civil code has ascertained certain procedural rules which were enforced for over 40 years. The main purpose of the code in this regard is to give a guide on the expropriation proceeding.⁴⁹ The civil code of 1960 provided expropriation procedures as follows.

A. Inquiry:-

Under this stage the competent Authority is required to make a preliminary investigation to decide whether the particular area is required for public use or not. The investigation is procedurally required to be transparent.⁵⁰ At this stage of the expropriation, owner of the property or any interested party have the right to reflect their views or critics on the proposed decisions of the investigating authority.⁵¹ This stage is valuable since it gives the chance to reach to a consensus as between interested parties and the authority driving the project, if convinced each other.

B. Declaration:-

According to this procedure, the competent authority is required to declare that the area is needed for the project to serve public interest. It is also required at this stage to publish public notice to this effect.⁵²

⁴⁹ Civil Code 1960, Art 1445 & 1450

⁵⁰ Ibid Art. 1465(1)

⁵¹ Art. 1465(2)

⁵² Ibid Art. 1463

C. Determination of Property:

The competent Authority has to determine the expropriating property for the purpose of public interest. It also has to identify status of right (full owners, bare owners, and usufructuary). The authority, should be bond to notify individually within a reasonable period which fixed by It.⁵³ Article 1466 requires that the notification should be done personally to every owner, bare owner and usufructuary. The affected individuals on their part are expected to give their views to the authority within a reasonable time. However, the laws did not lay down the effect of their views on the contemplated expropriation. Besides, the civil code did not fix the notice period.

D. Issuance of Expropriation Order

This stage is very important for the competent authority as it is the stage where it clears the area for the intended programme. In this stage the authority make clear the area from any form of right bearer. This means the land or the area will be made clear from of rights such as: servitude, usufruct, right of pre-emption, promise of sale or right of recovery. ⁵⁴

3.1.1 Expropriation Procedures Under Proclamation No. 455/ 2005

Proclamation No. 455/2003 provided additional procedures and requirements to expropriate the property for the purpose of public interest.

A. Appropriate Organ Decision

The project which is planned by appropriate organ shall be sound enough to deserve expropriation of property before entering into expropriation process. Besides, the project shall be feasible to bring development for the public better than earlier.⁵⁵

⁵³ The 1960 Civil Code Art. 1466

⁵⁴ Ibid Art. 1467 (1,2)

⁵⁵ Expropriation of landholding for public purposes and payment of compensation proclamation No. 455/2005, Art. 3(1)

B. Advance Payment

The implementing agency is required to pay an advance payment of compensation before handing over of the private property into public domain.⁵⁶

C. Notification Order

The expropriating organ which is either wereda or urban administration shall notify for the landholder by specifying the period of expropriation of the property. The notification should specify the amount of compensation to be paid to the land holder. It means, the property owner has the right either to accept or reject the given decision rendered by the expropriating organ. On the other hand, the land holder has an obligation to hand over the land for the expropriating organ within the period determined in the proclamation i.e. 30 days for those lands with no any attached property and 90 days if there are properties attached to the land therein.⁵⁷

D. Compulsory Procedures

The expropriation organ shall use different peaceful mechanism while implementing the process of transferring land from individual to public domain. But if the landholder is not willing, the proclamation provides for a compulsory mechanism, i.e., using a police force.⁵⁸

E. Obligations of Implementing Agency

The implementing agencies shall prepared and submit a detail information to the expropriating organ the properties to be expropriated one year before the commencement of the project.⁵⁹

⁵⁶ Ibid Art. 3(1)

⁵⁷ Ibid Art. 4

⁵⁸ Ibid Art. 4(5)

⁵⁹ Ibid Art. 5

F. Removal of Utility Lines

The procedures for removal of utility lines are not similar with the procedure for other properties. The body which needs the removal of lines shall submit a requisition in writing for the owner of Utility lines indicating the exact location of the lines. The owner of affected lines should value a fair compensation and send it to the concerned body within 30 days from the day of requisition. Besides, the utility owner has a duty to remove the lines within sixty days from the date compensation payment is effected.⁶⁰

3.2. Valuation Organ Under Proclamation No. 455/2005

Valuators recognized by proclamation No. 455/2005, are classified into three. These are private or public institutions, individuals and consultants. The proclamation doesn't empower full authority for these bodies. The empowerment in the proclamation to these bodies is conditioned to the confirmation of the federal affairs ministry on the capacity of such bodies.⁶¹ To fill the gap until these bodies become able to undertake the duty of valuation upon the confirmation of the ministry of the Federal Affairs, the proclamation provides other alternatives, i.e., valuation committee and owners of utility lines.⁶²

The committees will be designated by expropriating authority, which is wereda or urban administrations. The committee member shall have the relevant qualification and experience to the subject of valuation. If the property to be expropriated needs a special knowledge to evaluate it, the authority would assign a person having the required special knowledge and experience on that specific subject of valuation.⁶³

⁶⁰ Ibid Art. 6

⁶¹ Ibid Art. 9

⁶² Ibid Art. 9(8)

⁶³ Ibid Art. 10

The law has given the owner of utility lines a valuation power to value its own utility. In this case the ownership right and valuation role lies on the same institution unlike the case in private property. It is required to bring a reasonably private property fair valuation.⁶⁴

3.3. Compensation

According to Black stone the term “compensation” is defined as “identification; making whole; giving an equivalent or substitute of equal value that is necessary to restore an injured party to his former position...”.⁶⁵ Compensation is an act of reinstatement of the right of the property owner by refunding the damage to the property with compensation which is equivalent to the previous one. Compensation is a substitute and shall be of equal value of the damage to the property expropriated for the public use.

3.4. The Practice of Expropriation Process Under the Road Sector

So far the paper has discussed the procedural requirements of expropriation. This section however, tries to highlight the practice of expropriation process in road construction. The main task of the Ethiopian Roads Authority (ERA) is to administer and construct roads by providing the work through contracting agreement to contractors and consultants or by own force. ERA has been re-established by proclamation No. 80/1989 as an autonomous public authority of the federal government.⁶⁶

The proclamation empowers the authority various duties and responsibilities that can be exercised on the road sector. One of its

⁶⁴ Ibid Art. 6

⁶⁵ Black Heery Campbell Black's law Dictionary P. 1951

⁶⁶ Ethiopian Roads Authority Re-establishment Proclamation No. 80/89 Art. 3

responsibilities is to construct or improve highways under its jurisdiction either by its own force or contractors assigned through the contractual work agreement.⁶⁷

To this effect the Authority is organized into different divisions. The Construction contract Implementation Division is one of divisions of the organization. This division administers construction contract agreements. This division is further organized into sub-branches. One of those branches is Right of Ways and Roads Protection Branch (ROW). The main activity and responsibility of this branch is to do a process of expropriation proceeding and handing over of the requested land in written document for the undertaking road projects through negotiation system.⁶⁸

3.4.1. Contracting Parties

Proclamation No. 80/89 had empowered the authority to out source the construction activity. The authority out sources a road construction activity through competitive tender system.⁶⁹

In the road construction, the system of contractual agreement concluded with three different organizations which are the client, contractor and consultant. Despite the involvement of three parties, the agreement is basically a bilateral agreement between the client and the contractor and between the client and the consultant.⁷⁰ These parties have different responsibility and obligation determined through contractual agreement on that single road project.

⁶⁷ Ibid Art. 6(7)

⁶⁸ Ethiopian Roads Authority Resettlement /Rehabilitation Policy Formwork, February 2002 Ethiopian roads Authority Organization Chart

⁶⁹ Ethiopian Roads Authority Re-establishment Proclamation No. 80/89 Art. 6(7)

⁷⁰ Addis-Modjo-Awassa Road Rehabilitation Project signed with ERA on sep. 1998, Contactor Dragados, J & P and DHV consultants

The client is the Road authority which is a contract giver. A contractor is a party to the agreement whose role is to construct or maintain the road as per the requirements agreed therein, while the consultant is in agreement with the client to perform a supervision role on behalf of the client.⁷¹

One of the obligations of the authority or the client in its contractual agreement with the contractor is to provide land related with the road construction and to settle any dispute related to right of way problems or any obstacles which are outside the discretion or responsibilities of the contractor.⁷²

3.4.2. Subjects of Expropriation Process in Road Construction

In this case, the authority had been taken full responsibility to provide the necessary land for the project to the contractor. The handing over of the land shall be free from any obstacles and barriers from third parties. Among others, the following are subject to expropriating land: camp site, plant area, road segment, quarry sites Borrow pits, soil dumping area, sand area, diverting or detour road, discharge ditch (inlet and outlet ditch system) material storage area and explosive storage area. The client thus clear all the legal liabilities as with the owners or possessors of these subjects of expropriation by paying all the compensations and hand over the requesting site to the undertaking project site with a handing over document as per the requirements provided therein the contractual agreement.⁷³

⁷¹ See Annex – I

⁷² Ethiopian Roads Authority Re-establishment Proclamation No 80/1989 Art. 6(18)

⁷³ See Annex – II

CHAPTER FOUR

4. Expropriation Disputes, Law and its Practice under the Road Sector

4.1. Types of Disputes

The basic end of expropriation process is payment of compensation for the affected property owner. I have been analyzing, a detail expropriation and compensation valuation system on the basis of proclamation No 455/2005 and regulation No 135/2007. These laws have provided different type of compensation for the affected property owners, where the land the property situated is assigned for public interest for the purpose of development works.

During the road construction process, the community will face with various problems, which affects the undertaking projects beyond compensation payment. In the expropriation process, one of the issues of dispute is the amount of compensation rate, I.e., whether it is sufficient to equivalently replace the affected property, or it could be a challenge for the victim's future survival conditions.

4.1.1. Disputes over the Amount in the Compensation Process

The valuation committee is the one empowered by law to evaluate the compensation to be paid to the displaced property owner. However, the valuation committee is unable to value the affected property due to various reasons. From the interview, I have made with authorities there are multiple problems, most of which are stated below.⁷⁴

⁷⁴ Interview with Ato Abraham Bekelle, Row's Agent at Different ERA's Projects June 20,2009

A. Lack of assessment of actual day estimation cost

As provided by law the designated committee would set up actual day cost to evaluate the property to be expropriated. However, there is no system of recording market assessment cost at the national or regional level. Hence, the committee used to opted estimate the property against physically existing market value. Thus the valuation system may end in unfairly favoring either of the parties.⁷⁵

B. Unsufficient time on expropriation process

Practically speaking, the implementation of the road construction and the expropriation process usually commences at once, hand in hand. This shortens the period for completing the compensation process. Proclamation N^o 455/2005 provides that the implementing agency shall submit detail information to the expropriating organ about the land it requires. As per this law, this request should be made at least one year before the commencement date of the project.⁷⁶ Despite this, in practice the road construction system is backed by very complicated agreements that imposes serious of obligations upon the contracting parties. Among others, these contracts command the implementing agency to hand over the requested site urgently.

C. The compensation assessment committee lacks independence and necessary skill

The proclamation N^o. 455/2005 empowered to the committee to evaluate the expropriating property. But the committee does not have the necessary skill with respect to the subject property intended to be valuated. The law fails to set the required skill for the process and failed to put limitation while to recruit membership of the committee to prevent partiality.

⁷⁵ Questionnaire Annex – III (1)-Q.2

⁷⁶ Questionnaire Annex –III - (1,2,3) - Q.4

In practice, the implementing agency representatives are not involved in the expropriation process while evaluating the expropriated property. The committee is intended to constitute community members where the expropriation takes place. In practice, they may be exposed for partiality since they may be made to evaluate properties of their relatives.⁷⁷ Even the woreda administration lacks the expected impartiality since it needs the vote of the local people during election for power.

D. Implementing agencies' compensation payments are not similar across different cases of similar property.

The implementing agencies are determined in the proclamation No 455/2005. As per the proclamation, these agencies shall be governmental or public enterprise.

Regarding to actual practice, in road construction sector, the Ethiopian roads authority constructs the road. EEPCO (Ethiopian Electric and Power Corporation) had performed an activity of installation of electric power all over the country. These are parts governmental implementing agencies but their compensation payment systems are not alike.

Based on an interview with concerned officials, EEPCO while implementing the hydropower project at Gelgel Gibe No 1, it had resettled the affected property owners properly besides the compensation payment. On the other way, the Ethiopian Roads Authority, at Addis – Jimma Road rehabilitation project have paid a compensation payment for the victims unlike with EEPCO. The two projects have been founded near to the same location. These dissimilarities are among source of disputes of expropriation process.⁷⁸

⁷⁷ Questionnaire attached with Annex – III (1,3,4) Q. 6

⁷⁸ Interview with Ato Miftah Kemale, ERA's Legal Advisor June 10,2009

E. Lack of check and controlling mechanism on the evaluating committee act

The law does not provide any system of checking or controlling mechanism during expropriation process. The evaluation duty is solely given to the valuation committee. There are no any controlling mechanisms whether by expropriating organ, implementing agencies or other independent organ.

In accordance with the interview I made, practically compensation payment should performed by the implementing agencies. The evaluation committee sent compensation documents which approved by the expropriating organ to the agency. The agency approval representatives have been checked the legal formality of the compensation document contained is not the technical procedural elements where the committee arrived at on the valuation cost decision upon the payment.⁷⁹

F. Lack of an awareness which is a payer compensation payment

The law under proclamation No 455/2005 and regulation No 135/2007 imposes payment of obligation to the implementing agencies. In practice, the implementing agencies carry out their activities by the contractor through contractual works agreement. The contractor staff used to appear in the undertaking project. The surrounding community and the evaluating committee thus would be confused as to who is responsible for the payment and would be biased.

4.1.2. The Issue of Land

In road construction the land is a very essential element. As discussed under chapter three of this research, road construction may necessitate expropriation of fertile or barreled land for the purpose of construction.

⁷⁹ Interview with Ato Abrham Bekelle, Row's Agent at Different ERA's Projects, June 20,2009

Proclamation No 455/2005 Article 8(1,2) provides that, the land from rural landholders may be expropriated either permanently or provisionally. The rural land holder as optional right may get substitute land by expropriating organ, a Wereda Administration. As per article 8(3), the law provides that if the organ may substitute the land for the affected owner should confirm, because of for the purpose of amount of compensation calculation to make vary. But the law doesn't grant the right to get a substitution of land as a mandatory requirement, rather it is optional.

On the other hand, an urban landholder is better than the rural. In addition to the compensation payment, the expropriating organ which is urban administration has the obligation to provide a plot of land for the affected property owner while this is optional in the case of rural land owners.⁸⁰ The law deals only the amount of compensation, which varies depending on whether it is replacement or non-replacement the issue of land is not considered as a vital right of the affected property owner.

In practice, as per the interview with the road's authority representative, the road construction needs a very huge capital to construct. At this time, the road construction sector has been financed either by donors, borrowers or a government budget. As it is stated under chapter three of this research, private contractors through contractual agreement process often implement the road construction projects.

The contract agreement clause is a very sensitive and seriously time tabled contract. It imposed a serious obligation upon the contracting parties. Every single obligation of the parties and it's effect will be determined in the contract agreement in each road construction projects. Land and related things; the purpose of the area, the location of the area, width and length are clearly specified in the clauses of contract

⁸⁰ Regulation No 135 2007 Art. 15

document. Hence, all the parties are aware before the contract signed or commenced the project.

In accordance to the clause of contract agreement, one of the parties which the client or the authority shall provide the land requested by the contractor the construction contract agreement. The contracting parties cannot change or amended easily the determined area or location concluded in the clause. For example, camp site, it is a backbone of the undertaking projects. It needs large area it affects many dwellers. The landholders may be displaced in complete condition without a remaining piece of land. The compensation payment doesn't give permanent solution for the victims, which need further concrete resettlement and rehabilitation remedies for survival.

The presumption of law is, the affected land holding have been displaced provisionally assuming that after the contractual agreement is finalized the victims can hold the land again. The law doesn't confirm the right of displacement beyond presumption. In practice the victims faces the problem of losing the land value indirectly to resettle again.

For instance, in this is research, an investigation was made on the actual case to check whether the presumption that the displacement victim again re-holding the land or remain to be only presumption. After the undertaking project is finalized the expropriating land hand over or repossessed again by the implementing agencies or an expropriating organ.

Addis-Gohastion Road Rehabilitation Project was constructed by the contractor of Kajima of Japan, supervised by Japanese Consultants and the client was the Ethiopian Roads Authority. The client handed over the campsite through expropriation process near to Chancho for the contractor. After the contract is accomplished, the Authority failed to return the land to owners. The land is under the Authorities control. It is

using the camp site as a training center till now.⁸¹ However, the contract agreement was minimum for three years and the presumption was that the displaced farmers would re-hold their property with the completion of that period. The displacement property owner cannot be resettled within three years and it is economically and morally impossible to maintain it.

On the other hand, in practice, providing substitute land cannot be enforced easily. Since the population size is increasing at alarming rate and the land availability is scarce and since the land policy doesn't allow easy re-distribution of the land.

4.1.3. The Issue of Right of way Border

It is one of the sources of dispute in road construction projects. The basic issue is whether there is a clear-cut demarcation in road construction either in design or implementation level. From the interview, the right of way demarcation issue is a very controversial one. There is a right of way law to limit the demarcation of the segment of the road. The border limit is 15 meters both right and left hands from the centerline of the road as it is stated under proclamation No 66/36 art 2(a). On the other hand the Ethiopian Roads Authority Re-establishment proclamation No 80/89, art 6(18), states that, the authority should decide the road segment limit by itself and also it would demarcate the limit of the land to be used by the third parties.

The legal framework of the right of way limit is considered as it is defined. But in practice, the right of way limit is a very controversial issue. During the road construction, the limit is governed on the basis of the road design and the geographical landscape. Hence, the right of way limit doesn't have a clear-cut demarcation. It remains controversial issue

⁸¹ An interview with Ato Abrham Bekelle Row's Agent in Various ERA's Projects, June 20,2009

and an obstacle to implement the expropriating process properly on the road.⁸²

On the other side, the implementing agency use to pay a compensation payment to clear obstacles within the right of limit even upon the existing main road. But the expropriation may go beyond the limited. I have analyzed a certain real case submitted to the court by the plaintiff, Ato Aregay Abrha versus Ethiopian Roads Authority and Dragados J & P contractor.⁸³ The case shows that the implementation and the law are not aligned as to the rights of the expropriated peoples.

ERA as owner of the road has made little effort to protect the right of way border. Proclamations No 65/1936 and 66/1936 should be replaced with modern laws, which take into consideration the country's economic development. In the near future Ethiopia would construct motorways of more than 30 meters width.⁸⁴

4.2. Settlement Organs

4.2.1. Administrative Organs

In this research, the expropriation organs were discussed under chapter three. These administrative organs are, the expropriating organs, the implementing agency, property valuation committee and grievances hearing body. As stated at in proclamation No 455/2005 Art 3,5,10 and 11(2). Such organs would settle the expropriation problem in peaceful method provided in the law.

⁸² Interview with Ato Kenenissa Ketema, In Ethiopian Roads Authority, Legal Division, Row's Legal expertee, June 7,2009

⁸³ In Amhara National and Regional Government, under Supreme Court, north Shoa Higher Court, file No 12837, Ato Aregay Abrha Vs Ethiopian Roads Authority and Dragados J & P Contractor, Annex – iv

⁸⁴ The New Road, Addis – Nazreth Motorway signed on June 27,2009 b/n Ethiopian Roads Authority and CCCC

In practice, the road construction involves more expropriation process on the basis of proclamation No 455/2005 and regulation No 135/2007. The expropriating organ has an exclusive power to render a decision upon compensation payment for the affected property owner based on estimate of the designated evaluating committee. The duty of the implementing agency is to pay a compensation payment in accordance the document of the evaluation committee.

Grievance hearing body mentioned under article 11(1) of proclamation No 455/2005. Such organ is not yet established in the expropriation process especially in the rural area. There is no method to hear the complaint before or after the expropriation process. There is no a system of check and balance between the expropriating organs and the affected owners. Sometimes the implementing agency and expropriating organs would communicate complains of the affected property owners. The organs which solve the complaint, does not have reexamining system whether to amend or change their decision permanently after the committee have made compensation estimation. Hence this would be among the ground of dispute between parties and agencies. On the other hand, administrative tribunal hearing expropriation disputes exist only in Addis Ababa. Municipalities and Wereda of regional governments should set up at least ad-hoc administrative tribunals which entertain expropriation and other land related disputes. This greatly creates/increases the burden on regular courts.

4.2.2. Courts

The court is the organ for final settlement of disputes arising in the expropriation process. Proclamation No 455/2005 under article 11(4) provides the court a jurisdiction to entertain the case as a first instance or an appellate courts level.

In practice, any ordinary court having material and local jurisdiction would entertain the case, on the basis of complaint or claim. On the basis of the legal procedure, upon the submission of the complaint case the court would often order for testimony of expert witness, judge visiting the disputed areas etc before rendering its decision. However the affected property owner should hand over the needed land or property even if he has any complaint, otherwise it is impossible to go further to the court. This implies that the property will be demolished or expropriated before the owner exercises her/his right to be heard in the expropriation later front of an impartial court. Even if the court later found that the expropriation is wrong, the plaintiff can not get back the already demolished property except compensation. This restriction to the right of complaint may lead to a result contrary to procedural or evidence laws of the country.

4.3. Case Analysis

Practical procedures expropriating property, the contracting parties' responsibilities and obligations, and how to apply the expropriation procedures have been discussed on chapter three of this paper. The writer of the paper here below tries to analyze real cases treated by the court on different type of property expropriated for the public purpose in road construction sector.

Case One

Bayu Gashaw Bezu Vs ERA and Dragados J & P

In the case submitted to the North Shewa Zonal Higher Court, under the Amhara National and Regional Government Supreme Court file No 10525, date April 25/99 E.C. The parties in the dispute were; plaintiff,

Bayu Gashaw Bezu, and Defendants Ethiopian Roads Authority Dragados J & P (International Contractor).⁸⁵

The case arose from the road construction project executed by the contractor Dragados J & P from Kombolcha to Tarma Ber under the ownership Ethiopian Roads Authority. While the road was under construction, the contractor had been storing select material which is crushed stone on the plaintiff's farmland, and this has injured with his four families. He claimed loss of about 192,000 Ethiopian birr related to this case.

The contracting parties to the road construction agreement were the defendants for the submitted case. In accordance of the expropriation law, the Ethiopian Roads Authority is an implementing agency and it should provide any requesting land for the contractor by dealing with expropriating organ such as Wereda administration. According to ERA it doesn't proceed the expropriation process, and not handed over the land to the contractor and not to do any responsibility. The authority give alternatively opposed the plaintiff statement of claim alleging that the amount of damage is exaggerated and the right of ERA under its establishment proclamation to use a free land without any charge for the public purpose.

The 2nd defendant Dragados J & P, respond the claim, saying that it is entitled to use the land provided by the owner of the road, the Ethiopian Road Authority as per contractor-client contractual works agreement. Therefore, the contractor argued that it has no responsibility for the claim by the landholder. The court give an order for the expropriating organ i.e. Efrata Gdim Wereda Office, to confirm the plaintiff is possessor

⁸⁵ In Amhara National and Regional Government, under Supreme Court, north Shoa Higher Court, file No 10525, Ato Bayu Gashaw Bezu Vs Ethiopian Roads Authority and Dragados J & P Contractor, Annex – v

of land and also the land is no more available to be used as a farm land because of the contractor act of storing material.

The court after examining the parties' statement of claim or defendants response decided that the 1st defendant which is the Ethiopian Roads Authority has no responsibility for the claim since, it doesn't handed over the site through expropriation process. Hence, the contractor has a responsibility for the claim. But the plaintiff complaint for damage was accepted only for the last one-year crops production cost.

As to the writer of this paper, in the case provided here, the court has missed the basic claims of the plaintiff, because the main issue of the plaintiff addressed to the court was that he was displaced without due process of law from his farmland and he is lost consecutive years of crops production.

The court while examining the case, should have entertained the case from the angle of expropriation procedure and its effect. In accordance with the stated expropriation case, the expropriation law and its procedures were not applied. Thus the act of contractor is unlawful and unlawfully took the land from the plaintiff. The expropriation law and the practical procedure give the power of expropriating to the expropriating organ, which is the Wereda administration not to the contractor. The land also should have been handed over for the contractor by handing over documents by implementing agency which is the Ethiopian Roads Authority. Thus in the absence of these procedural requirements of expropriation, the act of the contractor should have been pronounced illegal and the plaintiff should have been awarded the property compensation.

On the other hand, the stated case can be treated with the normal course of procedure. The court doesn't proof the status of the plaintiff

land before it was taken by contractor. If the plaintiff had made permanent improvement to the land he could have been entitled to displacement compensation even if there was no property situated on the land. In this case, the law of expropriation and its practice doesn't reconcile one to the other.

Case Two

The plaintiffs, Ato Getachew Abera and four Peoples Vs (1) ERA (2) Sunshine Construction

The case submitted in Amhara National Regional Government, under Supreme Court to North Shewa Zonal Higher Court, file No 18557, date October 7, 2001 E.C. In this case the plaintiffs are five peoples; the defendants are two institutions, Sunshine Construction and Intervention defendant Ethiopian Roads Authority.⁸⁶

The plaintiffs statement of claim was submitted to the court on March 1, 2000 E.C. The main issue in the case is, the defendant which is Sunshine Construction while constructing the road from Muketure to Kokeb Mesk in Ensaro Wereda and Begezzawash Dalota Kebele the contractor destroyed stored soil and crushed stone on farmland belonging to the plaintiff. The plaintiffs had claimed injured and lost the availability of land fertility for a future. In this case, the contractor was convinced to pay a compensation for ten years. It paid for five years in advance not performed the remaining years. The plaintiffs are claiming the remaining five years which the contractor had interrupted its promise.

⁸⁶ In Amhara National and Regional Government, under Supreme Court, north Shoa Higher Court, file No 18557, Ato Getachew Abera and four peoples Vs Ethiopian Roads Authority and Sunshine Contractor, Annex – vi

The 1st defendant Sunshine submitted its response to the court, first, it has been arising on the plaintiff statement of claim error of procedure as primary opposition. Second, as optional response, it defended strongly on the main substantive elements it argued that it as a contractor has no responsibility for the submitted case, since the design and the expropriation process responsibility is the Ethiopian Roads Authority. It argued that the Ethiopian Roads Authority should intervene in the suit. On the other hand, the defendant argued also that the expropriation law proclamation No 455/2005 is not relevant for the case.

The contractor which is the defendant argued that the reason why it paid the compensation before for five years for the plaintiffs were lack of awareness and failure to analyze the obligations that emanate from the contractual agreement. The amount of claimed stated on the case submitted to the court in contrary of the expropriation proceeding procedural process granted on the law. The defendant also rejected the amount of compensation claimed by the plaintiffs raised expropriation law. Hence the respondent, the Sunshine Contractor argued the claim on the part of the plaintiff doesn't have a legal ground.

The 2nd intervening defendant, the Ethiopian Roads Authority have convinced the 1st defendant contractual relationship to be an agreement of contractual works and would have a certain responsibility regarding the contractual agreement but upon the plaintiffs case submitted to the court it will not be liable contractually.

The court examined the suit and analyzed the question of fact. The court has rendered a decision, that the contractor having a prior agreement with the plaintiff to pay compensation and it started payment is responsibility to pay the compensation raised by the plaintiff on the statement of claim.

As to the writer of this paper the case is purely an expropriation case, which should have got a relief based on the expropriation law not based on the contractual agreement. The contract agreement therein if it should be in accordance the expropriation law. The parties involved are determined by the law. Hence contractual agreements disregarding the right parties to the subject of expropriation would be unlawful. The case here failed to be treated in line with the expropriation laws. This shows that there is a gap as between the law and the practice.

CONCLUSIONS AND RECOMMENDATIONS

Conclusion

In this research, an attempt is made to look into and discuss the expropriation process in the road construction sector. Road construction is one of the basic governmental activities by which public interest is highly vested. The activity needs huge capital, special knowledge and wide area of land as input for the construction purpose. Hence, expropriation process is a very essential element for the road construction. The process ensures access to land and other inputs for the construction the implanting agency of the road construction. Obviously the property owners will be affected by the process with the rationale of public interest. This necessitates a law to regulate and create a balance between the public and individual property owner interests. As it affects individuals' property right and the very livelihood of the owner of the property to be expropriated, but also since the valuation process is controversial, the controversy on the issues of expropriation remains intact.

Different expropriation laws have been promulgated. However, these laws and regulations are not complete enough to properly address the issue of

property right with out contravening basic human rights principles and the constitution. As others did, this research found out that there are gaps as to the legal frameworks devoted to regulate the expropriation process. Just to site an example, the laws of expropriation denied the property owner one of the basic rights, the right to be heard before an impartial court of law before compelled to lose her/his property. The property owner is forced to hand over his/her property before being heard by the court of law.

The expropriation process has practical problems too. There are no scientific valuation methods to fairly value the property and fairly compensate the affected individual. Lack of compensation rate in national or regional level, lack of sufficient skill and impartiality on the part of the evaluating committee, practical failure to provide substitution with the reasonably time frame and failure to re-hand over the property which was only temporarily expropriated as the case applies are among the practical manifestation. Therefore, filling the legal gaps and the practical irregularities would enable the appropriate bodies responsible for expropriation process to perform their duties in line with the constitutional framework and enable the right owners get fair treatment.

Recommendations

The aim of my research is to find out the main problems related to the issue of expropriation process in road construction sector, provoke researchers for further research and point out possible solution measure to be taken by the appropriate responsible bodies. Below are the researcher's recommendations.

1. As there are gaps with regard to the legal frame work, it would be sound to make a study by the appropriate body to identify the exhaustive list of legal gap and would be advisable to undergo with amendment process to align the subordinate laws with the Constitution.
2. The law of expropriation granted compensation payment for the affected property owners under the process of expropriating organ. The law of expropriation does not provide a standard rate of compensation either national or regional level. Also resulted in either the owners or the implementing agencies had been suffering from unbalance and unfair compensation payment. Therefore, it would be advisable if a national or regional compensation rate dependant of objective parameters as a guidelines.
3. The expropriation law empowered the wereda and urban administrations to be expropriating organ. This organ is empowered to undertake valuation. However, the committee members one way or another attached to the property owners. The committee does not include independent members external to the community. In such a case the implementing agencies or the affected property owners have been facing problem of partiality on the valuation. Thus, it is recommended that, the appropriate body to establish the mechanism an independent body can make the

valuation or to design and legalize a system by which the valuation can be checked and balanced by other party.

4. The expropriation law granted in the grievance hearing body. Practically not any. Thus, it is recommended that, the concerned authority to establish grievance hearing body and make it effective.
5. The law granted compensation payment with a replacement plot of land for the urban displaced owner as mandatory provision unlike the rural which is optional. Thus, it would be fair and consistent if the law is amended to enable rural displaced owner to a plot of land.
6. By the dispute settlement procedure of the expropriation law restricted the individual's right to be heard before the court of law before losing his/her right. Therefore, would be advisable to the appropriate body to amend the law and restrict execution before decision by the impartial court.
7. The right of ways boarder limit is one of the issues of disputes. Thus it is advisable if the concerned authority adopt a clear-cut demarcation right of way limit by law.

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Appendices

DECLARATION

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

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Signed _____