

ST. MARY'S UNIVERSITY COLLEGE

FACULTY OF LAW

LL.B THESIS

**RESTITUTION OF PROPERTIES TAKEN IN VIOLATION OF
THE RELEVANT PROCLAMATION: THE LAW AND
PRACTICE**

BY MAKONNEN WONDAFRAW

**ADDIS ABABA, ETHIOPIA
JULY 2008**

**RESTITUTION OF PROPERTIES TAKEN IN
VIOLATION OF THE RELEVANT PROCLAMATION:
THE LAW AND PRACTICE**

By Makonnen Wondafrw

Advisor: Assefa Ali

**Submitted in Partial Fulfillment of the Requirements for
the Bachelors Degree of Law (LL.B) at the Faculty of Law,
St. Mary's University College**

**Addis Ababa, Ethiopia
July 2008**

Table of Contents

	Page
Acknowledgements	1
Introduction	2
CHAPTER 1: NATIONALIZATION AND RESTITUTION	
1.1 Background	3
1.2 Process of Nationalization	6
1.3 The privatization process	12
1.4 The Ethiopian privatization law	12
CHAPTER 2: STRUCTURE, POWERS AND DUTIES	
2.1 Power and Duties	14
2.2 Power and Duties of the Board of Privatization	15
2.3 Director General	15
CHAPTER 3: THE LAW AND PRACTICE IN RELATION TO RESTITUTION	
3.1 Claimants and Investigation of Claims for Restitution	19
3.2 Decision Procedure and their effects	22
3.2.1 Amending the Proclamation by an Executive Order	23
3.2.2 Appeal	25
3.2.3 Delayed decisions of the Board of Privatization	27
3.2.4 The decision of Federal Supreme Court Cassation Bench	27
3.2.5 Execution of Decisions.....	29
3.3 Delegation of Powers to Regions	30
3.4 The Introduction of Period of Limitation and its Effect	31
CHAPTER 4: CONCLUSION AND RECOMMENDATION	
4.1 Conclusion	32
4.2 Recommendation	34
Endnotes	37
Bibliography	41

Acknowledgement

First and foremost thanks to God for his kindness all the way from the beginning to completion of my education.

Special thanks to my advisor Ato Assefa Ali helpful with dedication and indispensable comments.

My thank goes to w/rt Tsigereda Negash for the assistance in course of writing paper.

Finally thanks to all my friends who assisted materially and morally during education years.

Introduction

During the socialist oriented government of Ethiopia the major means of production and private property were nationalized as a result of the socialist economic structure that was adopted by the country. Laws had been issued to facilitate the nationalization process.

After about 17 years a new economic structure emerged which no longer condemns private ownership. With it privatization came inevitably. The concept of privatization is the process of transferring ownership right from the public to private sector through various ways. One of the ways is restitution of property taken in violation of the relevant proclamation to their former owners which is the concern of these papers.

This paper seeks to highlight the powers of the Privatization and Public Enterprises Supervising Agency (PPESA) regarding claims for restitution of such properties. The major constraints of the restitution process are discussed with cases illustrating the issues involved where appropriate. It is also intended to provide an indication of what procedures are to be followed in the process.

With a view to providing a basic context on restitution the paper is divided into four chapters. The first chapters provide background of restitution. The second chapter contains the structure, power and duties of Privatization and Public Enterprises Supervising Agency. The third chapter deals with the law and practice relation to restitution. The final chapter presents a number of concluding remarks and recommendations.

CHAPTER 1

NATIONALIZATION AND RESTITUTION

1.1 Background

"Property" includes everything with either moral or material value to human beings such as their own body, reputation, and freedom to think and act¹. The state guarantees the protection of property rights in such a way that persons enjoying such right, in accordance with the law, may have recourse to the laws of the state, the judiciary and the police against any one interfering with the enjoyment of this right².

However, things become property in the legal sense of term not when they are appropriate³. Appropriation in this context refers to the arrangement in which things are taken over by private persons or the state. Nevertheless, they may still be called "property" even though they are not under the control of any person or state, so long as they are susceptible of appropriation⁴. What matters at this point is solely the possibility of appropriation; hence, a thing that can possibly be taken over by private persons or the state is deemed to be property. Laws are made, in principle, for things that form the subject matter of actual ownership right, whether individual or collective. Only in this case do they really become "property"⁵.

The narrow and original meaning of "property" relates to corporeal objects, be it movable or immovable, but in recent years property

includes not only corporeal things but also embraces certain kinds of incorporeal things which are referred to as rights⁶.

Property may generally be divided into three categories on the basis of perceptibility (corporeal and incorporeal), mobility (movable and immovable) and private or public nature (private and public property)⁷.

Public domain represents property which is not susceptible of ownership by private person and is destined to benefit the public directly⁸. This dedication to public use results in the inalienability of such property until the time when the ground that created this situation, i.e., the dedication, terminates⁹.

Private property is not destined to directly benefit the public as a whole. It is understood to mean any product, tangible or otherwise, that is produced by "the labor, creativity, or capital of an individual citizen or an association of citizens" that have juridical personality or, where necessary, property produced by communities particularly authorized by the law to own property in common¹⁰.

It is very difficult to give a clear cut definition of ownership¹¹. However, one can safely say that the right of ownership ensures the exclusive enjoyment of a given property and confers upon the owner a right to abuse the thing¹². The owner may use the property in any manner he pleases, as long it is within the area of use permissible by law. That is to say the activities of the owner in relation to property should not be contrary to the social role of individual ownership¹³.

In principle, to the extent possible, ownership remains unrestricted¹⁴. This principle is incorporated in article 1204 of the Civil Code of Ethiopia 1960 which provides that ownership is the widest right that one can have over corporeal things¹⁵.

Art 44 of the 1955 revised constitution of Ethiopia provides for individual ownership in accordance with the law. This situation changed shortly after the country started following the socialist order. According to socialist ideology, ownership is limited to consumption goods, since the productive wealth, i.e., land and capital are owned by the state as a whole¹⁶. Presently, the 1995 Ethiopian constitution affirms that all Ethiopian citizens may own private property as of right, although this right does not extend to land and natural resource, which remain under government ownership domain¹⁷.

Private properties confiscated or nationalized unlawfully in different countries, especially in former socialist countries. Those private properties are restituted (returned) to owner. Restitution means the act of restoring to the rightful owner something that has been taken away, lost, or surrendered¹⁸.

During World War II, the Nazis seized property from organizations and individuals who were persecuting such as Jews, members of some Christian organizations, homosexuals and others¹⁹. Much of the property in Western Europe was returned during post-war period under occupation law in areas occupied by the Allies and under the laws of individual countries. This was not generally possible in the

socialist countries, where the newly established communist governments simply took over property seized earlier by the Nazis. Those governments also frequently confiscated additional property from their own citizens²⁰.

The collapse of communism in 1989 - 1991 made it possible to restitute property in the former socialist countries. Many countries (Russia, Germany, Bulgaria, Czech-Republic, Hungary, Poland, Romania) enacted legislation to provide for the restitution of both private and communal property (Communal property is property previously owned by religious and other organization. It includes churches, community halls, Parochial Schools, Medical facilities etc)²¹.

In the late 1970's Ethiopia adopted a socialist economic policy. During those years, means of production, rural lands, private schools, urban lands and extra house were nationalized by the socialist government.

1.2 Process of Nationalization

Nationalization took place in the majority of countries around the world and virtually in every area of economic activity. In the central and eastern European countries, nationalization was imposed under Soviet influence after the end of World War II. In most African countries, including those following socialist models, the 1960s and 1970s saw widespread nationalization programs.

In 1974, when Ethiopia adopted the socialist economic system, the major means of production were nationalized and the private sector was limited to small scale enterprise. Some of the properties were nationalized arbitrarily on the order of the Military Administrative Council, the Council of Ministers, Revolutionary Operation Coordination Committees, urban dwellers and peasant associations, other governmental and mass organization and their official. The majority, however, through four proclamations of nationalization, namely: Government Ownership and Control of Means of Production Proclamation No. 26/1975, Public Ownership of Rural Land Proclamation No. 31/1975, Government Ownership of Urban Lands and Extra Houses Proclamation No. 47/1995, Public Ownership of Private School, Proclamation No. 54/1975.

1.2.1 Government ownership and control of means of production

Proclamation No. 26 of 1975 was aimed at ensuring government ownership and control of the means of production. The preamble of the proclamation states that, in principle, the interest of community should be given primary importance rather than personal interest. It notes that as these resources provide an indispensable service to the society, they are essential for economic development and should, as of necessity, be transferred to government ownership²². It also states that the activities of the private sector should be maintained in cases where they do not affect the interest of the society.

The proclamation provides for three categories of activities. The first group which is exclusively reserved for the government²³.

It is further provided the government would take over the properties of individual proprietors and businesses organization engaged in and off these activities mentioned in the first group.

The second group comprises of activities undertaken jointly by the government and foreign public or private capital participation²⁴. In addition, it is provided that the minimum share of the government in joint undertaking is 51 percent. In the case of individual proprietorship and business organization engaged in any of these activities, the share of government was adjusted to a minimum of 51 percent²⁵.

The third categories of activities are those which may be undertaken by the private sector²⁶.

The private sector was permitted to undertake all other activities not falling under the first category of activities. This seems to reflect the position adopted in the preamble, which considers it beneficial for certain activities to remain in private hands.

1.2.2 Public Ownership of Rural Land

The second nationalization legislation is Proclamation No. 31 of 1975, which provided for the public ownership of Rural Lands.

The primary objective of this proclamation, as stated in its preamble, is to abolish the feudal order for the benefit of the rural

community²⁷. On March 4, 1975 all rural lands in Ethiopia became the collective property of the Ethiopian People. Private persons or business organization could no longer enjoy ownership rights over land. Compensation was to be paid only for movable properties and permanent works on the land and not in respect of rural lands, forest and crops on such lands²⁸.

Any person, including former land owners, were entitled to be allotted rural land sufficient for and his family's maintenance, provided that the person is utilizing to cultivate the land personally and that in any case, the size of the land could not exceed 10 hectares²⁹.

The transfer of land such as by sale or any other manner to another person was prohibited as it was inconsistent with the principle of land nationalization, although the right to use the land could devolve upon the heirs of a deceased land holder³⁰.

1.2.3 Government ownership of urban lands and extra houses

The third nationalization law, Proclamation No 47 of 1975, provided for government ownership of extra urban land and houses. The proclamation's preamble justified the nationalization of such properties on the ground that the holding of urban land and large number of houses in the hands of a few individuals, such as feudal lords, had created artificial shortage of urban land, which resulted in the inflation of its value. It also stated nationalization would

contribute to the improvement of urban areas and the living standard of urban dwellers³¹.

Private ownership of urban lands was abolished and all such land became public property without payment of compensation to the former owners. Any kind of transfer of urban land was prohibited. The power of taking urban land due to the failure of the holder to utilize it within the period of specified by the Ministry of Public Works and Housing as well as the power of expropriation of urban land for public purpose against payment of compensation were reserved to the government³².

As regards urban houses, the proclamation permitted the ownership of a single dwelling house by any person or family. Organization could own houses for their employees or persons for whom they were responsible. Business houses could also be owned by any person, family or organization, the number and size of which were determined by the government³³.

The owners of houses had the right to transfer it by succession, sale or barter. The government, however, had to authorize transfer by have the right of permitting sale. The first part of this provision seems to be consistent with the principle that the most important right of a person who owns free hold property is that of transfer of all his interest in it. When a person owns a freehold dwelling house, his interest continues after his death, as the houses are part of an asset³⁴.

A person owning more than one urban house had the right to possess the house of his choice. Likewise any person owning one or more business houses held in antiphthesis by another could possess the house of his choice provided that he had no other business houses and can produce a license for the business³⁵.

As one can understand from the provisions of this proclamation, urban houses that did not fall within the meaning of extra houses as specified above were deemed to be government property.

1.2.4 Public ownership of private schools

The fourth nationalization legislation, Proclamation No. 54 of 1975, provided for the public ownership of private schools.

A school designated by the Ministry of Education as a foreign community school and mission school did not fall within the meaning of private school for the purpose of the proclamation. Hence, such schools were exempted from transfer to public ownership³⁶.

The Ethiopian nationalization process was highly influenced by socialist theory. The socialist program of nationalization of industries, which was meant to subject the economy to public control, failed to live up to expectations; public ownership did not make nearly as much difference as had been anticipated. Nationalization was a result of the strong belief that rapid economic progress could be achieved through the growth of the public enterprise sector, which was regarded by the government, as a

means to regulate and control the economy. But state-owned enterprises frequently required huge subsidization and imposed a burden on the economy, thus failing to meet the expectation that they would provide inevitable surplus to government.

The long period of domination by nationalization operations preceded a wave of privatization in recent years.

1.3 The privatization process

Privatization means the process of transferring ownership from the public sector to the private³⁷. In the process of privatization, the ownership of public properties is transferred from the public sector to the private sector in such different ways as sale or restitution.

Restitution of nationalized property to the former owners is one form of privatization. Restitution of nationalized properties to former owners has taken place in some countries including Russia, Czech Republic, Germany, Poland, Hungary, Bulgaria, Poland, Romania³⁸.

1.4 The Ethiopian privatization law

The government of Ethiopia, believing that properties taken pursuant to directives, written and oral orders issued in violation of the relevant proclamations by the Military Administrative Council, the Council of Ministers, Revolutionary Operations Coordination Committees, urban dwellers and peasant associations, other governmental and mass organizations and their officials should be returned to rightful owners, issued Proclamation No. 110 of 1995 for

the restitution of properties taken in violation of the relevant proclamations³⁹. This proclamation was amended by Proclamation No. 193/1998⁴⁰.

"Property taken in violation of relevant proclamations" means any property taken pursuant to directives, written or oral orders given in violation of the Government Ownership and Control of the Means of Production, Proclamation No. 26/1975; the Public Ownership of Rural Lands Proclamation No. 31/1975; the government ownership of Urban Lands and Extra Houses Proclamation No. 47/1975 and the Public Ownership of Private Schools Proclamation No. 54/1976⁴¹.

Proclamation No. 110/1995 does not restate all properties that were nationalized by the socialist regime. As its preamble indicates nationalization must have taken place by way of directives, written and oral orders issued in violation of the relevant proclamations. Lawfully nationalized properties cannot be restituted. In addition, properties can be subject of restitution only if they are under the physical control of the government⁴².

The governmental body which is vested with the authority to make prompt and effective decision on claims of restitution is the former Ethiopian Privatization Agency, which was established by Proclamation No. 87 of 1994⁴³, and which is currently named the Privatization and Public Enterprise Supervising Agency (PPESA) established by Proclamation No. 412/2004⁴⁴.

CHAPTER 2

STRUCTURE, POWERS AND DUTIES

The Privatization and Public Enterprise Supervising Agency is an administrative organ which has a diverse organizational structure. It has specialized responsibility in a certain defined field, making it well suited to perform its tasks. The Agency is established as an autonomous public agency responsible to the Ministry of Trade and Industry and has its own legal personality.

2.1 Power and Duties

In so far as restitution is concerned, the agency has the following powers and duties:

To register claims of title presented to it in respect of property taken in violation of the relevant proclamations; to investigate on the basis of the relevant proclamations the claims and conditions of title submitted to it; to obtain from any government or private office, organization or establishment as well as from any private position any evidence it deems necessary for such investigation; to hear the testimony of witnesses and to require the production before it of any written evidence; to give appropriate decisions on claims in respect of properties taken in violation of the relevant proclamations upon examination of the evidence and to take the measures necessary for the implementation of same; to delegate its powers and duties with detailed implementation guidelines, as it deems it necessary, to the appropriate regional and central government organs⁴⁵.

The agency's structure consists of Board of Privatization, and Director General, and the necessary staff.

2.2 Power and Duties of the Board of Privatization

The Board of privatization consists of five permanent members appointed by the government. It is vested with important powers and duties as regards properties taken in violation of the relevant proclamations. It has the following powers and duties:

To issue detailed directives for the purpose of executing the powers and duties within scope of Proclamation No. 110/1995; to submit to the appropriate government organ proposals regarding the settlement of claims of title where it believes that additional policy decision or law is necessary; and upon the adoption of policy or issuance of law, to implement such policy and law; and to decide on petitions presented before it against decisions passed by any organ of the agency which relate to claims of title⁴⁶.

2.3 Director General

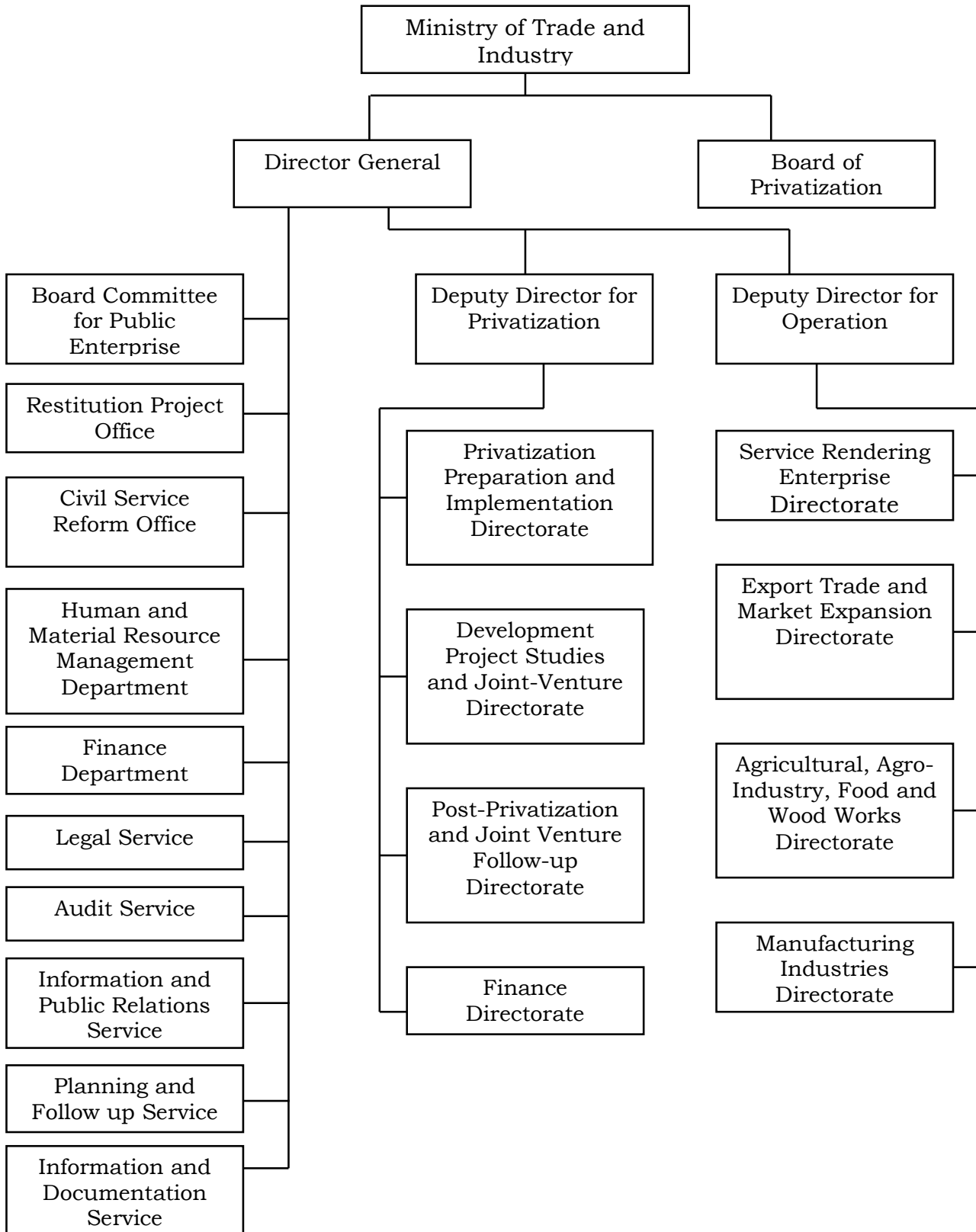
The organizational structure of the agency includes the Director General. The Director General is appointed by the government and is accountable to the Board of Privatization. The powers and duties of the Director General include to participate in the meetings of the Board as a member, to employ and administer employees of the agency in accordance with federal civil service laws, to manage and administer the activity of the agency, and to represent the authority agency in all its dealing with third parties⁴⁷.

The third body that constitutes the organizational make up of the agency is the staff. These include two deputy director generals.

The first is the Deputy General Director for Privatization Sector, who oversees the privatization of public enterprises while the second is the Deputy General Director for Operation Sector, who is responsible for the support and supervision public enterprises⁴⁸.

The agency also has other functional units which are entrusted with carrying out various tasks, properties taken in violation of the relevant proclamations affairs, that is restitution project Office⁴⁹.

Organizational Structure of PPESA⁵⁰



CHAPTER 3

THE LAW AND PRACTICE IN RELATION TO RESTITUTION

The Restitution issue is mainly legal issues and as such needs certain procedures to guide it.

It is necessary that the agency follows certain procedures if its powers and duties are to be implemented properly. In particular, as the decisions tend to significantly affect the right of claimants, arbitrariness is a vice that should be avoided for the purpose of protecting these rights.

Proclamation No. 110/1995 provides the power of the agency to register, investigate, and decide on claims of ownership within its jurisdiction⁵¹. Nevertheless, the making of rules of procedure is left to the agency since the proclamation does not lay down procedures for any of these stages in the implementation of the duties of in the agency.

Article 5 (1) of Proclamation 110/95 empowers the agency to issue detailed directives⁵². Accordingly, the agency has issued number of directives the main one is No. 01/1996 Directive which sets out rules of procedures. The procedures employed in the different stages relating to application and investigation of claims and decision making will be discussed in the next section along with the major substantive issues that may arise in those stages.

3.1 Claimants and Investigation of Claims for Restitution

The question of the real party in interest is a crucial one. In principle, sufficient relationship to the subject matter of the suit has to be established before one could be accepted as a proper party to a suit. Pursuant to article 33(2) of the Civil Procedure Code, a plaintiff has to have a vested interest in the subject matter of the suit⁵³. This party must first have the right which is sought to be enforced.

Directive No. 01/1996 provides that the claimant must have legal capacity as well as ownership title to the property in question⁵⁴. This conforms with the principle of the Civil Procedures Code which require that vested interest on the part of any one who wants to prosecute action. This principle also applies to a number of claimants who may be required to join in one suit where they are joint owners of the property that falls within the jurisdiction of the agency.

The procedure in the institution of claims for repossession commences by filing an application for the restitution of property take in violation of the relevant proclamation with the registrar of the agency. The detailed information any application has to contain is enumerated by Directive No. 01/1996.

A claimant is required to submit a written application which should be either typed or legibly written by hand. The application has to include the name and residential address of applicant with, if possible, his telephone and post-office box number. It should also

state the kind, size, current address, former and new name, as well as former and current identification number of property in the respect of which the claim is brought. Furthermore, it must indicate, if available, the name of the government organ or official who caused the transfer of property to government ownership in violation of relevant proclamation. It should also clearly state that the property in question is presently under the physical possession of the government⁵⁵. All these particular have to be stated in the application, where appropriate, depending on the type of property.

Usually, claimants are advised by the relevant officials of the agency on what to include in their application so that they would meet the regiments laid down under the provisions of the directives as in the case of Ato Samuel Tsahi and Ato Hilu Tsahi, file No. 05/0012/98 See Annex 1.

Investigation begins when the head of the restitution project office for the Execution of properties taken in violation of the Relevant Proclamation Affairs or an official verbally delegated by him refers the application by a former owner to an expert for investigation. Such expert must examine the application and, where during investigation, it is not found that the applicant does not have legal capacity or ownership right over the property in question, or the power of attorney of the applicant's agent or the document evidencing the right of the heirs of the applicant to succeed him is not legally acceptable, or the application does not fall within jurisdiction of the agency, or the case has already been decided upon by a court before the coming into force of Proclamation No. 110/1995, or the case proves to be beyond the scope of the agency

for any other lawful reason, the expert must recommended to the project office's team leader that the case investigation continues. During the course of the investigation he may order the claimant to physically appear or to amend his application so that it compiles with the changes put forward by him.

In the case of an application filed by W/ro Yewebdar Mengistu (Case File No. 05/006/97) the team leader rejected her claim on the ground that she petitioned without fulfilling the formalities of Proclamation No. 110/95 (See Annex 2).

If the expert recommends that the case merits further investigation, the agency will instruct the possessor of the property in question, as well as governmental institutions which used or still give registration service in respect of the property or are reported or expected to be in possession of relevant evidence, to bring before it evidence which are necessary to pass a decision on the application.

The agency may send such on order with a view to obtaining:

1. Documents containing the decision that caused the transfer of the property to government ownership;
2. In case the property in question is a business organization, the memorandum and articles of association together with the amendment;
3. Work permit and trade license granted to the claimant;
4. Hand over document;
5. A document indicating the amount of debt relating to the property that was acquired by the government along with the

- property and also the amount of such debt paid after government takeover;
6. The audit report drawn the time when the ownership of the property was transferred to the government;
 7. A statement on any improvements made by the government on the property while the property has been in its possession;
 8. Documents proving ownership title to the property such as title deed, plan of the building in question;
 9. Documents establishing whether or not the applicant had been compensated or given a substitute for his property which had been taken by government;
 10. A note containing details of current condition of property; and
 11. Any relevant evidence.

3.2 Decision Procedure and Their Effects

After completing all the necessary investigation, the expert shall submit a written recommendation to the team leader of the project office indicating the issues involved along with the details of how they should be resolved on the basis of the appropriate law, regulation or directives. The recommendation shall, in particular include: the name and address of the claimant; a statement indicating whether he is claiming on his behalf or as a representative, as an heir; the kind or property on the basis of which restitution is sought, its address, an indication of who is currently using it and in whose hands it; a list of documentary evidence adduced by the claimant; a brief account of the testimony of witnesses appearing at his request along with issues testified; a list of evidence obtained at

the order of the agency with the particular proved by such evidence; and the time and circumstance in which the property was taken

After examining the expert's recommendation, the team leader can either turn down the applicant's petition or recommend to the head of the project office that the property in question be restituted to its former. The head may accept, alter or reject the team leader's decision. The above described procedure can be illustrated by the case of W/ro Ayalnes Assefa File No. 05/0019/2000 (See Annex 3).

One of the considerations mentioned in the preamble of Proclamation No. 110/1995 in empowering the then Ethiopian Privatization Agency is to pass prompt decisions on claims of restitution⁵⁶. Though the agency started in 1995 receiving petitions for the return of nationalized properties, there are several pending cases that have been well evidenced and investigated. To cite just one, it has been close to 12 years since ascertain Ato Mesfin Wadjo submitted a petition on November 02, 1996 for the return of his house located in the city of Addis Ababa, Worda 5, Kebele 23, House No. 890. The case was still pending till this paper was written, File No. 05/0965/88 (See Annex 4).

3.2.1 Amending the Proclamation by an Executive Order

Proclamation No. of 110/95 was issued for the purpose of restituting properties taken in violation of relevant proclamations, their rightful owners. It does not allow the return of properties lawfully nationalized. This distinction between the restitution of lawfully and

unlawfully nationalized properties can be regarded as a problem besetting the restitution process.

According to Proclamation No. 110/1995, one of the circumstances on the basis of which PPESA restitutes a property to its former owner is the nationalization of that property through an oral order in violation of the relevant proclamations. However, in its regular meeting held on August 13, 2004, the council of Ministers decided that the business process reengineering study under way in PPESA then be reviewed in such a manner that puts a stop to corruption-prone procedures in the restitution process, including passing a decision to restore a nationalized property to its former owner in the basis of oral testimony⁵⁶. Following this decision, the Board of Privatization, in its meeting of January 14, 2005, interpreted the decision of the Council of Ministers to apply to residential houses only. It underlined that residential houses can be deemed to be nationalized in violation of the relevant proclamations, including through oral order, only when a directive or a written order, or evidence demonstrating that the authority executing the relevant proclamation (proclamation No. 47/1975) has decided that the property in question be returned to the applicant, have been adduced⁵⁷. The decisions of the council of ministers and the Board of privatization in effect amend proclamation No. 110/1995 given that logically it is through oral testimony that it can be proved that an oral order was given for the nationalization of residential houses and not through a directive or written order.

The Board of Privatization, in the same meeting mentioned above, also decided that the head of the restitution project office be given

the discretion to decide whether or not oral testimony can be used to particularly prove that residential houses in rural areas having no municipalities were nationalized through oral order having regard to the circumstances prevailing then⁵⁸. This means that it is practically impossible for an applicant to secure the restitution of his urban residential house nationalized through an oral order through the same thing is possible for a person who used to own a rural residential house. Such a distinction ultimately results in giving different decisions on essentially similar cases and as such is unfair and legally dubious.

The decision given in the case of Ato Getachew Ali can illustrate the argument raised above (see Annex 5).

3.2.2 Appeal

There is a procedure instituted by Directive No. 01/1996 whereby any party, be it the claimant or the government body in possession of the nationalized property, dissatisfied with a decision given against him can lodge an appeal⁵⁹. Accordingly, an appeal petition against the decision of the team can be submitted to the head of the project office within ten days of receipt of the decision by the appellant, similarly, any party feeling aggrieved by the decision of the head of the project office may appeal to the Director General within 30 days from receipt of the decision. A party dissatisfied with the decision of the Director General can lodge an appeal with the Privatization Board within 60 days from the date he was notified in writing of the Director General's decision⁶⁰.

The Director General may not participate as voting member while the board is considering the case submitted to it on appeal, although he may take part in the deliberations for the purpose of clarifying some points related to the case. The decisions passed by the board are final and binding, against which no appeal lies.

Directive No. 01/1996 provides that the petitioner shall have legal capacity and ownership title over the property which is the subject matter of the petition. In the event that a decision is given restoring the nationalized property to its former owner, it is the body claiming ownership over the property or the governmental body that administers the same which is entitled to appeal against the decision. (The lessee of the property cannot lodge appeal as he is not the rightful owner).

A house located in the city of Addis Ababa, Woreda 11, Kebele 17, House No. 684 was unlawfully nationalized on May 31, 1980 by a written order given by the Vice Chairperson of the Higher 11 Revolutionary Operations Coordinating Committee on the ground that the house was needed for the use of the organizing committee of the Addis Ababa Region Workers Party of Ethiopia.

Consequently, the heirs of the house's former owner, W/ro Lulit Belay, filed a petition for restitution of the house. After investigating the case, the agency decided to return the house to the heir. Following this decision, the Oromia Region Council, which was the lessee and not owner of the house, applied to the Privatization Board

claiming that it wanted the house for public use. Disregarding the directive issued by the agency, the board accepted the appeal though it has not yet disposed the case (See annex 6).

3.2.3 Delayed decisions of the Board of Privatization

The Board of Privatization is vested with a power to decide over any grievance in respect of decisions and petitions regarding ownership title, it takes a disproportionately long time to review and decide on the appeals submitted to it. A case in point is the appeal lodged by the Oromia Region Council against decision restituting the house of W/ro Lulit Belay to her heirs, which has been pending before the board for close six years (see Annex 7).

3.2.4 The decision of Federal Supreme Court Cassation Bench

In accordance with Proclamation No. 110/1995, PPESA is vested with power to investigate and to decide on the petitions for the restitution of properties unlawfully nationalized by directives, written or oral orders⁶¹. The proclamation does not state that witnesses' testimony can not serve as a basis to return houses nationalized by oral orders in towns where there were municipalities at the time Proclamation No. 47/1975 was issued. But, this is necessary what the Board of Privatization said in a decision it made during its meeting held on January 14, 2005.

If the agency does not entertain the petition of persons whose houses were nationalized through oral orders, they should be able to go to court to seek a relief based on the provisions of article 79(1) of the Federal Democratic Republic of Ethiopia which states that only courts have the authority to pass judgment at Federal or Regional levels⁶². The heirs of Mr. Nurbeza Terega petitioned the agency for the return of their house located in the city of Addis Ababa, Woreda 18, Kebele 34, and House No. 001-007. Their request was rejected. Following this decision, the heirs took the case to a court of law and filed a charge against the agency. After litigations at various levels of the court, the Federal Supreme Court Cassation Bench ruled on November 13, 2007 that the decision of the board of privatization is final and binding. (See Annex 8)

The remand the Federal Courts Proclamation No. 454/2005 introduces elements of the common law system into the Ethiopian Legal System by providing that the decisions of the Federal Supreme Court's Cassation bench are considered as law⁶³. This helps to make court decisions in the country uniform by preventing the passing of different decisions on the same case. However, while our country is known to follow the continental law system, it contradicts with our legal system to consider decisions of the Cassation Bench of the Federal Supreme Court as law similar to countries that do not have a codified system. If the agency refuses to entertain petitions regarding houses nationalized through oral orders in towns where there existed municipalities, it is the courts that should have jurisdictions over the case. If courts do not accept the petition, it will make it difficult for

citizens to exercise their rights. For this reason, the decision by the cassation bench of the Federal Supreme Court stating that the decision of the Board of privatization is final and binding contradicts with the constitution and thus should be reviewed.

3.2.5 Execution of decisions

The Agency to give appropriate decision on claims in respect of property take in violation of the relevant proclamations upon examination of the evidence, therefore, and take the measures necessary for the implementation same⁶⁴.

The decision of agency not be executed in itself as well. Where the agency decides in favor of the claimants, its power delegate to courts for execution.

After taking more than 12 years to decide petitions to return unlawfully nationalized properties to their rightful owners, it is delegating courts for the execution of its decisions. Given that currently Ethiopian courts take a time to give decisions the agency's choice to delegate them entails a delay in the execution of its decisions. The agency has the responsibility to implement its decision using the power vested in it. Hence, the delegation it gives to courts should also be reviewed. (See Annex 9 which shows the delegation the agency gave to the Eastern Showa Zone High Court)

3.3 Delegation of Powers to Regions

PPESA can delegate its power and duties with detailed implementation guidelines, as it deems it necessary, to the appropriate regional or federal government organs⁶⁵.

The federal or regional organ delegated by the agency must establish committees or a department for the purpose of implementing the delegated power⁶⁶.

The delegated body is required to submit a report to the agency every three months concerning the implementation of the delegated power, the problems arising thereof and such other related matters⁶⁷.

Petitions regarding unlawfully nationalized properties are submitted to the agency's office located in Addis Ababa. Due to its failure to delegate regional governments, petitioners living in distant areas such as Gondar, Moyale or Jijiga come to Addis Ababa to follow up their cases and waste their time and money. Had such delegation been granted, the petitioners would have had the chance to closely follow their case petition and gather evidence at their convenience, thus saving which time and money. Therefore, delegating regional governments is an issue which merits serious examination.

3.4 The Introduction of Period of Limitation and its Effect

The Proclamation No. 572/2000, as stated in its preamble period of limitation for submission of restitution claims and repossesses

public properties taken through unlawful restitutions based on insufficient or false evidence⁶⁸.

Claims of restitutions submitted to the PPESA, pursuant to Proclamation No. 572/2008, shall be barred by a period of limitation at the expiry of three months after the effective date of the proclamation⁶⁹.

The three month time limit seems to be very short. In a situation where there are a number of Ethiopians presently living in abroad whose property was unlawfully nationalized by the military government and 85% of the Ethiopian people are rural dwellers it is not fair to expect both to meet the deadline. As a result, this time for submitting petition for the return of properties also needs to be addressed.

The residential or business house shall be returned to back to public ownership where it physically exists, irrespective of the act that it has been transferred to a third party by way of sale, inheritance, donation or otherwise⁷⁰.

Third parties might buy in good-faith properties unlawfully retribute based on insufficient or false evidence. Therefore Proclamation No. 572/2008 violet right of good-faith buyers and contradicts with other principles of laws and as such should be reviewed.

CHAPTER 4

CONCLUSION AND RECOMMENDATION

4.1 Conclusion

After World War II, Eastern European countries which were part of the socialist block like Bulgaria, Hungary, Czechoslovakia, Poland, and Romania nationalized properties of their citizens, foreigners, communities and religious organizations. The nationalization process of these countries was influenced by the Soviet Union. After the fall of communism, they restituted nationalized properties to the former owners. The former military government of Ethiopia, which also had adopted the socialist ideology; nationalized means of production, rural lands, urban lands and extra houses, as well as private schools.

Following the fall of the military government, the current government of Ethiopia issued Proclamation No. 110/95 with the aim of returning to the rightful owners properties taken in violation of relevant proclamations by directives, written orders and mandated the Ethiopian Privatization Agency, the currently Privatization and Public Enterprises Supervising Agency to make prompt and effective decisions on claims of restitution. The agency is vested with the power to register, examine and give decisions on properties taken in violation of the relevant proclamations.

Out of the 32,000 petitions of claims that were submitted to it, the agency to gave decisions on 828 of them returning nationalized properties to their rightful owners while 29172 claims were rejected⁷¹. We have seen in the preceding chapters various problems associated with the restitution process of properties taken in violation of the relevant proclamation. The main problem is Proclamation No. 110/1995, which does not address the issue of properties lawfully nationalized. Apart from that, the agency takes long time to give decisions and has not delegated regional governments, a measure which could have potentially contributed to speeding up the decision making process as well as lessen the inconvenience experienced by petitioners who come from far places to the agency's headquarters, undue interference by parties which have no vested interest, the ruling by the cassation bench of the Federal Supreme Court that the decision of the agency's board of privatization is final and binding, as well as the inability of the agency, despite having the authority, to execute its own decisions are also challenges that face the agency.

Generally speaking, the restitution process in Ethiopia is best by a host of problems ranging from the very legal instrument which introduced the concept to the manner in which decisions are given to the content and execution of the decisions given. In view of this, the government and the agency must initiate reform measures so that the restitution process accomplishes its objectives.

4.2 Recommendation

The writer of this research believes that if the following specific measures are taken, the problems attending the restitution problem can beyond large be solved.

1. Given that there claims for restitution of properties taken in violation of the relevant proclamation that are pending for over 12 years, the restitution project office of PPESA should be staffed competent professional and be allocated the required materials with a view to give appropriate and prompt decisions.
2. As the decision of the agency's Board of Privatization to prohibit the restitution of residential houses nationalized through an oral order in towns which had municipalities at the time proclamation No. 47/1975 which oblige the agency to restitute all properties taken in violation of the relevant proclamation, including through oral orders, urban residential houses should be restituted to their former owners in accordance with proclamation No. 110/1995.
3. The agency must stop accepting petitions submitted to its by parties which, according to its implementation directives, have not vested interest.
4. Courts should review decisions of the agency's Board of Privatizations which contain an error of law and pass decisions on same.
5. The agency should exercise its power which to take, on its own, the appropriate measures in the execution of its decisions.

6. The agency should delegate its power to regional governments in order to avoid the unnecessary wastage of time and money by claimants who must come from far places to its head office to submit their petition and follow up their cases.
7. Proclamation No. 110/1995 must be amended in such a way that it also addresses the restitution claim of anyone whose property was nationalized by way of the relevant nationalization proclamation.
8. The three-month period of limitation laid down by Proclamation No. 578/2008 after which claims for the restitution of properties taken in violation of the relevant proclamation will be barred is short and as such must be extended to a period extending from three to five years.
9. Proclamation 572/2008 violates the right of good-faith buyers. Therefore the proclamation must be amend a provision which protects the right of third parties good-faith buyers.

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

Name Makonnen Wondaferaw

Signed _____

END NOTE

1. Aubry and Rau, *Droit civil francais*, civil translation 2 (7th edition 1961) (P. 1)
2. Ibid
3. Marcel Planiol, *Treatise on Civil Law vol.1 part 2* (12th edition 1936) (P. 280)
4. Ibid
5. Ibid (P. 286)
6. Ibid (P. 280)
7. Ibid (P. 292)
8. Ibid (P. 810)
9. Ibid (P. 814)
10. The Constitution of Federal Democratic Republic of Ethiopia article 40(2), *Negarte Gazta Proclamation No. 1.21st August 1995*
11. J. Croseley vaines, *Personal Property* 3rd edition, 1962 (P. 39)
12. Cited at note 3 (P. 578)
13. Ibid (P. 380)
14. K.W. Rayn, *An Introduction to Civil Law* (1962) P. 161
15. *Civil Code of Ethiopia 19th year - No. 2 Proclamation No. 165/1960 May 5, 1960*
16. Smith MC Dougl and David Haber, *property, wealth land, allocation, planning and development* (1948), P.13
17. Cited at note 10 art 40 (1 and 2)
18. www.answer.com/topic/restitution accessed online 18 Feb, 2008
19. *Property restitution in central and eastern Europe*, USA department Bureau of European and Eurasia affaires

Washington Dc October 3, 2007 w.w.w answer com/topic restitution accessed online 18 Feb, 2008

20. Ibid (P. 2)
21. Ibid (P. 3)
22. The government ownership and control of the means of production, proclamation No. 26/75 Negarit Gazeta March 11, 1975 (P.1)
23. Ibid (P. 2)
24. Ibid
25. Ibid (P. 3)
26. Ibid
27. The public ownership of rural land, Proclamation No. 31/1975 Negarit Gazeta April 29, 1975 (P. 1)
28. Ibid (P. 2) article 3 (3)
29. Ibid (P. 3) article 4
30. Ibid (P. 3) article 5
31. the government ownership of urban lands and extra houses, proclamation No. 47/75 Negarit Gazeta July 26, 1975 (P. 1)
32. Ibid (P. 4) article 8
33. Ibid (P. 4) article 11
34. Ibid (P. 4) article 12
35. Ibid (P. 7) article 16
36. The public ownership of private schools, Proclamation No. 54/75 Negarit Gazeta September 29, 1975
37. w.w.w. answer com/topic privatization accessed on line may 2, 2008
38. Cited at note 19
39. Properties taken in violation relevant proclamations, proclamation No. 110/95 Negarit Gazeta February 15, 1995

40. Privatisation of Public Enterprise, Proclamation No. 146/1998
Negarit Gazeta December 28, 1998
41. Cited at note 39 (P. 2) article 2(3)
42. Ibid article 3
43. The establishment of Ethiopian Privatization Agency,
proclamation No. 87/94 Negarit Gazeta February 17, 1994.
44. The establishment of the privatization and public Enterprise
supervising Authority, Proclamation No. 412/2004, Negarit
Gazeta August 2, 2004
45. Cited at note 39 (P. 2) article 4
46. Ibid (P. 3) article 5
47. Cited at note 44 article 10
48. Organizational structure of Privatization and Public Enterprise
Supervising Agency
49. Ibid
50. Ibid
51. Cited at note 39 (P. 2) article 4
52. Ibid (P. 3) article 5 (1)
53. Civil Procedure Code, article 33 (2) Proclamation No. 3/1960
Negarit Gazeta, April 5, 1960
54. Implementation directives No. 01/1996 of Proclamation No.
110/95
55. Cited at note 39 (P. 2) article 4(1)
56. Minutes of council of Ministers August 13, 2004
57. Minutes of Board of Privatization January 14, 2005 (P. 3)
58. Ibid (P. 2)
59. Cited at note 54 (P. 21)
60. Cited at note 54 (P. 20)
61. Cited at note 39 (P. 2) article 4
62. Cited at note 10 article 79 (1)

63. Remand the Federal Courts, Proclamation No. 454/2005
Negarit Gazeta July 15, 2005
64. Cited at note 39 (P. 3) article 4(1)
65. Cited at note 39 (P. 3) article 4(2) d
66. Cited at note 54 (P. 5)
67. Cited at note 54 (P. 6)
68. Period of Limitation for submission of restitution claims and for
the possession of public properties taken through unlawful
Restitution Proclamation No. 572/2008 Negarit Gazeta, April
22, 2008
69. Ibid (P. 2) article 5 (1)
70. Ibid (P. 3) article 5 (2)
71. Interview of Head of restitution project office July 16, 2008

BIBLIOGRAPHY

I. Books

1. Subry and Rau, Dirot Civil francais, civil translation 2 (7th edition)
2. Marcel Planiol, treatise on civil law vol. 1 part 2 (12th edition)
3. J. crrosely Vaines, personal property (3rd edition)
4. K.W. Rayn an introduction civil law 1962
5. Smith Mc Dougl and Dawid Haber, property, wealth land, allocation, planning and development (1948)

II. Tables of Law

1. The Constitution of Federal Democratic Republic of Ethiopia
2. Civil Code of Ethiopia 19th year No. 2, 1960
3. Civil Procedure Code No. 3 1960
4. The Government Ownership and Control of the Means of Production, Proclamation No. 26/75
5. The public ownership of rural land proclamation No. 31/75
6. The government ownership of urban lands and extra houses, proclamation 47/75
7. The public ownership of private school, Proclamation No. 54/75
8. Properties take in violation relevant proclamation 110/1995
9. The establishment of Ethiopian Privatization Agency, Proclamation No. 87/1994
10. Privatization of Public Enterprise Proclamation No. 146/1998
11. The establishment of Privatization and Public Enterprise Supervising Agency Proclamation No. 412/2004
12. Implementation directives No. 01/1996 of proclamation No. 110/1995

13. The remand the Federal Courts Proclamations No. 454/2005
14. Period of limitation for submission of restitution claims and for the repossession of public properties taken through unlawful restitution proclamation No. 572/2008
15. The decision of Federal Supreme Court Cassation bench, at November 13, 2007

III. Cases

1. The application of Samuel Tsahi and Hilu Tsali case file No. 05/0012/98
2. The application of w/ro Yewubdar Mangistu (case file No. 05/006/97)
3. The application of w/ro Ayalnesh Assefa File No 05/0019/2000
4. The application of Ato Getachew Ali
5. The application of Ato Mesfin Wadjo File No. 05/0965/88
6. The appeal of Oromiya Region Council
7. The decision of Agency on W/ro Lulit Belay claim
8. The application case of w/ro Lulit Belay file No. 05/176/88
9. The delegation the agency gave to the eastern Showa Zone High Court

IV. Others

1. Minutes of Council of Ministers
2. Minutes of Board of Privatization
3. Interview of head of restitution project office

V. Electronic Sources

1. W.W.W. answer com/topic restitution accessed online
2. W.W.W. property restitution in central and eastern Europe, USA department Bureau of European and Euro-Asia affairs

A N N E X