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LL.B THESIS

THE AMOUNT AND ASSESSMENT OF COMPENSATION
PURSUANT TO THE COUNCIL OF MINISTERS
REGULATION 135/2007 AND THE PRACTICE

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ADDIS ABABA, ETHIOPIA

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STATEMENT OF DECLARATION

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

Name.....

Signature.....

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Introduction

Land is the basic natural resource, which today has reached a stage of scarcity either in urban or rural areas as a result of urbanization process. Thus expropriation of land is often the only method available for the government to implement some of the duties which are included under the provision of infrastructure and public service like constructing road, school, hospitals, condominium houses and etc

As it is known that the government has the authority to expropriate landed immovable private property for public purpose. So where the expropriation of a piece of land is deemed to serve the public interest at large the government pays commensurate payment of compensation for the house and other development or improvement of the land .

However due to the reason which has stated earlier the displaced land holders will receive commensurable amount of compensation in advance by considering the economical status of the country. The payment of compensation will be effected by considering the current market value.

Thus, as long as it involves the lawful taking by the government privately owned immovable properties are always taken for public purpose against payment of commensurate compensation with the value of the expropriated property. Here it is made for the purpose of up grading and to bring better development for the society at large but how the payment of compensation is conducted for the displaced land holders needs some consideration.

This research will examine the implementation of the laws that are issued to effect the payment of compensation for those whose land holdings have been expropriated and the way how the payment of compensation is conducted before and after the issuance of the new laws which are proclamation 455/2005 and regulation 135/2007 will be taken in to account.

Then this senior thesis is divided in to three chapters, and sub divided in to sections and sub sections.

The first chapter is in to seven sections, in this chapter the concept and definition and nature of expropriation is dealt also the rational behind expropriation and the way how the public purpose is determined and the purpose of land expropriation will be seen respectively.

Chapter two describes compensation before and after the issuance of the new laws which are proclamation 455/2005 and regulation 135/2007. This chapter has seven sections. The first section deals with the concept of compensation .Then administration of compensation will be seen at the time of before the existence of the new laws which is the way of administration at pre 2005 and also how the new proclamation administers the payment of compensation will be dealt in this chapter.

Chapter three deals with determination of the amount of compensation for the case of expropriation. In this chapter there are six sections which deal the procedure of compensation, the valuation of property and there is also description of the new regulation 135/2007 and the types of compensations under it will be dealt respectively.

Finally conclusion and some possible recommendations are there.

Chapter One

1. Expropriation

Expropriation refers to the taking of private property for public purpose. It is the act of a sovereign government. This chapter focuses on the definition, the nature and scope, the concept, and purpose of expropriation.

1.1 Definition

Expropriation has no exact universally accepted definition, but different scholars used to call it as the taking of privately owned immovable properties for public purpose with the payment of compensation equivalent to the value of the expropriated land. ¹

The reason why there is no commonly used definition for this term may be because the different kinds of legal systems and the way these states interpret may differ from one state to another thus a universally accepted uniform definition could not be found. Yet as there are various legal systems the term expropriation will be conducted in different terms like, taking, eminent domain, condemnation, are some of the terms that will be used to express the term expropriation. ²

I will look at some of the following sample definitions which are used by different scholars as their opinion for the term expropriation according to their understanding of the concept. Here in under Black's law dictionary defines the term expropriation.

¹ Charles M. Haar ,Louis, D.Brandeis, Lance Liebman , *Property and Land Law*, p 1278

² Muradu Abdo, *Commentary on Public Domain and Expropriation* (unpublished), p. 9

It is to take property of an individual in the exercise of state sovereignty as by eminent domain. ³

This definition is to mean that the sovereign organ which is the government has the power to take property of private individuals.

In another definition it is seen in a different view other than the first one.

The power to take private property for public use or purpose without the owner's consent in an inherent power of the federal and state governments, a necessary attribute of sovereignty .⁴

Thus, the later definition states that the act of taking is the power of the state to take over privately owned properties without the consent of the owner and it also states that this act is an inherent power of the sovereign which can be either the federal or state government.

Therefore, the difference between the two definitions is on the idea which is stated by the later one that seems more explanatory rather than the former definition. Because the former one seems even if it is the act of the sovereign states to take the privately owned properties it is considered as a public domain which means, the government will take privately owned properties when ever there is need for public domain.

But the later one states that, the sovereign state seems it has vested interest to take the property of private individuals which was never been under the control of the government. This means there is no retaking of property by way of the need for public domain.

³ H.C, *Black's Law Dictionary*, 5thed, p.403

⁴ R.A Cunningham , W.B Stoe Buck and D.A White man ,*The Law of Property* ,2nded, p.510

In general expropriation can be defined as a power of governments to take privately owned immovable properties without the consent of the owners of private individuals for the reason of public purpose but just with a payment of compensation which can be considered with equal amount of the value of the loss of their properties. Because there should be payment for whatever the government took.

In our case, the proclamation which is provided for expropriation of land holdings for public purpose and payment of compensation states under Art 3 that the power to expropriate land holdings is the act of the woredas or an urban administration is empowered to take (expropriate) rural or urban land holdings for the reason of public purpose with the payment of in advance compensation.

The act of expropriation will be taken for a better development project when the decided land is to be expropriated by the appropriate higher regional or federal government organs for the same purpose. This means, the proclamation specifically deals with the taking of the land with a payment of compensation in advance because the land holders do not own the land rather they are exercising the lease holding right by rent.⁵

Some years back, land was under the ownership right of the state but the landholders do not own the land.

Therefore, the appropriate organs specifically want to take the land only not the immovable which are situated on the land. But whenever the federal or regional organ needs the land for public purpose, the land holders are expected to remove their immovable property from the land according to the given procedures and the empowered organ who is

⁵ Expropriation of Land Holdings for Public Purpose and Payment of Compensation, no 455/2005 , *Federal Negarit Gazeta*, Article 3

taking the land is expected to pay compensation for the expropriated landholders with equivalent amount to the value of the loss they face.

1.2 Nature and scope of Expropriation

As expropriation is referred to the taking of privately owned properties specially things related to immovable, and the act is possibly be made by the government itself with out the consent of the owner. It can be made at any time since it is needed for public purpose.

Here public purpose can be seen that as it is the act of expropriation is always believed to be made by considering the public interest at large either to be beneficiary directly or indirectly. So public purpose can be seen as it advantage or benefit to the public.⁶ It means that when the public is used to take the private property of individuals the benefit will be for all the society at large because in this case the economy of the country will be developed so that the society at large becomes to develop or to get advantage at the same time.

With regard to our law which is proclamation 455 /2005 under article 2 it provides that public purpose is defined as it is decided by the appropriate body in conformity with urban structure plan or development plan in order to ensure the interests of the peoples to acquire direct or indirect benefit from the use of the land and to consolidate sustainable socio-economic development.

So here as per this provision determination of public purpose will be conducted by the appropriate organ in conformity with the urban structure plan or development plan and by way of considering the

⁶ Bereket Bushra, *The Law of Compensation applicable up on Expropriation of Rural Land holding Right in the Regional State of Southern Nations Nationalities and Peoples*, 2006, unpublished, P.12

interests of the society by ensuring that if they are directly get benefit from the act or indirectly which can be get from the act it can be said that from the development of the socio economic condition of the country the society may be beneficiary indirectly. So public purpose can be referred as it is a condition to create direct or indirect benefit for the society at large according to the plan structure of the state.

Thus, the nature of expropriation is characterized with its special relation to the immovable and for any other interests that will arise from the immovable and for any other interest that will be raised from the immovable properties can be included under the nature of expropriation.

Its nature is limited only for immovable properties and for any interest that arises from the immovable properties and its scope proceeds as to providing a remedy for those who are affected by the act of expropriation. As long as there are victims due to the act of the government, the scope of the act of expropriation will cover all the victims by compensation payment to be done in advance which can help them to reinstitute their livelihood as it was being before the expropriation act.

Therefore, the nature of expropriation can be easily identified as it is related to only immovable and for any interests that will arise from the immovable. Then the scope exceeds up to providing a remedy for those who suffer by the act of government which is the act of expropriation.

1.3 The Concept of Expropriation

The concept of expropriation is dealt with at the earlier topics. Hence, in order to relate and to make sure that there is some identification between the idea of expropriation and other related concepts with expropriation. I will try to differentiate the concept of expropriation from other similar terms. Here in under, the term expropriation is discussed with other related terms and their differences and similarities will be taken in to account.

1.3.1 Nationalization

This is the most analogous concept to that of expropriation. It is defined as follows,

At least theoretically nationalization does not earn with it compensation since the idea is to take away property from wealthy people and since it is one method of minimizing wealth disparity or since it is one mechanism of eliminating the evils of private ownership.⁷

In this idea, the power of nationalization does not provide any payment of compensation when it takes property. While expropriation provides payment of compensation in case of taking privately owned property. Even if it provides payment of compensation the extent of compensation would be controversial in the case of expropriation.⁸ This can be taken as their difference and their similarity will be upon both acts are basically made by the government.

⁷ id 2 at 9

⁸ Ibid

1.3.2 Requisition

Here I will try to distinguish the concept of expropriation against requisition. Though both of them are restored to an account of public interest, requisition relates to the taking away of movables from private individuals while expropriation is generally concerned with the taking immovable properties ⁹

The above expression indicates that there are different applications with regard to the above two concepts. Even if there is public purpose requirement in both sides their difference lies when requisition deals with the taking of movable properties for public interest. While expropriation deals only with the taking of immovable properties.

There seems to be a difference between the two concepts, even If there is a distinction, it may not matter when we look at the provisions of the FDRE constitution Art 40(8) which refers to private products which means any tangible or intangible properties. According the above provision any property which is tangible or intangible is to be taken as a property. So, we can say that any intellectual property will be taken as an intangible property. ¹⁰

Therefore, as long as there is a requirement of compensation for the case of expropriation and as its scope is related only with immovable properties. But when we take the words of the constitution Art 40(8) the distinction on the basis of their subject matter disappears for this constitutional sub article because it refers to private property. ¹¹

⁹ Ibid

¹⁰ Ibid

¹¹ Ibid

1.3.3 Confiscation

*Confiscation refers to forfeiture of property from individuals as a result of their criminal behavior and this property will go to the state.*¹²

It is a taking of property as a sanction to some criminal act of the owner as it is a kind of penalty for the wrong doer while expropriation is a positive action of the state, which means the positive act of the state is made for the betterment of the society as a result of public purpose and it takes private property.¹³

Therefore, both acts seem to be the same because the taking of private property is made by the government. In case of confiscation, the government may exercise its power of taking due to the criminal behavior of the individual as a punishment. But in case of expropriation the taking of private property is made as a result of public interest and it is also made for bringing a better development for a state that is why it is called a positive act and it is also a civil act done by the government.

1.3.4 Police power

The police power is different from the act of expropriation. Expropriation is different from the other act of the government which is the police power of a regulatory taking of private property and police power refers to

¹² Ibid

¹³ ibid

*The power to legislate for the health, morals, safety and welfare of the community and this power can be exercised even though it imposes burdens on the use and employment of private property.*¹⁴

The police power is not made as a positive act of expropriation rather it is a negative act of the government and there is no payment of compensation. While expropriation is a positive act, it is also made for the betterment of the society at large.¹⁵

1.4 The Rational Behind Expropriation

There is always a question behind the power to expropriate privately owned properties by the government and it has been the concern of many scholars. Through considering different issues, various scholars have finally come up with different studies in order to determine the rational behind giving this power to the sovereign.¹⁶

The first rational is provided by the early civil law scholars, Grotius and Pufendorf. They argued that sovereign states had original and absolute ownership of property prior to possession by private citizens also individual possession was derived from grants from the state. In this argument they stated that the individual's possession is subject to the states interest in order to take their ownership right.¹⁷

The second rational emphasizes that eminent domain is the natural consequence of royal prerogatives that inherent to the concept of

¹⁴ Wright R.Robert, *Land Use in a Nut Shell*, 1994, p.80

¹⁵ Ibid

¹⁶ J.Dukminer and J.E krier, *Property* , Little Brown and co,1988, P987

¹⁷ Ibid at 988

feudalism. So they suggest that the power of taking is remnant of feudal tenures. ¹⁸

Finally, natural law theorists have argued in a different view, which is, the rationale for taking is eminent domain as it is an inherent attribute of sovereignty which is necessary to the very existence of government. The government can take private property by using its sovereign power and use it for the benefit of the public at large. Now a day this seems mostly the acceptable rationale.¹⁹

The natural scholar's argument provides that, a sovereign state as an interested organ with a vested interest in order to take the private individuals property when ever there is public interest. As the rationale behind taking is acceptable because it relates the power with the current need of exercising the power of the state to take privately owned properties for the public interest.

This means, it is the power to take and apply privately owned properties for the public benefit in these cases the taking power can be applied by the sovereign state. ²⁰

So in order to meet the needs of the public which is made for the development of the society taking the property rights of private individuals can be considered as an inherent power for the authorized organs.

¹⁸ Ibid

¹⁹ Ibid

²⁰ J.Lewis, *Treatise on the Law of Eminent Domain in United States*, p.62

1.5 Purpose of Land Expropriation

Expropriation involves the taking of privately owned immovable properties for public purpose with the payment of compensation equivalent to the value of the property which has been expropriated. The government may expropriate private property to serve the public purpose. The question is what constitutes public purpose? In most cases, it is said that public purpose is whenever there exists anything that will bring direct or in direct benefit for the public at large pursuant to proclamation 455/2005 which is issued for the expropriation of land holdings for public purpose and payment of compensation we can say that there is public purpose.

Thus this may lead us to determine which one is the purpose for expropriation. The construction of road, condominium houses and any infrastructure which can serve the public at large can be taken as purpose for the act of expropriation.

The applicability of the purpose of expropriation must have the public interest in general which means, it has to bring development for the country and also the individuals who lived at the areas must get some benefits like job opportunities, facilities to have education near their community. The act is made for the betterment of the society at large and it is the power of the government to acquire privately owned properties in order to satisfy the necessities of the state which can only be exercised by the sovereign state. ²¹

²¹ C.Berger, Land Ownership and Use, 1983, p.1015

1.6 The Power to Expropriate Land

The power of taking private property mostly resides at the hands of the sovereign state. It has the power to take private property for public use. In this case, the private property owners may be deprived from their ownership right over their immovable properties in the absence of their consent.

Eminent domain (expropriation) is the right or power of a sovereign state to appropriate private property for particular use for the purpose of promoting the general welfare. It embraces all cases where by the authority of the state and for the public good the property of an individual is taken without his consent for the purpose of being devoted to some particular use either by the state itself, by a corporation public or private or by private citizen .²²

The property of private individuals may be taken for public purpose by the concerned authorities of the state with out the consent of the holders. This act of taking will be made for the purpose of some particular use either by the state itself or by a corporation public or private, or even by a private citizen.

As per this idea, the power of taking private property is granted either by the state, private or public corporations, or by private citizens for the reason of public purpose. Planning to bring any development for the public at large can be made by the involvement of all the necessary organs stated.

²² Ibid at p.1

Even if bringing a better development is planned by the government, the projects will be put in practice by different capable organs which are allowed by the laws of the country.

The above organs have the power of taking in order to give effect for the planned goal such as rail roads and utility companies which provide public service. It is despite the basic concept that eminent domain is a governmental power and this right of the government remains with the sovereign power of the state.²³

The United States Fifth Amendment constitution states that, “nor shall private property be taken for public use, without just compensation.”²⁴ It provides a limitation rather than fully grant the power of eminent domain. Thus, this limitation is not a complete prohibition and also a total granting right of taking. In other words, it does not explicitly prohibit the taking of private property for private use. They are considered as it is implicitly prohibited by providing a requirement payment of just compensation for the act of taking.²⁵

With regard to the case of Ethiopia, the Federal Democratic Republic of Ethiopia’s Constitution under Article 40(8) grants the power expressly, “The government may expropriate private property for public purpose”.²⁶ This constitutional provision expressly grants the government to take the private property of individuals. Its implication might be to satisfy the public interest at large by way of taking private property.

In general, in order to meet the needs of the public at large, government must use some sort of mechanism for taking the land under the

²³ Supra note 4 at p.510

²⁴ Donald D.G. Hagman, *Urban Land Planning and Land Development Control Law*, 1971,p.311

²⁵ Ibid

²⁶ Constitution of the Federal Democratic Republic of Ethiopia, *Federal Negarit Gazette*, 1995,Article 40(8)

possession of private individuals but before this there are different options for the government to acquire an estate or interest in land.

These are the acquisition of an interest in land by gift, by purchase or by exercising their power of eminent domain.²⁷ So from these suggested options, the one which empowers the government to take land holding right of private individuals without any requirement to get the consent from the holders is exercising the power of eminent domain. Because the other two options, in order to acquire an interest in land by gift or by purchase always depend on the consent of the private individuals. So in this case if the individual is not consented it will not have effect.

Moreover, the current land policy of Ethiopia says ownership of rural and urban land is exclusively vested to the state and the peoples of Ethiopia.²⁸ And the Federal Democratic Republic of Ethiopia's Constitution clearly provided that, land shall not be subject to sale or other means of exchange.²⁹

Therefore, this indicates that purchasing or acquiring an interest in land is not an easy task at the current situation of land holding policy in Ethiopia. But exercising the power of eminent domain is forwarded for the sovereign governments in order to take land holding right of private individuals for the public purpose.

1.7 Determination of Public Purpose

Before looking in to public purpose determination, the meaning of 'public purpose' should be taken into account. The precise meaning of 'public purpose' requirements have varied over the time and according to

²⁷ supra note 24 at p. 505

²⁸ Id 26 at article 40(8)

²⁹ Ibid

the type of taking involved. The conventional statement of the historical case development holds that there are two basic opposing views of the meaning of 'public use'.³⁰

The first one is a broad view, which says that, the term public purpose means advantage or benefit to the public.³¹ It indicates that it is like advantage for the public to prefer the public benefit at large. i.e. when the act that is going to be made by the government as a public purpose, if it is going to benefit the economical development of a state we can say that there is public purpose it is taken as it has the idea of broad view, because here the advantage may not be for the benefit of private individuals for those who are living around the new project which is made for the betterment of the society at large.

Therefore, as long as the acts of the government by the reason of public purpose is made to benefit the public at large, the loss of the private individuals who suffers from the act of expropriation may not prevail than the acquired public benefits.

On the other hand, the second one narrows the view. It says the actual use or right to use the condemned property by the public.³² This means as far as taking of private property is permitted for public purpose, at the time when the act of taking is placed; there shall be the use of the taken property by the authorized organs.

³⁰ Supra note 16 at 988

³¹ Ibid

³² Ibid

Whenever we say there is public purpose, there has to be something special for the development of the country and any property may not be taken without having justifiable reason for public purpose. Any private property may not be taken for the benefit of another individual for the reason of private purpose without justifying public purpose, even though compensation is paid. ³³

³³ Ibid

CHAPTER TWO

2. COMPENSATION

The mere idea of compensation is provided in order to give remedy for those who suffered due to the act of expropriation. The case of expropriation is always made by the sovereign authority then those who are affected must get adequate payment of compensation as equal to the amount of the value of the land holder's loss due to the act of expropriation.

Here in this chapter, I will look at the concept and definition of compensation and the relation between expropriation and compensation. Then before starting to look at the current way of administration of compensation, the way of conduct regarding administration of compensation at the pre-2005 stage will be seen. Then how the payment of compensation was dealt with in light of the lease proclamation 272/2002 and the purpose of the proclamation will be taken into account.

Finally, the current proclamation 455/2007 will be considered in the areas of compensation, and the assets of the proclamation with regard to compensation will be seen too.

2.1 The Concept and Definition of Compensation

The concept compensation will be raised as long as it is related to the act of expropriation. The idea or the concept of compensation can be seen in light of different legal systems but what ever different legal systems exist, the concept compensation is more or less dealt with in different way as there are different legal systems. This means, any state has to compensate whenever it commits the act of expropriation, so it

can be made according to the method the states adopt in their legal system.

The Fifth Amendment of the United States constitution states that private property shall not be taken for public use without just compensation.³⁴

As it provides that there has to be payment of compensation which is just in order to take private immovable properties. Otherwise if there is no payment of just compensation, the constitution prohibits taking of the private individual's property. Because the United States constitution provides that payment of just compensation as a requirement for the purpose of taking privately owned properties, but when we talk about compensation what does just compensation mean shall be taken in to account.

Just compensation is interpreted to mean, a fair payment by the government for property it has taken under eminent domain. This should be done on the basis of properties' fair market value, so that the owner is no worse off after the taking. It is also termed as adequate compensation, due compensation, or land damage.³⁵

It is to mean that compensation has to be made by the government whenever it takes the private properties and the compensation to be paid by the government has to be made by a fair market value. This market value can be seen as fair market value is the price in cash for which the property would change hands in a transaction between a willing buyer and a willing seller; neither the seller nor the buyer acting under any compulsion to buy or sell.³⁶

³⁴ Joseph William singer, *Property Law ,Rules ,Policies and Practices*, 1993,p.511

³⁵ Jesse Dukminier, *Property*, 1990, P.992

³⁶ J. Dukminier and H.Brace ,Gilbert, *Law Summaries Property* ,14th ed ,1999, p.30

As compensation is believed to be made according to the fair market value, it is made on equal amount of the value of the price that the current value of the property every individual used to exercise their day to day activity. The meaning of just compensation is that it is generally the amount in cash which equals fair market value of the property taken.³⁷

Therefore, just compensation means full monetary equivalent to the property taken and the owner of the property who has been dispossessed has to get the same position monetarily as he would have occupied if his property had not been taken. In order to determine the monetary equivalence, the court easily established the concept of market value so, the landholder is entitled to get the market value of his property at the time of taking.³⁸

With regard to our law, especially the proclamation 455/2005 which is issued for expropriation of land holdings for public purpose and payment of compensation it provides under its definitional provision, compensation put as payment to be made in cash or in kind or in both to a person for his property situated on his expropriated land holdings.

Here the amount of compensation to be paid for those whose land holding has been expropriated will have commensurate amount of payment to be made either in cash, in kind or in both and the amount of compensation has to be determined on the basis of the replacement cost of the property .³⁹

³⁷ R.A .Cunningham, W.b ,Stoe buck and D.A White Man, *The Law of Property* ,2nd ed , p.511

³⁸ Id 35 at 987

³⁹ Expropriation of Land Holdings for Public Purpose and Payment of Compensation Proclamation no,455/20005, *federal Negarit Gazeta*, art 4(2)

Other than the definition of compensation under the proclamation 455/2005, the Federal Democratic Republic of Ethiopia constitution also provides a general principle. It states that the government may expropriate private property for public purposes subject to payment in advance of compensation commensurate to the value of the property the land holder's loss.⁴⁰ So, even if the people have the right to property which is provided under the FDRE constitution article 40(8) and it also states that their right may be deprived when there exists a need of the land by the government for public purpose. But even if there is deprivation of people's right to have property, the government also provides to get payment of compensation to be made in advance which is equivalent to the value of the loss the land holder's face during the act of expropriation.

Therefore, in one or another way our law takes into account the manner of compensation to be paid in advance, but the way how the payment of compensation is to be made will be discussed under the next chapter in detail. But for the purpose of identifying the concept and definition, the FDRE constitution provides as a general principle about the payment to be made. And as the proclamation is found at a lower status when it compares with the constitution in hierarchy the proclamation must always be in accordance with the provisions of the constitution as the constitution has a prevalence status over the proclamation.

In general, expropriation is the act of sovereign state in order to take the privately owned immovable property for the need of public purpose and this kind of government's act is always followed by commensurate amount of compensation to be paid for those whose land holding has been expropriated either in kind or in terms of cash, or in both.⁴¹

⁴⁰ The Constitution of Federal Democratic Republic of Ethiopia, *Federal Negarit Gazeta*, art40(8)

⁴¹ Ibid

Expropriation is an inherent power of a sovereign state, which is always to be made for the presentment of a state's economical development and for providing infrastructures. This right of the state and the corresponding duties to pay compensation to the affected individual owners are provided under the FDRE constitution and by other different proclamations and regulations as it is enacted to implement it.

In this respect, the proclamation 455/2005 which is for the expropriation of land holdings for public purpose and payment of compensation provides that a land holder whose holding has been expropriated shall be entitled to payment of compensation for his property situated on the land and for permanent improvements he made to such a land. Thus the amount of compensation to be paid will be calculated based on the replacement cost of the property.⁴² This shows that, the person who is deprived of his property is also constitutionally entitled to payment of in advance compensation commensurate to the value of his property.

However, the relationship between expropriation and compensation will never be seen separately because the existence of the act of expropriation will always bring the payment of compensation for those who are affected by the act of expropriation. So, if there is an act of expropriation the payment of compensation is always to be made.

As times goes, the developmental stage of a state must get well progressed and the government's need for land will become high and those who were settled at urban areas due to the need for public purpose they are getting displaced to the rural areas of the city and those who were living at the rural areas are moving out to the country side. This is when the government wants the land for public purpose the land holders

⁴² Id 39 at art 7

will be displaced with the payment of compensation either in kind, in cash or in both. Thus as long as there is an act of expropriation which is made by the government it is obliged to pay commensurate amount of compensation in advance for the value of the property the land holders loss at the time of the act of expropriation.

Even if the FDRE constitution clearly provides that the right to property for every individual to exercise their ownership right over the rural and urban land to exercise their use right, the land holders are permitted to have land, as land is exclusively vested as a common property of the nations, nationalities and peoples of Ethiopia and shall not be subject to sale or other means of exchange.⁴³

Even if there is a constitutionally provided right, when ever there is public interest, the land which is under the hands of the land holders will be transferred to the appropriate body when ever there exists public interest which can serve the public at large.

Then the act of expropriation will be permitted and the landholders shall hand over the land with payment of compensation in advance for the value of the loss the land holders face.

Therefore, the idea of compensation will always be present as long as there is an act of expropriation. As the expropriation is always to be made by the government authority or by other organs that are empowered by the government it self though these organs are specifically provided under proclamation 455/2005 the act to be carried out by public entities, private investors, cooperative societies or where such expropriation has been located by the appropriate higher regional or federal government organ for the same purpose.⁴⁴These specific organs

⁴³ Id 40 at article 40(3)

⁴⁴ Id 42 at article 3

can expropriate the private individual's property whenever there is a need to have the land for public purpose. So the landholders who become displaced due to the act of expropriation must get the appropriate payment of compensation according to the given laws which provide how to conduct the payment of compensation and how to deal with the act of expropriation. As a result of this we can conclude that the payment of compensation is necessarily made whenever there is an act of expropriation.

2.2 Pre-2005 Administration of compensation

At the earlier stage, before the issuance of the new proclamation, 455/2005 which is issued for expropriation of land holdings for public purposes and payment of compensation, determination on the amount of compensation was used to be dealt by different laws but the applicability of these laws is not necessary due to the issuance of the new proclamation and regulation.

Now a days, the issuance of the new proclamation 455/2005 starts to give a clear idea and it also provides a guideline on the administration of compensation before the act of expropriation takes place. Before the issuance of the new proclamation, the administration of compensation was used to be determined at the earlier times by the 272/2002 lease proclamation which was used to determine the amount of compensation up to the time the new proclamation starts to be applicable.

So, the administration of compensation at this time falls under the new proclamation and the applicability of the earlier laws terminated. But, even if there is a new proclamation issued before this law becomes to be effective, the administration of compensation was clearly forwarded by the provisions of the lease proclamation.

The 272/2002 proclamation mostly deals with matters relating to lease, and at the same time when the lease right is to be effective the consequences will be taken as expropriation because, even if, the lease holding right is permitted for private individuals, the act of expropriation is made by the government for public purpose. So the determination of compensation was made by this proclamation. After the issuance of the new proclamation 455/2007, the administration of compensation falls under the new proclamation and the applicability of the proclamation 272/2002 relating to administration of compensation is ended up. When the new proclamation becomes applicable with regard to expropriation and compensation for those whose land holding rights has been taken, the new ones do not repeal the 272/2002 proclamation rather the new proclamation starts to regulate the case by itself.

On the other hand, before the existence of these laws the administration of compensation and determination of compensation was used to be regulated by the lease proclamation 272/2002. So before starting to look at the case of compensation in relating to the new proclamation which is proclamation 455/2005 and the regulation 135/2007 at the first place there should be identifying the way how the earlier law like the lease proclamation administers the payment of compensation.

2.3 Compensation In Light Of Lease Proclamation 272/2002

The lease proclamation 272/2002 is related in general with the lease holding system especially with investors and investment. This proclamation grants land for those who want to possess land by way of lease. This means, those who want to have the land for investment they will take land by rent in order to perform the planned project and the way the lease holding system and performing the activities will be

conducted according to the master plans of the city as it is provided by the proclamation.

The proclamation 272/2002 also states that when the land is handed by the lease holder the lessee is duty bound to perform the entire prescribed project in accordance with the master plan. But at this time when the lease holder performs his activity, the given land may be taken from the lease holder when the land is decided to use for a public purpose or where the lease hold right is terminated, the land will be taken from the lease holder. The new proclamation 455/2005 also provides that the lease holder who holds the land by way of lease may not be dispossessed from his lease holding right. As long as the land is required for public interest his land holding right may not be taken before the time of lease termination. So, in this case, the lease proclamation under article 7 has clearly provided the land to be taken for public purpose which means it can be used in order to ensure the direct and indirect usability of land by people, and to progressively enhance development, the land which was under the hands of the lease holder will be taken for public purpose.

But if they take the land for public purpose, what will be the fate of the private individuals who suffer due to the act of expropriation and how this proclamation entertains the payment of compensation will be seen here in under.

Moreover, this proclamation 272/2002 states that when compensation is to be paid in the event when the lease agreement being terminated or when the land is being wanted for public purpose, the land holders are duty bound to handover the land to the appropriate body as there is public interest for the society at large. In this case, those whose properties have been taken are entitled to commensurate payment of

compensation for the property they have built up before the expropriation takes place.⁴⁵

When the proclamation states that the payment of compensation to be paid commensurately but there was no ground and method of assessment of compensation and also there is no provision which indicates the procedure how to proceed and there is no clear idea about who is the responsible organ, which is responsible to fix the amount of compensation.

Hence the proclamation 272/2002 states that the body receiving pleading must record and keep the estimate as to the amount of compensation, the grounds of assessment and the process followed in its decision up on the claim of compensation pursuant to this provision it needs one specific group which can estimate the amount of compensation by assessing over the existed loss of property.⁴⁶

Thus the proclamation empowers the urban land lease commission to give the final decision that arises from land lease holding. It also states that the appropriate body may clear and take over an urban land which it decides to be necessary to commit for public interest by issuing clearance order in writing to the concerned person and one who does not contest that public interest may bring an action in respect of compensation for property that he will lose due to the act of expropriation.⁴⁷

A person who receives a clearance order pursuant to art 16(1) and 16(2) or any other person alleging infringement of his right or benefit may take his claim to the appropriate body and any other grievance can be

⁴⁵ Lease Proclamation 272/2002 ,*Federal Negarit Gazeta* , article 15

⁴⁶ Ibid at, article 17(3)

⁴⁷ Ibid at, article 16

brought with justifiable nature and substantiation of evidence and reason to the appropriate body.

Such claim can be for the purpose of contesting the existence of public interest or for the claiming of the illegal order when the land holders are ordered to hand over the land for the construction of dwelling house may bring his claim to the concerned body.

Finally, the land lease holders may bring their claim before the body which has initially made the decision to clear and take over the land whether the body may order for any remedy which might satisfy the interests of the land holders or as per article 17(2) of the proclamation 272/2002. It decides on the issue either to pay compensation or to reject the claim. Therefore, any party who wants to claim compensation can bring his claim to the given or empowered administrative tribunal in order to get adequate payment of compensation.

2.4 Purpose of lease proclamation 272 /2002

In principle the Ethiopian FDRE constitution provides that the ownership of land is vested in the nations, nationalities and peoples of Ethiopia and the states control over the land is exercised through administration of the government.⁴⁸

On the other hand, under the preamble of the proclamation 272/2002, it clearly provides that transferring urban land by lease for a fair price will help to achieve the economic and social development and to help build capacity enabling progressive urban development based on the life span that a landed property may have.

⁴⁸ supra note 40 at article 40 (3)

This tells us that the lease holder shall plan for his activity of the lease holder. As long as lease is created in order to create an optimum condition, then the lease will become the main urban land holding system and it is also used to remove the obstacles in investment.

Thus lease proclamation 272/2002 creates good conditions for promoting investment by removing any act that may result in non-performance of the planned project over the land. So, as per the urban land lease law, the lease holder without any problem can perform his activity. On the other hand, if there is claim, any interested party can bring his claim if there is any problem against his activity. This means, if there is an infringement of ones legal right, the party who is affected can bring his claim before the concerned body.

In addition to this, this proclamation also deals with public interest before dealing with other points. So, public interest is like wise served when the lands taken from individual possessors it ensures the direct and indirect usability of land by people.⁴⁹ This could provide the authority with a permitting condition for dispossessing private individual's property for the purpose of granting the land to another private individual with out presenting justifying public purpose. Which means the authorities who take the land for the reason of public purpose may allow the land for simple construction which may not bring any special development or use for one society. So, if the authorities do not consider the reason presented for public purpose, they should not allow the land to be taken from the hands of the land holders.

⁴⁹ Id 47 at article 7

Therefore, dispossession of private individual in accordance to leasing it for a higher price may bring revenue for the public at large. Because of this, many individuals indirectly benefit the public as it is basically used for building infrastructure as intended by the objective of the lease proclamation.

2.5 Procedures of Administration to Expropriate Land under the New Proclamation 455/2005

The proclamation to provide for expropriation of land holding for public purpose no 455/2005 provides procedure for expropriation. As a first step the empowered organ either the woreda or an urban administration shall approve the land to be expropriated. Thus if the authority believed that the project to be performed at the planned land is more sound for the effectiveness of public purpose for the regional or federal government organ the order to decide over the land to be expropriated.

After the empowered authority becomes sure to expropriate the landholding, they shall notify the land holder in writing by indicating the time when the land has to be vacated and on the amount of compensation. In this case, the authority has duty to inform the land holders in writing about the amount of compensation to be paid and on the issue of the land to be taken by the competent organ, in order to effect upon notice for maximum 90 days from the date of payment of compensation.⁵⁰ Which means there should not be taking of property before the payment of compensation.

⁵⁰ Id 39 at article 4

As long as the above procedure become fulfilled, any land holder who receives the order for expropriation from the date of payment of compensation or from the date when the holder refuses to take the provided amount of compensation, the land holder shall hand over the land to the woreda or urban administration with in 90 days from the date of payment of compensation. According to the proclamation no 455/2005, the authorized organs are duty bound to prepare detail data as to the land needed for its work and it has to be made at least one year before the expropriation of land holdings is effected.⁵¹

But according to my informant at Lideta sub city, the notice for expropriation in most of the time is conducted within fifteen days if it exceeds it will be made within one month.⁵² This is not proper according to the intention of the law because, within these days the responsible organ to effect the payment of compensation will not prepare the exact payment of compensation and also it is not enough to collect the fair value of the land holders.

So, due to this, many land holders suffer without having a fair payment of compensation. These land holders do not get the proper replacement house as the notice is not according to the provisions of the law.

Moreover, the land holder who agrees to take the prescribed amount of compensation and those who do not agree to receive the amount of compensation shall hand over the land to the woreda or urban administration within 90 days for those who take the amount of compensation from the date of payment of compensation and for those who did not receive the amount of compensation, the time will be counted from the date where the payment of compensation is deposited

⁵¹ Ibid at article 6

⁵² An interview with Ato Abraham Tegene, Lideta sub city, Land Administration, May 20,2008

in a blocked bank account in the name of the woreda or urban administration may be appropriate.⁵³ Even if the provision art 4 sub art 3 provides the 90 days to hand over the land, if there is no crop, perennial crop or other property on the expropriated land holding, the land holder shall hand over the land within 30 days from the time of receiving the expropriation order of the appropriate organ either for the woreda or urban administration.

However, if the land holder who receives the expropriation order refuses to hand over the land in the time limited by the specified sub article 3 and 4 the woreda or urban administration may use the police force to take over the land. But if there is a claim on the amount of compensation, the land holder can bring an appeal for the appropriate organ. Which is the administrative organ established by the urban administration to hear grievances related to urban land holdings.

The administrative organ which is empowered by the lease proclamation 272 /2002 and proclamation 455/2005 to be established and to give decisions over the case of compensation as an administrative tribunal to hear grievances will help to condense the function of the court and to give a speedy trial for the complaints relating to land. Even if it is empowered to regulate the case as it is an administrative tribunal, there may not exist impartiality because as the organ by itself is under the control of the administrative organs there could raise an assumption of impartiality because those who are found at the working place of this organ are the agents of the administrative organ. And also the commission is an executive organ which permits the land to be expropriated and also it is the one which entertains the case by interpreting the provisions of the law. But in principle the provisions of the law most of the time interpreted by the judicial organ as it is an

⁵³ Id 51 at article 4

independent one. Here in this case when the case is entertained by the executive it will not be proper with the principle that provides the judiciary is always the first to interpret the law. When the executive which is the commission is at this time interpret the law which is not fair because as it is the executive body the one which permits the land to be expropriated is this organ and also the one that interpret the law is this organ .so rather than giving this interpreting the law is for this organ if there is a possibility to let the power of interpreting for independent judicial organ will be fair.

Due to this, the decision the tribunal passed might bring the question on the issue of law because those are at the decision making level most of them are experts so they may not have knowledge about the law. Therefore, the decision passed by these people will be appealable to the ordinary courts. Because the power of the judiciary is believed it is an independent organ without any interference. So, it can be said that it is impartial from any other interruptions while the administrative tribunal assumed that it lacks impartiality as it is the agent of the administrative organ, it can be said that it might side at the time of decision making for the administrative organ.

Therefore, even if, the tribunal is believed to give a speedy trial, it is assumed as it lacks impartiality. So, in order to protect the interests of the land holders', entertaining the case at the ordinary court seems fair as it is believed that there is impartial and independent judiciary is instituted. It is better to see the case at the ordinary court.

On the other hand, the proclamation also provides procedure of utility lines. In this case, where the land to be expropriated is under the hands of federal or regional government office or public enterprise, the procedure made for removal of these utility lines will be conducted by its

own procedure. When ever the body requiring the land shall submit its request in writing to the owner by indicating the exact location of the lines to be removed as per art (6), the body which has received a request as per sub article 1 of this proclamation shall with in 30 days from the receipt of the request will determine a fair compensation which can help to replace the lines to be removed and the one who receives the request shall send detail of its valuation to the requesting body the amount of compensation to be paid after the owner of the utility lines send the valuation of the property. Those who requested for the removal of utility lines shall pay compensation with in 30 days from the date of the receipt of the valuation.

Finally, the owner shall remove the utility lines from the date of receipt of compensation and shall hand over the land with in 60 days up on the date of the payment of compensation. In other words, if the owners do not receive payment of compensation, he is not duty bound to hand over the land.

Therefore at this time the provisions of the proclamation are applicable but for the purpose of comparison the provisions of the civil code are discussed in order to identify the difference between the two. So, the proclamation seems to put the procedures of administration in a simple way.

2.6 The New Proclamation 455/2005 in the Areas of Compensation

The issuance of the new proclamation 455/2005, which is issued for the expropriation of land holdings for public purpose and payment of compensation has presented an improvement in comparison to payment of compensation other than the laws that was used to determine the

payment of compensation like the lease proclamation is most of the law that was used for the determination of compensation at earlier time.

As this proclamation is the latest one it is necessary to define organs that shall have the power to determine and the responsibility to pay the compensation and also it has to define the basic principles to determine the amount of compensation to be paid for those whose land holding has been expropriated.

Thus as per this proclamation, compensation is purely defined to be paid for those whose land holding has been expropriated. So, any one who has been displaced from his land holding is entitled to payment of compensation for his property situated on the land and for permanent improvements he has made to such land.⁵⁴ Then the amount of compensation to be paid for the expropriated land shall be made on the basis of replacement cost of the property.

In this proclamation if the compensation to be paid is for the urban dweller the payment of compensation may not be less than the current cost of constructing a single room low cost house.⁵⁵ In other words, the payment to be made for those who are urban dwellers shall be seen according to the current value of the construction price in order to build a single room and if the compensation is to be paid for the improvement to land, the payment of compensation shall be equal to the value of the capital and labour extended on the land.

In addition to this, if there is property that could be relocated and to continue its service the payment of compensation shall be determined by considering the cost of removal, transportation and recreation.⁵⁶

⁵⁴ Ibid at article 7

⁵⁵ Ibid

⁵⁶ Ibid

Therefore, the property can be transferred and placed in another place, and it will continue its service as before. While transferring the property there is payment of compensation that shall be helpful for the transferred property to continue its service as before.

On the other hand, there is displacement compensation which is to be paid this kind of payment is used to be made where a rural land holder whose land holding has been permanently expropriated shall be paid in addition to the payment of compensation payable under the above provision the payment of compensation is to be paid. This is equivalent to ten times the average annual income he secured during the five years preceding the act of expropriation of land holding.⁵⁷ This kind of payment of compensation shall be paid for those whose land holding has been expropriated permanently, and this payment is calculated by the five years annual income of the land holder earns times ten will be the amount of compensation to be calculated in addition to the replacement cost of the property.

Other than this, it also provides those whose land holdings has been expropriated at the urban land holders, the proclamation provides a payment of compensation to be made for the loss of his property and in addition to this, a replacement land will be given. This can be used for the construction of dwelling houses or the displacement compensation will be paid equivalent to the demolished dwelling house or the dispossessed individuals may be allowed to reside for one year at the house owned by the urban administration.⁵⁸

Moreover, when the dispossessed land holders are rural land holders and if they are to be expropriated temporarily, before they hand over the land,

⁵⁷ Ibid at art 8

⁵⁸ Ibid

there is displacement compensation in addition to the replacement cost of the property they loss in part. Then, it is to be paid based on the average annual income secured during the five years preceding the act of expropriation and this payment shall not exceed the amount of compensation which is the replacement cost.⁵⁹

Therefore, even if the proclamation 455/2005 provides the payment of compensation to be paid in a different manner other than the previous laws. It takes according to the nature of the private individual's lively hood. If the land holder is an urban dweller, the payment of compensation is granted to be paid in addition to the replacement cost of the individuals demolished house and there is also additional payment of compensation which is conducted by way of displacement compensation which is equivalent to the land holders demolished house equivalent rent will be calculated and paid or the urban administration shall determine the size of the urban land which can help the dispossessed individuals to construct a dwelling house.⁶⁰ But at this time the plot of land that is provided will not be given at a place where they can precede their life style as it was before. Because the land given in replacement is most of the time found at the rural areas which is the dispossessed individuals can not get any thing as it was before the act occurred i.e. the place where the land holders settled will not be well developed areas as a displacement compensation because there may not be infrastructures, that is the necessary conditions to proceed their life style like the individual's life was before the act of expropriation happened like providing schools, light, and telephone lines must exist.

The land holder's life before this act was connected with the modern technologies that the country provides. So, most probably the above

⁵⁹ Ibid

⁶⁰ Ibid

conditions will not be found at the place where the urban administration is given for the urban dispossessed land holders. So, it must get some consideration before the land is proposed for the urban dispossessed land holders due to the act of expropriation.

On the other hand, if the act of expropriation is to be made at the rural land holder who is to be expropriated provisionally, the displacement compensation will be paid in addition to the payment made in replacement cost, until repossession of the land, compensation for the lost income which can be calculated based on the average annual income secured during the five years preceding the expropriation of the land. But if the woreda administration found a replacement land which can be easily ploughed and if it is believed the land will generate comparable income is available for the land holder. The compensation to be paid will be calculated only equivalent to the average annual income secured during the five years preceding the expropriation of the land.⁶¹

Due to the planned project which is proposed for the development of the public at large, so many people will be displaced. But for those who are found at a lower economical status either who construct their own house or those who rent governmental house whenever there exist displacement due to the act of expropriation, to compensate these individual land holders for the benefit they loss, and to improve their life style as it was before the act of expropriation.

But even if it is acceptable to improve their life style, there is no rule which can be helpful to reinstitute these individual land holders. So due to the non existence of permitting rules to reinstitute these displaced

⁶¹ Ibid

land holders who are found at a lower economical position many displaced individuals become the victims of expropriation. ⁶²

Therefore, for those who are found at a lower economical standard become displaced by the act of expropriation, there has to be the possibility to reinstitute. Then the way how to work on it must be provided either by regulations, or directives which can help to improve the life style of the displaced individuals and to bring them in a better position on their life standard.

⁶² Interview with Ato Zenaw Assefa , Land development study department , municipality of Addis Ababa , March 24 , 2008

CHAPTER THREE

3. Determination of the Amount of Compensation for Expropriation

3.1 Determination of the Amount of Compensation

In general, when land holding rights of a person are expropriated the displaced land holders are legally entitled to the payment of compensation. This is to be paid in cash or in kind or in both for the property situated on the land and for any improvements the land holders made before the receipt of the order of expropriation.⁶³ Before the payment of compensation takes place for the individuals who have lost their property due to the act of expropriation, in the first place before handing over the property to the concerned body the determination of the amount of compensation shall be made by way of assessing the value of the property the land holder acquires.

Here as the law says which is proclamation 455/2005 under article 10 there is valuation of property by the established committee for the assessment of the value of the property. The valuation committee is believed to be instituted according to the proclamation 455/2005. This valuation committee is expected to assess the value of the property situated on the land when there exists the act of expropriation.

So determination of the amount of compensation will be conducted according to regulation 135/2007 which is issued for the payment of compensation for property situated on landholding expropriated for public purpose. This regulation provides the way how the assessment of compensation is to be made by classifying the kinds of properties and it

⁶³ supra note at 61, Article 2

also includes different types of compensation and the way how the assessment of the value of the property is conducted in order to calculate the amount of compensation.

Therefore, the determination of the amount of compensation is expected to be conducted pursuant to the provisions of regulation 135/2007. Then the procedures of compensation, the valuation of property and the types of compensation, and the actual practice will be seen in detail by this chapter.

3.2 procedures of compensation

Under proclamation 455/2005 it provides that the procedure to expropriate land with the method to be followed for the payment of compensation. As the woreda or an urban administration has the power to expropriate rural or urban land holdings for public purpose, it is also believed that it has to be made up on the payment in advance compensation.

Thus after the woreda or an urban administration believes to expropriate the urban or rural landholdings for public purpose and also if it is believed it should be used for a better development project to be carried out by either of the one empowered organs which are stated under article 3 of the proclamation, the act of expropriation will be carried out.

Once the woreda or an urban administration decides to expropriate a land holding and if the property is clearly identified, the next step that will be followed in the procedures of compensation is the valuation of property which is situated on the land. Because the amount of compensation which is going to be paid has to be first determined by way of valuation of the property that the displaced landholder has acquired over the land must

be valued by the valuation committee which is established for the purpose of assessing the value of the property that are situated over the land.

Following this Addis Ababa City Government Administration Ministry of Works and Urban Development have provided the procedure of compensation in order to effect the payment of compensation for those whose land holding has been expropriated. The directive provides the way how to conduct the payment of compensation and it is working all in sub cities of Addis Ababa.

The directive states that before the payment of compensation is made those who are entitled for the payment of compensation must be identified if the individuals present sufficient documents that could prove their possession right. Then if the displaced individual can present all the necessary documents that are required by the law, they will be susceptible for the payment of compensation and replacement land.⁶⁴ So the necessary documents will help the administrative organs to identify easily those who are entitled to the payment of compensation.

Therefore, as the Addis Ababa City Government Administration Ministry of Works and Urban Development provides a directive which can help us to determine the entitled individuals to receive compensation when the individuals land holding is needed for a better development. Before the payment of compensation is made there has to be some identifications regarding the land holder's legality of their possession.

At this time, those who are displaced by the act of expropriation will be identified according to the document they present to identify the possessors of the house. This can help to effect the payment of compensation by the concerned organs that have responsibility to effect

⁶⁴ Addis Ababa City Government Administration Ministry of Works and Urban Development ,*Directive*, 1994

the payment of compensation. So the responsible organ will examine some important documents that the land holders have which can certify them as they are legal holders of the land.

In the first place in order to identify the displaced land holders before the payment of compensation becomes effective, the displaced land holders must present the necessary documents that can lead them to have the book for the house, like the water and electricity supply bill which is paid with their name and with their house number, the rent receipt at least for the consecutive years starting from 1970 up to 1982 , and receipt for the rent of the place and the ministry of finance must present the tax payment receipt for the place the land holders possess .⁶⁵ If the displaced land holder can present any of the documents, the land holder can be susceptible for the payment of compensation as long as it can give proof of the status of the land holder.

In the second place the displaced land holders can bring the certificate which is issued after 1967 or the book that can approve the possession of the place that belongs to the land holder, the approval from the kebele, and this approval must be only up to July 1976 E.C which can prove that the place is given by the kebele, for only dwelling houses, at last there can be the certificate that can approve the possession right from the government housing agency.⁶⁶ Therefore, individuals who can present at least one of the above indicated documental requirements can be entitled to take replacement land and the payment of compensation.

⁶⁵ Ibid

⁶⁶ Ibid

In addition to this, those who are living at the kebele or government housing agency, if they build another house at their living area they will not receive any payment of compensation or replacement house for the house they build in their living area. Because the house they built by their own expense is not subject to compensation rather they are expected to have replacement house for their house they possess from the kebele or housing agency and the individuals who are expected to be expropriated must indicate that they do not possess another additional house in another regional areas must be filed .⁶⁷

Moreover, as all this procedures are stated under the directive of Addis Ababa City Government Administration Ministry of Works and Urban Development directive states that, how to identify those who are entitled to the payment of compensation because when ever there is expropriation of land holdings for the reason of public purpose the payment of compensation is necessary for the victims in order to reinstitute the livelihood of the displaced land holders.

As the rural or urban land holding is expropriated for public purpose it should be used for a better development project to be carried out by the public entities, private investor's cooperative societies and other organs that are empowered to effect the act of expropriation with the payment in advance compensation.⁶⁸

The act of expropriation eventually brings development to the city which intern benefits the public at large. So whenever there is an act of expropriation the individuals who are displaced shall be compensated but when it says there has to be payment of compensation, those who are entitled to the payment of compensation shall receive the amount of

⁶⁷ Ibid

⁶⁸ Id at 63, article 3

compensation calculated by the concerned organ by considering the current market value.

Those who are possessors before and after the issuance of proclamation 47/67 are provided to identify those who are entitled to the payment of compensation and the replacement land. The land holders must present every document that the law provides here in under.

Basically, land holders who have certificate before proclamation 47/67 are stated in the first place, in this case those land holders who have certificate before the proclamation 47/67, replaced land is provided by checking the area of the land as shown in table 1, and the determination of the replacement land will be decided when the information urban development office present the bill that the land holders were paying for their holding right. Then the responsible organ by comparing the documents the land holders present and the document presented by the information urban development office the appropriate replacement land will be calculated.⁶⁹ Then if all the necessary documents are presented sufficiently, the land holders will receive both payment of compensation and replacement land.

On the other hand, for those land holders who do not have certificate and who hold the land before the proclamation 47/67, they should have bring electricity and water supply bill by their names and house numbers. These house owners should bring certificate from the kebele / woreda to certify that the house is under their possession till proclamation 47/67 becomes effective.⁷⁰ Then it must be proved that the house is not taken by government and hence, they will get replacement land according to table 1 which is stated here in under. Then if all the necessary documents that

⁶⁹ Ibid article 4

⁷⁰ Ibid

are required by the concerned organ are presented by the displaced land holders, they are entitled to the payment of compensation in kind which is the replacement land and also the payment in cash. ⁷¹

In addition to this, there are also land holders who had possession after proclamation 47/67 and those who have documents. In this case the individual land holders will have only replacement land which may not exceed 500 m² because the maximum holding right of the peoples will be given in this way. As long as all the required documents are present the displaced land holders will not receive payment of compensation in cash.⁷²

For the land holders after proclamation 47/67 and those who are possessors in 1967- 1976 if they do not have sufficient documents, the kebele and the woreda is obligated to investigate the background of the house holder's possession if the house belongs to them. ⁷³

In order to bring the documents which will identify the land is under the possession of the land owners starting from 1967 - 1976 E.C, and also the tax payment bills for the land must be presented from the ministry of finance and the documents must be brought by the information of urban development. Then the bill of the place which can approve the land belongs to the land holder must be compared to the replacement land provided to be given will be calculated as per the table.

The replacement land which is expected to be given will be between 150m -200m .Thus there is no additional payment of compensation in cash rather only the replacement land will be given as in kind compensation. ⁷⁴

⁷¹ Addis Ababa city Government Administration Ministry of works and urban development, Directive,1994

⁷² Ibid

⁷³ Ibid

⁷⁴ Ibid

Finally, if the land holding from 1976-1988 has no document or certificate, at least the house should be seen by GIS maps and bring certificate from the kebele's or woreda until the mentioned year was lived. ⁷⁵ When these criteria's are fulfilled the land holder will get replacement land only 150m without compensation payment in cash. These land holders as they do not have any document they will not get any payment of compensation in cash.⁷⁶

TABLE 1 valuation of compensation in kind.

Number	Size of possession m ²	Area of replacement land m ²
1	<_160	150
2	161-185	175
3	186-210	200
4	211-240	230
5	241-265	250
6	266-290	280
7	291-320	310
8	321-360	350
9	361-390	380
10	391-420	410
11	421-460	450
12	461-490	480
13	>491	500

Source: Addis Ababa City Government Administration Ministry of works and urban Development

⁷⁵ Ibid

⁷⁶ Ibid

3.3 Valuation of property

Whenever there is expropriation of private individual land holdings due to the reason of public purpose and the displaced land holders must get payment of compensation in advance. But here before the amount of compensation becomes to be effected there shall be valuation of the landholder's property which is situated over the land to be expropriated. As long as the displaced land holders are entitled to the payment of compensation, proclamation 455/2007 provides the payment to be made either in cash, in kind or in both.

As stated earlier the payment of compensation to be effective, the value of the land holder's property must be assessed in order to determine the amount of compensation payable to the land holders.

So before the amount of compensation payable to the displaced landholder becomes effective the valuation of property must be conducted for the properties situated over the land. As per proclamation 455/2005 the valuation of property situated on land to be expropriated shall be carried out by certified private or public institutions or individual consultants on the basis of valuation formula adopted at the national level.⁷⁷

According to article 9 of this proclamation the institution is expected to make valuation of property but under the same article sub article 2 it provides that till the organ which is stated to be established and to carried out by the certified private or public institutions or individual consultants, the valuation of property is expected to be made by the valuation committee and by the utility line owner as it is indicated under article 6 of the same proclamation this owners have the right to value their own property.

⁷⁷ Id 69 at article 9

The property valuation committee will work for the urban or rural areas , where the land to be expropriated is located in a rural area , the property situated over the land shall be valued by the committee not more than five experts having the relevant qualification and it will be designated by the woreda administration and for the land to be expropriated in an urban center , the property situated over the land shall be valued by a committee of the same as the rural one but here it will be established by the urban administration.⁷⁸

At this time as I tried to look at the working conditions of the responsible organs to effect the payment of compensation specially the sub cities which are duty bound regarding assessment of the value of property.

In practice at the sub cities level there is a team which is established as a committee but under proclamation 455/2005 it provides that the property valuation committee to be established and it shall be composed of experts having the relevant qualification.⁷⁹ But in practice the established committee is composed of members who do not have any qualifications for the work. The members of the committee are from the kebele administration, from the sub city, and from the project owner. ⁸⁰ Here the team is considered as a committee but it is not conducted according to the intention of the law because even the members of the committee are not experts.

Therefore, in general when the laws become to be issued the applicability of the law is for all the actors or the executive organs and for all implementing agencies.

⁷⁸ Ibid at article 10

⁷⁹ Ibid

⁸⁰ An interview with Ato Abraham Tegene , Lideta sub city , land development administration , on may20,2008

But here the administrative officials who are responsible to effect the payment of compensation are not acting according to the law. Because even if there are laws which are issued related to the payment of compensation like the proclamation 455/2005 and regulation 135/2007 the laws are not working at the necessary levels so as the laws are always issued to be enforced and to give solutions it must be applied by the implementing organs .

In addition to this for further description, I had an interview at Lideta sub city. Here according to my informant the team which is established as a valuation committee has the function only to collect data. Because there is a loaded data in the year of 1988E.C which is called bill number 005. The computer's soft ware has the value of the property which can lead them only to feed the collected data and the computer will calculate the amount of compensation to be paid.⁸¹ So the working condition specially the team which is believed as a valuation committee is simply taking the value of the land holder's property. The only thing the team can collect is the physical existence of the house which is not fair for the determination of the amount of compensation for each displaced land holders. Because the land holder's house might be made with a material which costs them to loss a lot of money but at the time of collecting data rather than taking all the materials the land holders use they simply take the total area of the house without considering the detail materials that the land holder used to build his house.

Due to this the displaced land holders will not accept the provided amount of compensation by the administration. Because as usual the team collects the total area of the house, the roof, the wall, the door and other related materials will be assessed as a whole. But the detail material of the house is not assessed.

⁸¹ Ibid

Because the bill 005 which is loaded in the computer can calculate only the materials which are loaded in the software but if the detail materials which are related with the existence of the house will not be acceptable by the data which is found in the computer. so as far as the detail materials of the house is not taken in to account the calculation of the value of the property will not satisfy the displaced land holders. As the calculation do not follow the current market value because the data loaded in the computer is a past years value of the property and as it is not used to calculate the detail materials of the house the displaced land holders will not get fair payment of compensation .⁸²

So as long as each and every material of the house is not taken into account, the individual land holder's interest will not be satisfied and I do not think that the interests of the displaced land holders are protected.

In addition to this, the data which is used to calculate the amount of compensation does not follow the current market value. Because I can see that the payment of compensation and the current value of the materials which is useful for construction of a new house are not comparable. So it needs some revision by considering the current market value of the country.

Therefore, due to this understanding the sub cities do not establish the committee in order to make the valuation of property. Because of the non existence of the committee the displaced land holders will face a lot of inconveniences at the time of collecting data.

Thus, the non establishment of the property valuation committee, sometimes the valuation of property will be made by one of the officials of the sub city at this time the value of the property will not be calculated properly or in a fair manner. because at this time the value of the property

⁸² Ibid

may not be loaded to the computer in order to calculate the value of the property rather the calculation will be conducted by them selves so it may lead the displaced land holders to incur unnecessary cost as a result of the compensation forwarded is not fair enough. Due to this the payment of compensation to be paid for the displaced land holders will not be fair enough and there is also a probability for the existence of abuse of power.

Then since the payment of compensation did not satisfy the interests of the land holders, they will not take easily the amount of compensation provided by the officials. Because the value of property may not be valued properly then the displaced land holders may not be compensated properly and the displaced land holders in most of the time will raise their claim on the issue of the unfairness of the payment of compensation by providing that it is not sufficient for them as the payment is not conducted according to the current market value. As it can be seen the present situation of the economical standard of the country is increasing in a high rate the payment which is made at this time by calculating the value of the property by the past years data will not bring any change for the displaced land holders.

Then I will show some of the existing problems in the actual practice relating to this issue at the end of this section.

On the other hand, even though the 1988's data were applicable to take valuation of the amount of compensation in February 2007 the Addis Ababa city Administration improve this data.⁸³

There is some improvement which is made in order to fill the gap between the issuance of the proclamation 455/2005 and the regulation 135/2007, which means after the issuance of proclamation 455/2005 and after it becomes to be effective there, was no regulation that can help to regulate

⁸³ An Interview with Ato Zenaw Assefa , At the Municipality of Addis Ababa , Land Development Study Department, March 24,2008

the case of compensation. So as the regulation 135/2007 is issued lately after the issuance of proclamation 455/2005 there were claims to be entertained with regard to the payment of compensation. Then in order to fill the existing gap which is raised due to the non issuance of the regulation Addis Ababa city administration passed a directive to entertain the case till regulation 135/2007 issued and becomes to be effective.

The reason why the Addis Ababa city administration passed a directive is in order to fill the gaps because the decision passed by the administration has the payment of compensation for house and how the value of the house to be effective is provided under it and it tries to improve the previous 1988's data.

Thus, the directive passed by the administration considers as it tries to regulate the case of compensation by substituting regulation 135/2007 till it becomes to be issued and effective. Hence it tries to solve the current problems with the responsibility to have proper valuation of property will be conducted according to the following improvements which can be seen for instance.⁸⁴

- for the lowest initial value of property ranges from 150birr-400birr/m²
- the highest initial value of a property ranges from 2000birr-3200birr/m²

Therefore, the decision passed by the administration improves the 1988's data and it also seems fair because the improvement at least tries to consider the current status of the socio economic condition. But I can not say that it is working according to the market value. Because the country's socio economic standard is changed or increasing rapidly and also even after the existence of the improvement the price of petroleum, cement, and other materials are increasing in a high rate specially the price of

⁸⁴ Addis Ababa city government administration, *Directive* ,February 2007

petroleum increased twice within a year. So I can say that the compensation payable has to be conducted by considering the current market value of the country and in my understanding the current working condition must be followed by the recent laws that are issued to regulate the case, and the applicable laws must be revised as per the current market value of the property and the new regulation must be applicable. As far as the act of expropriation is considered as a development it has to change the city and the life of the people. But with this condition there will not exist a tangible change regarding the life standard of the people rather it is making the peoples homeless, and it leads them to rule beyond the normal life standard.

3.4 Assets of Regulation 135/2007 under the Concepts of Compensation

This regulation is issued in order to give effect the payment of compensation for the displaced land holders with the proclamation 455/2005 which is issued for expropriation of land holdings for public purpose and payment of compensation. At this time the proclamation starts to give effect from the date of July 2005, the applicability of this law starts independently before the issuance of the regulation.

After the issuance of the proclamation it takes two years to exist for the regulation. Due to this there exists a gap in implementing the law. But for this reason and to entertain the amount of compensation for those whose land holdings have been expropriated. The responsible organs to effect the payment of compensation were used to take the previous laws which can help to effect the payment of compensation.

Due to the non existence of the regulation for at least two years it brought crisis at the time of payment of compensation, because the data that were used to be implemented were not up dated to the current market value.

But before the issuance of the regulation the city administration improves the way of valuation of property that was used to value at the earlier times has been improved in a better way than the previous one.

However, here in this section I will try to see the general content of the regulation as it is the latest one and improves the previous ones I will try to see it in detail. The regulation is issued for the payment of compensation. It has got different features that could make it better than the previous laws that were used to effect the payment of compensation.

The regulation 135/2007 is issued by the council of ministers with the purpose of not only paying compensation but also assisting displaced persons to restore their livelihood. The regulation also adopted a national standard.

Under the general part of the regulation, the title of the regulation is provided that it is the payment of compensation and property situated over the land holdings expropriated for public purpose. As this regulation is used to give effect the provisions stated under proclamation 455/2005 the regulation has different content which state that the way of assessment of compensation and the formula in it also provided in order to calculate the value of the property and to determine how to calculate the amount of the compensation which is payable for the displaced land holders.

Moreover, in part two of the regulation the assessment of compensation for the different types of properties is provided by stating compensation for buildings, assessing the value of the building, the law states the things that must be valued, in this case there are various factors that have effect on the value of buildings according to the market value of the country.⁸⁵

⁸⁵ Regulation 135/2007 , *Federal Negarit Gazeta*, article 6

Those things that will be valued is either that are found near to the building on the intrinsic materials that are always found with the existence of the building. Then all the materials from which the main building and its intrinsic parts are made together will be taken in to account while assessing the value of the property which can help to calculate the amount of compensation to be paid.⁸⁶

Furthermore, the application of the regulation is provided with respect to how to assess the value of different plants on the land, for crops, perennial crops, for protected grass, and other related properties. Then at the time of valuation for plants it must be made by considering not only the available on the land will be susceptible for valuation rather different factors of the plant will be taken in to account. Those things that are to be considered at the time of valuation the improvement made on the land will also be considered with the plants that are to be taken for the valuation.

In the case of trees the amount of compensation is determined on the basis of the level of growth of the trees and the current local price of the trees per unit will be taken.⁸⁷ Here the stage of trees can be determined by small tree, middle tree, and big tree and the value of the trees will be calculated according to the stage of the trees.⁸⁸

More over this regulation also has formula which can help for calculating the amount of compensation payable in accordance with the proclamation and it has to follow the prescribed formula for various properties situated over the land. Even if there are different types of properties situated over the land.

⁸⁶ supra 6 at p.63

⁸⁷ Ibid article 7

⁸⁸ Addis Ababa city administration , directive ,February 2007

The way of calculating the amount of compensation is conducted in different manner according to the nature of the property. But the amount of compensation to be calculated is provided by the formula according to the regulation. Then each and every material that is situated over the land is to be calculated independently in accordance to the current market price of the things in each plus the cost of permanent improvement on land will be taken in to account in order to calculate the value of the property.

Therefore the new regulation conducts the payment of compensation according to the current market value of the property which makes this law different from the other laws is that the method or the formula used to calculate the payment of compensation is used to take for the products to be produced in the future is considered. Which means the future benefit at the one year will be taken in to account according to the nature of the plant .and also the permanent improvement on land shall also be taken at the time of calculating the amount of compensation payable .so it makes some improvement on the way of taking the compensable materials and the way of calculating the amount of compensation.

In addition to this under part three of the regulation, it includes provisions of replacement land and payment of displacement compensation. The detail part of these types of compensation will be seen under the next topic.

3.5 Types of Compensation under Regulation 135/2007

Regulation 135 /2007 has adopted the two types of compensation which is the replacement land and the payment of displacement compensation. The idea of replacement land is one kind of compensation for the urban dwellers whose land holding has been expropriated and for

the rural land which is used to for growing crops or a protected grass or pastoral land is expropriated for public purpose the replacement land is provided under the regulation to be given.⁸⁹

The regulation 135/2007 states that the provisions of replacement urban land , this replacement land is usually expected for those whose land holding has been expropriated for those who are urban dwellers and whose land holding is expropriated for public purpose.⁹⁰

This urban dweller land holders when they are expropriated, basically this replacement land is provided for those who are private house owners because this land holders at the time of expropriation they will have the payment of compensation in cash and also the replacement land in kind.

In the first place the urban dwellers can be characterized as who lived in the developed areas of the inner city , the nature of their society is developed and also there are different diversity of cultures , most of the peoples who lives around this area are monthly salaried , this areas are most probably developed areas like having access for electricity , health center education facilities are easily accessible .So when this people who are the urban dwellers land holding becomes to be expropriated their replacement land as a compensation will be given most of the time in far areas out side the inner city.

Therefore the idea of replacement land is a good condition by it self but most of the time the displaced land holders refuse to take the given land because the place given in replacement is found out side the inner city and also the areas may not have well infrastructural development .

According to my informants the income of the people after and before expropriation is not the same. The income after displacement is very low

⁸⁹ Ibid at article 14

⁹⁰ Ibid

when compared with prior expropriation of their land holdings. The displaced land holders are also lose their working time and financial resources which directly affect their income like increasing transportation cost, loss of customers, lack of adequate infrastructure. So the displaced land holders will not feel comfortable to move to a new place and start to live all over again and compensation can not be equal to the damage caused by expropriation. The displaced land holder whose property is expropriated will have loss of the social association.

On the other hand, the provisions of replacement rural land states that where land used for growing crops, or protected grass or pastoral land is expropriated for public purpose, the possessor of such land shall as much as possible are provided with a plot of land capable of serving a similar purpose.⁹¹ which means that , whenever there are displaced land holders at the rural farm land in order to give effect the replacement land in another place stated by this provision, but the law is not mandatory because it has a phrase ' as much as possible ' which can lead for the existence of a gap either to give replacement land or not. But at this time, if the land holder does not get the replacement land the payment of displacement compensation will be given in a different form replacement land for the farmer.

The displacement compensation is provided for land used for crops and perennial crops. This displacement compensation is to be calculated as long as the farmer gets the replacement land. the compensation shall be paid equivalent to the price of the annual average yield of crops obtained from the land and the price of the average yield of perennial crops multiplied by the number of years required to obtain the level of crops of the perennial crops will be calculated. but for the farmer who do not get the replacement land as it is provided under the regulation135/2007

⁹¹ Ibid at article 15

article 16(2) where giving replacement land is impossible as per article 15 the amount of displacement compensation payable to the displaced farmer will be made in respect to land used for growing crops or perennial crops be ten times the price of the average yield of crops or perennial crops obtained from the land.

Hence after all the government takes the land holdings of the farmer the intentions of the law seems only to give displacement compensation and it may lead for the abuse of power for the administrative officials who are responsible to effect the question of compensation, and there might also exist discrimination from one farmer to the other which is one farmer may get replacement land while the other do not. Because this will happen due to the existence of the gap and on the understanding of the law under article 15 simultaneously with the reading of article 16 the interest of the farmers will be affected or be abused by the officials.

As a result of this many farmers become land less and start to migrate from the rural center to the urban areas of the city because the money given for them as displacement compensation will be lost without having anything and the farmer will become a drunkard with the payment of compensation given for him. Then this sudden payment of money in his hand will not bring any thing for the farmer rather he finished his money with in a short time and he will migrate to the country side of the state.⁹²

Hence the fate of the farmers is in danger because the rural land holders by its nature characterized as it is used for farming, and this land is useful for all families of the farmer because the only immovable property the land holder can acquire over the land is his house. Thus as a result of this for the farmer his land is his identity.⁹³ So the farmers who are displaced

⁹² An Interview with Ato Tesema Pawlos , Yeka Sub city , land development , on May 16, 2008

⁹³ An Interview with Ato Zenaw Assefa , At the Municipality of Addis Ababa , Land Development Study Department, March 24,2008

from their land and peoples displaced from their residential land in the sub city have faced different economic and social problems which are not common to them before their displacement.

Therefore, as the farmers land holding is used as farm land the farmers are producers and they always used to consume from what they produced. So when we say there is no land to give in replacement for the farmers there shall be a good consideration of the law which is the provisions under regulation 135/2007 specially article 15 which provides that where land used for growing crops or a protected grass or pastoral land is expropriated for public purpose, the possessor of such land shall as much as possible be provided with a plot of land capable of serving a similar purpose. According to this provision if there is expropriating the farm land which was used for growing of crops or a protected grass or pastoral land the replacement land is to be given as much as possible, which is not right. Because as long as there is the phrase as much as possible the probability to give the replacement land will be conditional.

So, as per the reading of this provision the displaced farmers may not get replacement land and also when this article is cumulatively read with article 16 (2) it needs some consideration as it results for the existence of a gap. Hence article 16(2) of the regulation provides that displacement compensation for the land used for crops and perennial crops , and where it is impossible to provide replacement land as per article 15, the ten times price of the average yield of crops or perennial crops obtained from land will be given as a displacement compensation.

This means, the replacement land will be impossible to give effect for the displaced farmers. Then at this time the ten times price of the average yield of crops or perennial crops obtained from the land will be paid as

displacement compensation. It may result the case of migration for the farmers. It can be said that the law by it self bring the existence of migration from the rural area to urban city and it will contradict with the government land policy. As long as land is under the hands of the state there shall be consideration of the interests of the farmers. But when ever there is payment of compensation only in money for the farmers which is the ten times price with out replacement land the farmers will start to migrate to the urban areas of the city .Because the farmers do not have replacement land which can help to settle and to continue his life as it was before .

Then being migrated will be difficult for the farmers and it will have the consequences of unemployment and expansion of peoples in the city areas will be faced. So there should be more consideration while implementation article 15 and 16 of regulation135/2007.

3.6 Analysis of the Actual Cases

As I have tried to mention in this chapter the applicability of the law is in question and the way how the payment of compensation is conducted in practice is not follow the intention of the law at the sub cities level. Specially before the payment of compensation the value of the land holders property is expected to be assessed by the valuation committee as it is stated under article 10 of proclamation 455/2005.

But in practice the valuation committee which is stated by the law is not established. So due to the non existence of the valuation committee rather than giving solution for the displaced land holders at the sub city level many displaced land holders are suffered and incurred unnecessary cost and in order to get solutions they will brought their claim to the urban land clearance matters appeal commission which is one of Addis

Ababa's government administrative tribunal. As this organ is empowered to pass decision by the proclamation 272/2002 and proclamation 455/2007 the commission is expected to give the necessary solutions. So here I picked up a case which is decided by the commission to look in to the practical experience.

In this section an attempt is made to show how the case of compensation is conducted by presenting the actual cases that I found related to my topic will be presented.

Case one

Appellant Ato Fantaye Kebede Vs Respondent Lideta sub city land development administration, urban land clearance matters appeal commission, appeal case, Addis Ababa, file number 326/99.

In the request of the appellant he said that due to the reason of public purpose his house is expropriated. But at the time of valuation of property and payment of compensation the way which is used to calculate the amount of compensation do not follow the law which is proclamation 455/2005. The appellant also stated that the payment of compensation is less than the replacement cost and its not made as per the law .and also the amount of compensation to be given which is the one year rent is not included and all the situated houses are not properly valued so that the amount of compensation is not fair enough. Even if the appellant claims that the payment is not enough, the respondent states that the assessment of the value of the property is conducted by the 1988's data. So as all the compensation is calculated based on this data the payment is proper and enough.

In addition to this, the appellant provides that the assessment should not be made by the 1988's data rather by the improved value which is given from Addis Ababa city administration and the property which is situated over the land is described in different way from one document to another, which means while one form of the collected data's provide some of the properties found and the other form do not take the properties that are taken by the previous one so there exists different value of property and it was difficult to effect the payment of compensation .

Finally the commission which is the tribunal taking in to consideration the surrounding circumstances forwarded its judgment as follows. As far as there is different description on the document of the valued property and as there is a difference and as the one year rent is not conducted which has been provided by the law is not taken in to consideration, then the commission passed its decision to be given the one year rent according to proclamation 455/2005 as per article 4.

In addition to this as the notice of expropriation is served after the improved data for the house is issued the value of the property can be conducted as per the improved data. This means all the difference which can be seen is ordered to be paid as per the Addis Ababa's city administration directive.

In my opinion, even if the decision of the commission is correct in order to give solution. Hence the sub cities have all the responsibility to effect payment of compensation because they are empowered to effect the payment of compensation in a fair manner and to implement all the laws which are issued for the payment of compensation. So while the payment of compensation is becoming effective, if all the necessary steps which are provided by the law are started to be considered at the sub cities level there could be a black and white working condition and the displaced land

holders may not get suffer . But in most of the cases in practice the provisions of the law are not applicable even those who are found at the sub cities level to implement the law do not have any know how about the existence of the law. So it may lead for the presence of many victims as a result of the non applicability of the law.

The major problem that can be seen is the non establishment of the valuation committee as per the provisions of the law as it is provided by proclamation 455/2005 under article 10; the valuation committee is expected to be established for having the right value of the land holder's property which can help to give fair payment of compensation. But the non establishment of the valuation committee brought to incur unexpected payment of compensation, which means the payment provided by the commission after the displaced land holders brought their claim will be high that could not be affordable when it is compared to the capital they have on their hand and it may lead to stack the planned project due to the landholders refusal to hand over their land under their possession and also it may present the abuse of power for those who are at the implementing stage.

Therefore, as there is no valuation committee which is instituted to value the land holder's property according to the provisions of the law, the value of the house is not valued in the right way and there is also having different documents which have different value of ones house, which is believed to present the abuse of power and regarding the applicable laws it is not still applicable even to calculate the amount of compensation even if there is an issued proclamation and regulation which can help to effect the payment of compensation properly . Because if all the related laws is enforced to give effect the there will not raise abuse of power and the displaced land holders may not get suffered and also the economy of the country will be used properly.

Case two

Appellant Hamsa Aleka Mekonene Hunde Vs Respondent Addis Ababa road authority, urban land clearance matters appeal commission, appeal case, Addis Ababa, file number 541/ 2000

The appellant brought his claims that the Addis Ababa city road authority demolished all his plants which he had planted. Here even if the authority believes that there exists damage on his plant in order to give the amount of compensation the authority orders that to have the value of the plants and the authority sent to Kirkos sub city. But at this time Kirkos sub city stated that there is no expert to value the plant property.

Finally the value of the plant is valued by expert who is ordered by the responsible organ. Then all the value of the plant is calculated and presented to the authority but the authority did not give the appropriate amount of compensation which is valued and presented to it.

The respondent stated that even if the immovable property of the land holder and his plant is taken, at the time when the place is required for road construction, the amount of compensation to be paid for the land holders is not acceptable by the authority. Because the value of the property is not calculated or assessed according to the proclamation 455/2005 by the valuation committee and the authority will pay the amount of compensation as far as it is conducted as per the proclamation the payment of compensation may not be effected. So the respondent provides that the value of the property is not made according to the law and it shall be made in a fair manner as per the provisions of the law.

Finally the commission reaches to a decision in accordance with the law.

As the appellant brought the value of the plants by calculating the 20 and 30 years product but the provision of the law which is regulation 135 /2007 provide that to calculate the amount of compensation for plants it states that to consider with the product only for one year.

So the commission which is the tribunal passes its decision by providing that the amount of compensation forwarded by the appellant do not follow the provisions of the law so the commission rejects and calculate the value of the property according to the provisions of the regulation.

In my opinion the decision passed by the commission is correct. But there are some problems which are occurred as a result of the non existence of the valuation committee and the non implementation of the law at the sub city level it forced the land holders to bring their claim to this tribunal. Because as far as there is no valuation committee to assess the value of the land holders either immovable property or the plant it leads the displaced land holders to bring their claim to the tribunal.

And the non application of the new laws will present for the unfair payment of compensation and improper payment of compensation because as per this case the value of the property is made by an independent individual who is sent form the ministry of trade and commerce and calculate the value of the plant by considering the 20 and 30 years product which is out of the intention of the regulation 135/2007. In this case if the authority follows the necessary procedures which is provided by the law the displaced land holders may not get suffered due to the act of expropriation. Which means as proclamation 455/2005 provide that under article 4, it states that to have at least ninety days before the act of expropriation so rather than displacing in a short time if the notice period becomes to be taken it to consideration at least as per the law it will be nice and at this time if there is a chance to give education for the society

regarding the laws will help them the way how to conduct their case like they will have a clear idea where to bring their case and they will have an idea who is responsible for their case .

Therefore creating awareness is expected from the authority because they are expected to have knowledge about the issued laws, so if there were awareness about the law in this case the displaced land holders will not take their property to be valued for those who are not responsible organs. This means if the land holders before they become expropriated have got all the information with regard to the responsible organ, how the valuation of property is taken and also the responsible organ to value the property, and how to enforce their right will help to bring the easy way at the working time. Then if the society is well informed everything will be dealt at the sub cities level without bringing the case to the commission and it will be useful for the commission to decrease the number of cases and also the displaced land holders will be safe rather than getting suffer while they are taking their case to the commission.

Because if the provisions of the law are followed the only responsible organ is the valuation committee to bring the value of the property or as per article 9 of proclamation 455/2005, the certified private or public institutions or consultants shall be instituted.

As a result of the non establishment of the necessary organs related to the valuation of property there might exist a problem that could be faced by the displaced land holders like unfair payment of compensation as a result of the value of property is not valued by the concerned officials specially there is no expert to value the property .So in order to avoid this problem and to decrease the number of the victims the appropriate measures shall be taken as I stated earlier the establishment of the responsible organs shall be established at this time and those who are responsible to

expropriate shall provide awareness for the society before the act takes place and even the method of valuation of the property has to be taught for the displaced land holders in order to avoid the claim that will arise from the improper payment of compensation.

Also the issued laws must be applicable in all the responsible organs to effect the payment of compensation. In other words due to the non applicability of the law the displaced land holders may be affected regarding the payment of compensation. So the necessary laws which are issued like the proclamations and the regulation to give solution for the case of compensation must get implementation at all stages.

As it is the reason that the authority rejects to accept the value of the plant by stating that the value of the plant shall be calculated as per the regulation's method of assessment. The commission which is empowered to give solution also rejects the calculated value of the property because it does not follow the provisions of the law.

Therefore before the displaced land holders brought their case if there is a possibility to end up their case at the sub city level, it seems a better way that could help the displaced land holders to protect them from unnecessary cost. But as all cases are raised as a result of the non applicability of the law there should be distribution of the new issued laws or creation of awareness about the new laws for all organs of the implementing agents.

Conclusion and Recommendation

Expropriation involves the lawful taking of privately owned immovable properties by the government for public purpose where the public derives direct or indirect benefit for the public at large. This can be said that like the construction of public schools, roads, and etc are some of the public purposes.

Regarding compensation the important things that need some consideration pertaining to the payment of compensation are for those who are entitled to effect the payment and how the amount of compensation is to be determined and how much compensation to be paid for expropriated property. Thus the responsible organs must pay the appropriate amount of compensation according to the current market value of the country.

Moreover for the development carried out compensation to be paid not only for the house and fences but also all plants that might have been grown in the expropriated land. The amount of compensation to be paid for the displaced land holders shall be determined according to the provisions of the law, as it provides that private or public consultant to determine the value of the property but till this organ becomes established the valuation committee shall determine the value of the property by the valuation committee which is expected to be established according to the law of expropriation.

However there are different problems that affect the lawful procedures of compensation which is set by the government , such as un planned compensation budget , insufficiency of the payment of compensation, lack of having the knowledge of the laws to effect compensation, the non

applicability of the laws to administer the payment and assessment of compensation, lack of prior consideration the future fate of the farmers whose land holding has been expropriated and calculation and assessment of compensation is not in a manner of guarantying the future settlement of displaced land holders or farmers, the assessment of compensation is based on the past years rather than considering the current and the future market value conditions.

Therefore applying effective land expropriation and payment of compensation are required for enhancing economic, social and infrastructural development.

Recommendation

The aim of my research is to find out problems related to the case of compensation at the time of expropriation and the way how to conduct the valuation of property for those whose land holding have been expropriated. On top of this, the following points are listed for the problems and gaps observed in the law and practice. Here are some possible recommendations proposed.

- Even if the standard of compensation is provided by the law which is the proclamation and regulation has set the standard of payment of compensation but the applicability of this laws do not start at the necessary levels to effect the payment of compensation. So the laws must be started at all the necessary implementing organs in order to bring fair and proper payment of compensation.
- There should be further study with regard to on the process of payment of compensation; the replacement land to be given at the appropriate time shall be considered before the act of expropriation conducted which can help to decrease the number of victims who are displaced land holders.
- There should be specific replacement land to be given for the displaced land holders before they become expropriated. Because even if the proclamation provides the replacement land to be given as compensation, but in practice the replacement land is not given at the appropriate time which is before the land holders become expropriated. So it is better to give more concentration about the replacement land before they become displaced or it shall be conducted with in a short time before a year rather than taking a year after they become displaced.

- The notice of expropriation shall be conducted according to the time given by the law and people who are expected to be expropriated should be informed within a reasonable period of time. So the expropriation and payment of compensation process must be conducted according to the laws that are provided.
- The peoples who are to be expropriated before the displacement or before they become expropriated the replacement land should be prepared or other alternative means like constructing more condominium houses will help the country to develop with higher building and also if the condominium house is given it will also help to avoid the current problem of scarcity of replacement land.
- Regarding the payment of displacement compensation the fate of the farmers must be considered which means as there is no replacement land to be given at the present time these farmers will face to be laborers and migrants to the country side. So it is better to give them the replacement land for the farmers as land is the identity for them it must be considered before the land holders become to be displaced.
- The expropriation of land holdings and the assessment for the amount of compensation is not effected according to the intention of the law so there should be awareness creation method either by training the implementing organs or by distributing the new issued laws for the necessary organs.
- Regulation 135/2007 is not still applicable and also the implementing organs which are specially at the sub city levels the issuance of the law is not know. So in order to give effect the issuance of the laws there should be a mechanism to distribute the new issued laws at least for the implementing agents.

- In determining the value of the displaced land holders property as the law provides either the private or public consultant or the property valuation committee must be established with in a short period of time in order to give effect fair payment of compensation for the displaced land holders.

- The way how the displaced land holders enforce their right is given for the urban land clearance matters appeal commission, which is one of Addis Ababa's government administrative tribunal. But as it is the one which is the executive organ who has the power to permit the land to be expropriated and it is also the executive organ who is the one that entertains the case of compensation for the displaced land holders by the act of expropriation. So it is better to entertain the case at the ordinary court as it is assumed as an independent organ to interpret the provisions of the law

Annex

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