



**KTH Architecture and  
the Built Environment**

## **Expropriation, Valuation and Compensation in Ethiopia**

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Doctoral Thesis in Real Estate Planning

Real Estate Planning and Land Law  
Department of Real Estate and Construction Management  
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**Dedicated to My beloved Mother Ayalnesh Abebe**  
*Who sacrificed her life to grow up me and my two brothers Andualem and Yitayew*

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## List of Abbreviations

ANRS	AMHARA NATIONAL REGIONAL STATE
APS	AFFECTED PEOPLES
AU	AFRICAN UNION
CBD	COMMERCIAL BUSINESS DISTRICT
ERA	ETHIOPIAN ROAD AUTHORITY
ETB	ETHIOPIAN BIRR
FCOM	FEDERAL COUNCIL OF MINISTRIES
FDRE	FEDERAL DEMOCRATIC REPUBLIC OF ETHIOPIA
FGD	FOCUS GROUP DISCUSSION
KII	KEY INFORMANT INTERVIEW
LDP	LOCAL AREA DEVELOPMENT PROGRAM
ORAAMP	REVISION OFFICE OF ADDIS ABABA MASTER PLAN

PAP	PROJECT AFFECTED PEOPLE
IVS	INTERNATIONAL VALUATION STANDARD
IFRS	INTERNATIONAL FINANCIAL REPORTING STANDARDS
RAP	RESETTLEMENT ACTION PLAN
RICS	ROYAL INSTITUTE OF CHARTERED SURVEYORS
RSDP	ROAD SECTOR DEVELOPMENT PROGRAM
SIA	SOCIAL IMPACT ASSESSMENT
SMNP	SEIMEN MOUNTAIN NATIONAL PARK
TEGoVA	EUROPEAN GROUP OF VALUER'S ASSOCIATION
UNECA	UNITED NATIONS ECONOMIC COMMISSION FOR AFRICA

## **List of Laws and Regulations**

### **Ethiopian laws and Regulations**

ADDIS ABABA CITY ADMINISTRATION DIRECTIVE NO.3/2009  
 CONSTITUTION OF 1931, CHAPTER 8, ARTICLE 74-76  
 CONSTITUTION OF 1955, ARTICLE 44  
 CONSTITUTION OF 1995, ARTICLE 40(1.8)  
 CIVIL CODE OF 1960 ARTICLE 1665 (1&2)  
 PROCLAMATION No.31, 1975, ARTICLE 3, 4(5)  
 PROCLAMATION No.47, 1975  
 PROCLAMATION No.455/2005  
 PROCLAMATION No. 272/2002  
 PROCLAMATION NO.721/2011  
 RURAL LAND ADMINISTRATION AND LAND USE PROCLAMATION 456/2005, ARTICLE 7(3)

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## **Abstract**

This study examines how the expropriation, valuation and compensation process are carried out in Ethiopia when privately held land and attached real properties are taken for public and private investment purposes. The study examines three case studies, inquiring whether the process of expropriation and valuation are transparent and justified or not and the compensation paid is fair and reasonable from an international perspective. A valid with theoretical background, the study examines practical problems that faced expropriatees and searches for possible theoretical explanations. The study also assesses whether there is a gap between the laws and the practice undertake on the ground.

The study reveals that expropriation as a concept and a land policy tool has economic and political justification and acceptance in Ethiopia. Similar to other developing countries, Ethiopia has faced enormous economic and social problems. The question of housing and other real estate construction for high population pressure, the development and investment questions, poor public utility facilities and other public interests are some of the problems that need the intervention of both the Federal and Regional governments. In order to facilitate these needs of the society, the Federal government, the City Administrations and/or Regional governments have been using “expropriation” as a meaningful and useful management tool. However, the field survey result reveals that different compensation standards among government institutions, inadequate compensation standards for loss of land use rights, lack of professional and certified property valuers, lack of reliable and up to date data and nontransparent expropriation and valuation procedures are some of the main problems that impend the proper and equitable implementation of expropriation, valuation and compensation in the country in general and the study areas in particular.

Another emerging issue is how the land laws especially the expropriation and payment of compensation laws are applied. It is evident that the application of and adherence to legal provisions with consistency, transparency and objectivity; by the acquiring authorities in ensuring that fairness is done, seems to be quite crucial. On the other hand, non-adherence to such laws brings numerous implementation problems in such programs. Whereas the affected expropriatees need “fair treatment and compensation” the government wants to pay a “manageable compensation” so, this thesis argues for a reasonable compensation to be established by striking a balance between these two view points.

This study ends up by proposing that both the Federal and Regional governments should revise the land laws especially the expropriation and payment of compensation laws in such a way that it would define and protect property rights for the vulnerable groups both in urban and rural areas and where and when these rights are acquired “reasonable compensation” must be paid.

**Keywords:** Expropriation, valuation, compensation, public purpose, property rights, reasonable compensation, fairness, land policy, Ethiopia

# ***PART I: STUDY BACKGROUND AND METHODOLOGY***

## ***CHAPTER ONE: INTRODUCTION***

### ***1.1 Background of the study***

Expropriation is an important tool in most countries for land acquisition for public purposes although it can often be arranged through other means. For instance, expropriation can be exercised through voluntary agreements (Viitanen & Kakulu, 2007). Driven by the demand for economic development and improvement of the well-being of citizens, governments in every country maintain and exercise the power to expropriate<sup>1</sup> private properties for public purposes. And every sovereign state maintains an “eminent domain power<sup>2</sup>” to advance the interest of the public (ADB, 2007). The same source also indicated that most countries have developed land acquisition laws to restrict their government’s exercise of eminent domain power and accumulated experiences in implementing those laws. Such laws define the following terms and conditions: (i) define the cases in which the government can exercise its power; (ii) describe the rights and participation of those persons whose assets are being taken; (iii) define the lost assets for which compensation is payable; and (iv) define the level of compensation that is payable for those assets.

Despite the fact that both private and public development projects ultimately aim to improve the overall well-being of the population, the implementation of such projects may affect negatively some portion of the society especially those who are living on, working on, or otherwise benefiting from the land and its attached resources and lost their land and its attached properties for the project. In principle, any development project is essentially attempt to improve the economic welfare of the society in the country, including those who have to be affected by the project. According to ADB (2007), these affected people, whether they are titled holders or informal dwellers of the property to be expropriated, are an integral part of beneficiaries rather than sufferers of such development project. According to the same source, “Any impoverishment to affected peoples by such project will be inevitably translated into not only a failure to achieve the project’s goal of increasing overall well-being of the citizens, but also an impediment to the smooth execution of the project. Compensation can be taken to as a mitigation measure for affected people to maintain their previous income and living standard”.

Unlike developed countries where private ownership is the main form of land ownership, Ethiopia adopted public ownership of land. According to the 1995 Constitution of the Federal Democratic Republic of Ethiopia article 40(8), land is a common property of the Nations, Nationalities and Peoples of Ethiopia and shall not be subject to sale or other means of exchange. However, such public ownership of land has undergone a series of reforms since the start of the current government. When the government started to exercise the market economy, it separated land use rights from land ownership. Land ownership is still publicly owned while land use rights are allocated to private individuals<sup>3</sup>. According to Proc. No. 455/2005, Article 7(1), “Since land is publicly owned, expropriation

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<sup>1</sup> “Expropriation” in this context refers to the government’s involuntary taking of land and attached properties.

<sup>2</sup> The taking clause has two key components: the public use requirement and, the just compensation requirement. These components serve to restrict the conditions under which the government can take private property. The public use requirement restricts when the taking of private property is justified (Miceli & Segerson, 2007)

<sup>3</sup> According to the Federal Government's urban land lease holding proclamation No. 80, 1993, one of the policy measures that would have been taken by the present government of Ethiopia is urban land lease holding system, which is one form of land tenure that enables the government to transfer land use rights and benefits from the state to private individuals.

of land only involves ‘withdrawal’ of land use rights’. According to the same proclamation, in Ethiopia land use rights can be withdrawn from the right holder for: (i) public interests, (ii) expiration of land use terms without renewal or denial of the renewal application, (iii) dissolution or relocation of the holder of administratively allocated land rights. However, a landholder is entitled to payment of compensation for his property situated on the land and for permanent improvements made on the land.

Property<sup>4</sup> valuation in the country is carried out for payment of compensation for both rural and urban development activities; private and government development projects (dam construction for drinking water and irrigation purposes, social and economic infrastructures (schools, health institutions, roads, etc)). According to proclamation No.455/2005, Article 7, the government agents, a Woreda<sup>5</sup> or an urban administration, may expropriate private property for public purposes for a better development project to be carried out by public entities, private investors, cooperatives, societies or other organs with payment of compensation. 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 on it. In such a situation, the compensation shall be equal to the value of capital and labor expended to the land. However, nothing is stated in the Constitution and Proclamation about the number of beneficiaries and significance of their benefits drawn from the acquisition or expropriation of the property.

Lack of Constitutional force, coupled with government expropriation practice, has resulted in a failure in proper implementation of the laws concerning expropriation, compensation and valuation (Field survey, 2011, 2012). These problems can be outlined in different ways: Who is entitled to compensation? What compensation is made to affected people? When the compensation is made? What determines the amount of compensation? In addition to these problems, valuation and compensation practices vary greatly depending on the purpose for which land use rights is expropriated, the source of finance for compensation and the institutions involved in the expropriation.

## ***1.2 The Research problem***

In Ethiopia, both in urban and rural areas, social and economic infrastructures are not yet developed. The need of suitable property unit formation, the question of housing and other real estate construction, the need to solve development and investment questions and other public interest requires the application of expropriations as meaningful and useful management tool.

Expropriation of land and its attached properties from its initial owners and users has everlasting effects on their lives especially if these people depend on the land for their livelihood. In the peripheral areas of many African cities, public land acquisitions deny these land owners their means of livelihood and hence change their lives forever (Kiapi, 1969; cited in Ndjovu, 2003). This is why there is a general reluctance and hostility when an attempt is made to interfere with established land rights because land is a peculiar institution, which occupies a

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<sup>4</sup> Private property is defined as “any tangible or, intangible product which have value and is produced by the labor, creativity, enterprise or capital of an individual citizen, associations which enjoy juridical personality under the law, or in appropriate circumstances, by communities specifically empowered by law to own property in common” obviously this does not include such naturally existing items as land which cannot be created by the labor, creativity enterprise, etc. of man.

<sup>5</sup> The second from the last administrative unit in Ethiopia. In Ethiopia, there are different administrative structures out of which Woreda is the second administrative structure from the last next to kebele.

central position in the social organization of the community. Any attempt to change the existing land relations whether by expropriation or whatever means is likely to meet the strongest opposition even if such projects were implemented by the government itself (ibid).

Urban redevelopment and expansion in Ethiopia is not only necessary but also unavoidable activity due to the rapid rate of urban growth, growing socio-economic needs, shortage of shelter and rapid expansion of slums. As experiences from developed countries showed that urban redevelopment is a complex and huge process that needs huge investment, well-organized institution and commitment, well-prepared plan and policy and legal framework (Abay, 2003). The magnitude of displacement from inner city and resettlement in urban outskirts has been increasing from time to time in all big cities of the country. The city governments are pushing inner city dwellers to the urban outskirts in addition to the economical segregation<sup>6</sup> by market forces in the cities. As the experience has shown the poor urban dwellers and farmers who are living in the peripheral areas of big cities in the country are victims of the urban redevelopment and expansion. In one way or the other, the redevelopment project in the inner city and resettlement in the urban outskirts has displaced farmers and exposed to critical socio-economic problems, such as intensified poverty and problems by making people landless, homeless and jobless. They lost their employment opportunities, income sources, social organizations and access to infrastructures without any government appropriate compensation and in the absence of re-establishment scheme.

Thus, numerous problems have been faced during the implementation of the expropriation, valuation and compensation. Some of these problems are similar to other countries but others are rather peculiar to Ethiopia. Many of these problems include the inadequacy of compensation amount/rate, inordinate delays, arbitrary compensation and lack of certified and professional valuers etc. It is also noted that sometimes the government agents (woreda or city administrations) expropriate land without paying compensation or by giving very little compensation. For instance, as Anteneh (2007) described, “Expropriation and compensation payments for reasons of township expansion including the zoning of industrial parks are expected to be handled by city administrations and municipalities from their own revenues”. But this is mostly theoretical. In practice only those city administrations / municipalities, which have relatively better revenue collection, pay compensation. For the most part towns have been encroaching to rural land with little or no compensation. In the early days of urban expansion most farmers were not compensated. The problem is both legal and financial capacity. Compensation is not fair and reasonable due to the absence of alternative property valuation methods, qualified and professional valuers, comprehensive valuation provisions and lack of reliable and up to data. As a result, compensation payment does not satisfy the interest of both parties in general and the land holders and right users in particular.

### ***1.3 Significance of the Study***

Solving most problems related to expropriation, valuation and compensation would help in the realization of sustainable and institutionalized valuation systems. In turn, it will serve as a tool for a number of public and private functions in the land sector, including a sound land management system and tenure security, compensation for state acquisition, taxation of land and determination of the value of collateral assets. Thus, this research is important for a number of reasons. First, it is important for policy and decision makers, donors and international organizations that are currently seeking policy measures for valuation, compensation and expropriation matters.

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<sup>6</sup> Urban economical segregation is the poor slum dwellers that have less access to assets (human, financial, social, physical, natural and political) are displaced to urban outskirts while the rich who have more assets and greater range of options are occupying the strategic site of the city.

Second, it is important for the government agencies and private investors that require land through expropriation for expansion of townships and investment, construction of highways and feeder /access roads, quarrying, detours, construction of dams, power stations as well as the taking of communal resources held by communities. Third, it is important to facilitate real estate transaction and strengthening real estate marketing in the economy. Finally, the research findings together with results from studies in other countries will be another contribution into the existing stock of knowledge in the areas of expropriation, valuation and compensation.

### ***1.4 Research objectives and questions***

In Ethiopia, Federal, Regional and Local governments and organizations apply different valuation procedures and rates to compensate affected landholders for their property expropriated. In line with this, it is hypothesized that the lack of application of standardized valuation and compensation procedures has created situations of unfair valuation and compensation regimes whereby equal rights of landholding provided under Federal and State Constitutions may be infringed upon. In view of these the research is designed to address the following objectives:

**First**, it examines how land expropriation, valuation and compensation procedures are implemented when privately held land and attached properties are taken for public and private investment projects;

**Second**, it assesses the fairness of amount of compensation paid in the event of expropriation;

**Third**, it examines drawbacks of the existing laws and whether the methodology of valuation used and procedures of expropriation and compensation exercised are appropriate and consistent with the existing laws and regulations

**Finally**, conclusions and recommendations are forwarded on valuation methods to be applied and compensation payments to be made.

In order to reach these objectives the following research questions are formulated:

- How is valuation and compensation carried out in Ethiopia?
- To what extent has the practice of valuation and compensation been consistent with the existing laws?
- To what extent the Federal and State laws and regulation are adequate to dispense fair compensation to expropriatees?
- Is compensation fair and reasonable with respect to what, how and when to expropriate and compensate?
- How effective is the capacity of the various government agencies to undertake valuation of property, and apply grievance redress mechanisms and enforcement of compensation adjudications?

## ***1.5 Background information on Ethiopia***

### **▪ Geography and Climate**

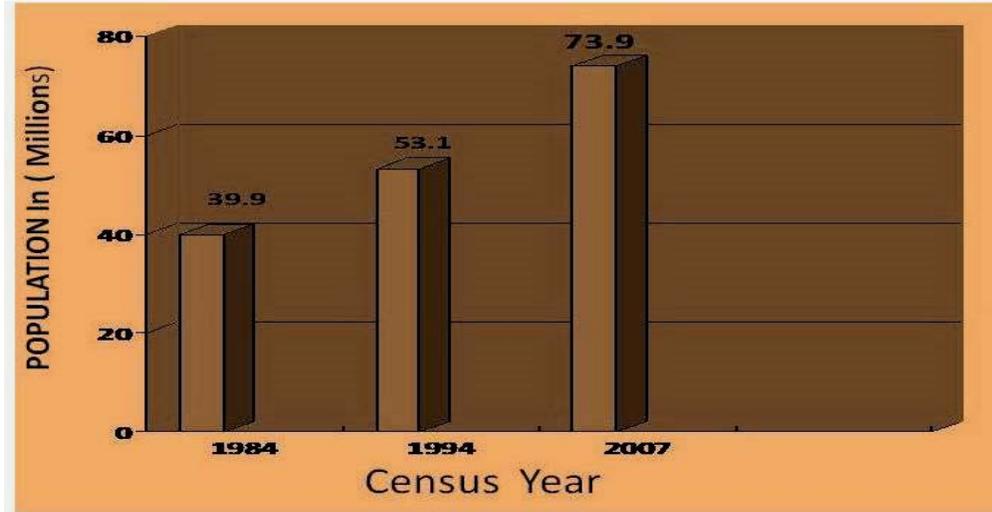
Ethiopia is strategically located in the horn of Africa at crossroads between Africa, the Middle East, and Asia. It covers an area of approximately 1.14 million square kilometers (445,000 square miles), and borders Djibouti and Somalia to the East and South East, Eritrea to the north, the Sudan & south Sudan to the West and South West, and Kenya to the south. Geographically, Ethiopia is a country blessed with immense contrasting physical features. It has a topography featuring high and rugged mountains, flat-topped plateaus, deep gorges, incised river valleys, vast rolling plains and low lands. Its altitude ranges from 148 meters below sea level at the Dallol Depression in the northeast, to the highest peak at the Mount Ras Dashen, which is 4620 meters above sea level in the northwest of the country. Surrounding the highlands, which constitute 56 percent of the total area of the country, are extensive low lands with altitudes of less than 1,000 meters.

Ethiopia is also endowed with other fascinating geographical features which include, among other things, the Great Rift Valley, which divides the country into western and eastern highlands, and canyons, gorges and river basins such as the Abay (Blue Nile), Awash and Baro. It has a climate varying from cold to temperate and from sub-tropical to tropical. Although Ethiopia lie within 150 degrees north of the equator, owing to the moderating influence of high altitude, much of the country enjoys a temperate and pleasant climate, with average temperature rarely exceeding 20<sup>0</sup> c (68<sup>0</sup> F). The sparsely populated lowlands typically have sub-tropical and tropical climates. At approximately 850 mm (34 inches), the average annual rainfall for the whole country is considered to be moderate by global standards. Ethiopia has various agro-ecological zones and three main climatic zones: Tropical rainy region, having an altitude of over 2500 meters above sea level; Dry climate region of hot low land lying up to 1500 meters above sea level; and Warm temperate wet region lying between 1500-2500 meters above sea level.

### **▪ Population**

According to the 2007 national population and housing census, Ethiopia had a counted population of about 73.9 million, out of which 37.3 million are male and the remaining balance, 36.6 are female. At present, Ethiopia is one of the most populous countries in Africa. The annual population growth rate is estimated to be 2.6 percent and population density of 64 per square kilometer. About 84 percent of the population lived in rural areas. Average life expectancy is 53.42 and 55.42 years for male and female respectively. With regard to working age population, urban workforce constitutes about 6.95 million while rural workforce is 32.6 million. Each successive population and housing census demonstrates that national population size increased in steady increments of significant proportions. For instance, a comparison of the 2007 census results with those from 1994 shows that the population of the country increased by more than 20 million persons over the last 12 years. Similarly, in the previous decade (1984 to 1994), the population of the country increased by 13.2 million people (CSA, 2007).

Figure 1-1: Counted Population Size of Ethiopia (in millions) 1984-2007



Source: CSA, (2007)

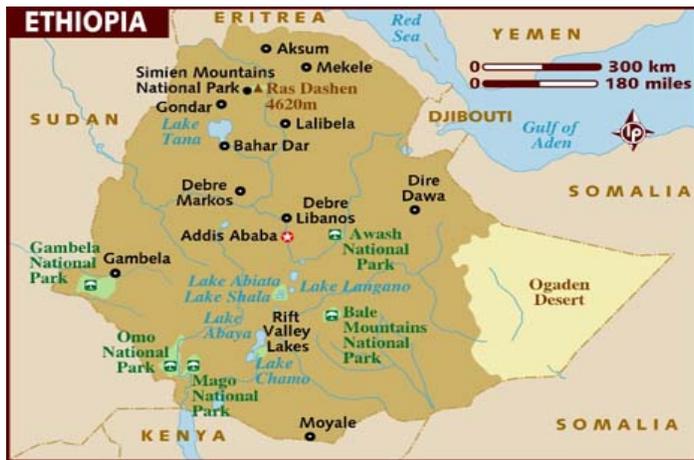
Ethiopia is one of the oldest nations in the world and its people have an ancient culture and deep-rooted values. Its culture and tradition dates back over 3,000 years. In fact, the 3.5 million-year-old skeleton of "Lucy" or Australopithecus at Hadar, in the Afar Region, the 4.4 million-year-old remains of Australopithecus Ramidus which is considered to be man's anthropoid ancestor, and the earliest hand tools of humans unearthed in the Omo Valley make the country the oldest home of mankind on the planet.

The Ethiopian people are ethnically and culturally diverse. Thus, there are about 80 ethnic groups. According to the 2007 census report, the Oromo and the Amhara are the dominant ethnic groups, jointly accounting for 61.4 percent of the total population. Amharic is the official working language of the Federal Government. English is the medium of instruction in secondary schools and higher education institutions; and it is also widely used in business transaction, particularly in banking and insurance. Ethiopia's population is predominantly Christian (62.7 percent), Muslim (33.9 percent), and traditional animist religions and others (3.3 percent) which is being practiced by many ethnic groups in some parts of the country.

- **Map of Ethiopia**

Map1.1 below indicates the major towns of Ethiopia and bordering countries. The study areas are located in various places that appear on this map. The map shall therefore assist readers (who have never been to Ethiopia) to appreciate where in Ethiopia the case areas are situated. Also, the map shows countries in the horn of Africa that share boundaries with Ethiopia.

**Map 1-1: Map of Ethiopia with important towns and bordering countries**



Source: <http://www.lonelyplanet.com/maps/africa/ethiopia/>

## ***1.6 Structure of the study***

This research work is organized into four parts where each part contains different chapters with similar nature. Part one comprises study back ground and methodology, part two comprises chapters dealing about theories of expropriation, valuation and compensation, part three contains the legal system in land and related matters in Ethiopia, and the last part contains chapters deal in with expropriation, valuation and compensation practice in Ethiopia.

More precisely, the first chapter contains introductory and explanatory information giving a clear insight into this research. Particularly, it provides background of the research along with the research problem, significance, objectives and question of the research. A detailed description of the research methodology is further presented in chapter Two. Chapter Three and Four introduce the theoretical frameworks about expropriation and compensation. Concepts of expropriation and compensation, rationales of expropriation, international and comparative laws on expropriation and compensation are discussed. Chapter Five deals with property valuation and valuation for expropriation and compensation. Chapter Six provides overview of land tenure system and property rights in Ethiopia since the imperial era to present. Chapter Seven deals about the legal framework on expropriation, valuation and compensation in Ethiopia. Chapters Eight, Nine and Ten explore the three case studies namely: Urban redevelopment and induced –displacement in Addis Ababa: the case of Senga-Tera locality in Lideta-Sub City, expropriation, valuation and compensation in Ethiopia: the case of Bahir Dar City and surrounding and Land acquisition and compensation in Ethiopia: the case of Gondar-Debarq Road Redevelopment Project. Integration of the findings and their analysis is presented in chapter Eleven, while policy implications and contributions are made under chapter Twelve.

## **CHAPTER TWO: RESEARCH METHODOLOGY**

### **2.1 Introduction**

This section discusses the methodology used in this research. It explores the way the research was designed, the instruments that were applied in the data collection and methods of analysis used in the research. Different sources of information and data are investigated. Since the research is conducted to evaluate expropriation, valuation and compensation practices in Ethiopia based on the three case studies, discussions as to what, how and why these cases are selected are dealt in detail.

### **2.2 The research design**

Huff (2009) defines a research design as “A plan that guides the investigator in the process of collecting, analyzing and interpreting observations. It is a logical model that allows the researcher to draw inferences concerning causal relations among the variables under investigation”. According to the same source, the research design is an attempt to make the process more efficient and effective (Huff, 2009). A research design is a procedural plan that is adopted by the researcher to answer questions validly, objectively, accurately and economically (Kumar, 2005). According to Selltiz et al. (cited in; Kumar, 2005), “A research design is the arrangement of conditions for collecting and analyzing of data in a manner that aims to combine relevance to the research purpose with economy in procedure.”

A case study approach was considered appropriate in evaluating expropriation, valuation and compensation practice in Ethiopia. A case study is defined by Yin (2003) as “An inquiry that investigates a contemporary phenomenon within its real-life context, especially when the boundaries between phenomenon and context are not clearly evident. The case study inquiry copes with the technically distinctive situation in which there will be many more variables of interest than data points, and as one result relies on multiple sources of evidence, with data needing to converge in a triangulation fashion, and as another result benefits from prior development of theoretical propositions to guide data collection and analysis”

According to Denscombe (2007), a case study method allows to use a variety of data sources, data types and data collection tools. The case study like other research strategies is a way of investigation an empirical topic by following pre-specified procedures (Yin, 2003). The central tendency among all types of case study is that it tries to illuminate a decision or set of decisions: why they were taken, how they were implemented and with what results being realized (ibid). Whatever the subject matter, the case study normally depends on a conscious and deliberate choice about which case to select from among a large number of possibilities. From these the following two points has to bear in mind. First, cases are not selected randomly rather they are selected deliberately on the basis of known attributes to be found in the case or cases. These attributes are particularly significant in terms of the practical problem that the researcher wants to investigate. Second, the criteria used for the selection of cases need to be made explicit and justified an essential part of the methodology (Denscombe, 2007).

The main benefits of using a case study approaches are: i) It focus on one or a few instances that allows to deal with the details and complexity of social situations in particular it enables the grapple with relationships and social processes unlike the other approaches. ii) The case study approach allows the use of a variety of research tools in order to capture the complex reality under investigation. iii) It also fosters the use of multiple sources of

data including documents, archival records, interviews, direct observation and group discussions. This in turn facilitates the validation of data through triangulation. iv) Finally, the case study approach is found suitable where the researcher has limited resource to cover all events in the research topic under consideration.

Besides its advantages, a case study method is criticized in relation with weak credibility of generalization made from its findings, focuses on process rather than measurable end products (relying qualitative data and interpretative methods rather than quantitative data and statistical procedures). Moreover, in case studies access to documents, people and settings can generate ethical problems in terms of confidentiality matters (Denscombe, 2007).

Consistent to the case study definition and explanation, the expropriation, valuation and compensation practice was viewed a phenomenon, taking place in real life context; hence it qualified to be explored using case study method. Furthermore, the case study method was considered appropriate for this study since it allowed direct observation of the events being studied and interviews of the persons involved in the events. Through direct observation of properties expropriated, compensations provided and infrastructures and public facilities available in areas where expropriatees resettled, as well as through interviewing and conducting group discussions with expropriatees, valuers and the community, it was possible to evaluate the actual practice of expropriation, valuation and compensation practice in Ethiopia.

Although, a case study method has limitations, its advantage outweighs the limitations due to the following factors such as the purpose of the study, the nature of data required and the availability of resources, the nature of the problems, objectives of the research and the research questions. These factors had a bearing and influenced on the choice of this research method.

### ***2.3 Selection of cases***

In this research, case study areas are selected based on the purposes for which expropriation practices are applied. The first selected case study area is Addis Ababa where expropriation, valuation and compensation practice is exercised for urban development and induced- displacement while Bahir Dar City and its surrounding rural Kebeles are selected for the purposes of private investment and public development activities. The third case study area, Gondar-Debank road, is selected for the purpose of high way road (re)development.

The choice of Addis Ababa for a case study area was motivated by a number of reasons. First, Addis Ababa is the largest city in the urban hierarchy, a capital city and commercial capital for Ethiopia. Factors that make the city assume strategic significance in the national and regional economy and subsequently command high influence on the possible effectiveness of a number policy measures. Moreover, its unique metropolitan features and complexity offers opportunities for learning important lessons that could be applicable elsewhere in the country.

Addis Ababa is a city with a large population growing at a very fast rate. As a result of this, its spatial growing and horizontal expansion result in numerous land problems that are more serious as compared with other urban areas. Many national and international investment projects are being undertaken in the city due to its industrial and market advantages. As result of these scenarios, the expropriation practice is common and frequent in the city. The availability of data at the sub cities of Addis Ababa and the ease access of expropriatees made the choice of Addis Ababa a rational case study area. Second, urban redevelopment and induced-displacement in case of Senga-

Tera locality in Addis Ababa was the recent and the biggest expropriation project in terms of the investment volume and number of expropriatees. When the project took off, it was easy to make a close follow up of every event and development. Hence, there is no convenience place to select as a case study than this area to get adequate and detail information for this research. Given these factors the city was found more appropriate for the study as there was quite a substantial amount of insights to learn about expropriation, valuation and compensation practice in Ethiopia.

Bahir Dar City, the capital city of Amhara National Regional State, and its surrounding rural kebeles is selected as a second case study area for the following reasons: First, Bahir Dar City is the fast growing city where both private investment and public (re)development activities are undertaken at a rapid rate. As a result of this, expropriation, valuation and compensation practice is frequent. Second, private investments and public development activities under taken in Bahir Dar City and its surrounding rural kebeles are similar in nature and application to other cities and rural kebeles in Ethiopia. Hence, evaluating expropriation, valuation and compensation practices in this case study area can provide good evidence for other parts of the country. Third, in Bahir Dar City and in its surrounding rural kebeles the expropriatees are compensated by the regional government /city administration unlike to expropriatees in Gondar –Debark road which is financed by the Federal government. Hence, Bahir Dar City and its surrounding rural kebeles as the second case study area helps to compare compensation amounts provided by Federal government and Regional governments / city administrations.

Gondar-Debark Road is selected as the third case study area due to the following factors. First, the process of expropriation is practiced on road sector where both its implementation and compensation provision are made by the Federal government. Hence, it is possible to compare the practice of expropriation and compensation paid by regional and Federal government. Second, collecting information about expropriation, valuation and compensation from different sectors at different area can maintain the reliability and comprehensiveness of the study findings.

## ***2.4 Methods of data collection and analysis***

Data and information were collected at individual and community levels as well as from interviewees in the relevant regional government agencies which have relation with the issues of expropriation, valuation and compensation practice in Ethiopia. At the level of individuals, a household formed a basic unit of inquiry represented by its head who was the land holder and was identified as a potential interviewee. Household may consist of a single person in the case of a nuclear family or it may consist of several nuclear and extended families. Among these affected individuals, there were both holders of land and the holders of fewer interests in the acquired land or buildings (tenants). However, in this research only landholders were identified for interviews and not the leaseholders and tenants.

### **2.4.1 Data sources and collection methods**

According to Denscombe (2007), evidences for case studies may come from different sources. Similarly, Yin (2003) says, case study approach in research is not restricted to any specific data collection method. It allows for the use of a variety of methods depending on the circumstances and the specific needs of the situation. It is for this reason that several sources of data and methods of data collection were used in this research. The following main methods of data collection were used, namely primary data through structured and semi structured

questionnaire interviews, Key Informant Interviews (KII), direct observation and Focus Group Discussions (FGDs). In addition to that secondary data analysis, both qualitative and quantitative research methods were also applied. Each of these methods provides an alternative tool available to the investigator for the collection of empirical data.

#### ***2.4.1.1 Primary data***

One of the research instruments used in collecting primary data consisted of structured and semi structured questionnaires that would be administered to all categories of participants in a specific expropriation, valuation and compensation practice. The main practices exercised on the affected people, the acquiring authorities, property valuers and government higher and local officials.

Structured and semi structured questionnaires, key informant interviews and focus group discussions were administered during the field survey, which entails undertaking interviews and also personal observations. Since majority of the interviewees were illiterate and some of them did not have time to fill the questionnaire, the data collection was managed through schedule-structured questionnaire interviews. A few affected individuals were selected for key informant interview to get detail information. Moreover, Focus Group Discussions (FGDs) were held with the community members from the case study areas

- **Interview**

One of the most important sources of case study information is the interview (Kumar, 2005; Yin, 2003). According to Denscombe (2007), interviews are essential sources of case study evidence because most case studies are about human affairs. These human affairs should be reported and interpreted through the eyes of specific interviews, and well informed respondents can provide important insights in to a situation. In this study focused interviews were conducted in collecting primary data from local and higher officials. This type of interview was considered appropriate because government officials are not voluntary to provide information in time taking interviews. Hence in order to gain important information from government officials the interview focused on crucial points that did not take much time. Interviews are an important tool of data collection since they provide a chance for an investigator to collect detailed information from the respondents who are engaged in the events being studied.

- **Questionnaire survey**

A questionnaire survey was conducted on individual expropriatees and property valuers. This took the form of a personal interview (schedule-structured interview) in which an investigator was asking questions and recording answers from the respondents. The questionnaire was structured to get real information on the process of expropriation, valuation and compensation, the amount of compensation paid and provided substitute physical assets, disturbance and its consequential effects etc. The schedule-structured interview was considered appropriate for this study as it enabled the research to obtain elaborate answers to open ended questions from the respondents. It also helped to obtain responses from illiterate property holders and to avoid the pitfalls of other types of data gathering instruments in the survey method.

- **Direct Observations**

“Observation is one way to collect primary data. It is a purposeful, systematic and selective of watching to an interaction or phenomenon as it takes place” (Kumar, 2005). According to Yin (2003, Flick, 2009), observational evidence is often useful in providing additional information about the topic being studied. Direct observation

enabled the investigator to collect evidence that can be captured without necessary asking respondents. This was made possible by visiting each and every event undertaken on the expropriated land and attached properties. Direct observations were also used to cross check on some of the respondent's responses on certain aspects. Since many respondents were illiterate they could not be able to provide technical information. Direct observation, therefore, enabled the researcher to obtain such information. Moreover, direct observation provided an opportunity for the investigator to observe the type and characteristics of the expropriated land and attached properties, the infrastructure and public facilities. In addition, it gave a good opportunity for the investigator to observe the situation of the basic infrastructure and services in the original area and in the resettlement area. Furthermore, supporting documents including maps, figures, and photographs were also prepared and gathered from field.

- **Focus group discussion**

Focus groups provide insights in to how people think and provide a deeper understanding of the phenomena being studied (Flick, 2009). Focus group discussions (FGDs) undertaken to validate data coming from different sources and to cross check for disparity and to get in detail and outstanding information and to generate new idea that is important to overcome solution of problem in response to an open-ended questions.

The appropriate participants in FGD are individuals who have relevant information for the topic being studied. The major issues raised during the group discussion include opinions, attitudes, beliefs, and perceptions of participants to gain supportive insights and information about the topic under studied.

#### *2.4.1.2 Secondary data and Documentary analysis*

Relevant documents and papers, legal concepts and provisions, valuation methods, and matters related to financial sources and their influence on the determination of compensation rate/amount were gathered and used in the study. Documents were also gathered from various published journals, reports, books, project reports, and related materials. In general, documentary sources are classified in to three major categories: legal documents, academic literature, and documents reflecting international practices. Legal documents including the Federal and Regional Constitutions, proclamations, regulations, etc. dealing with land administration, expropriation, valuation and compensation. Academic literature, which reflects various research work and studies on issues / problems related to expropriation, valuation, compensation and related matters.

The uses of multiple sources of evidence in case studies allow the investigator to address a broader range of issues. Different sources of evidence that can be analyzed together results in the case study findings to be based on convergence of information from different sources, not quantitative or qualitative data alone (Denscombe, 2007). Thus, the research findings in all case studies to be much more convincing and accurate, different sources of information and data collection tools were used in this research.

#### **2.4.2 Sample and the sampling methods**

Given available resources, existing capacity to administer/ monitor the survey and the importance of increasing and diversifying sample sizes, a representative sample size was taken from the selected case study areas. Selection of the sampled expropriatees was conducted through the systematic random sampling method. This method had saved time as well as financial and human resources. At the same time, each element in the population has an equal and independent chance of selection in the sample and the available information on the

population would be represented by elements of the sample which in turn represents the whole population under study (Kumar, 2005). In all case study areas, names of expropriatees were drawn from title registers kept at Woreda and / or at City Administrations. After determining the sample size in each case, the interval is determined systematically by dividing the total number of expropriatees by the sample size. In the first group of the interval, the first element was selected randomly then after the remaining elements of the sample were selected through adding the interval with the already selected element of the sample. Since, the people that were interviewed were the head of households but were these not available, another person within that group of interval was selected for interview, instead.

The number of property valuers and local and higher government officials working in land and related matters were small in size and easily accessed, all of them who were available during the interview time were included in the sample; whereas the number of people affected due to expropriation were found relatively large in size and live in scattered areas. Thus, systematic random sampling method<sup>7</sup> was found appropriate and applied for expropriatees as was applied in various similar research works.

### **2.4.3 Methods of data analysis**

- **Qualitative and quantitative methods**

In this study, analyses of both qualitative and quantitative data obtained from the field were used. Both qualitative and quantitative data are equally regarded as good methods (Nachmias & Nachmias, 1997). According to Yin (2003), Analysis the data in the case study consists of examining, categorizing, tabulating, testing and recording both quantitative and qualitative evidence to address the initial proposition of a study.

For the survey data, preparations for analysis involved checking all questionnaires to see whether they were filled properly or not. And then, they were tabulated and categorized according to their meanings. The tabulated categorized data were then coded after which all data in the questionnaires were entered in the computer. Subsequently the data were processed and analyzed using the SPSS computer programme. Data analysis output in the form of simple descriptive statistical methods such as averages, ratios, and percentages was interpreted so as to establish the context of the meanings of the responses and their implications to the study objectives and questions. Also statistical tests were carried out to find significant differences between the studied groups. Frequency analysis contained information that provided a summary of the number of responses to each question on the survey form.

On the other hand qualitative data had also been collected, analyzed and interpreted against the relevant research questions. According to Yin (2003), data analysis consists examining, categorizing, tabulating, testing, or otherwise combining both quantitative and qualitative evidence to address the initial propositions of the study. In line with this, analysis of qualitative data in this study was based on the examination and categorization of the evidences collected from different sources in line with the topic under investigation.

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<sup>7</sup> In Systematic Random Sampling Method, each element in the population has equal and independent chance of selection in the sample. Equal implies that the probability of selection of each element in the population is the same, that is, the choice of an element in the sample is not influenced by other considerations such as personal preference. Similarly, the choice of one element is not dependent upon the choice of another element in the sampling.

- **Evaluating the laws**

This study analysis the main expropriation and compensation proclamations and regulations and how these were implemented during expropriation. The laws are examined, assessed and gauged against their own aims and objectives. The primary focus of the tasks of the legal issues / problems are on looking for and pinpointing such variances in terms of regional legal provisions and actual practices between the relevant Federal laws and regulations and the regional directives as well as between provisions of regional directives and actual practices. In both cases the adequacies of laws and /or practices were broadly analyzed and assessed based on considerations of what the concept of fair and just compensation is under Ethiopian law including constitutional rights thereto, and following that, whether regional directives require to explicitly include fair and just compensation provisions in cases of land expropriation; what the concept of public purpose is understood to mean again under Ethiopian law; what the elements that need to be taken in to account are in fixing the amount of compensation to ensure fairness and justice, the structure of the bodies determining compensation and the type of persons/ institutions responsible for valuing property and fixing compensation and the manner in which grievances are dealt with.

For the successful accomplishments of the legal component of land and property valuation and compensation study in Ethiopia, the most important sources for secondary information are Ethiopia's Federal and Regional legal documents. These include proclamation, regulations and directives, as well as other similar documents of foreign origin. These legal documents helped to make some comparisons of systems and approaches between Ethiopia and other countries with similar socio-economic conditions and countries having well developed experiences<sup>8</sup>.

## ***2.5 Validity and reliability of the data used***

“Validity depends on the relationship of research conclusions to reality, and there are no methods that can completely assure that the researcher has captured that.” (Maxwell, 2005). The reliability of the data used depends upon the consistency and accuracy of the research methodology applied. According to Kumar (2005), “If a research tool is consistent and stable, and, hence, predictable and accurate, it is said to be reliable. The greater the degree of consistency and stability in an instrument, the greater is its reliability.” This type of testing ensures that the researcher measures what he or she has embarked upon to measure using the procedure chosen. The variables chosen in this research could have been easily influenced by a number of factors which were not thought of, due to say, errors committed during measurement taken or any other human error so that one is not sure of the outcome. Of the various methods of measuring validity the researcher used sampling validity tests which tested whether the sampled population represents the total sets of people that were aimed at the conception of the research and also whether the statements, questions asked or indicators identified, adequately represent the properties being measured. The second type of validity test that was relevant was the predictive validity, which measured the results of the analysis against the expected results.

In the field survey where the process of expropriation and valuation process were not transparent and the expropriatees had been provided low compensation, there would be very clear evidence of the distortion of information, where the opinion of expropriatees had to be assessed. On the one hand government officials hesitated to provide genuine information due to the fear of confidentiality and on the other hand the interviewees

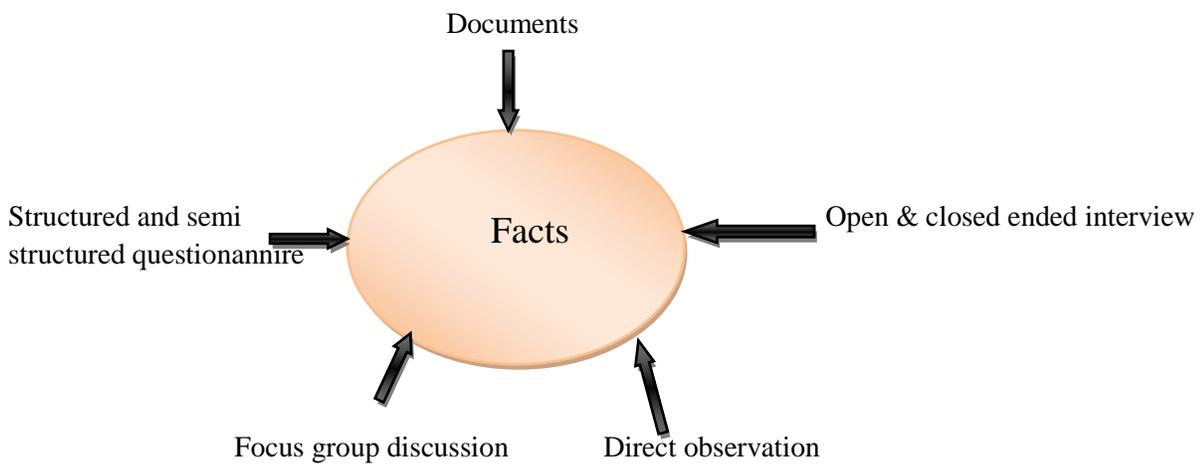
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<sup>8</sup>For the purpose of highlighting international and comparative laws in this study, the rational for selecting certain countries' laws is their long and well developed experience and similar socio-economic conditions etc.

were not as objective<sup>9</sup> as expected though they were generally more transparent to being interviewed than in cases where compensation undertaken was paid and generous ‘compensation rates’ had been applied. When asked about the amount of compensation paid for the properties expropriated, expropriatees had exaggerated the value of the expropriated properties relative to the open market value. The possible main reason for this deliberate exaggeration of the property value was that they were expecting a possibility of having property values for compensation reviewed.

**Triangulation**

According to Denscombe (2007), “Triangulation involves the practice of viewing things from more than one perspective. This can mean the use of different methods and sources of data. The researcher can get a better understanding of the thing that is being investigated if the investigator views it from different positions.” Evidences for each case study in this research are summarized by the following frame work of data collection tools.



Source:(Denscombe, 2007)

The uses of multiple sources of evidence in case studies allow the investigator to address a broader range of issues. Different sources of evidence that can be analyzed together results in the case study findings to be based on convergence of information from different sources, not quantitative or qualitative data alone (Denscombe, 2007). Although there are obvious limitations with the data and data collection tools, the investigator used different sources of information and data collection tools to make the research findings to be much more convincing, accurate, valid and reliable.

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<sup>9</sup> Although it was expected to get genuine information from affected landholders, most of them gave exaggerate personal value to their property. So it was difficult to get concrete and objective information.

## ***PART II: THEORIES OF EXPROPRIATION, VALUATION AND COMPENSATION***

### ***CHAPTER THREE: EXPROPRIATION***

#### ***3.1 Introduction***

This chapter provides the theoretical framework of expropriation. It defines expropriation and examines theories and concepts that are useful in the analysis part. Conceptual origins and rationales of expropriation are explored.

#### ***3.2 The concept of expropriation***

The term expropriation is used in its widest sense to include all forms of taking of private property by a State for public use, in time of peace, war or national emergency (Epstein, 1985). Expropriation is the compulsory acquisition of property. The owner of the property<sup>10</sup> need not want to sell and in fact, he does not sell his property is taken away from him by compulsion, and against his will. The remedy available to him is compensation determined in accordance with the statutes. The expropriator (usually the State) and the expropriatees (the affected people) may come to an agreement with regards the amount of the compensation. The underlying principle of expropriation by a statutory power is generally not aimed at acquisition but rather to serve some or other public need (Searles, 1974). Expropriation or compulsorily acquisition refers to government's power to force a person to sell his home, his business, or other property to the government at a price it deems "just compensation" is one of the most extreme forms of government coercion, and today among the most common (Sandefur, 2006).

Powers of "expropriation" have been practiced in various societies for a very long time but often characterized by infrequent procedural irregularity (Searles, 1974). Biblical narrations indicate the existence of such powers in those ancient societies.<sup>11</sup> In classical times, the taking of property for public purposes was also practiced especially among the Romans<sup>12</sup> and Greeks.<sup>13</sup> It is therefore clear that the concept of expropriation has a long history (Bryant, 1972). This power of property taking is referred to as "eminent domain" in America, Some US states including New York and Louisiana use the term "appropriation" as a synonym for the exercising of eminent domain powers, "Compulsory purchase" in United Kingdom, New Zealand, and Nigeria, "resumption" and "expropriation" in South Africa and Canada. This is an action of the state to seize a citizen's private property,

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<sup>10</sup> Property may be categorized in various ways. Recognized legal categories include real property (land and related fixtures attached to and connected to the land), personal property (movables such as equipment, inventory, and personal goods), intangible property (contract rights and insurance), intellectual property (copyrights, patents, trademarks), and cultural property (traditional medicines and goods or products identified to a specific cultural community and context). In this paper, the term property is used to mean land and related permanent fixtures attached to and connected to the land.

<sup>11</sup> King Ahab of Samaria, who sought the vineyard of Naboth, offered Naboth as his choice of compensation either a better vineyard (under substitution or replacement theory of damages) or the vineyards worth in money (under the indemnification theory). Naboth asserted a right of refusal, which has never existed in the laws, and paid with his life.

<sup>12</sup> In the Romans law there was no general law of expropriation, but the taking of property for public works was covered by special statutes (Bryant, 1972). The Annals of Tacitus illustrates that the Roman government used these powers to acquire the land and materials with which it built and repaired aqueducts.

<sup>13</sup> Among the Greeks the taking of property for public use was also evident. A dispute between Athens and Eleusis was settled by providing for arbitrators of the value of the certain properties sought to be acquired by the Athenians, "with three valuers on either side."

expropriate property, or seize a citizen's rights in property with due monetary compensation, but without the owner's consent (ibid). The property is taken either for government use or by delegation to third parties who will devote it to public or civic use or, in some cases, economic development (Chan, 2003; Denyer-Green, 1994; Eaton, 1995). The exercise of expropriation<sup>14</sup> or compulsory acquisition is not limited to real property. Governments may also condemn personal property, such as supplies for the military in wartime or franchises. Governments can even condemn intangible property such as contract rights, patents, trade secrets and copyrights (Denyer-Green, 1994).

The idea of expropriation originates from the French revolution in 1789 and the Napoleonic law on expropriation of 1810, although the concept of expropriation is much older, for instance, already known in the Roman society (Wiiala 1966; Hyvönen 1976; cited in Viitanen, 2002). It is seen necessary to limit private rights when required for the public good. This will also benefit the private sector when only the private losses are compensated (Viitanen, 2002). Originally, the power of eminent domain was assumed to arise from natural law<sup>15</sup> as an inherent power of the sovereign state. It is therefore clear that the concept has a long history (Bryant, 1972). Similarly, in modern times, the concept has been extensively used throughout the world.

According to Almond & Plimmer, (1967), "With the development of the concept in the contemporary world, many democratic states have provided legal flexibility of land acquisition methods in their compulsory purchase statutes. The traditional use of force is no longer mandatory and land could either be acquired compulsorily or by agreement" (Almond & Plimmer, 1967). Where the acquisition authority and the real property owner would negotiate to reach an efficient solution where no one is made worse-off and no government intervention would therefore be required. However, if property owners hold out against the acquisition and the parties do not agree on the take-over, then the hidden powers of eminent domain are applied as the tool of the last resort (Zrobek & Zrobek, 2007).

Expropriation is therefore an exception from the general civil principles of ownership transfer; real property can be expropriated only if public purposes cannot be achieved in any other way but by depriving someone of their rights to a real property or restricting such rights. Another condition to be met is that the rights to the real property cannot be acquired by concluding a relevant contract. Application of this form of ownership right transfer by the state or local administrative bodies is subject to many formal restrictions and procedures which have to be strictly followed. If the real property, which is necessary for public purpose, cannot be acquired by purchase the expropriation procedure is the last resort (Zrobek & Zrobek, 2007).

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<sup>14</sup> This study uses the term "expropriation" interchangeably with eminent domain, compulsory purchase, condemnation, compulsory land acquisition etc. to mean the power of the government in taking private property for public use without the consent of the owners.

<sup>15</sup> Natural law or the law of nature has been described as a law whose content is set by nature and that therefore has validity everywhere. As classically used, natural law refers to the use of reason to analyze human nature and deduce binding rules of moral behavior. The phrase natural law is opposed to the positive law (meaning "man-made law", not "good law"; cf. posit) of a given political community, society, or nation-state, and thus can function as a standard by which to criticize that law. In natural law jurisprudence, on the other hand, the content of positive law cannot be known without some reference to the natural law (or something like it). Used in this way, natural law can be invoked to criticize decisions about the statutes, but less so to criticize the law itself. Some use natural law synonymously with natural justice or natural right, although most contemporary political and legal theorists separate the two (ibid)

### ***3.3 The rationales for expropriation***

In compulsory acquisition, both the taking of land and attached properties and the use of expropriation in its implementation must be convincing and rational. Although purposes of expropriation are numerous, the general objective must yield benefits to the society and not specific individuals. In the literature several reasons can be adduced for the “taking” or “compulsory acquisition” of land and attached properties by the government (Fernando, 1984). According to Fernando (1984), “The usual objectives in countries, where compulsory acquisitions had taken place include the following : redistribution of land in an equitable manner; political and price stabilization through land control; social justice; physical planning; redistribution of income, wealth and opportunities; and recapture of social-created gains for the benefit of the community etc.”

#### ***3.3.1 Land assembly and holdout problem***

According to the conventional justification, the government as well as private parties need the power of eminent domain to overcome the holdout problem among strategically-acting sellers. This insight regarding the holdout problem was widely recognized even prior to the modern law-and-economics movement. Likewise; contemporary courts have identified the holdout problem as the primary justification for the state’s use of eminent domain (Kelly, 2005). Land assembly through land acquisition is a way out to solve problems with landownership and landowners’ reluctance to offer their land for development (Omar, 2005). The undertaking of some large-scale projects like highways and ring roads, irrigation dams etc., require the assembly of several contiguous parcels of land whose ownership is dispersed. The problem facing providers in these cases is that, once the assembly becomes public knowledge, each landowner realizes that he or she can impose substantial costs on the developer by refusing to sell. Imagine, for instance, that a road builder has decided on the optimal path for a highway and has assembled several parcels along the route. The refusal of any one owner to sell would greatly increase the cost of completing the project, if not preventing it from being completed altogether. This knowledge confers significant monopoly power on landowners, who can hold out for prices substantially above their true valuations<sup>16</sup> (Miceli & Segerson, 2007; Posner, 2003). Thus, Fischel (1995) suggests that “Preventing time-consuming strategic bargaining is an important justification for eminent domain”. Indeed, strategic behavior among sellers could prevent the entire assembly project from occurring. The primary advantage of eminent domain is therefore the ability to avoid these holdout problems and simply appropriate property<sup>17</sup> (Fischel, 1995).

The state may use the power of eminent domain for the benefit of a private party by deeming the private party’s use a public use. One view holds that a taking requires either public ownership or public access such as airport, or highway. A contrasting view argues that eminent domain can be justified for any private use so long as the taking ostensibly produces a general public benefit. Under this view, a taking might be justified to enable a private party to develop real estate, build a factory, or construct a road (Kelly, 2005). The usual justification for allowing private parties to benefit from the use of eminent domain is the same as that for the government: this power may

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<sup>16</sup> Eminent domain may be justified even when owners do not behave strategically to exploit their monopoly power. The mere fact that owners vary in their reservation prices, which the assembler cannot observe, may preclude market acquisition when the number of owners is large and all parcels are necessary for the project to proceed (Shavell, 2007).

<sup>17</sup> “The problems in bargaining that can prevent or delay consummation of purchase of property are avoided when the state can appropriate property. If the state wants to assemble land to build a road, it can simply take the land; it need not bargain with the many owners to acquire the land and face delay or unwillingness to sell. This is a primary advantage of the use of eminent domain over acquisition by purchase.” (ibid.p.26).

be needed to overcome the “holdout” problem caused by strategically-acting sellers if property had to be purchased. In the absence of eminent domain, a buyer would confront a holdout problem in cases involving the assembly of multiple properties for a single project (e.g., a highway or real estate development). Any potential seller, knowing that his single property is necessary for the entire project, could “hold out” in order to obtain an inflated price. This strategic behavior could prevent the transaction (and consequently, the entire project) from occurring. According to this conventional wisdom, private parties seeking to assemble multiple properties are just as afflicted by the holdout problem as the government and thus just as much in need of the power of eminent domain to overcome the problem. According to Kalbro (2001), when a specific area of land is needed for the purpose, the seller finds himself in a monopoly situation vis-as-vis the purchaser, which puts him in a very strong negotiation. In such cases the seller can put pressure on the purchaser to pay a higher price than would have been obtainable if there had been a number of sellers competing together. Compulsory acquisition, then, can be justified on the grounds that the purchaser should not have to pay an excessive price because the seller just happens to possess land in a strategic location. That is, “to avoid public purposes being delayed or frustrated by resistance from landowners, land has to be acquired compulsorily”(Kalbro, 2001).

According Kalbro (2001), another argument given to justify collective coercive power in compulsory acquisition is that “it prevents a property owner from obtaining monopolistic profits by owning land which happens to occupy a strategic position. That of “reallocating” Wealth from seller to buyer, which as a rule means in favor of the community” also justifies the use of compulsory acquisition. ... in order to legitimate compulsory acquisition, the purpose with the purchase has to be “profitable” in the view of society, i.e. the value of the land-uses must exceed the value of the existing use”.

### **3.3.2 Legal and social rationales for expropriation**

According to the United Nations comprehensive Human Rights Guidelines on Development Based Displacement, adopted in June 1997, expropriation should only occur as a last resort. That states should refrain, to the maximum possible extent, from compulsorily acquiring housing or land, unless such acts are legitimate and necessary and designed to facilitate the enjoyment of human rights through, for instance, measures of land reform or redistribution. As a last resort, states consider themselves compelled to undertake proceedings of expropriation or compulsory acquisition (Plimmer, 2008). The International Covenant on Economic, Social and Cultural Rights (CESCR), comment No.4 and General Comment No.7 indicates that “the state itself must refrain from forced eviction and ensures that the law is enforced against its agents or third parties who carry out forced eviction. It states that evictions should not result in individuals being rendered homeless or vulnerable to the violations of other human rights; and prescribes procedural protective mechanisms for evictees in those highly exceptional circumstances where eviction is unavoidable (CESCR, 1997). Many developing countries suffer from badly outdated expropriation legislation, which makes expropriation so costly and time-consuming that it is, for many purposes, almost useless. Without reasonable expropriation legislation, it would have been difficult to maintain the interests of both the expropriator and the expropriatees in the process of compulsory acquisition. Even when most public acquisitions are in fact negotiated, an effective expropriation law is necessary as a “back-up” possibility to prevent owners from demanding excessive prices (CESCR, 1997).

However, “If no public intervention and coercive collective power is used in the acquiring property for the “gainers” and compensating losses for the “losers” it would be legally difficult and economically almost impracticable to transact” (Ndjovu, 2003). According to Kalbro (2001), forcing someone to surrender land against

his/her wish is of course a powerful incursion on the individual right of ownership. Accordingly, there have to be very good reasons for building up legislation sanctioning this kind of coercion(Kalbro, 2001). Public and private enterprises would fail to acquire property for intended social projects just like private or public enterprises would fail to collect money from all, direct and indirect, beneficiaries of the facilities (ibid). In case of compulsory purchase, collection of money from all project beneficiaries is important in order to pay full compensation for losses sustained by those who gave away their land (Michelman, 1967). Another argument, according to Kalbro (2001), is that “there exists a social contract whereby an individual acquires property under the implied condition that it is to be surrendered at the demand of the state. So, from a social point of view, loss to an individual as a result of compulsory purchase is justified by the gains to the society or wider community at large, of which the individual is a part” (Kalbro, 2001)

## **CHAPTER FOUR: COMPENSATION FOR EXPROPRIATION**

### **4.1 Introduction**

Compensation, whether in financial form or as replacement land or structures is at the heart of expropriation (Epstein, 1985). To meet the need of public services and other economic and social needs of the society, the government use expropriation (compulsory acquisition) as an alternative tool to secure land for development. The process, however, brings tension for people who are threatened with dispossession. The compulsory acquisition of land for development purpose may ultimately bring benefits to society but it is disruptive to people whose property is acquired (Paul, 1987). In countries like Ethiopia where the level of economic and social development is extremely low, the government, for (re)development purpose and undertaking public facilities, displaced people both in the inner cities and peripheral urban areas. As a direct result of these government actions, people especially the poor ones are displaced from their homes, farmers are dislocated from their fields, and businesses are disconnected from their neighboring hoods. Obviously displacement of people from their possession may bring separation of families, deprive communities of important religious or cultural sites, destroy net works of social relations and leave people without access to necessary public facilities and resources.

The property owner, therefore, shall be compensated for the losses he/she suffers due to expropriation. In other words, the affected property owner/ shall be in the same economic position as if the compulsory acquisition had never happened. Compensation is to repay the affected people for the losses they suffered, and should be based on principles of equity and equivalence<sup>18</sup>. The principle of equivalence is crucial to determining compensation: affected owners and occupants shall be neither enriched nor impoverished as a result of the compulsory acquisition. Financial compensation on the basis of equivalence of only the loss of land rarely achieves the aim of putting those affected in the same position as they were before the acquisition; the money paid cannot fully replace what is lost i.e. in some circumstances monetary compensation is either inadequate or inappropriate (Crawford, 2007). According to Paul (1987), compensation very often leaves former owners far from whole. In some countries, there is legal provision recognizing this in the form of additional compensation to reflect the compulsory nature of the acquisition. For example, According to Article 14(3) of the German Basic law, the compensation is intended to offer a full balance for the loss that was imposed upon them by the expropriation interference. Other property losses due to the expropriation (consequential damages) are also compensated, too (Crawford, 2007).

According to Keith (2007), in developing countries where there is the financial resource limitation, less emphasis should be put on monetary compensation where resettlement or reinstatement are often the best means of putting the claimant back in the same position as if his/her land had not been taken from him /her. In practice, given that the aim of the acquisition is to support development, there are strong arguments for compensation to improve the position of those affected wherever possible (Keith, 2007).

This chapter deals about the questions of why the expropriators pay compensation and expropriatees are compensated and compensation according to international laws.

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<sup>18</sup> The term equivalence refers the affected people should receive compensation that is no more or no less than the loss resulting from the compulsory acquisition of their land. Appropriate measures should ensure that those affected, and particularly the vulnerable, are not disadvantaged

## ***4.2 Why do expropriators pay compensation and expropriatees are compensated?***

### ***4.2.1 Introduction***

The constitutions of most countries contain compensation clauses. However the procedure, determination of the amount and payment of compensation differ from country to country depending upon the circumstance prevailed with in the country. In some countries, compensation is paid only when property is taken away from an individual with the state acquiring the property. While in some other countries compensation is also paid for injurious affection and other damages in addition to the compensation paid for compulsorily taken property. For instance, according to the courts of the United States of America, compensation is not restricted to instances where property is taken away from an individual with the state acquiring the property. It is also paid when an individual's property suffers from a permanent physical invasion, lost all economically viable use or is deprived of a core property entitlement (Epstein, 1985; Paul, 1987). These contrasts with the Australian approach, where the state needs to acquire a benefit or advantage before compensation is due. However, once it is found that there was an expropriation and that compensation is due, the question that remains is whether compensation was calculated correctly, focusing on the principles of equity and equivalence. The affected people should receive compensation that is no more or no less than the loss resulting from the compulsory acquisition of their land (Crawford, 2007).

### ***4.2.2 Why do expropriators pay compensation?***

The Constitution of many countries states that compensation is paid to strike a "just and equitable" balance between the interests of those affected and the public. According to (Wilson, Evans & Murning, 2001), the justifiable reasons why compensation is paid are: to protect the citizen from harmful government interference, and to distribute the burden of the government interference. Since compensation is required upon expropriation, government will only expropriate property once it is cost-effective (and therefore efficient) to do so. To distribute the burden of the government interference in the case of expropriation, an individual is singled out to carry a burden for the public benefit. This would be an unfair burden if compensation is not paid. Compensation is therefore paid to place individuals in the same position as they were before the expropriation (Wilson, Evans, & Murning, 2001).

- **Compensation is paid to prevent inefficient expropriation**

A government's expropriation power is limited if it is required to pay compensation for properties taken from private holders. More fundamentally, the compensation requirement provides another guarantee against tyrannical government. In a liberal notion of property, the state can be expected to pay for almost any interference with property that does not fall under its police powers, while, if property is seen as a social relation, only interferences that burdens an individual disproportionately to the gain of society will be compensable (Trefzger, 1995). To assure that governments do not obtain through compulsory acquisition or regulation, compensation must be paid and that should relate to the price at which the owner would willingly have parted with the rights foregone (ibid).

"It is argued that governments must pay for what they acquire because if the rule of no compensation would allow governments to acquire resources at no cost, this could encourage them to make unwise decisions. Such decisions are likely to be those that are not based on comparison between the benefits of the public good to the amount of

compensation they must pay to the owners of the acquired properties” (Johnson, 1977; cited in Ndjovu, 2003). Payment of compensation prevents over-regulation on the part of the government when it is required to undertake the payment of full compensation (Blume, E., & Shapiro, 1984). Private property is protected because the government is forced to pay for almost every interference, and this makes government interference expensive. It limits the government to choose market solutions above political solutions by requiring high or even excessive compensation, severely restricting government from regulating (Crawford, 2007) with careful acknowledgment that property is not absolute and that government has to regulate, expropriation is explained as a shift in balance of public and private rights from government to the property owner (Paul, 1987).

- **Compensation is paid to prevent government from arbitrary action**

According to Paul (1985), the usual rationale for compensating victims for takings is that a person should be made whole again. Without such reimbursement the burden of public improvements, carried out for the “public good” would fall disproportionately and unjustly upon a few unlucky land and property owners. More fundamentally, the compensation requirement provides another guarantee against tyrannical government. It cautions government that it must match its desire for public works with its treasury, and that it cannot expropriate arbitrarily. Compensation would be required for properties expropriated since it discourages the government from arbitrary, unfair or tyrannical action by taking away the profit motive.

According to Sax (1964 cited in; Plessis, 2009), “Compensation is payable when government acts in its enterprising capacity, to counter the risks involved<sup>19</sup>. Compensation is thus paid to protect the individual from arbitrary interference of government leading to unfair competition when the government acts as an enterprise, since the government would have an unfair advantage if it did not pay compensation but took a profit.”

According to Sax (1971, cited in Plessis, 2009), “by having to pay compensation, the state is prevented from arbitrary and tyrannical action. The idea that compensation is paid is to maintain existing economic values against government interference. Here property and economic position are subordinated to the attainment of social justice. Sax argues that contemporaneous commentary on the topic of why compensation is paid supports the historical proposition that the takings clause was designed to prevent arbitrary deprivation, rather than preserving the economic status quo.”

- **Compensation is paid to spread the cost of expropriation**

The commonly accepted standard of fairness requires that owners receive full compensation for property that is taken. All items of losses which resulted from the process and outcome of expropriation are compensable. That is the affected property owner should not bear the cost of expropriation that benefits the public as a whole<sup>20</sup>. This can happen when an individual “has been required to give up property rights beyond his/her just share of the cost of government” (Epstein, 1985). According to Michelman (1967), “Compensation is a corrective measure, paid to equalize the impact of unequal impairment of liberties (unless some other rule is proved to work best for each

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<sup>19</sup> Sax (1964; cited in Plessis, 2009), mentions three risks. The first is the risk of discrimination, since government is acquiring resources; it risks not only defining the need, but also creating it. The danger is that the government can reward the faithful and punish the opposition. Second is the risk of excessive zeal, with the government acting as a judge in its own case. The legislature can only reflect impartially on balancing two private interests when it is not party to it, but it might risk being partial when it must decide on how to implement its own projects. Third is the scope of the exposure to risk, limiting the scope of competition government is subjected to. And therefore it needs to be limited in another way.

<sup>20</sup> The owner whose property is expropriated is depicted as innocent and vulnerable, and in this context property has a specific meaning that must be protected, unless the community needs are bigger (Michelman, 1967).

person). Property is regulated in a societal context. In the case of the so-called regulatory takings, compensation is paid to spread the unequal burden of a regulation, while in the cases where the state exercises its eminent domain; compensation is paid because the state acquired property” (Michelmann, 1967).

- **Compensation is paid to make the expropriatee indifferent to the taking**

Expropriation can result in losses in addition to the land. There may be disturbances if a household or business has to be relocated. If such losses are compensated, the property owner is not made worse off as a result of the expropriation process. Compensation should be paid to make expropriatees in the same position as before the expropriation. Black J (1999, cited in; Plessis, 2009) stated that the purpose of compensation for expropriation is to “bar Government from forcing some people alone to bear public burdens which, in all fairness and justice, should be borne by the public as a whole”. The commonly accepted standard of fairness requires that owners receive full compensation for property that is taken. Fair compensation is for the claimant the “right to be put in so far as money can do it, in the same position as if his/her land had not been taken from him/her: In other words he/she gains the right to receive a money payment not less than the loss imposed on him/her in the public interest but on the other hand no greater” (Keith, 2007). Wyman (2007; cited in Plessis, 2009) stated that:

Expropriatee should be subjectively indifferent to the taking. That is the most practical way to determine such an amount without running into difficulty of determining such an amount is by determining the fair market value of the property. This is done by determining what a willing buyer would pay a willing seller for the property, and the courts regard this as an objective measure of determining how to make the expropriatee subjectively indifferent to the taking. Compensation should be paid to make the expropriatee objectively whole. This should enable the individual to satisfy his/her own preferences, thereby enabling the expropriatee to “enjoy the same capabilities that we as a society deem valuable, before and after the taking”<sup>21</sup> (Wyman, 2007; cited in Plessis, 2009).

### ***4.2.3 Why expropriatees are compensated?***

The property taken, severance and injurious affection and other inconvenience of a property owner/ holder due to government interference are used to explain why expropriatees are compensated.

- **Expropriatees are compensated for the property taken**

“Compensation should include all consequential losses suffered by the dispossessed owner as a result of the compulsorily acquisition” (Crawford, 2007). Considering the value of the property taken is best commenced with consideration as to whether there is special value to the owner or if reinstatement principles apply. Reinstatement is the method of assessing compensation as the cost to put the dispossessed owner in a similar position to the one enjoyed prior to acquisition (Crawford, 2007). People not only use land and personal property to differentiate themselves from other people and to express themselves individually; they also use their property to express themselves in groups that share their values with others (Sandefur, 2006). According to Epstein (1985), ownership is vehemently protected and ownership’s value lies in the ability of an owner to exclude others from his/her property. Government must pay for every interference that restricts the exclusivity of ownership. From this it can

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<sup>21</sup> Wyman (2007, quoted by Plessis, 2009) proposes that the amount of compensation should be determined on a case to case basis, where what individually assessed the extent to which an individual enjoyed the things that are objectively deemed valuable, before and after the taking. The expropriatee is thereby compensated with an amount that would enable him/her to enjoy those things that were valued before the taking, on the same level after the taking.

be deduced that, by paying compensation, an owner is compensated for his/her loss of exclusive use of and control over the property itself. Since property is traded between willing buyers and sellers, the state ought to pay as compensation at least the price that a private purchaser would be willing to pay<sup>22</sup>.

Radin (1988) believes that “Property functions in a societal context, where the purpose of compensation is to burden members of a society equally with the expropriation. Compensation would therefore be paid for the social aspect of property, and what is compensated is the amount that would equal such a burden. Such an amount should therefore aim at distributing the wealth and burdens of society equally amongst the citizens” (Radin, 1988). Fee (2005) also agrees that “An expropriatee should be rendered indifferent to the expropriation, but argues that in the case of home interest an individual must feel subjectively indifferent to the taking. What is therefore compensated is an amount that would make the individual subjectively indifferent to the expropriation.” This can be done, he argues, by paying market value plus an added percentage of the market value. When dealing with property for which there is a general market or demand, compensation is based on the market value of the land. In exceptional circumstances, such as specialized property for which there is no general market or the property market itself is thin and ineffective, compensation may be assessed by considering the cost of providing an “equivalent reinstatement” of the property (Fee, 2005).

- **Expropriatees are compensated for the reduction in value of property**

The basis of compensation is the diminution in the value of the claimant’s property, that is, a payment to put the claimant in the same position as he/she would have been in without the works (Wilson et al., 2001). The extent of loss of property rights by owners and occupants may vary considerably, both in terms of the amount of property involved and the types of rights that are affected. This has implications for the extent to which a particular government action is governed by the principles of compulsory acquisition.

Compulsory acquisition is commonly associated with the transfer of ownership of a land parcel in its entirety. This may occur in large scale projects (for instance, construction of dams or airports) as well as in smaller projects (for instance, construction of hospitals or schools). However, compulsory acquisition may be also used to acquire part of a parcel, e.g. for the construction of a road. In some cases, the acquisition of portion of a land parcel may leave the remainder of the land intact. The remainder may be large enough for continued use by the owner or occupant despite its reduced value; or it may be so small that the owner/holder can no longer use it to maintain a living. In other cases for example, a new road may cut through the middle of the parcel, leaving the remainder divided into several unconnected pieces, some of which may be without access routes. In some countries, the governing legislation may allow the landowner/holder to require the acquiring agency to acquire the whole parcel. According to Kalbro (2007), “ A property owner forced to surrender land must be kept in the same economic position as if the compulsory purchase had never happened” (Kalbro, 2007). Thus, property owners will be compensated for the damage they suffer. In this sense, compensation can be said to be based on the principle of indemnification. If only part of the property is affected, the compensation must equal the resulting loss of market value. However, the effects of the compulsory purchase itself on the market value of the property are disregarded. For compensation purposes, the value of the property is assessed as though the compulsory purchase had never happened. However, if only a part of a property is taken, compensation may still be given for any “injurious effect” resulting from the compulsorily acquisition (Kalbro, 2007). According to Plimmer (2008), “Land which is retained by an owner can be depreciated in value in two ways: severance and injurious affections.”

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<sup>22</sup> See Grover, Anghel, Berdar, Soloviev, Zavyalov (2007), compulsory purchase and compensation in land acquisition and takings. Paper presented in the seminar held at the Helsinki University of Technology TKK September 6-9, 2007

### **i. Severance**

A severance claim only arises where part of a claimant's land is taken, and where the value of the retained land is depreciated as a result. Baum and Sams (1997) identify two instances where this can occur:

- a) Where a holding is divided into two parts, one being taken for the scheme, and the other being retained. The value of the retained land is consequently less than before the acquisition, by reason only of it being smaller than previously,
- b) Where a holding is divided into three parts, with two being retained and being physically separated by the third which is the part taken. Each retained part may suffer the loss as described in (a) above, but additionally the two parts together may suffer through now being physically separated by a barrier of some sort i.e. the scheme (Baum & Sams, 1997).

In both instances, the effect of taking part is to destroy any marriage value that existed in the claimant's total ownership (Denyer-Green, 1994). Where the part retained will be less useful or less valuable in some significant degree, the acquiring authority may be compelled to acquire the whole. For instance, In Germany, if the loss of a part of the property or the burdening with rights to property is sufficient for the fulfillment of the expropriation purpose, then the property may not be extracted as a whole. If the owner, however, requires that the remaining property cannot be used any longer structurally or economically then the expropriation authority has to compensate him/her for the whole property (Kertscher & Voss, 2007).

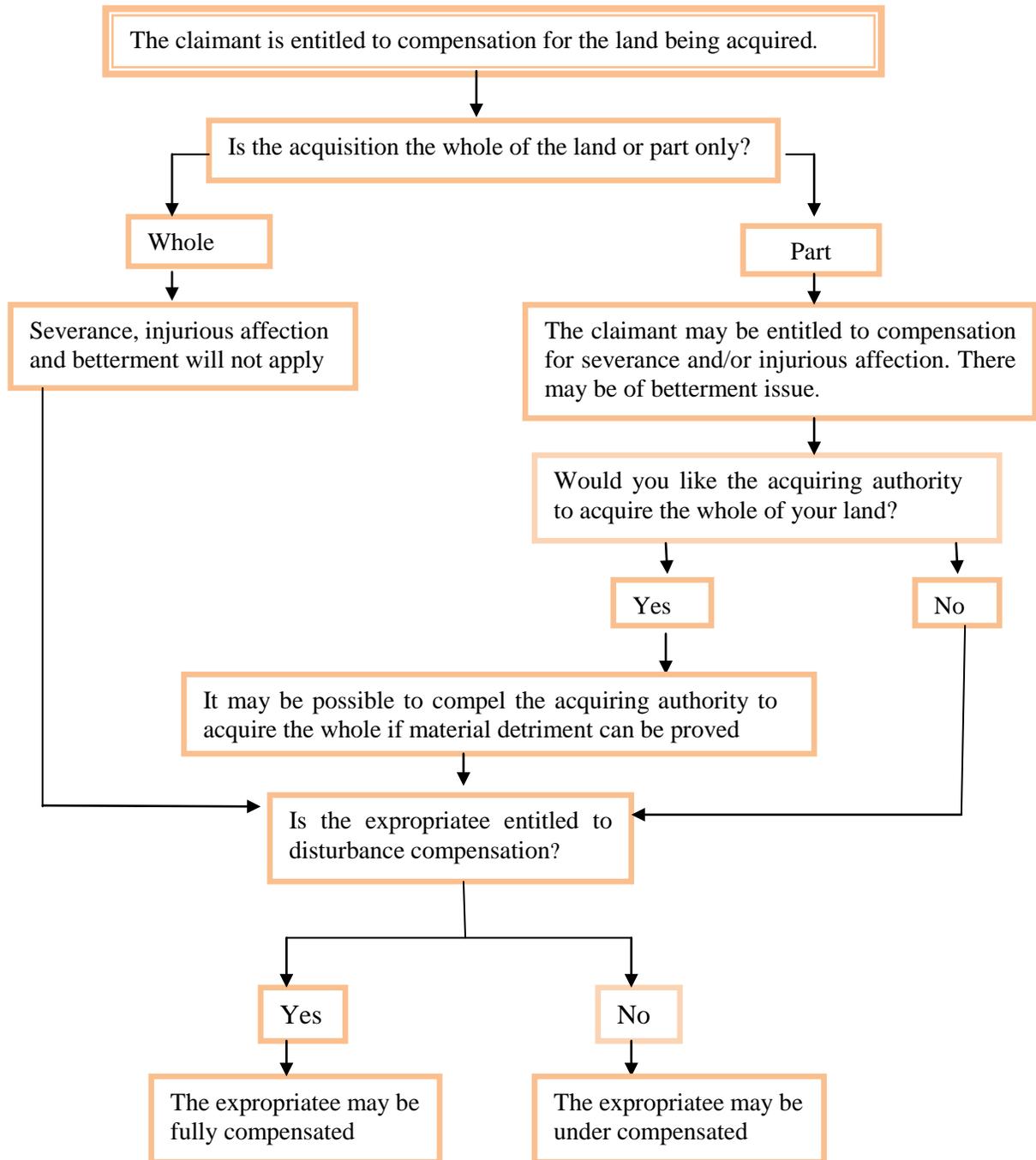
### **ii. Injurious affection**

Injurious affections should be defined as the damage resulting from the proposed or actual works or planning scheme that can be measured in the market place, that is due to the nuisance which is caused by the acquiring authority and/or by the development on the land taken diminution of value of the remaining land, affecting its highest and best use (Michelman, 1967). Nuisances arising from the construction work itself, such as dust and dirt, noise and other inconvenience, are of a temporary nature, and therefore more suitable for a claim for disturbance. In extreme cases, the compulsory acquisition of only a part of a property, restrictions on land-use, and environmental injury can make it difficult for the remainder of the property to be used in the same way as before (Kalbro, 2007). "Injurious affection is related to uses of or activities on the resumed (taken) land by the constructing authority as a result of the resumption (taking) and consequent depreciation in the value of the retained land" (Gibbard, 2001).

According to Gibbard (2001), in his paper titled "Compensation for Injurious Affection" says:

Compensation for injurious affection is compensation for the extent to which the highest and best use of the land in question is restricted. The highest and best use of the land is an objective fact, and is, as already submitted the use which maximizes market value. Compensation for injurious affection therefore is to be quantified as being the diminution in the market value of the land in question which after all is exactly what the landowner has actually lost. The mode of proof of diminution of market value will be the same whether the diminution results from mere zoning, reservation for public purposes or compulsory acquisition. It is concluded therefore that there is no difference between injurious affection in town planning cases and injurious affection in compulsory acquisition cases (Gibbard, 2001).

**Figure 4-1: Claim for compensation when whole or part of property is taken**



**Sources:** Compiled by the researcher based on office of the deputy Prime Minister of England (2004)

The compulsory purchase Act of England, 1965, section 7 regarding severance and injurious affection say:

In assessing the compensation to be paid by the acquiring authority under this Act regard shall be had not only to the value of the land to be purchased by the acquiring authority but also to the

damage, if any, to be sustained by the owner of the land by reason of the severing of the land purchased from the other land of the owner, or otherwise injuriously affecting that other land by the exercise of the powers conferred by this or the special Act.

Both severance and injurious affections are forms of damage flowing from resumption and both are in respect of land retained by the claimant. In one sense severance damage is a specialized form of injurious affection to the retained land. Compensation is claimable both for the construction of works and their subsequent use. Therefore it can be seen that both severance and injurious affection can reduce the value of the retained land. Severance occurs when the land becomes separated whereas injurious affection occurs as a result of the construction and use of the acquiring authority's scheme. If a part of property is acquired, the claim for land taken, severance and injurious affection can all be dealt with together by adopting a "before and after" approach. This is in line with the principle of equivalence which states that the affected person should be in the same position after the acquisition as he/ she was before, in monetary terms (Office of the deputy prime Minister of England, 2004).

### **Betterment**

If a claimant retains land, which is reduced in value as a result of the compulsory acquisition of his/her other land; he/she is entitled to claim compensation for this loss. If, however, the compulsory acquisition results in an increase in the value of remaining land, it is known as betterment (Wilson et al., 2001). For instance, part of the land may be taken for the building of a new road. This may make development possible on the remainder that would either previously have been impossible or would not have been granted town planning approval. In such circumstances the owner might be made better off even though he/she has lost part of his/ her land. In assessing compensation, the acquiring authority will have regard to any increase in value of land retained that is adjacent to or adjoining the land acquired. There may be instances where the scheme of the acquiring authority may increase the value of retained land. An example of this would be if a person owned development land, part of which is acquired for the construction of a new road and that new road enhances access to the remaining land thereby increasing its value. In such circumstances, the acquiring authority will seek to offset this increase in value against the compensation that is payable in respect of the land acquired (Office of the Deputy prime Minister of England, 2004).

For instance in Britain, according to the land compensation act of England (section 6, 1961), where an owner who is claiming compensation has land which is increased in value as a result of the acquisition and development proposed by the acquiring authority, then the amount of compensation payable is set off against the increase in the value of land. Hungary also has a process by which compensation can be set off against any increase in value of the remaining property (Gibbard, 2001). The acquiring authority should, of course, be able to explain their grounds for considering that their proposal has generated an increase in the value retained land. Where betterment occurs it may sometimes be appropriate to adopt the "before and after" approach. This will take into account the issues of land taken, severance, injurious affection and betterment (ibid, p.15).

### ***4.2.4 Compensation when no property is taken***

In the preceding section it has been discussed how compensation is paid when whole or part of property is acquired. However, a right to compensation may also arise in limited circumstances when no land is taken. Miceli & Segerson (2007), in their article titled "the Economics of Eminent Domain: private property, public use, and just compensation" said that:

Eminent domain is typically couched in terms of physical acquisitions of property, for which compensation is universally required by courts. Much more pervasive, however, are government regulations that restrict the use of private property without physically acquiring it (Miceli & Segerson, 2007).

From an economic perspective, there is no substantive difference between a government action that involves an outright seizure of property for purposes of providing a public good, and one that merely regulates that property for purposes of preventing an external harm. In both cases, the government imposes a cost on the landowner in order to provide a social benefit, where the action is justified on efficiency grounds only if the gain (whether in the form of a benefit conferred or harm prevented) exceeds the cost. From a legal perspective, however, the question of whether compensation is due is treated quite differently in the two types of cases — it is virtually always required for physical acquisitions (however slight), but is rarely required for regulation.

People may also suffer a loss when governments impose new and significant restrictions on the uses to which land may be put. Such zoning or land use controls may substantially reduce the usefulness or value of particular parcels. The payment of compensation for such losses where the land has not changed hands is not widely adopted. However, some countries do provide for compensation in such cases. For example, in the United States of America, when the regulation goes too far so as to deprive the property owner of all reasonable use or value of the property, it will be judicially recognized as the equivalent of a taking which may not take place without payment of just compensation to the property owner (Miceli & Segerson, 2007).

### ***4.3 The use of market value as measure of compensation***

According to ADB (2007), “Based on constitutional requirements, many countries have developed standards for determining just compensation. Most high- and middle-income countries with well-functioning legal systems and real estate markets have adopted fair market value of the expropriated asset as the standard for determining compensation for state expropriations. The fair market value is commonly defined as the amount that the land might be expected to realize if sold in the open market by a willing seller to a willing buyer.” The underlying reason for adopting the fair market value standard is that the market is an objective gauge for assessing the value of the land. Market value<sup>23</sup> has been the most popular suggestion for calculating compensation payable. The use of market value as measure of compensation that is “just, adequate, full, fair,” etc raises questions because it seems to contradict the basic logic. When the government acquires the land compulsorily and pays compensation, the transacted price cannot be equal to the market value because of the coercive conditions attached to the sale. This equation defeats the very basic rule of a free market, i.e. “free operation” of the transitions. In a free market, market value can only be produced in a situation where willing buyers and sellers of commodities meet and transact freely under market conditions and the price arrived at is supposed to be fair assuming that negotiations were not interfered (Hardwick et.al 1990; cited in Ndjovu, 2003). It is argued therefore, since there is no freedom of transaction, there is no market as such for the compulsorily acquired property and any attempts to equate “just compensation” to “market value” is incorrect (Eaton, 1995). Market values only provide a useful guide towards determination of the market value case.

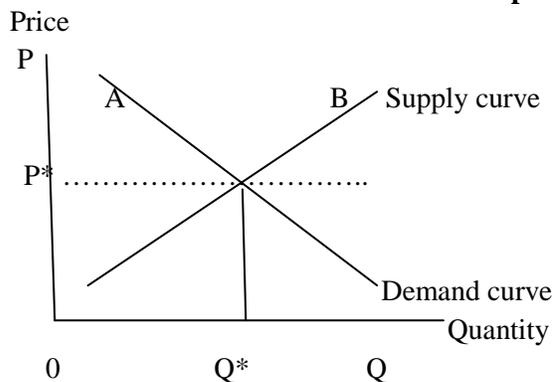
According to Epstein (1985), “In a compulsory land taking, the government is a willing buyer, but the affected

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<sup>23</sup> The concept “market value” is not necessarily the equivalent of “just compensation” but rather a useful and generally sufficient tool for arriving at this value.

landowners are often not willing sellers. Some countries provide a premium above the “fair market value” because of the involuntary nature of the taking. Some governments have developed variety of mechanisms to compensate landowners in excess of market value because of the involuntary nature of the taking.” Miceli and Segerson (2007), substantiated this argument as the just compensation, paid to owners whose land is taken is systematically less than the amount owners would ask for their land in a consensual transaction. The difference reflects the owners’ “subjective value.” In this sense, fair market value must necessarily undercompensated unwilling sellers (Miceli & Segerson, 2007). The idea is illustrated using a simple supply-demand diagram as shown below.

**Figure 4-2: Divergence between market value and reservation price for owners of unsold properties**



Source: Miceli and Segerson (2007)

The demand curve represents the marginal private benefit to potential buyers of putting additional land into an alternative land use. It thus gives potential buyers’ marginal willingness to pay for land. The supply curve represents the marginal private cost to current owners of taking additional land out of its current use. It thus gives the owners’ reservation prices; that is, their marginal willingness to accept in compensation in exchange for giving up their land. The equilibrium price in this market,  $P^*$  can be interpreted as the market value for this class of property. It represents the price at which those parcels between 0 and  $Q_*$  would sell in consensual transactions. In contrast, parcels to the right of  $Q_*$  would not sell because the reservation prices of the owners exceed the equilibrium price.

Now suppose one of the owners who would not have sold voluntarily at  $P^*$  is forced to do so<sup>24</sup>. Such a sale imposes a loss on that owner equal to the vertical difference between the relevant point on the supply curve (that owner’s reservation price) and  $P^*$ . This difference represents the owner’s subjective value. In this sense, market value undercompensated unwilling sellers. Miceli and Segerson (2007) say about market value and under compensation as follows:

In some such settings particularly remote, rural settings, markets are not sufficiently active to provide reliable information about prices. Even when markets do provide reliable information about the value of the expropriated land, it may not be possible to identify comparable land for purchase. Even in the presence of both conditions, valuation using the fair market value standard can result in less than market price due to a variety of other factors. In many countries, legal compensation criteria are based on a registered “market value” that underestimates actual market value, so landowners are unable to replace

<sup>24</sup> If the marginal social value of putting the land to the alternative use exceeds the marginal private value, then it would still be efficient for land beyond  $Q_*$  to be taken by the government for this purpose (Miceli & Segerson, 2007).

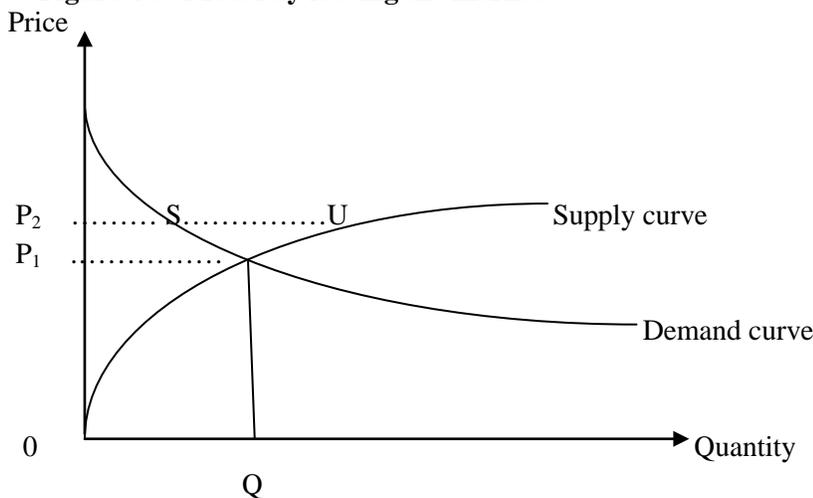
their assets. In other settings, the legal framework recognizes the claims, but compensates them at a discounted value. In some settings, the state places sharp restrictions on the rights of formalized land users—such as the right to sell—which then results in a less than market value, making it impossible for landowners to replace their asset.

### Individual value and reservation price

A private property owner would not voluntarily sell his or her property if the price did not amount to at least the personal value he or she places on his or her property. This value is often higher than the market value. Apart from the compensation to be paid for the market value (or for the reduction in market value) and for possible other financial damages, it is proposed that compensation should also include compensation for the personal value to the property owner (Gunnarsson, Palsson, & Sjodin, 2008). When acquiring land for purposes that are primarily operated on market terms, compensation is also to include special compensation related to the purpose, or what is termed ‘profit-sharing’. The additional compensation in such cases is to be determined according to what is reasonable in the individual case, bearing in mind the special value of the property to the party acquiring it.

Every property seller has their own idea of what price to the lowest he/she would consider transferring the property. This price covers the seller's individual value. Similarly, every buyer has their own idea of at what cost him / her more than willing to buy the property. The price reflects the buyer's individual value. For a sale at all can be reached, the purchaser must pay a price at least amounts to the seller's individual value. While the buyer is not willing to pay more than what he/she him/her self values the property at. An agreement of the price must therefore lie somewhere between the seller's and the buyer's individual values of the property<sup>25</sup>. In a classical economics model with supply and demand, the price where buyers and sellers meet reflects market value. That is the price that provides a balance between sellers and buyers in the property market.

**Figure 4-3: Model by leaving the market**



**Source:** Compiled by the researcher based on Gunnarsson et al. (2008)

<sup>25</sup> See Kalbro (2001), ‘compulsory purchase and restrictions on land use’; Kalbro et.al (2008) ‘compulsory acquisition and compensation’; Kalbro and Lind (2007) ‘Compulsory purchase: Reasonable and Fair Compensation’ argue that in order for the seller to give up his/her land, the purchaser must pay a price at least equaling the value which the seller puts on the property. At the same time the purchaser is not prepared to pay more than the value which he/she him/herself puts on the land. The price agreed on, then, must come in between the values assigned by purchaser and seller respectively. The level of the price finally settled on will then depend on such things as the strength of each party’s negotiating position(Kalbro & Lind, 2007).

The figure above indicates the number of properties  $Q$  that was rare for a certain period of time. The supply curve consists of (average) all the seller's individual values and the demand curve of each buyer's individual value. Where these curves intersect, an equilibrium price and quantity maintained i.e.  $P_1$  provides a balance between sellers and buyers in the property market. Price  $P_1$  can thus be equal to market value. However, transactions among sellers and buyers can take place out of the equilibrium point, i.e. between the buyers who attribute the highest property values and the seller's property attribute to the lowest values.

At any given time, property owners who have considered selling their properties  $Q$  is thus a relatively small percentage of the total property stock. It is only those who for various reasons are "dissatisfied" with their real property holdings, which offer their property on the market. It is saying that the owner has no reason to consider selling until the personal value, for any reason, less than (or at least in the vicinity of) market value, and so the supply side in market price formation consist of the lowest individual vale. For most properties can therefore be assumed that the owner's personal values are above the market value of their properties (Gunnarsson et al., 2008; Kalbro, Sjodin, Norell, & Paulsson, 2008). Even in some special circumstances, a special purchaser to whom the property may have a value over and above its worth to other potential buyer may pay higher prices for quantities less than  $Q$ , for instance at point "s".

In compulsory acquisition, if the affected property owner did not want to sell his/ her property at market value, it can be assumed that the owner is the right of the equilibrium point of the supply curve-his/ her persona value is thus higher than market value. If the owner in question for example is at point  $U$ , in the figure above, he or she is not willing to sell the property at a lower price than  $P_2$ , which is thus precisely the property owner's individual value. If the property is yet to acquire at market value ( $P_1$ ) makes the property owner, from their own starting points, a loss equivalent to  $P_2-P_1$  (Gunnarsson et al., 2008).

According to the study conducted by Gunnarsson and others (2008), since personal value to the property cannot be determined objectively, it is proposed that compensation for personal value to be set as a standard supplement amounting to 25 per cent of the market value (Gunnarsson et al., 2008). According to ADB (2007), "The Indian Land Acquisition Act (LAA) of 1894 provides that in addition to the market value, affected peoples are entitled to a sum of 30% of that market value in consideration of the compulsory nature of the expropriation or acquisition. Italian law goes even further by offering owners of arable land compensation up to three times a government-determined value of the land."

Another concept that is closely related to personal value is the reservation price. According to Werin (1970 quoted by Gunnarsson, et. al., 2008) reservation price is defined as:

... the lowest price at which an owner of a property can imagine wanting to sell the property in open negotiations without expropriation threats. The owner chooses to "reserve" – to maintain - property for personal use unless the owner is offered at least that price.

Although the basic definitions of "individual value" and "reserve price" is almost the same, a degree of precision and coordination of the two concepts have however been made recently. According to Kalbro and others (2008), the reservation price-the minimum price demanded by the seller if he/ she are not to keep / reserve the property for him/ herself is made up of three factors:

1<sup>st</sup> owner's individual (personal) value

2<sup>nd</sup> transaction costs, i.e. expenses, labor and other "problems" that arise for the owner in connection with a transfer and

3<sup>rd</sup> seller's demand for a certain part of the profits from the buyer through the acquisition

Whoever forcibly compelled to refrain from anything should at least be replaced by what this "something" is worth. Perhaps, however, requires a seller more than that to be prepared to sell something he or she owns. It is not enough for the seller to get a price that allows he or she is in exactly the same situation before and after the sale. The amount of seller's profit demands, possibly because on who the buyer is what property should be used for, how much profit the purchaser may reap, etc. To a fair distribution of benefits between buyer and seller is indeed a prerequisite for agreement to be achieved (Gunnarsson et al., 2008; Kalbro et al., 2008).

It could be argued that if compulsory purchase of property is under taken for "urgent public purposes, the seller must accept that the entire profit on the purchase goes directly to the buyer. Compensation Principle is then, that the vendor will only be compensated for the loss or damage that the acquisition raises. If land acquisition is made to accommodate many people (urgent) need, maybe the seller's "dissatisfaction" with the only compensation for his injury is minor. However, if the seller can see that the acquisition primarily benefit one or a few buyers, it would probably be easier to claim a share of profits. What compensation should be paid is the "substantive" part of a sharing (Kalbro et al., 2008).

As a summary, the overall purpose of compulsory acquisition of property is to enhance society and thereby increase the overall welfare of society. A compulsory acquisition must therefore be socially and economically viable, and in all cases there must be some sort of balance between public and private interests to a forced acquisition of property.

## ***4.4 Review of International and other comparative laws***

### ***4.4.1 International laws and Laws of selected countries on compensation for expropriation***

International experiences in expropriation and compensation practices vary greatly. Although most, if not all, governments practice some form of expropriation, the different practices adopted have resulted from the land policy context of each country which is part of their individual historical and political development.

For the purpose of highlighting international experience in this study, the international laws and laws of few selected countries have been discussed. The intension is not to discuss in detail rather to highlight and get some lesson for the experience of expropriation and compensation in Ethiopia. The rationale for selection of the countries has been the inclusion of an example from well developed system, with the remainder being examples from developing countries which have good experience and recently undergone, or are in the process of undergoing, transition. German has a long history both of recognizing private land ownership rights and of empowering the State to expropriate these rights in certain circumstances. China has been chosen as examples of economies that may be said to be in a period of transition, where recognition of individual property rights has recently emerged but the State still exercises, to varying degrees, significant control. South Africa one of the developing countries in Africa has been chosen since it has good experience in compensation for compulsory

acquisition. The main issues of international laws and laws of these selected countries have been highlighted to draw the latest internationally accepted principles.

Various international laws reflect the concern for protection of property rights and the payment of compensation when people are displaced and or expropriated. The right to own property is recognized as a fundamental right of the individual under international law. This right can be found in most constitutions and international conventions. Article 17 of the Universal Declaration of the Rights and Duties of man of 1948 specifies that everyone has the right to own property alone as well as in association with others and that no-one may be arbitrarily deprived of property. Since this right to property is recognized as a fundamental right, the power to deprive the individual of this right can only be granted by law and only justifiable grounds (Treeger, 2004). Article 1 of protocol 1 (Council of Europe 1952) states that no-one shall be deprived of his possessions except in the public interest, subject to the conditions provided for by law and by the principles of international law (FAO, 2008).

The African Charter on human and peoples' Rights, 1986, Article 14 says that the right to property shall be guaranteed. It may only be encroached upon in the interest of public need or in the general interest of the community and in accordance with the provisions of appropriate laws. As Article 21(1) of this charter, all people shall freely dispose of their wealth and natural resources. This right shall be exercised in the exclusive interest of the people. In no case shall a people be deprived of it. In case of spoliation, the dispossessed people shall have the right to the lawful recovery of its property as well as to an adequate compensation.

The right to expropriate property is not absolute and international law seeks to place limitations on governments' discretionary powers in this regard (Treeger, 2004). The 1962 United Nations General Assembly Resolution on permanent Sovereignty over natural resources (GA Res, 1962: paragraph 4; cited in Treeger, 2004) stated inter alia that expropriation " shall be based on grounds or reasons of public utility, security, or the national interest which are recognized as overriding purely individual or private interests , both domestic and foreign". In such cases the owner shall be paid appropriate compensation in accordance with the rules in force in the state taking such measures in the exercise of its sovereignty and in accordance with international law.

In 1926, the Permanent Court of International Justice (PCIJ) took the position in the Upper Silesia case that "expropriation for reasons of public utility, judicial liquidation and similar measures" was lawful. In a case against the government of Sweden, the European Court of Human Rights (ECHR) stated that a fair balance must be struck between the demands of the general interest and the requirement that the individual's fundamental rights be respected. In addition to these requirements, international case law suggests that lawful expropriation must not be discriminatory, in the sense of its being deliberately directed against land-holding nationals of the only a single foreign country (Shivakoti, 2005).

In Germany the legal basis for the right of expropriation is defined by Article 14 of the basic law (Grundgesetz (GG)). This article describes both the property warranty and the constitutional expropriation basis. As is described in Article 14(3) of GG, "expropriation shall only be permissible for the public interest." The public interest requirement has been interpreted to mean that expropriations cannot be undertaken solely for the benefit of the state's commercial interests or those of a private person. It is possible, however, for a private person to benefit from an expropriation as long as the expropriation is undertaken in the execution of public necessity (Kertscher & Voss, 2007; Shivakoti, 2005). It may only be ordered by or pursuant to a law that determines the nature and extent of compensation. Such compensation shall be determined by establishing an equitable balance between the public

interest and interests of those affected. In the federal structure of the state of Germany expropriation law belongs to the concurrent legislation (Article 74 GG).however, there are many laws concerning expropriation regulations. The most detailed regulations can be found in the German Federal Building Code (Baugesetzbuch (BauGB)).

By expropriation, the property of land (also parts of an estate) as well as rights to properties (e.g. easements, hereditary building right) can be extracted. Apart from the loss of property, the expropriation is also possible by burdening. From the constitutional requirement to keep the interference into property as low as possible, if the loss of a part of the property or the burden with rights to property is sufficient for the fulfillment of the expropriation purpose, then the property may not be extracted as a whole. If the owner, however, requires that the remaining property cannot be used any longer structurally or economically then the expropriation authority has to compensate him for the whole property (Shivakoti, 2005). According to the compensation regulation of the BauGB, the compensation is not a payment of damages. It concerns rather a fair weighing of interests between the interests of the involved landowners and the interests of the public. The range of the compensation thus covers:

- The loss of property rights due to expropriation (real asset loss)
- Other property losses due to the expropriation (consequential damages)

Loss of the right of ownership is defined solely as the real asset loss, which can be estimated by the current market value. It does thus not depend on the expropriated person. If property or rights are withdrawn, the official valuation boards (a committee of valuation experts responsible for valuation to estimate the amount of compensation (current market value).

The People's Republic of China Constitution, 2004, Amendment 10, mandates that any expropriation or requisition of land must be "for the needs of public interests." According to the Land Management Law (LML), 1998, Art.2 of China, the State may, in the public interest, lawfully requisition land owned by collectives. Moreover, the People's Republic of China existing legal frame work governing land expropriation further requires that all non agricultural use of land must use state-owned land (LML, 1998, Art.43). Where the land is owned by a rural collective, it must first undergo a process through which the state expropriates the land and becomes the owner. In such cases, the intended land user must apply to the state for approval of the use and conversion of agricultural land for nonagricultural purposes. Upon approval, the state will exercise its eminent domain power through the county-level government (Art. 46). Under such a land-taking framework, the state may take farmers' land not only for "public interests," but also for all other purposes nonpublic in nature.

According to the Urban Structure Demolition Regulation No. 2001, Article 23, the amount of cash compensation in China, is determined by a market appraisal of the condemned structure based on location, use, and floor space of the structure. The method of appraisal should be the comparable sales approach, except in areas where housing markets are not developed (ibid, Art.24). As to in-kind compensation, the property owner is entitled to a replacement structure plus or minus any difference between the value of the replacement structure and the assessed market value of the condemned structure. In addition, the property owner is entitled to moving expenses and transitional resettlement subsidy (ibid, Art.31).

Section 25(2) of the Constitutional Law of South Africa second edition, gives three requirements for a valid expropriation, namely that it must be carried out in terms of general application, second that it must be in the public interest or for a public purpose, and thirdly that compensation must be provided for. The term "public

purposes” is usually defined in contrast to “private purposes”. It would include an expropriation by the state for the purposes of carrying out its administrative obligations such as, for instance, building a road, a bridge or a hospital. An expropriation specifically for the benefit of a private individual or for the benefit of the state’s commercial ventures would be a private purpose, not a public purpose, and would therefore not be permissible. Article 25(1) of the same constitution of South Africa, states that deprivation may only take place in terms of a law of general application and further provides that “no law may permit arbitrary deprivation of property”. This means that the government should exercise its powers in terms of clear rules and principles set out in advance. The exercise of power is arbitrary where it does not follow rules or precedents. Even if authorized by a law of general application, a deprivation will be unlawful if its effects are to allow for “arbitrary” deprivations of property (De Waal et al.2001; cited in Treeger, 2004).

Section 25 (2b) of the constitution sets out the requirements that compensation is due upon expropriation. Section 25(3) of the same constitution stipulates that the compensation for expropriated property must be “just and equitable” in its amount, time and manner of payment. Ordinarily, according to foreign property rights jurisprudence, “just and equitable” compensation would mean market value compensation. It is also indicated that compensation below market value or, conceivably, above market value, may in some circumstances be just and equitable and therefore constitutional. Article 25(3) requires a balancing test between the public interest and the interests of those affected by the expropriation when calculating the amount of recompenses for expropriation and thereby requires that account be taken of “all relevant factors” includes:

- i. the current use of the property;
- ii. the history of the acquisition and use of the property;
- iii. the market value of the property;
- iv. the extent of direct state investment and subsidy in the acquisition and beneficial improvement of the property; and
- v. the purpose of the expropriation.

Though the market value of the property concerned is only one of the criteria, the land claims court pointed out that, apart from factor (iv), which deals with the extent of state investment and subsidy, market value is the only factor listed in Article 25(3) that is objectively quantifiable. Once market value has been determined, the court can then attempt to strike an equitable balance between private and public interests. The interests of the expropriated party may raise the compensation to above market value. Similarly, the public interest may reduce the compensation to an amount which is below market value. The order of analysis, according to the Land Claims Court, is therefore first to determine the market value of the property and thereafter subtract from or add to this amount, on the basis of other relevant circumstances, which both “just and equitable” compensation (Plessis, 2009)

#### ***4.4.2 Policy approaches to displacement and resettlement***

Some International/Regional organizations and national governments have developed clear resettlement policies. The most widely known and increasingly adopted policy is the World Bank’s Involuntary Resettlement

Policy<sup>26</sup>. This policy emphasizes that people affected by development projects should be able to improve, or at least be well-off after the project as had been without the project. The policy also specifies that the absence of a legal title to land and other assets should not prevent affected people from receiving compensation, and that the amount of compensation should be sufficient to replace lost assets, incomes, and living standards.

The World Bank's operational policy statement (O.P 4.12-Involuntary Resettlement) underlines the need to identify, understand and mitigate various impoverishment risks (social, cultural, economic, and environment) that may arise as a result of a development project that entails displacement of people. The three core objectives of the O.P 4.12 on involuntary resettlement are:

- Involuntary resettlement should be avoided where feasible, or minimized exploring all viable alternative project designs;
- Whereas bit feasible to avoid resettlement, resettlement activities should be conceived and executed as sustainable development programs, providing sufficient investment resources to enable the persons displaced by the project to share in project benefits. Displaced persons should be meaningfully consulted and should have opportunities to participate in planning and implementing resettlement programs; and
- Displaced persons should be assisted in their effort to improve their livelihoods and standard of living or at least restore them, in real terms, to pre-displacement levels (WorldBank, 2011).

It is important to develop a national resettlement policy framework to protect displacement disasters or the interests of affected people. Experience from Asia and Latin America reveals that in countries where appropriate resettlement policies exist, the adverse effects of displacement were averted (Agrawal, 2000; Mejia, 1999). There is a growing recognition that resettlement projects should involve communities, NGOs, the private sector, and other stakeholders. Where a claimant is displaced from his/ her dwelling house, he /she should be entitled to claim not only for the “unexhausted improvements” but also for cost of removal, fixture, incidental expenses, etc.(Bashar, 2008).

According to Terminski (2013), analysis of displacement caused by development projects, at the outset, a clear theoretical framework. This is because the term “displacement” can be understood in two different ways. It may be used to refer to eviction of people from their habitual homeland without adequate compensation, guarantees or mechanisms of social support, or to the initial phase of a process of resettlement (associated with physical relocation of people from their homes). Displacement may therefore, be a distinct, negative phenomenon related to violation of fundamental human rights, or the initial step in resettlement process. The term “resettlement” therefore, refers to physical, pre-planned relocation, combined with appropriate support mechanism, including social support, in the new location (Terminski, 2013).

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26 The World Bank's criteria of eligibility reads: "Displaced persons may be classified in one of the following three groups: (a) those who have formal legal rights to land ... (b) those who do not have formal legal rights to land ...but have a [recognizable] claim to such land or assets ... and (c) those who have no recognizable legal right or claim to the land they are occupying. Persons covered under... (a) and (b) are provided compensation for the land they lose, and other assistance.... Persons covered under...(c) are provided resettlement assistance in lieu of compensation for the land they occupy, and other assistance, as necessary... if they occupy the project area prior to a cut-off date..."(WorldBank, 2011)

The rehabilitation of displaced people goes beyond monetary compensation because it involves replacement of housing and income generating possibilities (Davidson, Zaaier, Peltemburg, & Rodell, 1993). Investment in rehabilitation of displaced people should be seen as laying the foundation for sustainable development of cities, which cannot be attained in the absence of equitable and affordable access to opportunities. Janice Perlman (1998; cited in Yntiso, 2008) warns, "there can be no sustainable city of the 21st Century without social justice and political participation, as well as economic vitality....It is only by seeking out innovations in social equity, participatory democracy, and economic productivity...that our cities can be truly sustainable for the 21st Century and beyond".

According to World Bank (2002), compensation must be paid at full replacement cost prior to the actual move, and all sorts of assistance are provided during the transition period especially in the resettlement sites. The needs of the poorest groups of the claimants have to be paramount. Community participation in the planning and resettling the claimants is encouraged and re-settlers ought to be socially and economically integrated into host communities so that adverse impacts on host communities are minimized. Land, housing, infrastructure and other compensations are to be provided to all adversely affected population without segregation and absence of legal title to land by such groups should not be a bar to compensation (WorldBank, 2002).

The practice of eviction without consultation or adequate alternative and compensation is illegal in terms of international law. It is also unjust, compromising fundamental human rights principles, with devastating consequences for those affected. According to the United Nations Comprehensive Human Rights Guidelines on Development-Based Displacement, adopted June 1997, all persons subjected to any forced eviction should have a right to compensation for any loss of land, personal, real or other property or goods, including rights or interests in property not recognized in national legislation, incurred in connection with a forced eviction. Compensation should include land and access to common property resources and should not be restricted to cash payments. The UN guideline further states that expropriations should only occur as a last resort.

#### ***4.4.3 Manner and time of payment***

International law requires that compensation be "appropriate", also with regard to the manner and time of compensation. It should thus be paid within a "reasonable" time and in such a manner that the recipient of compensation is able to make use of the compensation (Treeger, 2004). Many constitutions state that compensation should be paid promptly. However, the period in which payment is to be made is often left undefined in relevant legislation. When the acquiring agency takes possession before full compensation is paid, there may be little incentive for it to make the final payment. Legislation should ensure that people receive full payment of the agreed-upon compensation sum in a timely manner. Any departure from a standard compensation rule should be based on clearly stated grounds set out in the law, and should be approved by a judicial body or administrative officer superior to the acquiring agency. Legislation should require that possession takes place only after a substantial percentage of the compensation offer has been paid. The laws of some countries include provisions for payment plans, time limits, and other procedures by which people can force payment. Legislation should entitle people to claim interest on any unpaid compensation starting from the date of possession (FAO, 2008).

According to Crawford (2007), "The time and manner of compensation payment must be just and equitable without specifying time limits". The procedure of payment must also be fair. Procedural requirements can

influence the substantive fairness question, and these rules are not objective rules that can be applied mechanically. For instance, in Scotland, because of the potential for unfairness to the claimant, it is essential that any delay in paying compensation be minimized by the use of the advance payment procedure. After an acquiring authority has taken entry and acquired title to the land, the claimant no longer has an effective interest in the land, only a claim for compensation. It can take many years for the compensation to be agreed or determined but claimants are entitled to advance payment of 90 percent of the agreed estimated compensation, or, in the absence agreement, 90 percent of the acquiring authority's estimate(Wilson et al., 2001). The advance payment is without prejudice to the claimant's compensation claim and interest at the statutory rate is payable from the date of entry until settlement, taking into account any advance payments made to the claimant (Wilson et al., 2001). Ordinarily, prompt payment of compensation would have to follow an expropriation (Erasmus, 1990; Charkalson et al, 1998; cited in Treeger, 2004). The notion of “just compensation” does not preclude the possibility of delayed compensation. In this regard, factors such as the use to which the property is being put in particular cases be relevant to the time within which compensation is paid. If an owner is not using a particular property and does not intend to gain any material benefit from that property in the immediate future, it may well be just to allow for delayed payment of compensation.

Various international laws reflect the concern for protection of property rights and the payment of compensation when people are displaced. The overall purpose of compulsory acquisition of property is to enhance society and thereby increase the overall welfare of society. A compulsory acquisition must therefore be socially and economically viable, and in all cases there must be some sort of balance between public and private interests to a forced acquisition of property

## **CHAPTER FIVE: PROPERTY VALUATION**

### **5.1 Introduction**

Property valuation is the heart of all economic activity. Everything we do as individual or as groups of individuals in business or as members of society is influenced by the concept of value. A sound working knowledge of the principles and procedures of valuation is essential in all sorts of decisions relating to real estate buying, selling, financing, developing, managing, owning, leasing, trading, and in the ever-more-important matters involving income tax considerations (Pornchokchai, 2006).

The basic goal of property valuation is to provide a measure of the utility derived through the access to and control of property. Screpanti & Zamagni (2005), explained the utility theory of value by arguing that the value of goods depends on their utility and rarity. It is not absolute utility that counts, but rather utility in regard to the quantity available (Screpanti & Zamagni, 2005). The value of property is determined through the flow of services it is capable to provide for the satisfaction of human needs; i.e. the increment in well-being dependent upon it, or – what is the same – the impairment of well-being which its loss must bring about (Mises, 1998). In general, the term property describes a legal concept; it refers to the rules that govern people’s access to and control of physical things (tangible assets) like land, natural resources, and manufactured goods as well as of non-physical things (intangible assets) such as inventions or contractual rights and financial claims. Real Property refers to the ownership of land and its man-made improvements attached to land e.g. buildings (Appraisal Institute, 2001).

The combination of rights associated with the ownership of real property is sometimes referred to as the bundle of rights. The bundle-of-rights concept likens property ownership to a bundle of sticks with each stick representing a distinct and separate right of the property owner, e.g., the right to use, to sell, to lease, to give away, or to chose to exercise all or none of these rights’ (Appraisal Institute, 2001; IVSC,2005). Ownership of an asset other than land (vacant or improved) is referred to as personal property which can be generally characterized by its moveability (Appraisal Institute, 2001). Thus, the term property, used without further specification, can either refer to real property or to personal property. However, whenever the term property is used in the study it is meant to refer to real property.

Property valuation, also referred to as appraisal<sup>27</sup>, is carried out for many different purposes, their relative importance varying from one country to another and from time to time. Valuations are required for many purposes relating to the development and subsequent occupation and ownership of property. The purpose for which the valuation is required and the type of property that is to be valued will determine the nature of the valuation instruction, including the techniques employed and the basis on which value is to be estimated (Wyatt, 2007). As stated in table 5-1, purposes for which a valuation may be required include sale or purchase, rent to be paid or demanded, the amount of mortgage which could be advanced on a security, calculation of compensation payable or receivable, assessment of taxation or rating and the advisability of investment. The intension of the valuation, together with the circumstances and requirements of the client requesting the assessment, can greatly influence the value. As a result the valuer may provide each of a number of clients concerned with one property a different valuation, or indeed, different valuations to the same client on the same property depending on the

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<sup>27</sup> Similar to the use the terms (real) property and real estate, the terms valuation and appraisal can be used interchangeably. While the term valuation is more common in a UK context, the term appraisal is used in US. Within this dissertation the term valuation is used unless a direct quote contains the term appraisal.

definition of values being sought (Blackledge, 2009; Graeve, 1996).

**Table 5-1: Main purposes of property valuation**

Valuation for	Examples
Purchase and sale	Occupation, investment, (re)development
Accounting and Financial reporting	Annual accounts, Stock market flotation, pricing of investment bonds performance measurement
Lending	Calculation of loan amount / loan security
Insurance	Calculation of insurance coverage , inheritance tax, taxation on capital gains on disposal, taxation on transfer
Statutory purposes	Compulsory acquisition by a public body, compensation for planning restriction or gains
Courts of Law	Divorce, inheritance, compulsory auction

**Source:** (Adair, Downie, McGreal, & Vos, 1996)

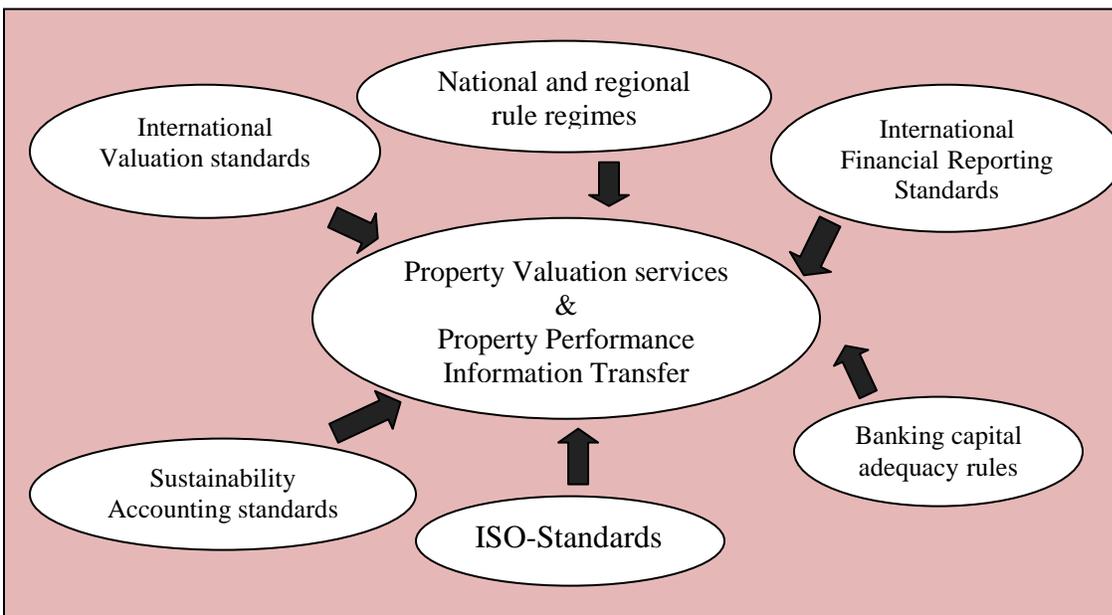
The services that property valuers provide are critical for the functioning of property markets, interconnected financial markets as well as of national economies. Property valuers are ‘the independent axis around which property information flows’. They touch every aspect of development from feasibility studies in the beginning of a project to the determination of value when an asset is to be taken by the government or destroyed to make way for new growth’ (Motta & Endsley, 2003).

The main task of property valuers is to find the value of a property. Hence, property valuers, before they value the property, are expected to know exactly what type of value they are seeking to find, for whom they are finding it and for what purpose this valuation is being sought without this knowledge, the resultant figure will have no relevance and has the potential to be taken out of context and interpreted in an incorrect manner(Blackledge, 2009). Gilbertson and Preston (2005; cited in Lorenz, 2006) have formulated a vision for valuation by investigating the actions that need to be taken in order to ensure the provision of valuation services that the modern economy requires. They find that there is a bright future for those valuers who understand the dynamics in the market place and who are willing to anticipate or respond to change. However, whatever, the drivers of change in the property market place are, “it is fundamental for the survival of professional valuation services that the public interest is protected”.

The valuer’s role in general is to advise as what would be the best figure obtained for a given property, in the open market, at a specific date. To do this, the valuer must know how the many and varied characteristics of real property can affect value and how changes in social, economic and political factors, in the local, national and international contexts, are likely to influence (Blackledge, 2009). According to Lorenz (2006), contemporary valuation practice is being shaped by a combination of strong forces within and external the profession. Among

the external forces are the adoptions of new capital adequacy rules for international banks, the introduction of International Financial Reporting standards (IFRS) within the European Union, a general shift in accounting conventions from depreciated historical costs to market value reporting of property assets as well as the growing acceptance of International Valuation standards (IVS) which is closely interconnected with developments in the accounting arena (Lorenz, 2006). In addition, the continuing globalization of property investment requires valuers to significantly extend the scope investigations to include aspects of the national or regional rule regimes in order to produce useful valuation services for international clients (see Adair et al, 1996). Further, valuation services will be influenced through developments within the sustainability accounting and performance reporting arena. Figure 5-1: provides an overview.

**Figure 5-1: Property valuation within a global economy**



Source: Lorenz (2006)

Among the internal forces that currently shape valuation practice is the growing awareness of academics and practitioners that an urgent need to increase the transparency of valuation services exists by adopting procedures to systematically assess and report property risks as well as to account for the uncertainties associated with any property valuation ( French & Gabrielli, 2005; cited in Lorenz, 2006).

Now, the pressing need for more sustainable development in general and in property markets in particular represents another force that will significantly impact on the practice of property valuation (Motta & Endsley, 2003). Governments and organizations whether in developed, developing or under developed countries that have the legal power to acquire private property compulsorily for undertaking public development projects can take it from private owners / holders for specific purposes. This might be to build a new road, a big dam, or to develop airport for example. Freehold, leasehold, and common hold interests in property can be compulsorily acquired by these acquiring authorities. An important question that has to be raised here is that “is a property owner affected by such an acquisition? If so how the compensation is valued?” Despite that the matter differs from country to country, if a property owner is affected due to compulsory acquisition, compensation can be claimed for any land taken, for injurious affection (severance) caused and for disturbance (Viitanen, Falkenbach, & Nuuja, 2010). The

legal basis of the right to claim compensation in these respects may differ from country to country as the statutory regulations and circumstance prevailed in each country.

Property valuers are often appointed to estimate the value of the property compulsorily acquired and to estimate any diminution in value of property resulting from either construction activity or use of the finished development. Despite, the guiding principle of the legislation in respect of property owners who have been affected by compulsory acquisition is to ensure, financially at least, that they are restored to the position before acquisition took place, since each country's statute refers to their own definition of market value, before trying to value the property, valuers need to know the laws correctly prevailed in each country.

Given that international standards will be the platform upon which international valuations will be undertaken, the time may be right to adjust valuation theory to comply with internationally accepted best practice. Otherwise, valuers relying on national definitions and methodology are to be marginalized by those operating internationally and those exclusively applying the international bases and methodology (Mansfield and Lorenz, 2004; cited in Lorenz, 2006).

Motta & Endsley (2003) stated about property valuers as follows:

Property valuers are expected to protect public interest and to provide clients with real feedback. If they fail to meet these tasks, the profession will not prosper, rather it will decline. If property valuers adopt a "wait and see" strategy, others (e.g. consultants) will use this opportunity and offer those services that are increasingly valued by clients. On the other hand, "if the valuation profession can once again become part of the vision for the future, by analyzing the status of entire markets and helping governments and individuals shape real property markets in to sustainable, rational assets for the people of the world, then the vitality of the profession will be unquestioned" (Motta & Endsley, 2003).

## ***5.2 Concepts of Value***

Value, by itself, can be a subjective concept in that a property will have different values at any point in time according to the purpose for which it is being valued and the circumstances of the party for whom it is being valued (Blackledge, 2009). There are many different concepts of value that can serve as an underlying basis of property valuation. Depending on the purpose of the valuation as well as on the historical background of countries, concepts of value used in property valuation can differ from each other (Adair et al., 1996; Milgrim, 2001; Sayce, Smith, Cooper, & Venmore-Rowland, 2006). The word value can be used to describe different but related concepts in terms of real estate. In the language of economics used by Kinnard, worth can be considered as value in use, where as price or market value can be considered as value in exchange (French, 2004; cited in Blackledge, 2009). Property valuations are mostly focused on the market value of a property. Through history, and especially when there have been dramatic downturns or upturns on the real estate market, there has arisen a demand for a value concept that leads to values that are more stable than the current market value (Lind, 2005). Most property valuation methods are designed to determine market value. In this case, valuation input parameters are based on market derived information. In contrast, whenever the intention is on calculating worth, valuation input parameters depend on both market information and individual specific inputs. For instance, if an individual investor believes that most market participants overestimate the risk associated with sustainable construction, then the yield figure used within the calculation of worth is changed in order to calculate the worth

of a particular sustainable building based on that new assumption. Despite there is a controversy about the interpretation of the concept market value<sup>28</sup> the internationally accepted definition of market value can be found in International Valuation Standards and reads as follows:

Market Value is the estimated amount for which a property should exchange on the date of valuation between a willing buyer and a willing seller in an arm's-length transaction after proper marketing wherein the parties had each acted knowledgeably, prudently and without compulsion' (IVSC, 2005).

From the definition, it seems appropriate to stress that market value needs to be clearly distinguished from price and worth. The concepts of market value and worth and their relationship to price are fundamental issues within the operation and regulation of real estate markets. If a dictionary is consulted, the words market value, price and worth are normally found to be described as synonymous or to have definitions that are at least in part interchangeable (Blackledge, 2009; Sayce et al., 2006).

The word value may be viewed as a general, all-encompassing term that incorporates the three main types of value: price, market value and worth. Although the term valuation has specific professional definitions, the definitions of the RICS Appraisal and valuation standards (RICS, 2003), the European valuation standards (TEGoVA, 2003) and the International Valuation Standards (IVSC, 2005), the essence is that a valuation is an estimate of the most likely selling price on the open market, on the basis of both a willing seller and a willing buyer. However, in practice, the valuation figure may not be the same as the price actually achieved. This may be due to imperfections within the property market or the presence of a special purchaser to whom the property may have a value over and above its worth to other potential buyers; or it may reflect a timing discrepancy (Sayce et al., 2006). In reality, the length of time it takes for the marketing of a property investment and agreement of a price can be several months, during which time market movement may occur that places the agreed price out of line with the then prevailing market values. Another problem that can lead to differences between the valuation and the price achieved may relate to the lack of current comparable evidence on yields and rents upon which to base the valuation. Price is derived from the interaction of supply and demand, but the supply of property for specific uses is relatively fixed and is slow to adjust to changes in demand, leading to price anomalies (Sayce et al., 2006).

Price is the actual observable exchange amount paid for a particular property, whereas market value is an estimation of the most likely price achievable if the property were to be sold in the [open] market (Blackledge, 2009). It is important to bear in mind that the price paid for goods or services by an individual with particular motivations or special interests 'may or may not have any relation to the value which might be ascribed to the goods or services by others' (IVSC, 2005). Any observed price from a comparable sale is not indicative of market value since prices from particular transactions depend on the negotiating strengths of the buyer and seller as well as on their perceptions of worth (Fisher, 2002; cited in Lorenz, 2006). Worth on the other hand, can be defined as the value of the property to a particular investor, or class of investors, for identified investment objectives. In this context an investor includes an owner occupier. Or expressed in other words, worth is the maximum/minimum capital sum an individual would be prepared to pay/accept for an asset (Blackledge, 2009; Sayce et al., 2006). However, whether the individual is considering investment or occupation will have consequences for the calculation of worth. An investor's view of worth can be described

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<sup>28</sup> See, Lind (1998), the definition of market value: criteria for judging proposed definitions and an analysis of three controversial components, *Journal of property valuation and Investment*, vol.16 No.2 (Lind, 1998).

as the discounted value of the cash flows generated by the property whereas the owner-occupier regards the property as a factor of production. Thus, the owner-occupier's view of worth depends on the property's contribution to the profits of the business and, and thus also on issues such as image, identity and other personal preferences. Irrespective of possible methodological difficulties in calculating worth to the occupier, the intention of the concept should be clear; i.e. the calculation of subjective use values. However, regarding the definition of worth, there exists some confusion in the literature which is mainly due to two reasons:

1. Sometimes a distinction is made between individual worth and market worth (see Sayce, et al., 2006). Market worth has been defined as “the price at which an asset would trade on a market where sellers and buyers were using all available information in an efficient manner” (Crosby et al., 2000; cited in Lind, 2005). The intention of this notion of worth is to find some thing that is more justified than the current market value by investigating what the price would have been if the market had been efficient. The idea is to find out whether there are mispricing and speculation on the market. However, Lind (2005) explained explicitly that the concept of market worth as “It should be put aside since there is no way for valuers to determine this figure in an objective way. Estimating market worth is an impossible ambition since it is never possible to show that the market is wrong. The reason is not that the market is always right, but because the words right and wrong are meaningless when we look at asset prices” (Lind, 2005). For estimation of “market worth” it is not even possible to use data from actual markets as there might be mispricing (ibid).
2. Sometimes a distinction is made between value in use and worth which is also referred to as investment value. Notably the International Valuation standards (IVSC, 2005) and The Appraisal Institute (2001) draw this distinction: value in use is defined here as the value a specific property has for a specific use to a specific user. While in contrast worth or investment value refers to the value of a property to particular investor, or a class of investors, for identified investment objectives (IVSC, 2005; The-Appraisal-Institute, 2001). According to French (2004; cited in Lorenz, 2006), “This distinction, however, is unnecessary and unhelpful since worth to an individual user and worth to a particular investor are both concepts of worth and could be included in one definition”.

In the context of market value, price and worth, Hoeslinn & MacGregor (2000; cited in Sayce, et al., 2006) distinguish between four different concepts:

- Price is the actual observable money exchanged when a property investment is bought or sold. In most other markets price is given, but in the property market every property interest is different and requires an individual estimate of value to guide the buyer and seller in their negotiations to agree a price. Price can be fixed by negotiation, through tender bids or at auction.
- Value is therefore an estimation of the likely selling price. In other markets, where homogenous goods are sold, the price is not estimated but is determined from market trading and is usually used to describe an assessment of worth.
- Individual worth is the true value to an individual investor using all the market information and available analytical tools and can be considered as the value in use.
- Market worth is the price a property investment would trade at in a competitive and efficient market using all market information and available analytical tools. A valid model of calculation of market

worth should reflect the underlying conditions of the market at the time. This should therefore be distinguished from market value, which accepts a less than perfect knowledge of market information.

According to Adair, et al. (1996) in order to estimate market value, a valuer must first estimate highest and best use, or most probable use. The concept of highest and best use is a fundamental and integral part of market value estimates (IVSC, 2005). According to the Appraisal Institute (2001), the concept of highest and best use “can be described as the foundation on which market value rests” (The Appraisal Institute, 2001). According to Betts & Ely (2005), highest and best use is defined as “A reasonable and probable use that will support the highest present value ...as of the date of value for the appraisal”. The uniform standards of professional Appraisal Practice require that all appraisals estimating market value must research and report an opinion of highest and best use. This opinion should be based upon a careful analysis of the property and its environs (Betts & Ely, 2005). The International Valuation Standards Committee (IVSC) defines highest and best use as follows:

The most probable use of a property which is physically possible, appropriately justified, legally permissible, financially feasible, and which results in the highest value of the property being value (IVSC, 2005).

Since Market valuation means estimating the most likely price attainable within a hypothetical transaction, highest and best use analysis must always be the first step within the valuation process because this analysis forms the basis for identifying comparable properties and it identifies the most profitable or competitive use to which the property can be put. It is this use of a property which determines its utility for a potential purchaser. Highest and best use is shaped by the competitive forces within the market where the property is located. Analyzing these forces means setting “the foundation for a thorough investigation of the competitive position of the property in the minds of the market participants” (The Appraisal Institute, 2001). Market valuation is therefore an issue of identifying what is likely to be the highest and best bid. It is this highest bid that will determine market value (Betts & Ely, 2005). Thus, the property valuer has to view the transaction through the eyes of a hypothetical buyer; i.e. to replicate the hypothetical buyer’s calculation of worth. Furthermore, the valuer must consider all possible buyers in the market in order to identify what is likely to be the highest and best bid. Without any question, this is a difficult task since the valuer has not only to identify the best bidder in the market but also the level of this bid. But just because analyzing the market is difficult, property valuers must not take a conservative view and simply calculate the market value estimate on the average of past price<sup>29</sup>. This may be much more comfortable but in doing so, property valuers are abdicating their responsibility since they are hired to provide a professional expert opinion which includes an interpretation of the market at the date of the valuation (Adair et al., 1996).

According to Mansfield and Lorenz (2004; cited in Lorenz, 2006), “Given that international standards will be the platform upon which international valuations will be undertaken, the time may be right to adjust valuation theory to comply with internationally accepted best practice. Otherwise, valuers relying on national definitions and methodology are to be marginalized by those operating internationally and those exclusively applying the international bases and methodology”. In addition, it is indeed questionable if something like ‘market consensus’ or ‘average view’ exists at all since this would imply that there is something than can be called rational

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<sup>29</sup> If the swings in asset prices are caused by unexpected new information not related to historical patterns, then presenting historical information will not have a large effect (See, Lind, 2005, Value concepts, value information and cycles on the real estate market, Vol. 23 No.2, 2005).

expectations within property investment markets; the existence of rational expectations would imply that if people use best available theories and all available information they should come to about the same expectations about the future if they act rationally (Lind, 2005). De Bondt (1995 and 1998; cited in Lorenz, 2006) however argued that market participants often react in repeating patterns and that these patterns are not always rational. Furthermore, it can be argued that different market participants see different opportunities and risks in the same situation. According to Mises (1998), “From the perspective of the Austrian School of economics there is never any market consensus. In contrast a lack of consensus is regarded as a major force that drives transactions. Individual value judgments which result in the determination of definite prices are different by nature: Each party attaches a higher value to the good he receives than to the good he gives away. The exchange ratio, the price, is not the product of equality of valuation, but, on the contrary, the product of a discrepancy in valuation” (Mises, 1998). It is explained explicitly by Lind (2005) as follows:

A market is a place where there are countless “experiments”: different people trying to do different things based on different beliefs about the future. All have different expectations about the future because there is seldom information enough to show that one expectation is more rational than a number of other expectations. Some people that act on the market make profits and others losses, but no one really knows whether those who make profits have skill or luck.

It is possible to draw two important conclusions from the above are: (1) Without doubt, reporting single value estimates is important when it comes to providing values for performance measurement, for the courts of law, or for protecting the public from unscrupulous developers, predatory lenders or fraudulent financial reporting (Motta & Endsley, 2003). However, the various uncertainties involved in determining the most likely sale price reveal that property valuation cannot be an exact science. Therefore, providing clients with detailed market and risk analysis as well as with an indication of the range of likely sale prices in addition to the single value opinion is regarded to be more appropriate since this better reflects the nature of the valuation process (Adair et al., 1996; Motta & Endsley, 2003). (2) Estimating property values on the basis of average past prices paid for comparable properties cannot lead to market value as defined in international standards since an average of past prices is in no way indicative of the highest bid attainable for the property under investigation simply because this average does not reveal the property’s current competitive position. This does, however, not mean that past prices are unimportant. In contrast, it is necessary to be familiar with these prices because “if more is known about the past development of the market, the smaller is the risk of at least making similar mistakes” and because whenever we make an empirical statement saying that “A leads to B”, this must be based on something, and this base is primarily observed relations in the past (Lind, 2005).

As it was said before, identifying what is likely to be the highest bid for the property under investigation involves studying market forces in order to determine the competitive position of the property in the marketplace.

### ***5.3 The determinants of value***

Basically the value of a property is determined by supply and demand. Economic market principles determine what value any commodity will have at a particular point in time. If there is a plentiful supply of a commodity and little or no demand, the price of the commodity is likely to be low, whereas, if there is little supply and a great deal of demand, the price will be higher. However, in the property market the supply of property is relatively fixed at any one time. In order to increase the supply, more properties need to be built, which of course this

process takes time. Demand, in contrast, can change relatively quickly. Therefore property values tend to be influenced by demand rather than supply (Kertscher & Voss, 2007; Millington, 2000). Demand can be increased by changes in the economic circumstances of the buyers. If changes occur so that buyers have more income, for example if the basic rate of tax was lowered, this will tend to stimulate demand. If however, for example there was an interest rate rise, buyers incomes could fall, which would lead to lower demand.

In the real estate business it is common to assume that the value and potential of a property is fundamentally determined by its location (Lahoz, 2007). Certain sites are attractive because they may have a beautiful view, shore and forests in the vicinity, good rail and road connections without noise and all kind of public and private services. When determining value, where a property is situated is more importance that what the property is. According to Scarrett (2008), each separate property is unique: even when it is indistinguishable inform from an adjoining property, it occupies a different site, the location of which may be of great importance in the consideration of value (Scarrett, 2008). If we compare similar types of properties in different areas, we may discover significant variations in price. Different areas attract different demand for property. Some areas are more popular than others and as a result, buyers will pay more for the same property in a more desirable location. More desirable areas have a demand which always seem to outstrip supply, and consequently prices remain high (Blackledge, 2009).

According to Wyatt (2007), “Factors which cause changes in the value of property and variations in value between properties can be classified as property-specific factors and factors outside to the property. Property-specific factors, which can be divided into sub factors, relate to the property itself and factors outside to the property to both national and international.”

### **5.3.1 Property- Specific factors**

Property-specific factors that cause changes in value of property and variations in value between properties are size, age, condition, external appearance (including aspect and visibility), internal specification and configuration. These qualities affect the performance of the property to varying degrees depending on the use to which it is put. The aspect of a property may be important in respect of the outlook of a property, particularly in residential areas; any property which overlooks a pleasant area is obviously being more attractive and valuable than one which overlooks unattractive surroundings.

The site and its location are important. The valuer will wish to judge the suitability of the site for the building erected on it. Considerations will include whether it is large enough and caters for any particular requirements associated with its use, and whether it has adequate off-site car parking provision and suitable loading and unloading facilities. The relevance of the location to its use will always be important and, under some circumstances, critical (Scarrett, 2008).

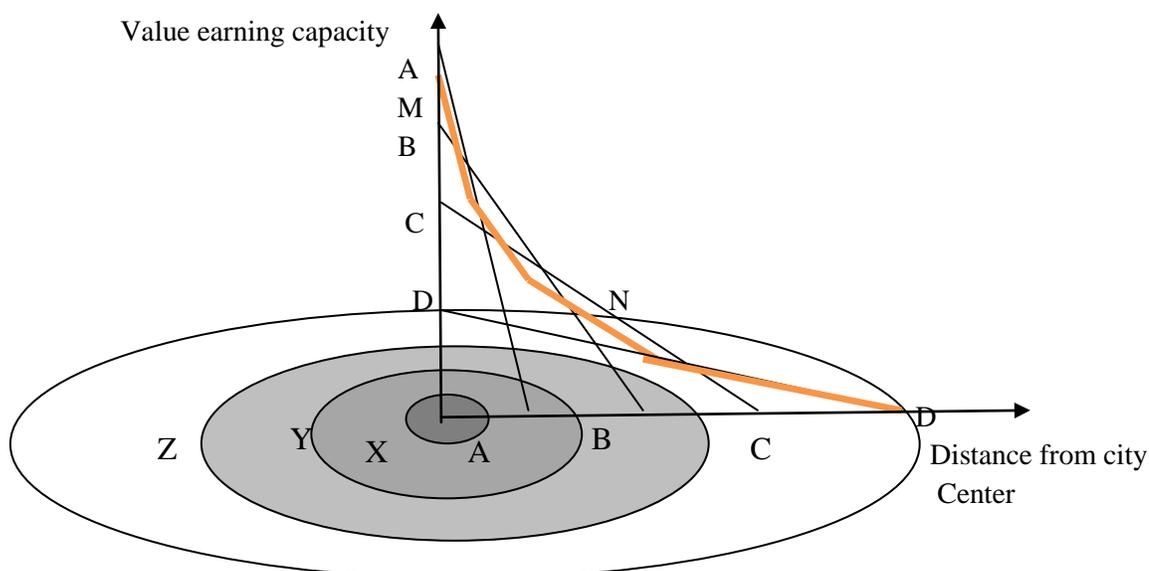
Legal factors, although intangible and therefore sometimes overlooked, can have a significant impact on property value. If the legal interest is a freehold then it is important to consider any easements or other statutory rights and obligations (such as restrictive covenants) over the land, the nature and extent of permitted use(s), potential for change of use and proposed development plans. If the freehold is held as an investment and let to an occupying tenant then the quality of that tenant is a primary concern, not only in terms of an ability to keep paying rent but also in complying with other lease terms such as repairs and maintenance. Planning control probably has a greater

effect on property values than any other single factor, possibly even greater than all other combined. The power of the planner in today's world is very great indeed, and the decision of a planning committee can result in huge increases in value arising, or alternatively in such increases being denied (Millington, 2000).

The potential of a property can greatly affect its attractiveness on the market. It may be in poor condition, but it is capable of improvement it may still sell readily at a good price. If, however, there is no possibility of improvement or the cost would be excessive, then the property will be unattractive to purchasers. Hence its value is lower. Whenever one has to value a property or advice a client one should consider whether the property is currently being used to its greatest potential and, if not, the possibility of putting it to a higher use should be given careful consideration. Special circumstances surrounding individual properties and owners also influence property value. The existences of good communication and accessibility have always been important in influencing value. According to Blackledge (2009), unless the market is modified by government policy, or legislation, sites in urban areas will tend to be devoted to the use that produces the highest value, which will largely be determined by accessibility, complimentary and intensity of use. Thünen (1826; cited in Blackledge, 2009) put forward the theory of concentric circles of value developing in urban areas, such that the value of land and rents is determined by distance from and transport costs to the city centre. In 1925, Park and Burgess developed the concentric ring theory. They concluded that accessibility, values and density declined with increasing distance from the city centre (Blackledge, 2009). What urban land uses desire is accessibility, not just access to the market (where the customers are) but also access to factors of production and to other complementary land uses.

In explaining the cause of different land values within an urban area, Hurd suggested that 'since value depends on economic rent, and rent on location and location on convenience, and convenience on nearness, we may eliminate the intermediate steps and say that value depends on nearness.' Theoretically, as Kivell (1993; cited in Millington, 2000) pointed out, in a monocentric urban area the centre is where transport facilities maximize labor availability, customer flow and proximate linkages, and therefore attracts the highest capital and rental value

Figure 5-2: The Concentric circles of value



Source: Harvey and Jowsey (2004, cited in Wyatt, 2007)

Basically greater accessibility leads to higher demand, which, in turn, causes value to rise and land use intensity to increase. The prime location factor revolves around linkages to people and other uses measured in terms of accessibility to market(s) and factors of production (capital and labor). Accessibility refers to the ease with which contacts can be made considering the number, frequency and urgency of those contacts. If there is more reliance on access to customers there is more need to locate at the position of maximum accessibility to the market. The layout of transport routes and the cost of traversing them influence the pattern of accessibility (Blackledge, 2009).

Different users of land might be prepared to offer different prices for a piece of land because it offers the potential to earn different amounts of revenue depending on the use to which it is put. The shaded areas in Fig 5.2 above, represents value- earning capacity and the sizes of these are maintained for each land use. A value curve MND is derived showing the value for land at different distance from the center of the city. The central area of the city has the highest levels of accessibility and complementarity. It is relatively small sized and, coupled with intense demand from users due to the advantages of its location; it will enjoy peak land values. The scarcity of land together with these high values will produce the greatest intensity of use of land in the center urban area.

Land values and intensity of land use becomes lower when we move away from the center of the city. The majority user is residential at moderate densities and associated complementary uses including open space and recreational areas. With lower land values, there is less pressure for high-rise development to maximize usage of the available sites. Establishing the economic area of land use within which a property is located is an essential factor in understanding the economic, social, political and geographical factors that exist and help determine the levels of supply and demand for a particular property type and thus influence its value.

### **5.3.2 Factors outside to the property**

As there are many factors which can affect property values and which may be considered by property valuers, it is essential for valuers to study factors outside to property at considerable length, and also the underlying factors which affect it. Factors outside to property are not specific to a particular property but relate to the property market as a whole (national & international) or at least to a market sector. There are certain factors that affect the values of all properties regardless of type, although the extent to which they do so will vary depending on property type and location.

- **The National Situation**

According to Wyatt (2007), market influences on property values include national output (as measured using the Gross Domestic Product metric), household disposable income, consumer spending levels and retail sales, employment rate, construction output, house building activity and net household formation, production costs (including wage levels), cost and availability of finance and inflation etc. Changes in the size and demographic profile of the population can affect demand for goods and services as well as the availability and cost of the workforce used to produce them.

Any increases or decreases in *population* will obviously affect property values. If there is an increase, all other things being equal, demand will increase. A larger population will require more housing in which to live, more

buildings in which to work, and more buildings for leisure-time activities and all the other ancillary activities associated with modern life. Changes in the age distribution of the population and changes in the income distribution of people may also affect the demand for real property. Changes in technology may also affect property values. Where factories are concerned, changes in technology may have far-reaching effects on values.

*Economic* factors that affect the value of retail property, in particular, centre on the propensity to attract custom, for example, purchasing power (credit restrictions), consumer behavior (spending habits, changes in tastes or fashion) and population density. Whatever the property type, the valuer tries to ascertain market strengths and weaknesses, assess the likely supply of and demand for properties, comparable to the one being valued and determine the factors likely to impact on the value of properties in the market. Important local market characteristics include stock availability, rental growth rates, yields, rents, capital values, take-up rate, vacancy rate and the development pipeline. As a way of obtaining a mixture of macroeconomic information and market information, valuers are able to obtain summary statistics relating to the urban and regional location in which the property is located. The extent to which a valuer is concerned with national and regional economy depends on the size and type of property being valued (Wyatt, 2007). Social factors such as tastes and preferences of consumers and clients and changes in those tastes also affect the value of property.

Finally, the main way that government intervention affects property values is through development control and land use regulation or planning, but other activities can also have a significant impact including compulsory purchase, legislation that may protect certain rights of occupiers (security of tenure, for example) and regulations that may affect value.

- **The International Situation**

The international situation similar to national ones can affect property values. According to Millington (2000), the effect of international events was particularly evident in the early 1990s when international factors played a very important part in property markets worldwide. With the advent of the 1990s (and a little earlier in some countries) economic growth faltered in many countries, rapidly resulting in recession in some. The deteriorating international economic situation was exacerbated by a number of international developments which caused uncertainty and thereby lessened the confidence of real estate investors large and small on both national and international scenes (Scarrett, 2008).

The deterioration of international economic situation results a downturn in consumption and production and high levels of unemployment in many countries. The downturns in production naturally affects the demand for property by would be users. National property markets were in some cases not only adversely affected by the poor performance of their own national economies, but by the withdrawal of international property users and real estate investors whose confidence, and sometimes their actual ability to invest, may be weakened not only by poor economic conditions in the foreign country but in their own country also. According to Scarlett (2008), one thing that was very clear indeed in the early 1990s was that national economies in the modern world are so interdependent that most economies are adversely affected by downturns in economies elsewhere. As such factors affect production levels they also affect the demand for properties for use and therefore their market values also (Scarrett, 2008).

Property values may rise or fall due to the shortage /or excess of mortgage funds and the higher/ or lower cost of borrowing as a result of worldwide increase or decrease in interest rates. So the international financial situation has an important effect on the property market, when high/ or low international interest rates helped to make it expensive/ or cheap to borrow money (Millington, 2000).

It is essential in the modern world for the property valuers to be aware of developments and trends in the international scene, as adverse developments may possibly even adversely affect local real estate prices in due course, or vice versa. There is little doubt that such prices are affected by the level of interest rates and the level of consumer confidence, both of which are very much affected by international factors (Scarrett, 2008).

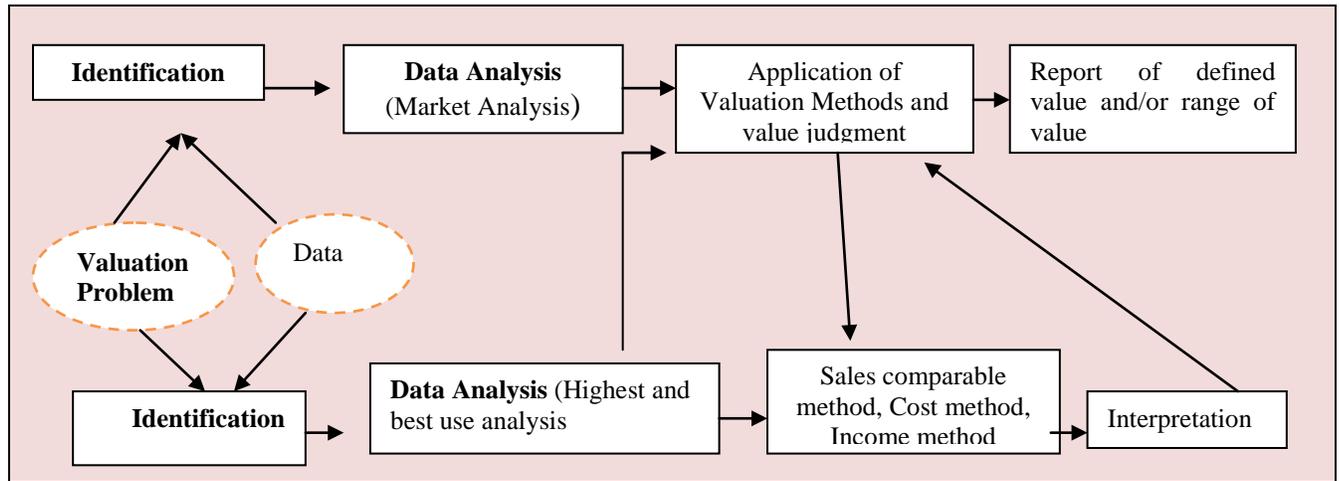
### ***5.4 Property valuation methods in general***

Basically property valuation all over the world follows the same methods. In some jurisdiction those rules are written in formal law and codes in other professional organization were organizing the formal patterns of valuation like the Royal Institution of Chartered Surveyors (RICS), London, the Appraisal Institute (AI), Chicago or the International Valuation Standards Committee (IVSC), London, or the European Group of Valuers' Association (TEGoVA), Brussels. But in general the essence of valuation is the same: It should be "[...] an estimation of the most likely selling price on the open market [...]" (Sayce et al., 2006). The target for the valuation professionals is in most circumstances the "Market Value". RICS; IVC and TEGoVA are using the same definition of "Market Value", which is:

The estimated amount for which the property should exchange on the date of valuation between a willing buyer and a willing seller in an arm's length transaction after proper marketing wherein the parties had each acted knowledgeably, prudently and without compulsion. The market value shall be documented in a transparent and clear manner. (IVSC, 2007; TEGOVA, 2009; RICS, 2007; cited in Bienert, et. al.\_\_)

There are three internationally recognized methods of property valuation and they are all based on the principle of market comparison. They are (1) sales comparison; (2) income capitalization; and (3) replacement cost. Using the sales comparison method, the valuer examines the recent sales of comparable properties and uses this market intelligence to help estimate a value. Income capitalization considers the net income that a property might generate, typically in the form of rent, and this income is capitalized using an appropriate yield or by discounting the projected cash-flow at a suitable target rate of return. Both the rent and yield will be estimated using comparable evidence. The replacement cost method considers the possibility that, as a substitute for the purchase of a given property, one could construct another property that is either a replica of the original or could offer comparable utility. In practice, the approach also involves an estimate of depreciation for older or less functional properties where the estimated cost of a new replacement is likely to exceed the price that would (hypothetically) be paid for the subject property (IVSC, 2005). Building costs, depreciation rates and land values are all estimated by referring to comparable evidence.

**Figure 5-3: The valuation process**



Source: Compiled by the researcher based on Appraisal Institute (2001)

The steps in the process of defining the valuation problem-identification of the real estate and the property rights to be valued, the date of the opinion of value, the intended use of the appraisal, and the definition of value-all serve to quantify the appraisal (The Appraisal Institute, 2001). A brief description of the three internationally recognized methods of property valuation will be provided in the following.

### 5.4.1 The Sales Comparison Method

The principle of comparison is based on the economic concept of substitution that a knowledgeable and prudent person would not pay more for a property than the cost of acquiring an equally satisfactory substitute. In the sales comparison approach transaction prices of highly comparable and recently sold properties are used to estimate the market value of the subject property being valued. The economic rationale of the sales comparison method is that a knowledgeable and prudent person would not pay more for a property than other persons have recently paid for comparable properties given that the general market conditions are the same. If meanwhile the general market conditions have changed, then persons are only willing to pay comparable prices adjusted by the general price level for properties. A property may be valued by comparing it to similar properties for which recent price information is available (Millington, 2000; Wyatt, 2007).

The principle of comparison underpins all valuation methods but Sales comparison is the preferred method of valuation. In fact, valuers turn to alternative methods of valuation only when available sales data is insufficient (which is very often the case, however). The sales prices of the properties that are judged to be the most comparable ones tend to indicate the range in which the estimated value for the subject property will fall. The degree of similarity or difference between the subject property and the comparable sales is usually established on the following elements of comparison: property rights conveyed, financing terms, conditions of sale, expenditures made immediately after purchase, market conditions (time), location, physical characteristics, economic characteristics, use (zoning), and non-reality components of value (Betts & Ely, 2005; The-Appraisal-Institute, 2001). Value-significant differences between each comparable and the subject property must be reconciled before price information from the former provide reliable evidence of the value of the latter. This reconciliation can be undertaken qualitatively by the valuer, who would have experience and knowledge of the local market, or a quantitative technique can be used to weigh comparable properties, isolate differences in

the elements, quantify these differences and adjust the values accordingly. Typically, a combination of qualitative and quantitative approaches would be employed (ibid). Then adjustments are made to the known sales prices to derive an indication of the value of the subjective property.

According to Appraisal Institute (2001) and Wyatt (2007), procedurally, the comparison method involves the following steps:

- Collect evidence of transactions and eliminate those not conducted at arm's length (between parent and subsidiary companies, for example).
- Determine which transactions are suitable for adjustment having regard to their comparability with the subject property. The geographic extent from which comparables can be selected depends on the type of property and the state of the market. Comparables yet to transact or beyond a suitable time-frame should be used with caution (Appraisal Institute, 2001).
- Select the elements of comparison.
- Compare the transactions on the basis of these elements, and make adjustments where necessary.
- Reconcile comparison elements to provide an indication of value for the subject property (taking care to ensure that any adjustments made to the comparable evidence reflect the likely reactions of market participants).

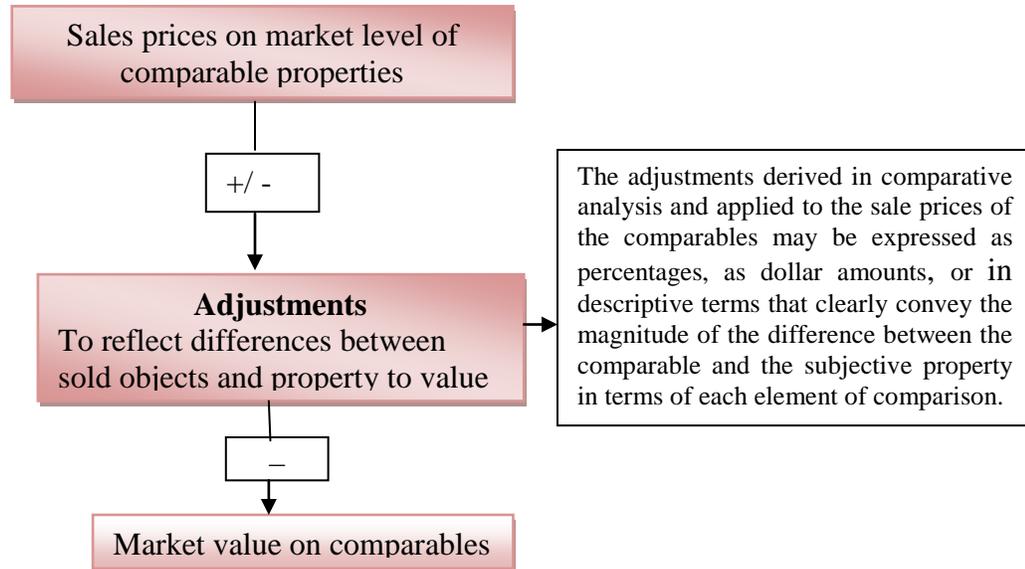
The sales comparison method is applicable to all types of real property interests when there are sufficient recent, reliable transactions to indicate value patterns or trends in the market (Betts & Ely, 2005; Ling & Archer, 2005). The sales comparison method is predicated on comprehensive and up-to-date records of transactions and is therefore a reliable method in an active market where recent evidence is available. For property types that are bought and sold regularly, the sales comparison method often provides a supportable indication of market value. When data is available, this is the most straight-forward and simple way to explain and support a value opinion.

When the market is weak and few market transactions are available, the applicability of the sales comparison approach may be limited. For example, the sales comparison method is usually not applied to special-purpose properties because few similar properties may be sold in a given market, even one that is geographically broad. The more specialized the type of property, the less likely is it that the valuer will be able to find well "comparables", and it is not unusual for there to be a complete lack of evidence of sales of comparable properties. To value special-purpose properties, the cost approach may be more appropriate and reliable. Nevertheless, sales and offers for properties in the same general category may be analyzed to establish broad limits for the value of the property being appraised, which may help support the findings of the other value approaches applied (Appraisal Institute, 2001; Millington, 2000; Scarrett, 2008).

According to Millington (2000), perhaps the biggest weakness in the use of the sales comparison Method is the underlying and simple assumption that because in the past one person was prepared to pay a certain figure for a particular property, another person will also be prepared to pay similar figure for a similar property. It may be that the purchaser of the comparable property had special reasons and specific personal circumstances which both prompted and enabled the purchase to be made, such reasons and circumstances being completely irrelevant to others in the market place. However, in spite of the need for great care in the use of the Sales Comparative Method and the frequent shortages of suitable comparable evidence, it is a method which the valuer will use regularly and which will give reliable results if used properly and in the correct circumstances.

The following flow chart demonstrates the global principle for the sales comparison method based on Appraisal Institute (2001).

**Figure 5-4: General Sales Comparison Method or Comparative Method**



According to (Wyatt, 2007, Betts & Ely,2005), one of the weaknesses of the sales comparison approach is to find significant information about the property of comparison when it comes to location-, technical-, legal- and economical characteristics and qualities. In the sales comparison method, it is not that easy to compare the subject property’s income variables (rent, rental area, what is included and excluded in terms of taxes etc) to comparables’ variables. The same problem is applied to operating and maintenance costs. It can be necessary to find out and give information on both real circumstances and circumstances adjusted to market conditions regarding rents, vacancies, operating and maintenance costs, and their estimated values must be openly showed in one’s calculations.

Hence, in sales comparison method, reconciliation involves consideration of the strengths and weaknesses of each element. A valuer uses judgment to determine the direction and magnitude of the effect that each element has on value and assesses its relative importance. When this has been done for each factor and for every comparable, the net adjustment for each is resolved. A qualitative approach is popular because it reflects the imperfect nature of the property market, but it is usual to combine quantitative and qualitative approaches when using the comparison method (Schulz, 2003; Wyatt, 2007).

### 5.4.2 The Income (Capitalization) Method

According Millington ( 2000), “Income method is usually applied for property that is capable of generating rental income and for which and investor is the most likely purchaser”. The income approach to value consists of methods, techniques, and mathematical procedures that a valuer uses to analyze a property’s capacity to generate benefits (i.e., usually the monetary benefits of income and reversion) and convert these benefits in to an indication of present value (Appraisal Institute, 2001).

Income methods are based on basic investment analysis methods, which do not mean that the sales comparison and the cost approaches are no good for valuing income properties. The problem with the sales comparison approach lies on the fact that income properties are not frequently traded, so the available sample becomes so small that it is very difficult to apply that method. Due to the characteristics of income properties, the cost approach is also difficult to be applied. In this case, the income approach is the most appropriate method to assessing this type of properties (Lusht, 1997; cited in Hungria-Garcia, 2004). The economic rationale of the income approach for existing properties is that no investor will pay more for a property than he/she will retrieve by holding the property.

In applying the income method, a property valuer assumes that the investor ultimately seeks a total return greater than or equal to the amount invested. Therefore, the investor's expected return consists of two components: full recovery of the amount invested, i.e., the return of capital and a reward for the assumption of risk, i.e., a return on invested capital. Because the returns from real estate may take a variety of forms, many rates, or measures of return, are used in capitalization. All measures of return can be categorized as either income rates, such as an overall capitalization rate<sup>30</sup> ( $R_o$ ) or equity capitalization rate<sup>31</sup> ( $R_E$ ), or discount rates, such as an effective interest rate (the rate of return on debt capital), yield rate (the rate used to convert future payments in to present value), or internal rate of return (IRR) (The-Appraisal-Institute, 2001).

According to Mott (1997), there are two recognised approaches to valuing a property using the income method: yield method and discounted cash-flow (DCF) method. Both calculate the present value of future economic benefits (Mott, 1997)

#### ▪ **The Yield Method**

According to Person (2003; cited in Hungria-Garcia, 2004), the yield method is based on a "perpetual capitalization" of forward-looking calculations of net operating income for the first years. The net operating income for the subject property is calculated out of the annual surpluses of rental payments discounting operational and maintenance costs (including property tax and eventual rent for leasehold site) drawn from the gross income. Payments regarding investments, stamp duty and other acquisition costs should not be taken into consideration in the net operating income calculation. The net operating income of year-one, that is, rents and operating costs for the first year underlie the entire calculation period (in principle, in perpetuity). The model does not include any exit value. The method is simple in its structure, but it holds a succession of problems that limits its usage.

The yield method:

$$Value = \frac{NOI}{\text{Intial Yield}}$$

Gordon growth model:

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<sup>30</sup> Overall capitalization rate ( $R_o$ ) (North American usage), all risks yield, commonwealth usage refers to an income rate for a total real property interest that reflects the relationship between a single year's net operating income and the total property price or value; used to convert net operating income into an indication of overall property value ( $R_o = I_o / V_o$ ).

<sup>31</sup> Equity capitalization rate ( $R_E$ ) refers to an income rate that reflects the relationship between a single year's cash flow expectancy and the equity investment; used to convert equity dividend into an equity value indication ; also called the cash on rate, cash flow rate, or equity dividend rate ( $R_E = \text{equity divided} / \text{equity invested}$ ) (Hungria-Garcia, 2004).

$$\text{Value} = \frac{\text{NOI, year 1}}{p-g} \quad \text{where,}$$

$$\text{NOI} = \text{normalized net operating income for year one}$$

$$p = \text{interest rate}$$

$$g = \text{growth rate (yield change in percentage)}$$

$$p-g = \text{yield}$$

**Source:** Persson (2003 cited in; Hungria-Garcia, 2004)

The yield method is mainly used to estimate the market value when valuing property. The formula for this method and the net capitalizing method, which is used to make estimation on the market value based on operating net and prices paid, are the same (Persson, 2003; cited in Hungria-Garcia, 2004).

Income capitalisation involves dividing either the contract rent or market rent (MR) by the all risk yield (ARY) to calculate a capital value. The magnitude of the all risk yield is estimated from comparable evidence of similar investment transactions. Any future growth in economic benefits (either rental income or capital value) is accounted for or implied by the choice of yield. The approach is therefore ‘growth-implicit’ in that it does not explicitly project the cash-flow beyond current contract rent or estimate of MR (Ball et al., 199; cited in Wyatt, 2007). The ARY technique relies on analysis of prices and rents achieved on recent comparable transactions to estimate an ARY for the subject property. The growth-implicit ARY is then used to capitalise an initial estimate of the cash flow.

#### ▪ **The Discounted Cash-Flow Method**

The Discounted Cash-Flow (DCF) Method is built on a present value estimation of operating net during a specific calculation period as well as a present value estimation of a residual value at the termination of the calculation period. This method is different from the yield method because it has two calculation periods instead of one. It has the eternity capitalization of the operating net but also a shorter period of normally 5-10 years (Persson, 2003; cited in; Hungria-Garcia, 2004).

$$PV = \sum_{t=1}^n \frac{NOI}{(1+p)^t} + \frac{Rn}{(1+p)^n} \quad \text{Where } R_n = \frac{NOI_{n+1}}{\text{exit yield}}$$

PV = present value

**Source:** (Persson, 2003 cited in; Hungria-Garcia, 2004).

According to Persson (2003; cited in Hungria-Garcia, 2004), in practice, valuations make use of cash-flow models with different objectives:

- Assessment of market value (market simulation)
- Consequence analysis of assessed market value
- Assessment of an individual yield rate

To better understand the usefulness of the cash-flow method it is absolutely necessary to distinguish the objective of the calculation. The only thing that can differ is the size of input variables, such as rent, operational and maintenance costs, discount rate, etc.

Discounted cash-flow (DCF) requires an explicit forecast of the cash-flow over a predefined time horizon. The cash-flow may consist of a rental income plus a reversion or resale value and is discounted at the target rate of

return (TRR) or discount rate. The DCF technique capitalises or, discounts the actual or estimated cash-flow at the investor's TRR. The DCF technique requires explicit assumptions, based on evidence, to be made regarding several factors but most importantly the TRR (which should cover the opportunity cost of investment capital plus perceived risk) and expected rental income growth. Essentially, the DCF technique removes the growth element from the all risk yield (ARY) and puts it in the cash-flow. As a result, it re-establishes the relationship between the TRR required from a property investment and those required from other investments. Instead of simply capitalising the current income (actual or estimated) at an ARY, the expected cash-flow, projected over a certain period of time at a rental growth rate, is discounted at a TRR (Millington, 2000; Wyatt, 2007).

It is interesting to note that the DCF analysis estimates a property present value in the same way investment analysis for other assets does: based on *expected future cash flows*. At first sight, the refinement of the DCF model gives the impression that accurate outputs will be given. However, the problem that arises in this model is exactly the role that expectations play. Future expectations always lead to uncertainty, as no one can predict the future. The assessed value, therefore, can be completely over- or underestimated, giving an incomplete picture of the liquidity of the asset during the assessed year.

In order to estimate the market value using a DCF method, it is important to input current data related to the subject property. This process allows input values to diverge from market-influenced conditions and, therefore, a realistic market adjustment can be done during the calculation period. The result makes it possible to control for market influence through the use of market ratios, such as the yield and the value per square meter.

The most difficult stage in the income method is the determination of yield requirement, which varies strongly according to the quality and location of the target. The requirements are also affected by the market situation and interest rate but due to the long-term nature of property investments the rental yield requirement varies less than the general interest rate (Lahdes, 1996; Motta & Endsley, 2003).

### **5.4.3 The Cost Method**

The cost method is used to value specialist properties<sup>32</sup> that are seldom sold because there is no clear market demand. Consequently, there is little or no comparable evidence. A property might be specialist because its use requires it to be constructed in a particular way, including highly production-specific manufacturing plants such as chemical works and oil refineries; public administration facilities such as prisons, schools and colleges, hospitals, town halls, art galleries and court facilities; and transport infrastructure such as airports and railway buildings, etc. (Vos & Have, 1996; Wyatt, 2007). Its economic rationale is that no a rational person will pay more for an existing property than it would cost to buy the land and to build a new building on it. However, given that construction of buildings needs time and that land for building purposes might not be immediately available, prices and costs will diverge in the short-run. The method is employed when the existing uses of these sorts of properties need to be valued for different purposes, for example, compulsory purchase and compensation. However, when these sorts of properties are offered for sale, perhaps because they are no longer required for their current use, the primary market is likely to be for alternative uses (Wyatt, 2007).

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<sup>32</sup> The cost value is calculated in special circumstances, where market is inexistent for special properties, in insurance context and in countries where the property market is not functional.

According to ADB (2007) the method does not actually calculate a market value. Instead, it calculates a replacement cost for the improvements that have been made to the land, typically in the form of buildings and ancillary man-made land uses such as car parks and the like. It is therefore fundamentally different from the valuation methods described so far. Because of an almost complete lack of comparable market transaction information the method seeks to estimate replacement cost rather than exchange price. It does not produce a market valuation (value-in-exchange) as such because cost relates to production rather than exchange, and it is often regarded as the method of last resort for this reason. The method involves assessing the value of the land in its existing use and adding the replacement cost of the building and other structures, adjusted for age and obsolescence. Mathematically, the method can be stated as follows:

Cost of new building (either an identical property or a modern equivalent)

– Disability allowance due to age and/or obsolescence

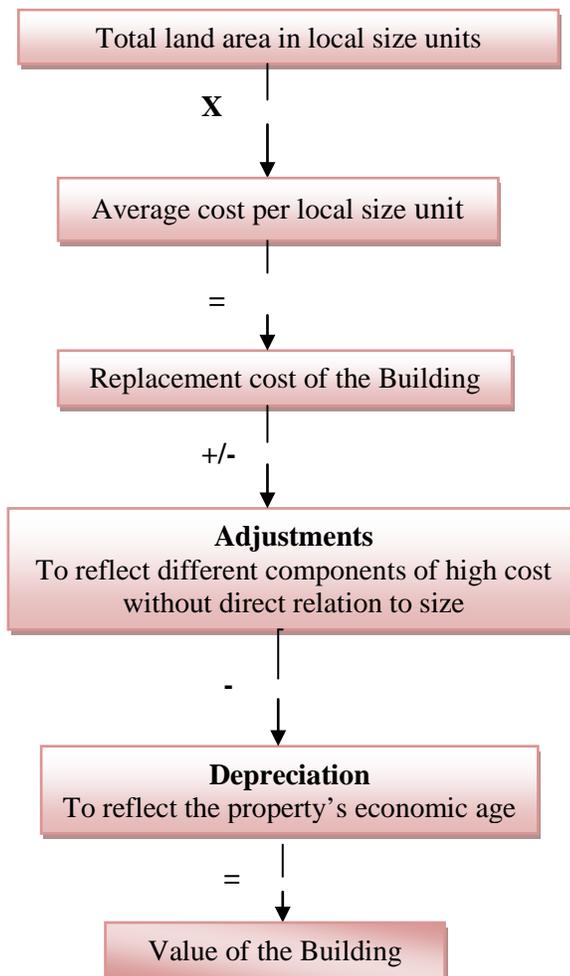
= Capital value of building

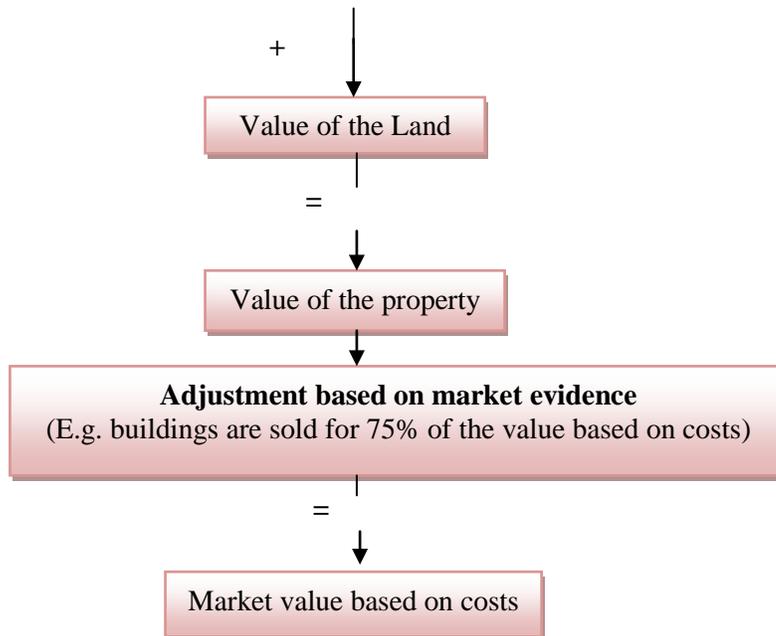
+ Value of land

= Value of property

This Mathematical expression of the cost method is also stated as follows based on the Appraisal Institute (2001).

**Figure 5-5: General Cost Approach**





Source: Appraisal Institute (2001)

The principle of substitution is basic to the cost approach. This principle affirms that a prudent buyer would pay no more for a property than the cost to acquire a similar site and construct improvements of equivalent desirability and utility without undue delay. Old properties can be substituted for the property being valued, and their value is also measured relative to the value of a new, optimal property. In short, the cost of property improvements on the effective date of the appraisal plus the accompanying land value provides a measure against which prices for similar improved properties may be judged.

#### 5.4.4 Final reconciliation and combinations of the methods

After having discussed the above internationally recognized valuation methods, the next question that comes immediately into mind is, which valuation method should be used?

Different valuation methods involve valuers making different assumptions and the use of different information, and the choice of one method instead of another can result in a different figure of value being produced. With the frequently changing economic and property scenarios of the recent years, the choice of the wrong valuation method or the careless application of a chosen method by the valuer could result in a widely wrong valuation figure being produced. It is therefore, stressed that a property valuer can determine the valuation method which is appropriate to value the property based upon the purpose and type of property to be valued. Millington (2000) explains in plain language why property valuers choose appropriate method when they value a property as follows:

Just as the skillful batsman chooses his strokes to suit such things as the condition of the pitch, the weather, the quality of the opposition and the state of the game, so in today's complex business world the valuer needs to be a careful and systematic analyst who chooses and applies a valuation method which is completely appropriate for the circumstances in which a valuation has to be made (Millington, 2000).

It is common usage for property valuers to value a property with more than one valuation method. This depends on property type and available information. If more than one method is used, then the valuer has to make a final reconciliation step to derive a final estimate of the market value. However, there exists no methodology on how to mix the different market values calculated by different approaches into one final market value. Once again, the reconciliation step depends solely on the expert judgement of the valuer (Schulz, 2003).

## ***5.5 Property valuation for expropriation and compensation***

### ***5.5.1 Introduction***

Governments and organizations all over the world that are responsible for undertaking utility networks, infrastructural development activities and other public sector development works may have a legal power to compulsorily acquire property for specific purposes. This might be to build a new road, a big dam, or to develop airport for example. Freehold, leasehold, and common hold interests in property can be compulsorily acquired by these acquiring authorities. Although the matter differs from country to country, if a property owner is affected due to compulsory acquisition, compensation can be claimed for any land taken, for injurious affection (severance) caused and for disturbance. The legal basis of the right to claim compensation in these respects may differ as the statutory regulations and circumstance prevailed in each country. “Proper valuation of and compensation for lost assets are crucially important counteractions to mitigate impoverishment risks for affected persons.”(Plimmer, 2008). A property owner forced to surrender land and / or attached properties must be kept in the same economic position as if the compulsory purchase had never happened. Thus, property owners will be compensated for the damage they suffer (ibid).

Valuation for expropriation involves both the total takings and partial takings. The taking for a public improvement may involve only a partial taking of real property interests, leaving a residue or remainder property. The remainder property may not be suitable economically for the present use, or may not be marketable “as is” for any use. In that case the property owner/ holder may be entitled to be compensated for the whole value of a property. Whereas the owner retains some land which is economically suitable for use but its value drops, he/ she is entitled to be compensated for this drop whether it is caused by severance of the two parts of land or by injurious affection to the retained land (Sayce et al., 2006) . An owner/ holder of a property will also be entitled to be compensated for the losses that are a consequence of being compelled to vacate the land, known as disturbance. It should also be noted that although it is common practice to talk about land being acquired or the value of land being affected by compulsory acquisition and public works, the legislation and therefore valuation rules apply to property interests in general. The acquiring authority sets out the nature and extent of the property interest to be acquired in a ‘notice to treat’ which may be served on owners of all property interests except holders of periodic tenancies of a year or less (Sayce et al., 2006).

Property valuers are often appointed by expropriators or expropriatees to estimate the value of the property expropriated and to estimate any diminution/betterment in the value of property resulting from either construction activity or use of the finished development. “Most countries around the world have constitutional and/ or statutory standards that call for “market value” or “fair market value” compensation for lost assets that the state expropriates” (Wyatt, 2007). Since each country’s statute refers to their own definition of market value, before trying to value the property, property valuers are required to know the laws correctly prevailed in each country.

The range of valuation problems can cover matters of access, existing versus new highways, split-up and divided land holdings, or even further, a situation where taking divides real property interests in a manner wherein a remainder is landlocked.

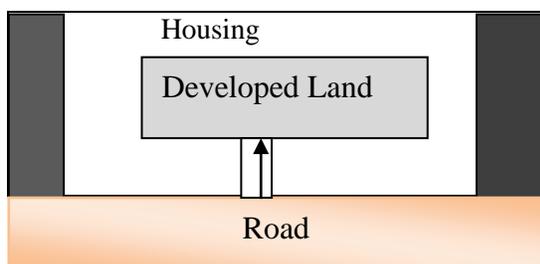
The purpose of this section, therefore, is to identify and discuss the main consequential losses suffered by the disposed owner as a result of expropriation as well as the types of property valuation methods that will be applied to calculate compensation to be paid by acquiring authorities.

### 5.5.2 Compensation for land taken

Most land transactions are carried out on the basis of open market value. This rule provides a clearly understood basis for assessing the monetary compensation, which is directly related to market evidence. Compensation following a compulsory acquisition of land is based on the principle of equivalence. This means that a land owner/ holder should be no worse off in financial terms after the acquisition than he / she was before. Likewise he/ she should not be any better off (Plimmer, 2008). This is because the effects of the compulsory purchase order on the value of a property are ignored when assessing compensation, it is necessary to value the land on the basis of its open market value without any increase or decrease attributable to the scheme of development which underlies the compulsory purchase order. Essentially, the property owner is entitled to compensation equivalent to the price that the land would sell for in the open market assuming there had been no compulsory acquisition. The valuation should therefore be to market value and incorporates the assumption that the seller is willing to sell despite the rather obvious fact that this is not the case. In exceptional circumstances when dealing with unusual or specialized land for which there is no general market, compensation may be assessed by considering the cost of providing an “equivalent reinstatement” of the property.

Development value may be considered alongside existing use value but, in many compulsory purchase cases, an impending acquisition will mean that no planning permission for development will be forthcoming (Denyer-Green, 1994). Therefore, it is necessary to make certain planning assumptions so that an accurate assessment of development value can be made. The possibility of marriage value, which arises from the merger of two or more physical properties or two or more legal interests within the same property, can also be taken into account when estimating market value. For example, if the area that connects the road to the development land in Figure 5.6 is being compulsorily acquired in order to provide access to the development land behind, the owner is entitled to a percentage of the development value of developed land. If the land for development is being acquired too but can only be developed if satisfactory access can be provided, the market value will be the full development value less the estimated cost of acquiring the necessary additional land (Denyer-Green, 1994).

**Figure 5-6: Development value of Land**



Sources: Wyatt (2007).

According to Plimmer (2008), no value can be attributed to illegal uses. If there is no market on which to base an estimate of existing use value then the basis of valuation is 'equivalent reinstatement' unless development value is higher. Because the acquisition is compulsory the owner has the right to disturbance compensation and certain other payments in addition to the value of the land acquired.

### **5.5.3 Compensation for severance and injurious affection**

According to Wyatt (2007), where only part of an owner's / holder's property is taken, compensation for severance of and injurious affection<sup>33</sup> to the part retained may be allowed. Compensation for severance is based on the reduction in value of the retained land, which need not be contiguous but must be in the same ownership and functionally related. It is necessary to consider the principal losses likely to be suffered in connection with the land formerly "held with" the land taken and the bases on which claims for compensation should be prepared. Compensation where part of a property is taken falls under three main heads: land taken, severance and other injurious affection to land held therewith; other incidental losses resulting from the compulsory taking. Other matters which may have to be considered are accommodation works<sup>34</sup>, and apportionment of rents (Johnson, Davies, & Shapiro, 2000). The valuer must be careful to include in the claim for compensation any injury likely to be caused to the rest of the property by the authorized user of the works. Every head of damage which can reasonably be anticipated should be included in the claim, since no further claim can be made later for damage which might have been foreseen at the time when the land was taken

The claim for depreciation in value of the land retained will be based on its market value which will take into account the benefit of any actual planning permission already given. It may be permissible, in some cases, to consider the effect on value of the possibility that planning permission might have been given, having regard to the terms of the development plan and other circumstances. But no assumptions of planning permission can be made, as in the case of land taken (Johnson et al., 2000). The effect of taking part is to destroy any marriage value that existed in the claimant's total ownership. The identification and quantification of marriage value is something that is particularly relevant in the agricultural land market. According to Prag (1999; cited in Gibbard, 2001 ), farms being traversed historically by canals, railways, and more recently, new roads, all leaving retained lands with difficult, if not insurmountable access problems.

The question of marriage value raises some pertinent theoretical valuation issues. Consider the example of two 500 hectares of arable farms adjacent to each other. The value of each is 2000 Birr per hectare. Suppose that a 100 hectare parcel comes on the market adjacent to both of them. Both of the farmers might be prepared to bid up to 2500 Birr per hectare to secure the additional land and benefit from the increased economies of scale that the

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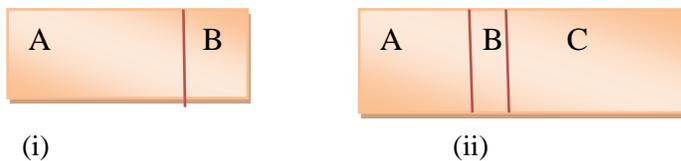
<sup>33</sup> Injurious affection is a loss in value to the remainder property as a result of a partial taking. This includes land taking, loss of parking, loss of access, changes in shape, loss of exposure and visibility etc. Land owners may also be able to substantiate an injurious affection claim even where no land is taken. For instance homeowners may have a claim for loss in value when their properties are "blighted" by the construction (and subsequent use of ) a new road nearby (Gibbard, 2001)

<sup>34</sup> Acquiring authorities may be willing to carry out various works of accommodation in order to mitigate the effect of their scheme on the landowner. Such accommodation works may reduce the impact of severance, for example fencing, bridges and underpass, rearrangement of private access roads and tracks, or may be aimed at reducing injurious affection, for example noise barriers. Compensation for severance and injurious affection will then be assessed on the reduction in land value on the basis that the works are carried out.

marriage produces. The resultant 600 hectare of farm land may now be worth a premium per hectare, reflecting marriage value.

The presence of a road or some other scheme bisecting land invariably results in increased costs of working the holding, due to greater travelling time, and often more irregular shaped, and smaller holding. A severance claim however requires the consideration of the diminution in land values: it is not suffice to capitalize the increased costs of working (Gibbard, 2001). Essentially what is required is a ‘before and after’ valuation of the retained land, although it is recognized (Denyer-Green, 1994) that this may well give a lower value, and not fully reflect the full cost of the severance to the claimant. The main kinds of severance can perhaps be best understood diagrammatically as follows:

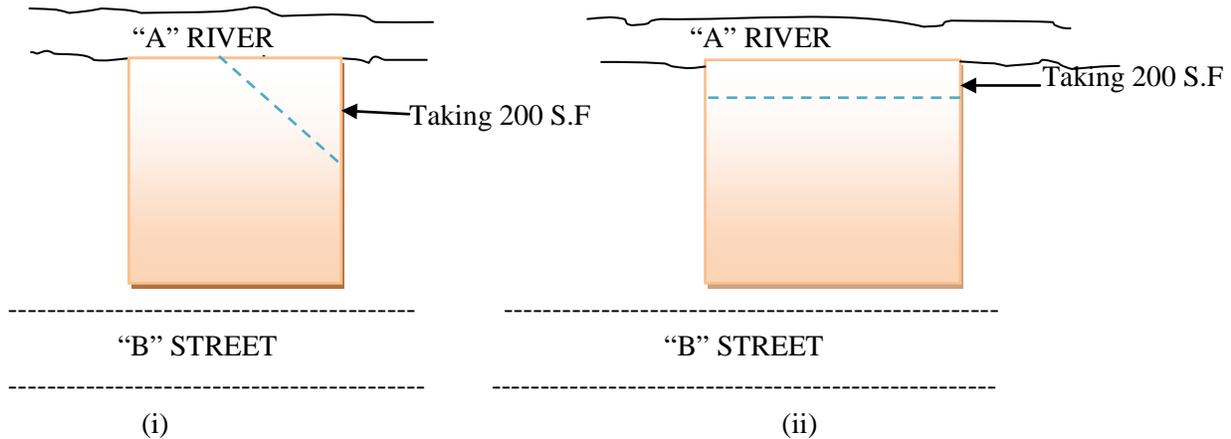
**Figure 5-7: Types of Severance due to compulsory acquisition**



Suppose, land “B” is acquired from the owner and severed from land “A” in the first case (i) and from lands “A” and “C” in the second case (ii), which the owner retains.

By the construction of a road across the property (second case ii), or where the area of a land is significantly reduced in size by the taking of part even though the part remaining is not split up (as case i). Such severance is likely to result in increased working costs. For example, if a portion of land is cutoff by severance of intervening land there will probably be an increase in the cost of all the normal operations and supervision necessitated by the property owner. The geography of the taking; that is, the consequence of a partial taking as affecting specific and distinct property rights, thus reflecting the utility and consequent productivity and marketability of remainder parcels of land. The following diagrams illustrate these facts.

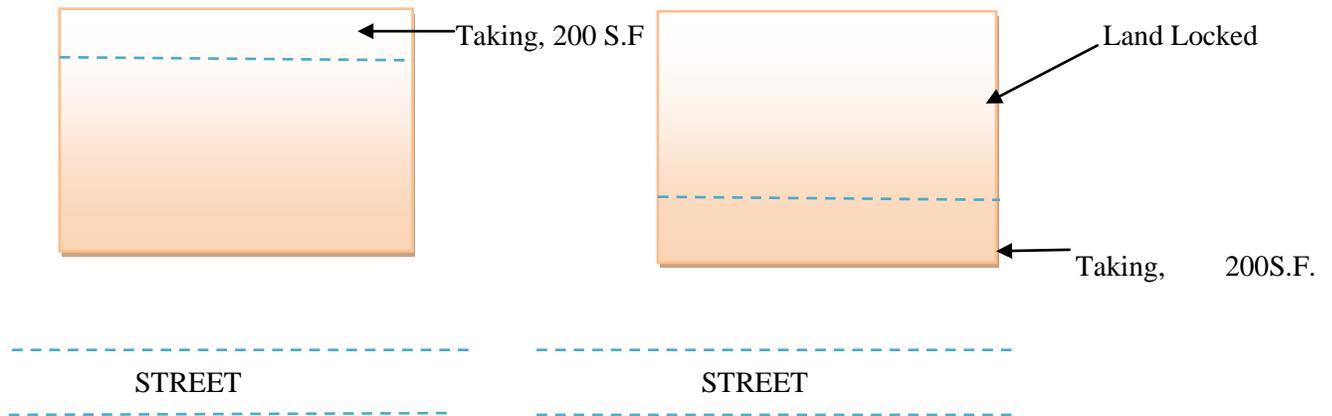
**Figure 5 -8: The impact of the geography of the taking on value of remainder**



The Figure 5.8 shows identical physical-quantity takings, but ones entirely different from a utility-functional aspect of the remainders. In the first case, river frontage and access remains; in the second case all access to the river is acquired. Actual or potential use of each site would dictate the degree of damages imputable as a

consequence of the taking based on the highest and best use, both before and after. The taking of the first and the second case affect the value of the retained property differently although the same amount of land size is compulsorily acquired. Thus, property valuers should take in to account the extent and degree of damages caused by expropriation from the geography of the taking point of view when they value the amount of compensation.

**Figure 5-9: Land locked remainders**



The two situations in the figure 5.9 give rise to two distinct valuation premises. In the first instance, aside from zoning or best use, would be the back land theory of value of the part taken, plus damages, if any, to the remainder. Here is an instance where a severance and partial taking may not cause serious damage to the remainder because it is still accessible to road. However, the second case poses somewhat different problems. The remainder is landlocked and has only nominal value. Hence, the amount of compensation that has to be paid should be valued taking in to consideration the extent and degree of damage and the needed additional cost to search alternative routes to the main street.

As it has been discussed above, the extent of loss from severance will naturally vary greatly according to the nature of the undertaking and other circumstance, for example, whether a new road is situated on a level with the land remaining or is put on an embankment or viaduct or in a cutting or tunnel, and whether or not “accommodation works” such as a private bridge or “underpass” are carried out to enable the owner to cross the road.

### ***5.5.4 Disturbance compensation***

In addition to being compensated for the value of the property taken and severance and injurious affection, the affected people are also entitled to the losses occasioned by being “disturbed” from property. When an owner is forced either to sell or leave (vacate) land, there are other losses which are suffered. Compensation for these other losses is referred to as “disturbance”, to reflect the fact that owners and occupiers are disturbed in their occupation of land (Johnson et al., 2000; Plimmer, 2008).

According to Plimmer (2008), “Disturbance essentially comprises any other consequential losses which are the reasonable and probable result of the acquisition and which will not be directly reflected in the assessment of the value of the property taken. Such disturbance compensation is based on the principal principle that the owner shall

be paid neither less nor more than his loss”. It is generally accepted that if an owner can demonstrate any loss as the result of being forced to vacate land, that loss will be compensated by the acquiring authority. Disturbance compensation is usually payable in respect of any item that is not too remote and is a natural and reasonable consequence of the acquisition of the owner’s interest (ibid).

### 5.5.5 Property Valuation methods for expropriation and compensation

Johnson et al. (2000) suggested that the methods employed to estimate the value of the property expropriated are not different from those that adopted in other market valuations. The main rule for the assessment of compensation for the property expropriated is the market value (Denyer-Green, 1994; Kalbro, 2001). “Property valuation is typically achieved through one or both of two basic approaches: comparable sales approach, and / or capitalization or income approach.” (Johnson et al., 2000). Care must be exercised when selecting comparable evidence because transactions would have taken place in the ‘scheme’ world. If the valuer feels that the scheme has influenced the evidence obtained from these comparables then they may need to be adjusted to give a value in the ‘no scheme’ world. Marshall and Williamson (1996, cited in Wyatt, 2007) noted that the basic thrust of the legislation is to ensure that the acquiring authority is not required to pay for any benefit which its own scheme creates whilst ensuring that the claimant does not lose out if the scheme causes a drop in value of the interest acquired.

The two recognized valuation approaches for partial takings are the before and after method and the summation or aggregate method (Canadian-property-valuation, 2009).

#### *The before and after method*

This is simply the difference in value between the before and after conditions. When an owner claims compensation for the decrease in value of the retained property obviously the value of the retained property has to be estimated. The values of this part of the property before and after the taking need to be compared. To estimate these figures, a valuer would value the property as it was before the compulsory acquisition and then value the same property on completion of the works. The difference between the before and after valuations represents the drop in value. If the value of the property taken is then deducted from difference between the before and after valuations, this gives the compensation for severance and injurious affection (Denyer-Green, 1994; Gdesz, 2008). Thus for example:

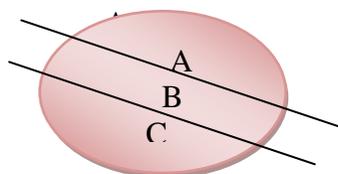
Value of the owner’s interest in the property prior to expropriation	\$1,000, 000
Value of the owner’s interest in the property after Expropriation and assuming the development completed	\$700,000
Owner’s loss, which includes both the value of property taken and the depreciation to the land retained	\$200,000

Hence, the owner is entitled to compensation of \$ 200,000, but this amount can be split in to two. The value of the property taken and the depreciation to the property retained. The valuer calculates the “before and after” valuations (as shown above) and arrives at the loss of (compensation claimed) \$ 200,000. The value of the land taken can be assessed before acquisition and after acquisition and then it is possible to know the depreciated value

of the land retained. That is the overall compensation claimed= the value of property taken + the depreciated value of the property retained.

According to Wiiala (1966; cited in Viitanen, 2002) the full compensation shall cover the objective value (market value) of the expropriated property, the depreciation of the value of the retaining property (severance), and other damages and costs which will weaken the financial situation of the expropriated owner. Baum & Sams (1997) argued that in order for the claimant to be properly compensated his/her severance and injurious affection compensation should be calculable by the following equation:

Injurious affection compensation = value of whole holding before- Value of retained property after plus compensation for property taken. Thus, in the diagram below, Land “B” is acquired from the owner and severed from lands “A” and “C”, injurious affection compensation (including severance) should equal  $(A+B+C \text{ before}) - (A+C \text{ after} + \text{compensation for B})$



The use of before and after valuation in this way suggest that the strip of land taken should be valued not as part of the whole land ,but as a distinct strip of land, thereby ignoring any element of value that might attach to it through being part of a larger parcel. As a consequence, it is probably only safe (Baum & Sams, 1997) to apply the before and after valuation to the retained land in order to calculate injurious affection, that is  $(A+C) \text{ before} - (A+C) \text{ after}$ . According to Baum & Sams (1997), land to be taken, and land to be retained should be distinguished throughout the valuation process. In this regard the valuation technique is based on estimating the difference in the value of the whole land before taking and the value of the retained land taking into consideration any effect the relevant project may have on that value. This method, in fact, leads to marginalizing the betterment problem since it ignores the enhancement of the retained land in calculating compensation for psychically taken land (Gdesz, 2008).

### **The summation or aggregate method**

This is the value of the part taken, plus any damages, less special benefits. It is used in many jurisdictions and breaks out the values of the part taken, damages and special benefits. It favors the property owner, since the owner is always guaranteed the value of the part taken as a form of compensation (Canadian-property-valuation, 2009). In the process of calculating compensation the increase in the value of the retained property is taken into consideration. The calculated amount is then deducted from compensation for the expropriated property as well as for severance and injurious affection. Consequently, the enhancement of the retained property may fully offset the value of the taken property. The value of the payment received by the owner added to the value of the remaining property after the taking, and enhanced by the special benefits, is equivalent to the value of the owner’s property prior to the taking (Gdesz, 2008).

**To conclude**, property valuations are needed for many different purposes and different valuation methods involve valuers making different assumptions and the use of different information. The choice of one method instead of another can result in a different figure of value being produced. It is therefore critical that both valuer and client are clear enough about which value is to be assessed and which valuation method is to be applied and why. As it has been shown in table 5.1, and discussed in section 5.1, valuations are required in connection with many activities. The diversity of property makes valuation a difficult task, no two properties are ever the same, yet valuation relies on the comparison of properties to give an indication of value. With the frequently changing economic and property scenarios of the recent years, the choice of the wrong valuation method or the careless application of a chosen method by the valuer could result in a widely wrong valuation figure being produced. It is therefore, stressed that a property valuer can determine the valuation method which is appropriate to value the property based upon the purpose and type of property to be valued. To do this, the valuer must be aware of, and be able to quantify, differences in type, location, legal interest, quality and the state of the market.

Property valuation for expropriation is no exception in this regard. Different valuation methods may be used to value compulsorily acquired properties depending up on the type and function of acquired properties. Hence, a property valuer may consider the type of and purpose of property and the type and extent of lose to be valued for compensation. Moreover, careful consideration to ownership details, given at an early stage, may enhance the basis of claims for depreciation of retained property. In this regard, careful consideration to accommodation works can assist in the mitigation of the harmful effects of public works, and may prove more beneficial to property owners than monetary compensation claims.

## ***PART III: THE LEGAL SYSTEM IN LAND AND RELATED MATTERS***

### ***CHAPTER SIX: LAND TENURE SYSTEM AND PROPERTY RIGHTS IN ETHIOPIA***

#### ***6.1 Introduction***

The land tenure system of Ethiopia<sup>35</sup> is believed to be the result of social, political and economic interactions evolving over centuries. A land tenure system encompasses far more than a set of legal statutes, customary rules, and administrative practices. It also encompasses the ways land-based resources are used, how they are categorized, the process and strategies through which access to them is acquired, maintained, and lost. In addition, it includes meanings, values, and narratives associated with land, insofar as they shape discourse and affect outcomes of contestations over access to land and the rights and privileges vested in it (Hoben, 1973).

Despite, Ethiopia has become one of the last and least developed countries in Africa; it has gone through a rich experience of different landholding systems over the last one hundred years (Gebre, 1994). Land tenure systems vary according to the culture of societies, however, it could be concluded that the evolution of land tenure systems in nearly all societies has passed through:

- Periods of collective ownership of land where everybody has equal right and access to all land (at a time when the land size in proportion to the population was high and limitation was meaningless).
- Periods of communal ownership where a clan owns the land and all members have the right to use particular piece of land allocated by the clan heads, land rights limited to use rights only.
- Periods of partial private ownership and partial communal ownership- with a right to transfer the privately held land for a consideration of various kinds.
- Periods of public ownership-individuals have use rights either freely or through the payment of rent (lease hold system) and
- Periods of private ownership of land (Gebre, 1994).

The periods sketched above may not be linear; a society may have a mixed land tenure system operating concurrently. Moreover the ramification is on general terms each culture has had its own variations. The case of Ethiopian land tenure system is not an exception. Leaving aside the complexities and differences that come from the length of historical periods, the Ethiopian urban and rural land tenure system and property rights could be categorized into three broad periods:

- Land Tenure system and property rights during the Imperial time (before 1975)
- Land tenure system and property rights during the Derg period (1975-1991)
- Land Tenure system and property rights since 1991 to present

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<sup>35</sup> According to the legal tradition of Ethiopia, all land in the country was the property of the state. Only the state had the absolute rights of “ownership.” That is, the right to dispose off and revoke land on temporary or permanent basis. With Emperor Menilik’s drive for formation of feudal empire all conquered lands become personal property of the emperor (Gebre, 1994). However, since then, a number of changes in land tenure system have occurred. In spite of regional variations, the changes towards private ownership of land by faithful followers of the emperor, including the nobility, governors, the church and clergymen. Such principle of private ownership of both rural and urban lands was sustained (constitutionally) and continue to operate throughout the region of Emperor HaileSellasie (ibid, pp.279-283).

These three periods have distinctive characteristics. The first period was predominantly communal ownership mixed with private ownership with the emperor or regional chiefs having supreme power over land. The second period is characterized by public ownership of land and use rights for citizens without limit to the period of holding, while the third and recent period combines public ownership with lease hold rights.

## ***6.2 Land tenure system and property rights: pre-1975***

Ethiopia is a country of long history with varying land size under the control of the central government at different periods. Historical accounts suggest the presence of different tenure systems in different parts of the country; however, the central stress is the power of the emperors and the regional chiefs who have had supreme powers to grant or disown (WUB, 2004). It is generally acknowledged that the pre-1975 land tenure system in Ethiopia was one of the most complex tenure systems in the world and had not been thoroughly studied<sup>36</sup>. According to Joireman (2000, cited in, EEA, 2002), the Ethiopian empire accommodated a land tenure system that is described as one of the most complex compilations of different land use systems in Africa. The country's geographical, ethnic and cultural diversity and its historical background were mentioned among those factors that produced highly differential forms of land utilization and ownership. The complex nature of that system was also noted as playing a major part in hindering any serious progress towards a meaningful reform of the system. These difficulties might have also resulted in a variety of classifications and approaches used to describe the then land tenure system of the country. Among others, rist / kinship, communal, diessa/village, private, state, church, and other land tenure designations were used. However, the most commonly recognized tenure types were rist/kinship, private, church and state holding systems (EEA, 2002).

In pre – 20th century Ethiopia, there were no rules for the private ownership of land, the Emperor / kings could take or give it away as they wished and hence there was no rules of expropriation, valuation and compensation. But, through time significant changes have indeed taken place over the first three quarters of this century in terms of land tenure system. The process of absolutization of rist<sup>37</sup> started in the Menelik era and was completed in the era of HaileSelassie. In January 1891, Menelik decreed that whatever the crimes you commit, your money should be confiscated and not your land, this pleased very much the nobility and the army (Gebre, 1994). In 1907, in the very first session of the first council of ministers: if a person committed crime, his land should not be confiscated; rather he should pay in money or in cattle. But if he committed homicide or less Majesty his rist and Maret (land he bought) should be confiscated. The decree does not stop here, and it goes to regulate inheritance of land. As article 75 of the constitution of 1931: it is provided by law that the Mesafent, governors and any other Ethiopian would not have their rist, which they own or which they will buy confiscated. They would be punished by the law. This provision removed a major condition of rist which made the rist form of ownership very close to absolute, private ownership.

All this shows that in the imperial era, the Ethiopian land policy used rist as a mechanism for ensuring loyalty and obedience to the law, as well as getting certain service (military or otherwise).The conditionality was maintained by the state. But, with changing times that mechanism became a hindrance. As the awaj (decree) of 1941 in which

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<sup>36</sup> Sources like Dessalegn, Cohen and Weingraub,1975 are very important in understanding the pre-1975 land tenure system in Ethiopia because they have extensively referred to, summarized, and analyzed previous studies

<sup>37</sup> Rist meant permanent, heritable and conditional ownership of land. Rist was subject to alienation, alienation in the legal sense of the word ( transfer of ownership of property from one person to another ) in the event of failure (Bekele, 1995).

service obligations attached to land were abolished. The owner was simply required to pay taxes. This process coincides with, and is a reflection of, a parallel process the increasing westernization of the Ethiopian state and the penetration of capitalism in to the country. This was a progressive development which HaileSelassie and the men around him pioneered and guided. It was progressive in the sense that it guaranteed absolute, private ownership of land which is the most important aspects of property rights (Feder & Noronha, 1987; Jaffe & Louziotis, 1996).

Following the establishment of Addis Ababa as the permanent capital of Ethiopia in 1886, Emperor Menilek II granted large tracts of land to the aristocracy. In November 1907 a new urban land decree was issued. With this decree, through a systematic land registration and issuance of title deeds a significant step towards the legal recognition of private ownership of urban land and the right attached to it (sell, transfer, use for collateral, mortgage, get compensation in case the land is needed for public purpose etc) was made for the first time in the country. The legal recognition of private ownership of urban land for the first time through the systematic land registration and issuance of title deeds was a major step towards the privatization of urban land. Describing the significance of the new urban land decree, once more Pankhurst states: “The city's system of land tenure underwent important change ... when temporary possession was transformed in to permanent occupation, the principle of more or less inalienable ownership of land being for the first time officially recognized (Pankhurst & Piguet, 2004). The registration of urban land and the granting of land charters as of 1907 removed the air of impermanence and insecurity that had constantly hung over Addis Ababa.” (Zewde, 1984).

The principle of private ownership of urban land, which was laid down by king Menelik at the beginning of the 20th century, was further strengthened during the reign of HaileSelassie in its first constitution of 1930 (chap. 8, article 74 - 76) and in the revised constitution of 1955. In the interest of the public, however, the government was given the right to dispossess private owners for the construction of hospitals, schools, churches, markets, roads, etc. by paying compensation or giving replacement to the owners (Gebre, 1994). The right of ownership and disposal of properties was respected and recognized in article 44 of the revised constitution of 1955. The right to own and dispose of property was given legal recognition in several articles of the civil code of Ethiopia. The Ethiopian legal system (1960 civil code) introduces the mandatory legal procedures to assure participatory and transparent process of expropriation and compensation. More specifically, article 1465(1) provides that the declaration of public utility shall not be made until the public interest has been consulted. Sub article (2) also states that any interested party may in the course of such inquiry express his (her) views or criticize the contemplated project.

However, it was not clearly stated how the expropriated land and attached property was valued and compensated. There was no clear valuation methodology for land expropriation for different purposes. On the other hand, as stated by FAO Land tenure studies (No.10, 2008), the system of valuation had to be fair and transparent and it had to be based on market value. It means that the valuation has to be far from the politics as possible. However, in the emperor era, few land lords; regional chiefs and crown became private owners of the large tracts of land and hence valuation and compensation was not made at the principle of market value. On the one hand these land owners were politically supporters of the king and on the other hand the government had a power to take the land even without any compensation if the land is needed for public purpose. Thus, valuation and compensation were not made in such a way that the buyers and sellers are genuinely interacting. The problem here was not only the absence of clear valuation and compensation procedures but also the term ‘public purposes’ was not defined explicitly and clearly.

The land tenure system of the Imperial regime was largely considered as a hindrance to the country's development in general. It was largely considered as the most important cause of political grievances that led to the overthrow of the regime. Institutional inadequacy –lack of necessary legal framework, absolute arbitrary control of land rights, and lack of well organized and transparent land administration had characterized the imperial Ethiopian government's land tenure system.

### ***6.3 Land tenure system and property rights during the Derg regime (1975-1991)***

In early 1974 the Imperial regime was shaken by a series of mass popular protests, occurring first in the major urban areas but latter spreading to the country side. The absolute monopoly of urban land and houses by few landlords and the lack of access by the majority, coupled with other socio-economic and political discontents was one of the driving forces that led to the 1974 socialist revolution of Ethiopia and resulted in the fall of the emperor era in Ethiopia. After the fall of the Imperial regime, one of the radical measures that was taken by the revolutionary government of Ethiopia, which came to be known as the Derg<sup>38</sup>, was the radical land reform which abolished all customary and formal rights to land and vested in the state the power to redefine property rights and access to land (Rahmato, 2009). The socialist government of Ethiopia, however, did not issue laws that deal about expropriation and compensation rather it applied expropriation process on previous land and house owners without paying compensation in the name of justice and equity income distribution. This violates the basic human and property rights of property owners (see box 6.1).

#### **Box 6-1: Basic human and Property rights in the process of expropriation**

##### **Basic human and property rights in the process of expropriation**

The Universal Declaration of Human Rights (Article 17) provides that “everyone has the right to own property alone as well as in association with others” and that no one shall be arbitrarily deprived of his property. The American Convention on Human Rights adopted at the Inter-American Specialized conference on Human Rights, San Jose, Costa Rica, 1969 (Article 21 Right to Property):

“Everyone has the right to the use and enjoyment of his property. The law may subordinate such use and enjoyment to the interest of society. No one shall be deprived of his property except upon payment of just compensation, for reasons of public utility or social interest, and in the cases and according to the forms established by law”

<sup>38</sup> “Derg” was a military Junta that came to power in Ethiopia following the ousting of the last King-Emperor Haile Selassie. Derg, which means ‘Committee’ or ‘Council’ in Ge’ez (the Ethiopian Orthodox Church language), is the short name of the Coordinating Committee of the Armed Forces, Police, and Territorial Army, a committee of junior military officers which ruled the country from 1974-1991.’ See Getachew Kibreth (2001), ‘The Fate of Andromeda: Ethiopia and the Superpowers’, page 7; immediately after assuming power, it had issued a proclamation entitled ‘A Proclamation to Provide for the Public Ownership of Rural Lands’, Proclamation No. 31, 1975, Negarit Gazeta No. 34, (4 March 1975) and ‘A Proclamation to Provide for Public Ownership of Urban Land’, Proc. No. 47, Negarit Gazeta Year 34, No. 26 which abolished the previously heterogeneous land tenure system that prevailed in the country for centuries in favor of a homogenous public ownership of all lands, undertook extensive distribution and redistribution measures and nationalized all privately owned farm lands and extra-houses without compensation (Mekuria, 2009)

The African Charter on Human and Peoples 'Rights, 1986, Article 14 stated that the right to property shall be guaranteed. It may only be encroached upon in the interest of public need or in the general interest of the community and in accordance with the provisions of appropriate laws.”

The European Convention on Human Rights and Fundamental Freedoms, 1950 (Article 8, first protocol): “Every natural or legal person is entitled to the peaceful enjoyment of his possessions .No one shall be deprived of his possession except in the public interest and subject to the conditions provided for by law and by the general principles of international law. The preceding provisions shall not, however, in any way impair the right of a state to enforce such laws as it deems necessary to the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties” (FAO, 2008).

The core of the March 1975 legislation is the provision that gives the state, as the trustee of the people, the right of ownership of all rural land and other resources and that prohibits private ownership of land. The basic provisions of the proclamation (proclamationNo.31/1975) include: public ownership of all rural lands, distribution of private land to the tiller, prohibition of transfer of use rights by sale, exchange, succession, mortgage or lease, except upon death and only to the wife, husband, or minor children of the deceased. This proclamation declared all rural land to be the property of the state Article (3) –without any compensation to previous rights holders – and prohibited all tenancy relations Article 4(5). Rights holders were allowed only use rights over the land they were cultivating which they could not sell, mortgage, lease or contract out. Moreover, only under certain circumstances could the holder pass it on to siblings as the legislation provided that young peasants who came of age had the right to a plot of land in their kebele<sup>39</sup>. Rights to land thus came to be rights of usufruct (Rahmato, 2009).The land reform of 1975 did, therefore, abolished not only the system of land ownership in the south, east, and west of the country but also the rist system of the north as well as any remnants of the Gult<sup>40</sup> system (Bekele, 1995)

The Derg justified the land reform program on two principles: (1) historical justice – to overcome the exploitative character of Imperial agrarian relations; and (2) justice as egalitarianism – providing each farm family with equal access to cultivation land according to their needs. The Proclamation made a number of provisions. Farmers were not allowed to transfer their usufruct rights by sale, mortgage, or lease, and bequeathing of allocated usufruct rights was limited to primary family members like spouse and children upon death of the rights holder. The plot size per family was restricted to a maximum of 10 hectares, and the use of hired agricultural labor was prohibited (Article 5). The reform was the first uniform tenure system imposed upon Ethiopia as a whole. All property belonging to landlords, gentry and landed nobility alike, was expropriated without compensation (Crewtt, A, & B, 2008).

The socialist government of Ethiopia has taken radical measures in urban areas as well. In order to grant equally the socio-economic and political rights and other opportunities afforded by urban centers to the mass, the provisional military government felt it necessary to bring urban land and extra housing under government ownership and control. Effective from August 7th 1975, and with no compensation payable, all land became public land vested in the state. The transfer of land through sales, lease, mortgage, or donation was prohibited as of this date.

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<sup>39</sup> The lowest administrative unit in the Ethiopian Administrative structure

<sup>40</sup> Gult rights over land were given to members of the ruling elite as a reward for loyal services to their lord, and to religious institutions as endowments. The individual or institution that held land as Gult had the right to collect taxes from those who farmed it, and also had judicial and administrative authority over those who lived on it

The objective of the proclamation was mainly attributed to getting rid of those social classes for whom the land and the rental income of houses was the source of power influence and wealth, while allowing the under privileged classes to acquire more easily plots of land and for the state to better manage urban development (Galaup, Tigabu, & Lakew, 1995). Though the objective of the proclamation was to access urban land to the masses, the effect was much worse than before. The transfer of land rights was highly restricted because transfer through sales, lease, exchange, or mortgage was prohibited and inheritance was severely restricted. Tenure security was further weakened due to endless control of the government on land ownership (ARD, 2004). The proclamation which was issued in August 1975 was the major legislation defining the urban land and house policy of the Dreg regime (the socialist government); several others were known to the public in subsequent years; indicating that the issue of urban land and housing was one of the major concerns of the socialist government administration.

During the socialist government of Ethiopia, due to the absence of proper title and land rights registration system, it was very difficult to identify the legal and secured owner of the property. Because of these and other unmentioned problems, the land holders could not be able to get fair and reasonable compensation for the property taken by the government. The government on the one hand expropriated the property owners without compensation and/ or replacement and on the other hand the satisfaction of the housing needs of the majority of the urban population could not be adequately addressed. Particularly the low-income groups who expected better administration in the after math of the popular uprising of 1974 in actual fact became worse off.

#### ***6.4 Land tenure system and property rights since 1991 to present***

In the present government (since 1991), similar to the previous government, land is owned publicly. But property rights and payable of compensation for properties compulsorily taken are enacted in the constitution, expropriation and payment of compensation and land administration laws. The 1995 Ethiopian Constitution draws a broad framework for land policy in the country and enshrines the concept of public land ownership and there are no private property rights in land. However, the present government has formulated articles in the constitution and proclamations that can address property holders' right, especially land use rights. Article 40 of the Constitution provides the right to property in general. First, it provides the right to ownership of private property relating to tangible and intangible goods which, subject to the limitations to be imposed by law in the interest of the public, includes the right to acquire, use and transfer (Article 40(1 & 2), Secondly, and more importantly, Article 40 (3-8) of the Constitution enunciates on land rights. Reaffirming one of the socialist tenets of the previous regime, the current Constitution has also declared public ownership of rural and urban land while use right is reserved to individuals. The 1995 Constitution declared land to be the property of the State and the People of Ethiopia, over which individuals have only usufruct rights<sup>41</sup>. Article 40(7) of the Constitution also specifies the rights to the compensation payments for investment on land in case the "right to use expires," Every Ethiopian shall have the full right to the immovable property he builds and to the permanent improvements he brings about on the land by his labor or capital. This right shall include the right to alienate, to bequeath, and, where the right of use expires,

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<sup>41</sup> Use rights are also dependent on a host of conditions most of which having to do with what is described as "proper" land and environmental management practices. Holders who do not follow these practices are subject to a variety of penalties, including the loss of their right to the land. What these "proper" practices consists of are not stated precisely and in manner to be legally challenged; they are only broadly stated and thus provide discretionary power to state officials. Holders may also their right if they are absent from their farms and the land is left idle for three consecutive years or more (Rahmato, 2009).

to remove his property, transfer his title, or claim compensation for it (Constitution of 1995, Article 40 (7)).

The Rural Land Administration and Land Use Proclamation No.456/2005 also states proportional compensation for rural land holders when evicted from his land holding for the purpose of public use. Article 7(3) reads:

Holder of rural land who is evicted for purpose of public use shall be given compensation proportional to the development he has made on the land and the property acquired, or shall be given substitute land thereon. Where the rural landholder is evicted by Federal government, the rate of compensation would be determined based on the federal land administration law. Where, the rural land holder is evicted by regional governments, the rate, of compensation would be determined based on the rural land administration laws of the regions

Since the country is structured along the line of a federal setup with nine autonomous regional states and two city administrations the use and administration of land is left to each regional government within the framework of the federal parliament's legislation. Property rights prevent a person or group of persons or institutions from forcibly appropriating what belongs to the other and thus enable the co-operative solution to arise voluntarily.

According to proclamation No.455/ 2005, Art 7(3), A Woreda or an urban administration as an agent of the government, can expropriate rural or urban land holdings for public purpose where it believes that it can be used for a better development project to be carried out by public entities, private investors or other organs with payment of compensation. As this same proclamation, 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 land shall be equal to the value of capital and labor expended to the land.

Adal (2002), argued that there are no fundamental difference between the legal framework of the Dreg and the present government of Ethiopia on rural land issues. Moreover, if those policy changes made by the Dreg following its 1990 "mixed economy" version are taken into consideration, there is more continuity than change. Not only officially stated policies but also what has been taking place on the ground is also more important. In practical aspects as well, there are more similarities in land administration between the two regimes than differences (Adal, 2002). Many scholars have questioned if the 1995 constitution provided any differences to the land reform proclamation of 1975 (Ege, 1997; Rahmato, 2004). There are, nevertheless, some notable differences between the rules of 1975 (Socialist government) and 1995 (present government). The 1975 proclamation prohibited the lease of land and the hiring of labor and Concealed the maximum land size per individual to 10 hectare; such provisions are absent in the 1995 document (Adal, 2002). It is believed that lease<sup>42</sup> has been in place as a cardinal land holding system to transfer urban land to appropriate users.

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<sup>42</sup> it is believed that transferring urban land by lease for a fair price, consistent with the principles of free market, will help achieve overall economic and social development and to help build capacity enabling progressive urban development based on the life span that a landed property may have and the period it requires to recover investment costs, the special nature of the investment. And the land use specified in conformity with Master Plan (Proclamation No. 272/ 2002)

# **CHAPTER SEVEN: EXPROPRIATION, VALUATION AND COMPENSATION LAWS IN ETHIOPIA**

## **7.1 Introduction**

Ethiopia, to lay a legal foundation of expropriation, it enacted laws and regulations that deal with expropriation valuation and compensation. The Federal Constitution of 1995, Article 40, the Federal expropriation and payment of compensation laws, Proclamation No. 455/2005, the Rural Land Administration and Land Use Proclamation, Proclamation No. 456 /2005 (Article 7(3)), and the Council of Ministries regulation No.135/2007 are enacted to justify and undertake expropriation for public purpose.

The major binding document for all other derivative national and regional laws and regulations is the 1995 Constitution of Ethiopia. It has several provisions about expropriation and related issues. Article 44(2) of the same constitution indicates that interventions for public purposes that cause the displacement of people or adversely affect the livelihood of the local population shall give the right to “commensurate” monetary or other means of compensation including relocation (resettlement) with adequate state assistance. The provisions in the constitution clearly states government’s obligation not only to compensate for the works on land created by the labor and capital of land users but also to compensate for the lost land through resettling the affected individuals/communities by the state programs with adequate assistance. The purpose of this chapter, therefore, is to present and discuss the main expropriation, compensation and valuation laws of Ethiopia.

## **7.2 The expropriation laws**

In Ethiopia, it is believed that the concept of expropriation was introduced, at least in law, during the reign of Minelik II when the first regulation, which made land a private commodity, was enacted in 1907 for the city of Addis Ababa. The provisions became applicable to other parts of the country soon after. Since the enactment of the 1907 regulation, few land lords; regional chiefs became private owners of the large tracts of land. In the interest of the public, however, the government was allowed to have the right of expropriation (dispossession) of private owners. Despite the right to own and dispose of property was given legal recognition in several articles of the civil code of Ethiopia; the government had eminent power to expropriate private property for public purpose. The 1960’s Civil Code of Ethiopia Article 1460 reads:

Expropriation proceedings are proceedings whereby the competent authorities compel an owner to surrender the ownership of an immovable properties required by such authorities for public purposes.

In this definition, the idea of the taking of private land by the state or authorities without the consent of the owner for public purpose is clearly envisaged. The phrase “expropriation proceeding” is employed here instead of the word “expropriation” because of a translation error from the original French version (Desta, 1975)<sup>43</sup> and yet, the need to pay compensation for private property owners is not envisaged under this particular definition, actually private owners of property were guaranteed payment of due compensation for the loss of their properties in

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<sup>43</sup> It is said that the original French version has defined the term expropriation as follows: “expropriation is a procedure by which the administration obliges an owner to surrender to it the ownership of an immovable which it needs for the purpose of public utility.”

different articles of the same code. The 1960 civil code of Ethiopia introduced the mandatory legal procedures to assure participatory and transparent process of expropriation and compensation. More specifically, article 1465(1) of the same civil code provides that the declaration of public utility shall not be made until the public interest has been consulted. Sub Article (2) also states that any interested party may in course of such inquiry express his / her views or criticize the contemplated project.

In the present government, since land is the common property of the Nations, Nationalities, and peoples of Ethiopia (the Federal Constitution of 1995, Article 40(3)), the Federal expropriation and payment of compensation law (Proc. No 455/2005), rural land administration law (Pro.No.456/2005) and the Council of Ministers Regulation No.135/2007 view the concept from the point of view of State or public ownership of land. Thus, the user of the land is a mere possessor, not an owner. But, the definition given is more comprehensive than that of the Civil Code of the Imperial era since it covers the principles of ‘public interest’, ‘compensation’, and the prerogative power of the State and other delegated bodies (Woreda or Urban Administration). In this regard the Federal expropriation and payment of compensation law, Proc. No. 455/ 2005, Article 3 (1) reads:

The power to expropriate land holdings means “ the power to expropriate rural or urban land holdings by a Woreda or an Urban Administration for public purpose paying compensation in advance where it believes that it should be used for a better development project to be carried out by public entities, private investors, cooperative societies or other organs, or where such expropriation has been decided by the appropriate higher regional or federal government organ for the same purpose ” (Proc. No 455/2005, Section two, Article 3).

Although the Federal rural land administration law (Proc.No.456/2005) mentions expropriation and compensation matters peripherally, its Article 7 sub Article 3, states that “A rural landholder who is evicted for purposes of public use shall be given compensation proportional to the development he has made on the land and the property acquired or shall be given substitute land thereon.”

Notwithstanding the merits of the above definitions of expropriation, in this study, the author opts to adopt the following as a working definition of the concept of expropriation on the ground of its comprehensiveness.

.....it is the right of the nation or State, or of those to whom the power has been lawfully delegated, to condemn private property for public use, and to appropriate the ownership and possession of such property without the owner’s consent on paying the owner a due compensation to be ascertained according to law (Johnson et al., 2000).

This definition seems more complete, since it includes all the basic elements. First of all, expropriation is a right exercised by the state itself or its sub-branches such as municipalities and Woreda administrations like Ethiopia, other public companies or private companies and people legally authorized by the State/legislature. The State or municipality may want a certain parcel of land to build a road, town hall, or museum; or, in the case of public and private Companies, they may want it to run utilities, such as telephone, power, or water etc.

According to the 1995 Constitution of Ethiopia, Article 40, every Ethiopian has the right to the ownership of private property. This right includes the right to acquire, to use and, in a manner compatible with the rights of

other citizens, to dispose of such property by sale or bequest or transfer. However, this right can be limited or modified by law where “public purpose”<sup>44</sup> so demands. The Constitution also states that every Ethiopian shall have the right to the immovable property he/she builds, and to the permanent improvements he/she brings about, on land by his/her labor or capital including the right to alienate, bequeath and where the right of use expires, remove his/her property, transfer his/her title or claim compensation for it (Article 40(7)). The Constitution further stipulates that the government has the power to expropriate private property for public purposes subject to payment, in advance, of compensation ‘commensurate’ to the value of the property. Note that compensation must be paid in advance and that it must be ‘commensurate’ to the value of the property (Sub Article 8). The property and expropriation provisions in the regional constitutions are not significantly different from those of the Federal constitution. In any case, regional constitutions cannot conflict with the Federal Constitution and, in cases where such conflicts exist, the Federal Constitution supersedes.

The Federal Proclamation No. 455/2005 governs expropriation and compensation in Ethiopia. As Article 14 of this Proclamation indicates that the Federal Council of Ministers (FCoM) issued regulation No. 135 / 2007 for the proper implementation of the proclamation. Similarly as Article 14 of the same proclamation, the regions can issue directives necessary for the proper implementation of the proclamation and regulation. Before Proclamation No. 455/2005 was issued, there was another Federal proclamation enacted to govern expropriation and related compensation matters – Proclamation No. 401/2004, “Appropriation of Land for Government Works and Payment of Compensation for Property owners/holders”. It did not last long as it was repealed by Proclamation No. 455/2005. What was interesting about Proclamation No. 401/2004 is that it appears to have narrowly circumscribed the occasions when expropriation may take place. As the title of the proclamation clearly states, that law pertained only to appropriation and payment of compensation for government works. One can reasonably argue that the proclamation has attempted to narrow the meaning of public interest and hence the power of appropriation only to government works which are defined as:

... the construction or installation, as appropriate, for public use of highway, power generating plant, building, airport, dam, railway, fuel depot, water and sewerage, telephone and electrical works and the carrying out of maintenance and improvement of these and related works, and comprises civil, mechanical and electrical works.

Proclamation No. 455/2005 uses the phrase “public purpose” instead of “public use” and “expropriation” instead of “appropriation”. Note that the fact that these works must be for “public use” can be interpreted to mean that works for the sole use of the government or private entities may not be considered of public use and, therefore, appropriation of a holding may not be made in such circumstances. Proclamation 455/2005 on the other hand stretches the meaning of public interest or public purpose so widely that it can practically be deemed open-ended. The current governing Federal rural land administration law is Proclamation No. 456/2005. It is to be recalled that Proclamation No. 31 of 1975 of the Derg period was repealed by Article 9 of Proclamation No. 89/1997, which in turn was repealed by Article 20 of Proclamation No. 456/2005. This proclamation mentions expropriation and

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<sup>44</sup> Proclamation 455/2005 Article 2(5) defines “Public Purpose” as the use of land defined as such by the decision of the appropriate body in conformity with an urban structure plan or development plan in order to ensure the interest of the people to acquire direct or indirect benefits from the use of the land and to consolidate sustainable socio-economic development.” This definition is quite broad so much so that if the authorities so desire, they may be able to deem any activity as serving the public purpose. Proclamation 455/2005 does not require prior declaration of the existence of public purpose and give to the land holders and other interested third parties the opportunity to challenge the existence of such public purpose

compensation matters peripherally. The only relevant provision is contained in Article 7 (3), which states that a rural landholder who is evicted for purposes of public use shall be given compensation proportional to the development he/she has made on the land and the property acquired or shall be given substitute land thereon. Where the rural landholder is evicted by Federal government, the rate of compensation would be determined based on the Federal land administration law. Whereas, the rural land holder is evicted by regional governments, the rate of compensation would be determined based on the rural land administration laws of regions<sup>45</sup>. The land administration and utilization proclamations of regions, for instance, Amhara, Tigray and SNNPR have been enacted after the advent of Federal proclamation No.455/2005 and, therefore, contain provisions that take account of this Proclamation. The Amhara Regional State Rural Land Administration and Use legislation, Proclamation No. 133/2006, Article 28(1-5) includes important issues about expropriation and compensation. It is reasonable to assume that the article was included as a means of accommodating Proclamation No. 456/2005, although there is no specific mention of this Proclamation. Although there is comprehensive separate Federal legislation that deals about expropriation and compensation, the two regional states (Amhara and Tigray) chose to treat the issue of expropriation and compensation in land administration and utilization legislation due to the following possible reasons:

Proclamation No.456/2005, Article 17, gives the regions the power to enact their own rural land administration and land use laws and it gives them more flexibility to become more innovative and region centered. Article 7 (3) of the same proclamation states in part that “where the rural landholder is evicted by the Federal government, the rate of compensation would be determined based on the Federal land administration law. “Whereas, the rural landholder is evicted by regional governments, the rate of compensation would be determined based on the rural land administration laws of regions.” On the other hand, the Federal proclamation No. 455/2005, Article 3, states that expropriation shall be made by Woreda or Urban administrations. That is in rural areas Woreda administrations and in urban area urban administrations are empowered to expropriate land holdings for public purposes provided that “... where such expropriation has been decided by the appropriate higher regional or Federal organ ...” Article 14 (2) of the same proclamation gives the regions only powers to issue directives and not even regulations let alone Proclamations. The reality on the ground shows that the regions including Addis Ababa, have given recognition to Proclamation No.455/2005 as applicable to them by issuing directives for application in urban areas directly based on Article 14 (2) of the same Proclamation. Thus, the cumulative impact of the provisions of Proclamation 455/2005 is a clear indication that the proclamation is not meant only for expropriations to be made by the Federal government or for Federal government purposes.

Laws relating to expropriation for public purpose under the power of eminent domain are generally considered to be distinct bodies of law in their own right rather than being dispersed into other types of legislation even in terms of rural and urban land administration. Furthermore, the application of valuation methodologies and compensation fixing cannot differ from region to region, or else the unequal treatment of Ethiopian citizens will prevail. It is obvious from the above that the Regional States that have enacted their own rural land administration and land use laws should make stride, even though in a limited way, to accommodate the implementation of Proclamation 455/2005 within their respective jurisdictions. The basic laws governing expropriation and compensation, a right enshrined in the Federal Constitution, should be governed by Federal and regional laws in such a way that citizens

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<sup>45</sup> This is strange in view of the fact the basic laws governing compensation, a right enshrined in the Federal Constitution, cannot be governed by Federal and regional laws since the result will be legal provisions that are not standardized leading to not standardized approaches, methodologies and results, thus resulting in unequal treatment of citizens in the different Regional States

of the country should be treated equally. These conflicting approaches require resolving, preferably by having a single directive based on Proclamation No. 455/2005 to deal with expropriation issues applicable to all areas.

### ***7.3 The compensation laws***

Resettlement and rehabilitation are recognized civic rights in the Ethiopian legislation. Article 44 No.2 of the 1995 Constitution of the Federal Democratic Republic of Ethiopia (FDRE) has a clause stating that:

All persons who have been displaced or whose livelihoods have been adversely affected as a result of state programs have the right to commensurate monetary or alternative means of compensation, including relocation with adequate state assistance.

This is the basis for the compensation procedures and the legal framework for the resettlement and rehabilitation policy framework of Ethiopia. All project affected peoples (PAPs) and organizations (whether public or private) that loose, houses, crops or sources of income will be compensated or rehabilitated according to the type and amount of their losses. The cut-off date for compensation eligibility will be set once all detailed measurements have been completed. Compensation will not also be paid for any structure erected or crops and trees planted purely for the purpose of gaining additional compensation.

According to Proclamation No.455/2005, compensation can be made in cash, in kind or both to a person for his/her property situated on the expropriated holdings. The Ethiopian Constitution, the Constitution of 1995, Article 40(8), puts an obligation on the government to pay, in advance, compensation “commensurate” to the value of the property expropriated. This principle is also found in other regions’ constitutions. However, no further definition is given in the Constitution as to what “commensurate” means. The Ethiopian Civil Code has adopted the indemnity theory in determinations of compensation. Article 1474 (1) of the Code says that the amount of compensation or the value of the land that may be given to replace the expropriated land shall be equal to the amount of the actual damage caused by expropriation. That is, if the amount of compensation is equal to the actual damage, there is no possibility for the owner to be harmed or benefited as a result of the taking.

Two broad types of situations for which compensation will be due in case of expropriation are envisaged under the Federal laws. The first category of compensable is what may be considered as immovable private property as defined under Article 40 of the 1995 Constitution. The second category of compensable is payment for displacement and appears to be based on Article 42 of the same constitution, which requires payment for persons displaced by government development programs.

In the first instance (Article 7 of Proclamation No. 455/2005), compensation is payable for each property situated on the land and for permanent improvements made to such land. While compensation for “property” is to be fixed based on replacement cost of the property, compensation for permanent improvement is to be fixed based on, and equal to, the capital and labor expended on the land. The amount of compensation payable to an urban dweller, may not, in any way, be less than the current cost of constructing a single room low cost house in accordance with the standard set by the concerned region (Article 2). As article 5 of the same proclamation the cost of removal, transportation and erection shall be paid as compensation for a property that could be relocated and continue its service as before.

In the second instance (Article 8 of Proclamation No. 455/2005), compensation is payable for displacement in addition to what is paid for each property situated on the land and for permanent improvements made to such land. Compensation for permanent displacement of rural land holder should be “equivalent to ten times the average annual income ... secured during the five years preceding the expropriation of the land.” However, in the case of temporary displacement (Article 8(2)), while the approach is still the same as in permanent displacement, it is time bound and only payable as long as the displacement continues, and should not exceed the amount that a person would have received had he/she been permanently displaced. In the case of displacement resulting from expropriation under the Proclamation, the Woreda Administration may decide to compensate the displaced person by providing substitute land “which can be easily plowed and generate a comparable income” (Article 8 (3)). In such cases, compensation payment due to the landholder in cash cannot exceed a onetime payment of the average annual income secured during the five years preceding the expropriation of the land.

An urban landholder whose landholding has been expropriated, in addition to the compensation paid for the property situated on the land and for permanent improvements made to such land, it shall also be also paid the following additional compensation, Article 8(4):

- the expropriatee should be provided with a plot of urban land for the construction of a dwelling (business) house of which the size can be determined by the urban administration; and
- the expropriatee should be paid a displacement compensation equivalent to the estimated annual rent of the demolished dwelling (business) house or be allowed to reside (trade), free of charge, for one year in a comparable dwelling (business) house owned by the urban administration.

In addition, when the land is possessed in lease system, the land use right can be terminated where it is decided to use the land for other purposes due to public interest (Proc. No. 721/2011, Article 25 (1b)) i.e. when an urban land lease holding is expropriated prior to its expiry date. In this case, the lease holder has a right, in addition to the compensation paid for the property situated on the land and for permanent improvements made to such land, to be provided with a similar plot of land which he/she can use for the remaining lease period or longer if the new land is less than the former land or if its rent is less than the former land. However, if the lease holder does not want a replacement land, he/she still has the right to request for, and take, the balance of the lease payment (Proc. No. 455/2005 Article 8(6)).

As far as regional laws and regulations are concerned, the regions including the City Administration of Addis Ababa have some regulations, directives or guidelines that deal with formulae in line with the Federal regulation No.135/2007 for determining compensation. However, there are certain inconsistencies that are observable between the Federal and regional laws.

The Amhara National Regional State (ANRS) has issued Land Administration and Utilization Regulation No. 51/2007 which has provisions on compensation under consideration. Article 30 (1) of this regulation, which appears to have been developed from Article 7 of Proclamation 455/2005, provides that compensation amounting to the money equivalent of the average annual income of the last five years should be made before the landholder or user is made to evacuate his/her holding. And yet, it has also another compensation provision for displacement Article 30 (2). Thus, what is provided under 30 (2) of the regulation is inconsistent with what is stated under Article 7 of Proclamation No. 445/2005, which does not envisage such payment.

Article 7 of a 1996 Tigray region directive provides for displacement compensation in a somewhat different way, as follows:

- In the case of [annual] crops, the landholder shall be paid an amount equivalent to the three consecutive years average yield per hectare of three widely produced local crops multiplied by the last six months average price of such crops multiplied by 8 years;
- In the case of permanent crops, the landholder shall be paid an amount equivalent to the average number of permanent crops per hectare for the last 3 years multiplied by average market price per quintal of each type of permanent crop for the last six months multiplied by 8 years.

Since then, however, Tigray region has given recognition to Proclamation NO. 455/2005, and the continuing application of the directive, particularly that of using the multiplying factor of 8 as against the 10 provided by the Federal Proclamation, is a contradiction that creates inconsistency.

Oromiya Region has a guideline that stresses Proclamation No. 455/2005 should apply and also provides some methodology for valuation of various compensable and determining the amount of compensation that is receivable in cases of expropriation. A look at the translated version of the guideline immediately shows that there is no clear distinction made between compensation for property and permanent improvements to land as envisaged under Article 7 and 8 of Proclamation No. 455/2005. This guideline provides for the valuation of houses (including infrastructural lines and other structures such as septic tanks), live fences, annual crops, eucalyptus trees, grass, minerals, etc. It also takes into account permanent improvements, depreciation and costs of repairs. The guideline does not state anything specific about the payment of displacement compensation, but instead states that compensation for permanent crops and pasture lands shall be annual income-based and multiplied by ten years. There is no provision that requires annual income from annual crops to be multiplied by ten.

Finally, Article 17 of a 2010 Addis Ababa City Administration directive provides displacement compensation in a similar way as the Federal proclamation No.455/ 2005, section 3, Article 4(b). Similar to the Federal Regulation No. 135/ 2007, Article 3(3), the 2010 directives of the City Administration of Addis Ababa, Article 16(1&3), the owner of a building shall have the right to claim compensation for the entire building by surrounding the total land in his/her possession where part of the building is ordered to be removed and the City Administration can use the land for other public development activities. As sub article 1(4) of the same directive, compensation shall be paid only for the demolished part of a building where the owner prefers to use the unwanted part of the land; provided, however, that such preference shall be acceptable only where the condition of the partly demolished building conforms to the requirements of the city plan.

### ***7.3.1 Time and manner of payment of compensation***

Compensation must be prompt or paid within a reasonable time and the expropriatee should have the possibility of rejecting it (Crawford, 2007). Articles 3 (1) and 4 (3) of Proclamation 455 of 2005 make it clear that compensation in cases of expropriation should be made in advance of evicting the landholder. According to Article 4(3) of the same proclamation, any holder who has been served with an expropriation order should handover the land to the Woreda or urban administration within ninety days from the date of payment of compensation or, if the expropriatee refuses to receive the payment, from the date of deposit of the compensation

in a blocked bank account in the name of the Woreda or urban administration as may be appropriate, the land holder should handover to the land without considering the type of asset situated on the land.

The Amhara land regulation No. 51/ 2007, Article 31(4A&B) stipulated that any land holder or user who has been paid compensation should hand his/ her land over within sixty days from the date he/ she has communicated of land expropriating if there is crop, perennial plant or another asset on the land may be expropriated. The land holder should hand over the land within thirty days from the date he/she has communicated warning of land expropriating if there is no crop, perennial plant or another asset on the land may be expropriated. Here there is some inconsistency with the Federal proclamation in terms of duration and type of property situated on the land. In both cases, the affected landholder should be paid compensation before handing over of the expropriated property.

### ***7.3.2 Complaints and appeals in relation to compensation***

The structures for dealing with grievances are dealt with under Article 11 of Proclamation No. 455/2005, in relation to Compensation”. It is obvious from this Article that complaints and grievances can only be made regarding compensation amounts. Thus, the possibility of questioning the “public purpose nature” of the activity or project for which the expropriation is being carried out cannot be challenged by those who are the victims of an expropriation. In the case of expropriations in rural areas, grievances against the amount of compensation are to be submitted directly to a regular court of competent jurisdiction. If the expropriated landholder is still not satisfied, he/ she may appeal to the “regular appellate court”. However, in the case of expropriation of urban land holdings, first instance complaints and grievances are required to be submitted to administrative organs established by the urban administrations to hear grievances. If the affected landholder is not satisfied, he/she can proceed a case directly to the regular court of competent jurisdiction .If the affected landholder is still not satisfied with the decision of the regular court, he/she may appeal to the “regular appellate court. In both cases, a right of appeal to the regular appellate court lies within 30 days from the date the appellant is provided with a copy of the decision of the court of first instance. The decision of the appellate court is final.

## ***7.4 Property Valuation Methodology and Procedures***

In Ethiopia, as stated in Proclamation No.455/2005, and the Council of Ministers Regulation No.135/2007, the amount of compensation for property situated on the expropriated land shall be determined on the basis of replacement cost<sup>46</sup> of the property. Although Proclamation 455/2005 envisages that valuations will eventually be carried out by certified private or public institutions or individuals, it also states that until such time as institutions of private or public nature, as well as individuals with the required capacity/ability become available, the valuations will have to be made by committees to be established under Article 10 of the proclamation or by owners of utility lines as provided under Article 6 of the same proclamation.

There is no hard and fast rule used for the selection of the members of a valuation committee. The members may consist of individuals from the sectoral offices, kebele representatives, representatives of implementing agencies, etc. however, these committees do not have any sort of comprehensive directives or guidelines on what kind of

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<sup>46</sup> In Ethiopia, particularly in remote rural areas, property markets are not sufficiently active to provide reliable information about prices (Anteneh, 2007).

formulas to use, and generally how to proceed with their valuations tasks. The exception is that if the property comprises public utility lines, such as telecommunication lines, sewerage system, etc., then it is the owner of the property that estimates the value of the property (Article 6 of Proclamation No.455/2005). This indicates a difference in the treatment of property holders in involving them in valuation of their property. The Ethiopian law, in general has adopted a valuation system of an administrative nature, opposed to a judicial one as practiced in many other countries.

#### **7.4.1 Basis of valuation**

As indicated in the preceding section, the cost replacement approach involves direct replacement of expropriated assets and covers an amount that is sufficient for asset replacement. Proclamation No. 455/ 2005 and Regulation No. 135/ 2007, Article 3-12, forms the basis for assessment of compensation for expropriation. The basis of compensation otherwise refers to as compensation heads:

(a) *Land*: according to the 1995 Ethiopian Constitution, land is the property of the government and people of Ethiopia. Hence there is no financial compensation for land. However, if the land holder has a legal use right, it may be given substitute land.

(b) *Building and installations*: the basis of compensation is the replacement cost of the building, installation or improvement, that is to say, such cost as may be assessed on the basis of replacement cost without less depreciation. The amount of compensation for a building shall be determined on the basis of the current cost per square meter or unit for constructing a comparable building. The compensation for a building shall include: (i) the current cost for constructing floor tiles of the compound, septic tank and other structures attached to the building; and (ii) the estimated cost for demolishing, lifting, reconstructing, installing and connecting utility lines of the building.

(c) *Compensation for fences*: The amount of compensation for a fence shall be determined by calculating the current cost per square meter or the unit cost required for constructing a similar fence.

(d) *Compensation for crops and economic trees*: The amount of compensation for crops shall be calculated by multiplying the amount of yield that would have been collected from the land at maturity by the current market price of the crops. The amount of compensation for unripe perennial crops shall be determined by calculating the estimated cost for growing the plant. The amount of compensation for ripe perennial crops shall be determined on the basis of the average annual yield, the current local market price of the crop. A rural landholder whose landholding has been permanently expropriated shall, in addition to the compensation payable for property situated on the expropriated land, be paid displacement compensation which shall be equivalent to ten times the average annual income he/ she secured during the five years preceding the expropriation of the land.

(e) *Compensation for Trees*: The amount of compensation for trees shall be determined on the basis of the level of growth of the tree, and the current local price per square meter or per unit.

(f) *Compensation for Permanent Improvement on Rural Land*: The amount of compensation for permanent improvement made on a rural land shall be determined by computing; the machinery, material and labor costs

incurred for clearing, leveling and terracing the land, including costs of water reservoir and other agricultural infrastructure works.

(g) *Compensation for Relocated Property*: The amount of compensation for a relocated property shall be determined by computing the estimated costs of labor, material and transport to be incurred at market value for removing, transferring and installing the property. Per Scott, 1941 (cited in; Bashar, 2008), enunciating that the owner compelled to sell his property through compulsory acquisition has the right to receive a money payment not less than the loss imposed on him in the public interest, but on the other hand, no greater.

**To conclude**, the overall purpose of compulsory acquisition of property is to enhance society and thereby increase the overall welfare of society. A compulsory acquisition must therefore be socially and economically viable, and in all cases there must be some sort of balance between public and private interests to a forced acquisition of property. Different valuation methods may be used to value compulsorily acquired properties depending up on the type and function of acquired properties. Hence, a property valuer may consider the type of and purpose of property and the type and extent of lose to be valued for compensation. Moreover, careful consideration to ownership details, given at an early stage, may enhance the basis of claims for depreciation of retained property. In this regard, careful consideration to accommodation works can assist in the mitigation of the harmful effects of public works, and may prove more beneficial to property owners than monetary compensation claims.

## ***PART IV: EXPROPRIATION, VALUATION AND COMPENSATION PRACTICE IN ETHIOPIA***

### ***CHAPTER EIGHT: URBAN REDEVELOPMENT AND INDUCED-DISPLACEMENT IN ADDIS ABABA: The case of Senga-Tera Locality in Lideta Sub-City***

#### ***8.1 Introduction***

An inadequate master plan, poor housing facilities, environmental problems, and shanty corners, among others, characterize urban centers of developing countries (Yntiso, 2008). In order to solve these problems and create conducive environment for residence, investment, and business activities, government authorities tend to re-order urban space, which require changes in urban land use. This process often causes the displacement (relocation and resettlement) of certain households, in most cases the powerless low-income people. Policy makers tend to view the disruptive effects of urban development on certain sections of society as justified sacrifices for the greater good. In other words, there is a tendency to view development-induced displacement as an unintended impact, unavoidable step, or a necessary evil. Hence, the plight of thousands of displaced households failed to attract adequate policy attention (Yntiso, 2008).

Addis Ababa, the capital of Ethiopia, has evidenced major transformations in the development of road networks, schools, healthcare institutions, hotels, real estates, banks, shopping centers, and many other businesses. According to the Revision Office of Addis Ababa Master Plan (ORAAMP, 2002), housing, slum upgrading, the development of inner city, construction of roads, establishment of industries and warehouses, and protection and development of the environment were the six priority strategic development goals to be achieved during the ten-year plan<sup>47</sup>. There is a sense of cheerfulness on the part of authorities and the general public with the direction of the urban development policy and the remarkable achievements. What remains unnoticed, however, is that thousands of low-income households have been displaced and adversely affected by the process of urban (re)development. The process of relocating people from the inner city to new resettlement sites in the outskirts has disrupted the displacees' business ties with customers, broken their informal networks of survival, caused loss of locational advantage and jobs and incurred high transport costs. The overwhelming majority of displacees reported significant income decline. Many displaced households have encountered problems related to infrastructure, access to public services and security. Displacees, who lost their property to public development project and other purposes complained about the procedure of expropriation, inspection and recording of compensable items, the valuation method used, the rate/amount of compensation and lack of other economic options to make a living. Woldemeskel (2004; cited in Yntiso, 2008 ) stated that people who were forcibly displaced by the ring road from Megenagna area experienced loss of income, increased housing rent, transportation problem, inadequate health services, and school problems, as children had to travel back to their old school at least in the first year of their relocation.

The inner city displacees in Addis Ababa in general, and the study area ( Senga-Tera Locality in Lideta Sub-City ) in particular, may be divided into four categories: owner-occupiers, public tenants (those who lived in public rental houses), subtenants ( who are sublet rooms from public tenants), and tenants of private premises.

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<sup>47</sup> The strategic development framework of the city of Addis Ababa provides a ten-year (2001-2010) policy and development direction.

Most owner-occupiers, (the focus of the present study), were given land replacement and cash compensation. Subtenants of public houses and tenants of landlords did not qualify for replacement houses and/or cash compensation. The public tenants were given only replacement houses but not cash compensation. According to Lideta Sub-City chief executive, although 90 percent of the evacuees of public house renters have been offered condos and some of them moved to the site/house of their choices, many were forced to accept smaller spaces and fewer bedrooms, far locations, and/or higher rental fees.

The main objective of this case study is, therefore, to examine how the expropriation process, the fairness of compensation paid and the appropriateness of the valuation method used were carried out. It also examines problems encountered, and the legal, economic and social implications of the exercise on households who have been displaced from private-owner houses in the inner city (Lideta Sub- City, Senga-Tera Locality) to two expansion cities, Kolfe-Keranio (Bethel area) and Nefas Silk-Lafto (Anbessa Garage area, kebele 02)

## ***8.2 The study area***

Given Ethiopia's history of being generally politically stable, it has become one of the main diplomatic centers of Africa. Addis Ababa, the capital city of the country, is located at 9° 2' N and 38° 45' E and is the geographic center of the national territory and its altitude ranges from as low as 1800 to 3200 meters above sea level. Its total area is 540 square kilometers (Ayenew, 1999; Berhanu, 2002). The lowest and the highest annual average temperatures of the city are 9.89°C and 24.64°C, respectively and the average annual rainfall is 1178 mm. According to the 2007 national population and housing census, Addis Ababa had a counted population of about 2.74 million, of which males constituted 47.6 percent and the balance 52.4 percent was the share of females (CSA, 2008; Dierig, 1999).

Addis Ababa is the diplomatic capital of Africa with more than 90 embassies and consular representatives. The city has been serving as the Headquarters of the United Nations Economic Commission for Africa (UNECA) since 1988 and the former Organization of African Union (now the African Union) since 1963. It is also the seat of the Federal Government, and many other development and diplomatic organizations. It is the major center of commerce and industrial establishments. In addition, compared to other urban areas of the country, relatively a greater number of public and private institutions and establishments which provide different kinds of social services are found in the city.

### **8.2.1 The redevelopment area and displacement**

#### **▪ The redevelopment area**

The Addis Ababa City Administration has a decentralized system of municipal government that is organized in three levels: the city government at the top; a second level composed of the 10 sub-city administrations at the middle; and below this level a total of 99 kebeles, which are the smallest local units of the City Administration. The crude map provided in Figure 8.1 indicates the boundaries of Addis Ababa and its ten sub-cities, which are: Arada, AddisKetema, Lideta, Kirkos, Yeka, Bole, Akaki-Kaliti, Nefas Silk-Lafto, Kolfe-Keranio, and Gullile. These Sub-Cities are again divided in to inner cities and expansion cities.

**Map 8-1: Map of the Sub-cities of Addis Ababa**



**Source:** Addis Ababa City Administration (2011)

Senga-Tera Redevelopment Locality in Lideta Sub-City is the central and one of the oldest inner cities in Addis Ababa. It is more accessible to all infrastructures and services. On the contrary, the resettlement sites are located in the outskirts of the expansion cities which have not fulfilled basic services such as water, road, etc. Senga-Tera Redevelopment Locality is one of the most congested settled areas, constructed out of mud and wattle with no or little facilities. Except the main arterial street that bounds the site, many streets in the inner block areas are substandard, narrow and proportionally insufficient. Most are surfaced with gravel and some asphalt streets are in bad condition. That is why the City Administration of Addis Ababa decided to redevelop the area. However, so many problems occurred when the people were displaced from the place where they lived for a long time.

**Photo 8-1: The Senga-Tera Redevelopment Locality before demolish**



- **Sources:** Lideta Sub- City documentary film (2011)

- **Displacement**

According to the City Administration of Addis Ababa, about 1320 households were displaced from Senga-Tera Redevelopment Locality out of which 338 were private property owners. Among the private property owners, 76 households preferred to resettle in the redevelopment area whereas the remaining balance (262) preferred to resettle in the new resettlement areas. More than 2600 residential units, shops, cafes and restaurants, the vast majority of them in kebele owned buildings, were demolished to prepare the redevelopment site. The redevelopment area covers 26 hectares of land which is divided in different land uses as shown in Table 8.1.

**Table 8-1: Land use of Senga-Tera Locality redevelopment area**

<u>Land Use</u>	<u>Area (in Hectare)</u>
Mixed use Lease development.....	5.09
Relocation site for private residential development.....	0.59
Reserved site for new condominium.....	2.11
Condominium with typologies A& B.....	6.95
Administration and Social service facilities.....	2.78
Recreation and green area.....	0.70
Other (Roads) etc.....	7.78
Total area.....	26.00

**Source:** Lideta Sub-City (2011)

**Map 8-2: Proposed Land use of Senga-Tera redevelopment area**



**Source:** Lideta Sub –City (2011)

In addition to the main objective of the Local area Development Program (LDP) to rehabilitate the dilapidated township to keep its standard and best suit the living capital, the City Administration also aims to generate revenue from leasing the land. According to Fortune, a local newspaper, from a total of 26 hectares of land which is cleared for redevelopment, 11,226 square meters of land is identified for lease to five private organizations. Among these, Awash International Bank acquired 2,800 square meters of land at a cost of about 18.8 million Ethiopian Birr (ETB) with its bid offer of 6705.26 ETB per square meter. Dashen Bank, on the other hand, bought two areas for different prices. It bought 2,696 square meters of land at a cost of 16.3 million ETB with its bid offer of 6037.5 ETB per square meter and 2,261 square meters of land at a cost of 9.16 million ETB with its bid offer of 4050 ETB per square meter. Hence, the City Administration got a significant amount of money (44.26 million ETB from leasing 7,757 square meters of land for the two private Banks). This shows that the City Administration generated on average 5,705.8 ETB per square meter from lease.

**Photo 8-2 : One of the typical slum areas in Senga-Tera Locality in Lideta Sub-City**



**Source:** Field survey (2011)

## **8.2.2 The location of resettlement sites**

Site has an important influence in all development activities in urban areas. Generally, as one move away from inner city to the outskirts of Addis Ababa, infrastructure and service provision, economic activities, urban employment opportunities and land values decrease (field survey, 2011). The Addis Ababa planning regulation (2002) states that resettlement sites shall be within the designed redevelopment area (LDP site). This makes the displacees access urban common properties such as kebele hotel/ restaurant, corporation and other institutional and infrastructural utilities. On the contrary, the resettlement sites are haphazardly located at every semi-urban area without considering the impacts of their situation on the displacees and the urban development model.

The lease-based urban redevelopment was the main motive why the resettlement sites were designed and planned for resettlement in the outskirts of the city where land is inexpensive. According to the officer for the Revision of the Addis Ababa Master Plan (ORAAMP, 2004), the cost-benefit analysis should show positive differences to have sound urban renewal process and to select redevelopment sites. According to Zeleke (2006), for example, the total phase one area in Casanches is about 62,487 square meters with the average unit price of 2000 Ethiopian Birr per square meters. The total proposed revenue at this urban prime land is, therefore, 124, 974,000 Ethiopian Birr. The average land lease value at Merkato (the most business center in Addis Ababa) is 4,000 Ethiopian Birr per square meters. Thus, it is the profit of land value that has oriented and determined the local development site selection rather than the urban problems (proportion of slums and infrastructure problems). This shows that the resettlement sites are located in the urban outskirts where urban land is inexpensive for generating revenue by leasing auction. Mejia (1999) found that resettlement sites are usually located in the urban periphery where the restoration of employment, income and social networks are very difficult. Cost of urban services, commuting distance to jobs, cost of transportation, scarce demand for labor and limited customer bases in these locations are also specific problems (Mejía, 1999).

In short, urban land value decreases away from inner city towards urban periphery and thus, the resettlement sites are designed in urban outskirts where land could not be sold by high land lease auction in the present condition. The government has focused on revenue generating through lease action of the inner city prime land without taking in to consideration the impacts on displacees and financial capacity of the City Administration to manage many resettlement sites. The impacts of leapfrog urban sprawl caused by dispersed resettlement sites were not given much emphasis. Contrary to Addis Ababa resettlement sites, Majia (1999) stated that in resettling the urban poor, it is important to make part of development or move them the least distance possible from their original location. Clark (cited in; Mejia, 1999) modeled plausible that the more affluent are living near the commercial business district (CBD) and the poor are living farther away from it due to market force and government intervention.

According to the directive issued by Land Development Bank and Urban Renewal project office of Addis Ababa City Administration (Directive No. 3/ 2009); private house owners displaced from the inner city resettle in expansion sub-cities (Kolfe-Keranio and Nefas-Silk Lafto if it is for residence and Akaki-Kaliti Sub- City if it is for industry). Similarly, Public tenant displacees have two options to resettle. Those who have financial capacity can purchase condominium house and those who could not afford to purchase condominium house can get replaced Keble houses. The same directive states that private house owners have two options to resettle. If they prefer to resettle in the redevelopment area, they can build ground plus four (G +4) building in group (12 members) if the initial occupied land size is less than 201 square meters and if the initial occupied land size is

201square meters and above, they are allowed to build ground plus two (G + 2) buildings individually. If the displacees could not afford to rebuild in the redevelopment area and prefer to resettle in the expansion cities, the allotment of substitute land depends on the initial land holding size. If the initial occupation is less than 100 square meters, they are offered 75 square meters of land size as a substitute, while those who have greater than 100 square meters of land can get up to 450 square meters. However, it is not possible to get greater than 450 square meters of land as substitute whatever its initial holding is.

### ***8.3 The legal bases of compensation for the displaced people***

As it has been discussed in the previous sections, people have the right to get compensation for their private losses caused by displacement. An urban landholder whose land holding has been expropriated shall be provided compensation for permanent improvements to land that is equal to the value of capital and labor expended on the land. The compensation, may not, in any case, be less than the current cost of constructing a single room low cost house. The cost of removal, transportation and erection shall be paid as compensation for a property that could be relocated and continue its services as before. In addition to that, an urban landholder whose land holding has been expropriated shall be provided with a plot of land for the construction of a dwelling house and shall be paid a displacement compensation equivalent to the estimated annual rent for residence (business houses) of the demolished residence house or business house (Pro.No.455/2005).

According to the Land Development Bank and Urban Renewal Project Office of Addis Ababa City Administration, Directive No.3/2009, the compensation for Addis Ababa (re) development project affected people should include the following:

- Relocated persons shall be entitled to fair compensation payments;
- Compensation shall be full cost of all socio-economic and housing costs (facilities) including owners' fence and trees;
- Compensation shall cover the cost of relocation and resettlement in a sustainable way;
- Land shall be the main component of compensation;
- Displacees shall be entitled to a fair resettlement method by considering willingness, residence, workplaces, social and neighborhood relationship and family livelihoods;
- Displacees shall benefit from new development in the area through employment or other means;
- In redevelopment, people should be relocated on site or in surrounding areas as much as possible. Otherwise, people shall be resettled in developed areas where the required infrastructure and social facilities are provided better than (or equivalent to) their former areas;
- Resettlement and rehabilitation shall be provided for displaced people with a means to improve or at least restore their former living standard, earning capacity and production levels;
- Rental houses shall be provided at affordable and fair prices for renters who want to continue to rent; and for others, the new housing units shall be privatized at fair prices and favorable terms of payment preferentially to present residents;
- Value assessment for compensation should be based on current market prices and shall take into account all damages incurred in the livelihood of the owner;
- Land compensation should consider suitable replacement where the owner can continue his/ her livelihood without difficulty; and
- Expropriation shall be executed only after proper compensation has been fully settled.

According to the same directive, a property holder/ owner is compensated for his/her immovable property situated in the expropriated land if the following ownership conditions are fulfilled:

- i) If the land is owned before the Derg proclamation No.47/1975 and has book or certificate card/ map and has evidence not expropriated by the Derg regime;
- ii) The ownership before the Derg proclamation No. 47/1975 without any document should fulfill the following criteria:
  - Have evidence of electricity and water utilities payment receipt in his / her name;
  - Have evidence of land rent annual payment receipts from 1975-1996;
  - Have evidence not expropriated by the Derg regime from the kebele and Woreda;
  - Have ownership evidence and order from housing agency;
  - Have evidence that the building is found on the Sofara top and Nortic map; and
  - Have written or court letter showing inheritance or gift or bought.
- iii) Buildings after the Derg proclamation No. 47/ 1975, should have legal ownership evidences;
- iv) Buildings from the proclamation No. 47/1975 to 1984 without any document should fulfill the following criteria:
  - Have legal evidence of this time interval and approved by the kebele and Woreda;
  - Have evidence of annual land tax from 1975- 1996; and
  - Have evidence of the building on Sofara top and Nortic map.

Although cash compensation and/or replacement land is given for expropriatees when their properties are expropriated for public development projects, according to the same directive number, the following property holders are not eligible for cash compensation and/ or replacement land:

- If the contract of temporary land use rights is expired;
- If part of the land is taken for redevelopment and if the land holder prefers to stay on the remainder in line with the standard of the city;
- If the properties are owned by the City Administration;
- If the displacees are applying to develop on the redevelopment site;
- If the displacees prefer condominium houses instead of replacement land; and
- If the displacees do not have titled deeds and are sub-renters.

## ***8.4 The expropriation process***

The expropriation process passes through a long procedure beginning with the conceptualization stage up to the payment of compensation despite it lacks procedural laws and uniformity in all places. The expropriation procedure for Senga-Tera Redevelopment Locality in Lideta sub-City was as follows:

### ***8.4.1 Conceptualization stage***

After the City Administration of Addis Ababa has decided to redevelop the area, higher officials of the City Administration have discussed intensively with the public about the redevelopment program and promised to incorporate and fulfill the residents' interest. Project preparation and implementation sensitization meetings have been organized in the redevelopment affected area aimed at explaining to the residents the likely project

benefits. The claimants would be persuaded to accept and protect and work against saboteurs, assuring that their lives would not be disturbed. Those affected would be compensated and resettled and that their legal rights were intact. Different alternatives may be given according to the interest and financial capacity of the affected people. After the overall discussion has been undertaken and a consensus reached on developmental issues, displacees nominated their representatives. The number of representatives differs according to the size of displacees and their holding types. The selected representatives of the displacees signed a contract with the City or Sub-City higher officials to bind the rights and responsibilities of the two signed parties.

After consulting the affected people, tasks to be undertaken by the City Administration and/or Sub-City are identified. These tasks include identification of the people to be displaced and resettle in the resettlement site; plotting of existing property boundaries, inspection of properties, preparation of the layout plans/ scheme, cadastral surveying, valuation and assessment of compensation, payment of compensation, and undertaking the resettlement process. Property valuers would be assigned to inspect and identify site and property boundaries to know the extent of acquisition. The assigned property valuers individually list and record compensable items and then encode to the computer. Then the amount of compensation to be paid to the affected people would be determined.

However, after the inspection and determination of compensation, most affected peoples were not satisfied about the clarity of the procedure and the amount of compensation valued. According to the Lideta Sub-City higher officials and experts, the large section of private property owner/holder displacees (84.4 percent) appealed to the Sub-City that either the amount of compensation and/ or the procedure was not correct. The complaints were categorized as follows:

- i) Low compensation rate and / or amount .....90 (34.4 %)
- ii) Low compensation and improper recording of compensable items.....92 (35.1 %)
- iii) Although compensable items were collected and recorded properly, there was a problem when these items were encoded in to the computer. Hence, 39 (14.9 %), applicants appealed to the Sub-City in this regard.

According to the Focus Group Discussion (FGD) and key informants, when the claimants appealed to the Sub-City for rechecking and revaluation of their property, they would be asked to sign and enter in to obligation to have the amount deducted if the value of the property declines compared to the initial value. Because of this, some applicants feared to appeal to the Sub-City.

**Box 8-1: Fear of respondents to appeal**

**Fear of respondents to appeal**

One of the key informants displaced from Senga-Tera Redevelopment area replied that she appealed to the Lideta Sub-City that her compulsorily taken property was undervalued. Then, she was asked to sign a contract in case if the estimated value declines farther, it will be deducted. She signed the contract and a new property valuer was assigned and the property was valued for the second time. The new valuation report showed that the value of the property reduced by 4,000 ETB compared to the first estimated property value. She believed that the value was reduced intentionally to warn others not to appeal. Because of this, a number of other claimants fear to appeal though they are not satisfied with the rate/ amount of compensation. As she replied, because of inappropriate property valuation many people became dissatisfied, sick, and disturbed (Field survey, 2011).

The City Administration is responsible to pay compensation for the affected people. In order to expedite (speed up) the process, the compensation was paid directly to the affected people after all valuations for compensation have been approved by the Sub-City manager or deputy manager although there were a number of complaints. Alula and Piguët (2004) stated that there need to be three phases in displacement and resettlement. The first is the preparation for resettlement including the planning, site selection, settler recruitment and preparation. The second refers to the concerns for the move and conditions of reception including timing for relocation, organizing departures and transport monitoring, infrastructure, services and assistance. The third phase considers creating sustainable condition including adaptations to new areas, relations with local people and environmental concerns, and assessment of self-reliance (Pankhurst & Piguët, 2004). On the contrary, the Addis Ababa City Administration has displaced dwellers as an urgent campaign without giving enough time for psychological and material preparation.

#### ***8.4.2 Mode of payment of Compensation***

The compensation was expected to be paid immediately after the valuation of the expropriated property and before hand over. However, some expropriatees had been paid after hand over. Compensation was paid directly to the claimant after signing in the presence of either the manager or deputy manager of the Lideta Sub-City who also served as witness to the payment. At this stage, some claimants had complaints regarding the amount of compensation paid to them. The claimants who still expect more payment do not have the right to refuse to leave the site. They are forced to leave the area and wait for additional payment if there is any. However, at the time of this survey, some of the claimants had not been paid any additional compensation by the Sub-City after the assessment. The Sub –City believed that the assigned property valuers inspected and valued the property properly, so the complaints were not accepted. If all the complaints are accepted, it may spread to other similar areas and bring a serious problem to the Sub-City in the future.

Although Article 8(4b) of proclamation No. 455/ 2005 says that a displaced person should be compensated either displacement compensation equivalent to the estimated annual rent of the demolished dwelling house or allowed to reside free of charge for one year in a comparable dwelling house owned by the City Administration, it was indicated that the City Administration provided one year house rent compensation which was not comparable to market house rent and did not provide residence house free of charge for one year. Furthermore, due to low compensation and high cost of construction materials, it is hardly possible for the affected people to construct replacement residence house in one year time. Consequently, many property owner displacees were not satisfied and some of them quarreled with the demolishing team. The demolishing team destroyed some displacees' houses before they evacuated. Relocating inhabitants involuntarily without adequate psychological and financial (material) preparation disrupts an entire lifestyle. The study has also identified that some of the owners in the resettlement area have not yet constructed the house on the given plot due to the absence of public services and lack of enough compensation for new construction (photo 8.3). This resulted in many homeless and impoverished urban dwellers. Pankhurst and Piguët (2004) stated that there was no official resettlement policy that could be used in the phase of moving settlers, timing of relocation, organizing the departures and transport, monitoring infrastructure, service and assistance in Ethiopian resettlement (Pankhurst & Piguët, 2004).

**Photo 8-3: Undeveloped plot in Bethel resettlement area**



Source: Field survey (2011)

## **8.5 Survey Results**

### **8.5.1 General profiles of respondents**

A representative sample was taken from the total property owner/holder displacees who preferred to resettle in the new resettlement areas (Nifas-Silk-Lafto and Kolfe-Keranio). Accordingly, the sampled respondents whose land holding expropriated in the redevelopment area and preferred to resettle in the new resettlement sites were randomly taken for interview. The information was supplemented by in-depth interviews with key informants, property valuers and higher officials as well as Focal Group Discussions (FGDs) held with the community.

In the redevelopment area the total number of displaced people was about 1320, out of which 338 were private property owners. From the total number of private property owners, 262 (77.5 percent) preferred to resettle in the new resettlement areas from whom samples are selected for this study.

The socio-economic composition of the affected people is shown in tables 8.2, 8.3, and 8.5. From Table 8.2, it is observed that the majority of the affected people are ranged from 25 to 75 years of age. In Table 8.3, it is evident that out of 66 claimants interviewed, 33 (50 percent) were self-employed of whom 19 are females and 14 males. An analysis of the income levels in Table 8.5 illustrates that the affected people mostly fell with the lowest income bracket (67 percent). With very few people (9 percent) earning more than 2500 Ethiopian Birr (ETB), therefore, the large number of the expropriatees are categorized as low income earners based on the sample survey results.

**Table 8-2: Age groups among the affected people in the Senga-Tera Redevelopment Area**

Age group	No. of people	Percentage (%)	Cumulative percentage (%)
Less than 25 years	1	1	1
25 up to 49 years	24	36	37
50 up to 75 years	36	55	92
Above 75 years	5	8	100
Total	66	100	

Source: Field Survey (2011)

**Table 8-3: Employment status of the displaced property owners from the Senga-Tera redevelopment area**

No	Engagement	Sex				Total	
		Male		Female		No	%
		No	%	No	%		
1	Government Employee	4	12	4	12	8	12
2	Private firm employee	1	3	1	3	2	3
3	Formal self employed	10	30	6	18	16	24
4	Informal self employed	4	12	13	39	17	26
5	Unemployed	2	6	0	0	2	3
6	Pension	7	21	4	12	11	17
7	Dependant	5	16	5	16	10	15
	Total	33	100	33	100	66	100

Source: Field survey (2011)

### **8.5.2 The expropriation procedure**

As stated in section 8.5, the procedure of expropriation commences by undertaking “consultations” with the local community at large, and it is at that point that the landholders that are going to be affected, or at least those who are presented at the meeting, become aware of a planned project for which land is going to be expropriated.

Although the expropriation and payment of compensation laws stated the procedure of expropriation and compensation in some extent, the practice undertaken on the ground is quite different from what is indicated in the laws and expected from the acquiring authorities. From the scheduled questionnaires administered, it was revealed that about 49 percent of the claimants did not participate in any procedure of expropriation and compensation. The remaining balance 51 percent of the claimants participated only during public discussion forum and inventory of properties, but not in property valuation and determination of compensation amounts. They were not the part of the decision on compensation amount and procedures. Generally, the majority of the affected people were not considered as part of the decision of the process of expropriation, valuation and compensation.

The expropriation and payment of compensation laws of Ethiopia stipulates that prompt compensation should be paid in the event of compulsory acquisition of private holding properties; however, the acquiring authorities did not pay for all affected people uniformly before the taking of the expropriated property. For instance, 14 of the respondents confirmed that they have been paid the compensation after their property was taken. This shows that most expropriatees were paid before handing over of their properties though the rule was not applied for all of the affected people. Moreover, they did not receive any extra money what they were expecting from the acquiring authority for the cost of removal, transportation, erection and late payment of compensation. The respondents were not also given sufficient time for preparation. Most claimants (68 percent) commented that they were not given sufficient time for mental, material and financial preparation for displacement and resettlement reactions. The focus group discussion held during the field survey has revealed that the

expropriation procedure was not clear and transparent. It was rush and campaign. Furthermore, one of the legal requirements, i.e., the submission of information and data at least one year prior, is hardly followed. According to Nuhu (2006; cited in Bashar, 2008):

When land is compulsorily acquired for a just purpose, there should be prompt and adequate payment of compensation that will better the lots of the claimant(s) in order to enhance livelihood and contributions to the economic and social activities of society (Bashar, 2008).

Although Articles 3 (1) and 4 (3) of Proclamation No. 455 of 2005 make it clear that compensation in cases of expropriation is to be made in advance of evicting the landholder, some of the authorities argue that there are cases of non-payment or delayed payment of compensation. The focus group discussions carried out with affected landholders during the field visits exposed several instances where: compensation is neither paid nor replacement land provided in advance of surrender of landholdings, replacement of land is given in advance and cash payment is made after surrender; or cash is paid partially in advance of surrender and the remaining paid after surrender.

### ***8.5.3 Purposes of expropriation powers***

Although Proclamation No. 455 of 2005 provides a broad definition of public purpose, it does not contain any provisions that set out a formal decision-making process for each specific case as to whether a project meets the public purpose criteria. Such a formal process deemed necessary, though implicitly, since to argue otherwise may be considered as favoring a state of affairs where citizens' rights to property can be infringed upon any time any place without any limit or boundary at which the deciding authorities must deny approval to expropriation requests. The absence of such a limit or boundary may also lead to arbitrariness and subjectivity that will result in unnecessary or unjustified infringement to the enjoyment of property rights as enshrined both in the Federal and Regional Constitutions.

The information from survey results reveals that at present, there is hardly any formal and conscious exercise carried out by the City Administration for determining the existence of public interest for projects requiring expropriation of land holdings. Though the expropriatees were informed that the land was totally designed and planned to be used for public development projects, the actual field survey revealed that significant amount of land was also provided to private investment projects.

### ***8.5.4 Expropriation order notification***

The Federal proclamation No.455/2005 provides that, where a decision to expropriate a private landholding is made, notification in writing is required to be given to the landholder a year before. Such notification is required to indicate the period within which the holding has to be “vacated and the amount of compensation to be paid”. To facilitate the notification process, the proclamation puts an obligation on implementing agencies<sup>48</sup> to prepare detailed data pertaining to the land needed for the work and send the same, at least one year before the

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<sup>48</sup> Under Article 2 (7), Implementing Agency is defined as government agencies or public enterprises undertaking or causing to the undertaking of development works with their own force or contractors.

commencement of the works, to the organs empowered to expropriate land in accordance with this Proclamation and obtain permission from them.

The minimum period of vacating a holding on which there is property is stated to be not less than 90 days from the date compensation is received while the period for land on which there is no property is not less than 30 days after receiving notification of the expropriation order. According to Article 4(4) of the same Proclamation, the date of notification of expropriation order is the point of commencement for counting the period within which the landholder has to vacate his/her holdings.

However, this creates a problem when seen in relation to the requirement of “advance compensation”. The practices in all parts of Addis Ababa in general (Zelege, 2006), and the study area in particular, formal written notification of an expropriation order was not given by the City Administration (Field survey, 2011). In lieu of formal notification, the measures taken are to make the landholders aware about the project and rarely, since the advent of Proclamation 455/2005, about their rights to be paid compensation. The process of expropriation commences by undertaking “consultations” with the local community at large, and it is at that point that the landholders that are going to be affected, or at least those who are present at the meeting, become aware of a planned project for which land is going to be expropriated. However, formal written notification was not totally delivered.

### **8.5.5 Losses due to expropriation**

Urban (re)development and renewal programs often target slums and shanty towns normally inhabited by low-income households. Compared to suburbs, income generating opportunities and social services are often concentrated in such areas. Therefore, relocation of low-income households from inner cities to the outskirts would, undoubtedly, affect their livelihoods and informal networks of mutual assistance, their critical coping strategies. It has been widely agreed that people dislocated from inner cities are likely to lose important locational and social attachment advantages linked to their survival (Davidson et al., 1993).

**Table 8-4: Types of losses due to expropriation**

Types of losses	Frequency	Proportion in (%)	Cumulative percentage (%)
Accommodation	4	6	6
Business center	17	26	32
Social life and Network	1	2	33
Access to public service	2	3	36
Accommodation, Business center and & access to public service	15	23	59
Accommodation & social network	2	3	62
Accommodation, Social network & access to public service	14	21	83
Business center & Access to public service	11	11	100
Total	66	100	

**Source:** Field survey (2011)

Table 8.4 shows types of losses due to expropriation identified by the affected people. From the point of view of the affected people, among the losses, business center, accommodation, access to public service and social network are the main problems that faced them. Loss of source of income due to displacement is the serious problem encountered by the affected people. Most of the respondents strictly commented that the expropriator did not give much emphasis to the problem they encountered due to the expropriation process.

- **Loss of Accommodation**

The City Administration of Addis Ababa so as to expedite the expropriation process, it had paid one year residence house rent in addition to the compensation made for the property taken assuming that the affected people can build their own residence house in one year time. Hence, all displacees lost their accommodation before constructing their residence house. According to the respondents, the problem that they have encountered is the amount of money paid for one year house rent and the amount of compensation made was extremely small as compared to the market house rent and the construction materials to construct the new residence house.

During the field survey, the researcher has observed that some of the displacees in the resettlement area have not yet constructed the new residence houses (photo 8.4). According to the urban planning regulation (2002) and guideline (1998), rental houses shall be provided at affordable and fair prices for renters who want to continue to rent; and for others the new housing units shall be privatized at fair prices and favorable terms of payment preferentially to present residents. However, the high price of rentable house which is beyond the displacees' capacity is contrary to the urban redevelopment regulation and guidelines.

**Photo 8-4: Incomplete development plots in Bethel resettlement area**



**Source:** Field survey (2011)

Participants in the Focus Group Discussion (FGD) and key informants mentioned that they were not provided fair compensation for their previous house and house facilities. According to the executive summary of the Addis Ababa master plan 2001, the valuation assessment method for expropriation and compensation should consider the current market prices, all damages and risks of displacement (social, economical and physical) that incurred additional cost on the livelihood of the displacees. However, the government did not follow and implement its guidelines and regulations. The reexpropriatees were asked whether their properties were valued at open market value. All of them (100%) said that their properties were not valued at open market value. If they were allowed to sell it in the open market, they would sell it by far higher price than the compensation they have

been offered. One of the main resettlement site selection criteria for Local Development Programs (LDPs) in the city is the positive balance between the area lease auction and cost of resettlement process rather than the proportion of slums and urban problems. The City Administration followed the principle of cost-benefit analysis that the development cost (for road construction, compensation and house construction) should be less than the total lease price (ORAAMP, 2002). This shows that the cost-benefit analysis of the land lease price was the main cause for the inappropriate house compensation and the absence of house facilities. That is why almost all sampled property owner displacees were given inadequate compensation. The minimum amount of compensation provided to affected people was 25,000 ETB. This amount of compensation is not enough either to construct or buy a single room low cost house. And this contradicts with the expropriation and payment of compensation law<sup>49</sup> enacted by both the Federal and Regional governments. Moreover, the finding of this study is also contradictory to Baye's (2000) finding. His study showed that owners were given better built houses with better house facilities and additional cash for their loss of site related opportunities (Baye, 2000).

- **Income Loss/ Decline**

**Table 8-5: Monthly average income of the affected people in ETB before and after displacement**

Description	Before Expropriation		After Expropriation	
	Frequency	Proportion in (%)	Frequency	Proportion in (%)
Less than 500	19	29	51	77
Between 500 and 1000	25	38	10	15
Between 1001 and 2500	16	24	4	7
Greater than 2500	6	9.1	1	1
<b>Total</b>	<b>66</b>	<b>100</b>	<b>66</b>	<b>100</b>

**Note:** ETB, Ethiopian Birr

**Source:** Field Survey (2011)

Of the 66 survey respondents, 29 percent earned less than 500 ETB per month in their old villages. In the new resettlement sites, the number of households earning less than 500 ETB per month increased to 77 percent. Likewise, the number of households who were earning between 500 and 1000 ETB per month before displacement decreased from 38 percent to 15 percent after displacement. At the same time, those who were earning between 1001 and 2500 ETB per month before displacement also decreased from 24 percent to 7 percent after displacement. Similarly, those who earned more than 2,500 ETB per month also decreased from 9 percent to 1 percent in the new resettlement area. This shows that although it was claimed that the expropriation process would benefit the public; it had affected the expropriatees' livelihoods very seriously.

Respondents were also asked about the main sources of household income and the breadwinners. In the old village, 26 percent and 24 percent of the households depended largely on informal self-employed and formal self-employed respectively. 12 percent of the respondents depended on regular salary from the formal sector. The remaining balance 15 percent and 17 percent are dependant and pension respectively (Table 8.3). Data from

<sup>49</sup> According to proclamation No. 455 of 2005, Article 7 (2) when compensation is payable to an urban dweller, it may not, in any way, be less than the current cost of constructing a single room low cost house in accordance with the standard set by the concerned region.

key informants and participants of the Focus Group Discussion (FGD) showed that most displacees had additional sources of income from renting part of their dwelling unit, boarding rooms (night or day), part timework in nearby restaurants, garages and from many other sources before displacement. On the contrary, in the new settlement area there is no opportunity to raise additional income.

Although one may think that displacees could have exaggerated their change of income, the level of income has significantly reduced in the resettlement area because they have lost not only their familiar environment and decent houses but also their diversified sources of income. This study has found that the decrease of income is mainly due to the loss of diversified (informal) inner city opportunities and absence of integrated programs for displacees' development and re-development in the resettlement sites. The absence of appropriate compensation for the loss of trading place and residence house and its facilities etc. are also other causes for economic marginalization and impoverishment of displacees in the new resettlement sites.

- **Household's expenditure**

There was a general increase of displacees' expenditure in the new resettlement area. Data from Focus Group Discussions (FGDs) and key informants supplemented this fact that households' expense increased in the new resettlement sites because of increased transport cost, increased commodities' prices and new house ancillaries. However, since the displacees lost their additional income sources, they are forced to cut their expenditure merely because their income may not allow them to expend more.

**Table 8-6 : Monthly average expenditure of the affected people in ETB before and after displacement**

Description	Before Expropriation		After Expropriation	
	Frequency	Proportion in (%)	Frequency	Proportion in (%)
Less than 300	11	17	23	35
Between 300 and 500	17	26	34	52
Between 501 and 1000	18	27	3	4
Between 1001 to 2000	17	26	5	8
Greater than 2000	3	4	1	1
Total	66	100	66	100

**Note:** ETB, Ethiopian Birr

**Source:** Field Survey (2011)

Of the 66 survey respondents, 17 percent expend less than 300 ETB per month in their old villages. In the new resettlement sites, the number of households who were expending less than 300 ETB per month increased to 35 percent. Likewise, the number of households who were expending between 300 and 500 ETB per month before displacement increased from 26 percent to 52 percent after displacement. On the other hand, those who expended between 501 to 1000 ETB per month before displacement decreased from 27 percent to 4 percent after displacement. At the same time, those who expended between 1001 and 2000 ETB per month before displacement decreased from 26 percent to 8 percent after displacement. Similarly, those who expended above 2000 ETB before displacement decreased from 4 percent to 1 percent after displacement because of the simple reason that the affected people lost their additional source of income in the new resettlement area. Due to the loss of additional income sources on the one hand and the increment of living expenses on the other hand, worsen the living condition of affected people in the new resettlement area.

- **Poor Infrastructure and Service provision**

Urban areas require well-planned network of different infrastructures and social services due to their large population size and high density of settlements. They require infrastructures that provide communication, supply (water, power, education, and health services), collection/removal (drainage, waste removal and sewerage) and transportation. Inner city has usually more important locational advantage than the outskirts as it has more access to social services and infrastructures. The availability of infrastructures can also be taken as a measure of development and requirement to attract investment. The affected people that are displaced from the inner city have faced problems in infrastructures and public service accessibility. According to Abraham (2003; cited in Zeleke,2006), the prevailing shortage of social services and inappropriate plan of infrastructures are being aggravated by lack of optimized planning, absence of integrated urban management and lack of holistic development approach in city centers.

- i. **Impacts on education and health Services**

Since educational institutions tend to concentrate in central areas, people living in inner cities enjoy better access to educational facilities compared to those living in the suburbs. The relocation of people from Sengatera Locality in Lideta Sub-City to resettlement suburbs limited their access to education. The problem is not just about the number of educational institutions. The location of affordable schools and the cost of education make the resettlement areas unattractive places to live in (at least from the point of view of the poor). Focus Group Discussion (FGD) participants and key informants indicated that distance to primary and secondary schools substantially increased. Those who used to attend college programs while in their old villages had to either bear high transport costs or drop out of the programs. 45 percent of the interviewed displacees reported that the distance to the nearest primary school is far or very far compared to the ones in their previous villages. Likewise, 25 percent of them indicated that the nearest high school is very far. One of the implications of the relocation process is that a significant number of parents whose children used to walk to school have to allocate a budget for transport.

The citywide baseline survey identified problems in health service delivery in Addis Ababa. These include shortage of health service facilities, uneven distribution of health services, shortage of trained manpower, and financial limitation and inadequacy (Resome, 2007). The public and Non Governmental Organization (NGO)-operated healthcare facilities are concentrated in the city centre, largely inhabited by low-income households. The urban development program caused the relocation of people from sub-cities (e.g., Lideta Sub -City) located in central Addis Ababa and with a large concentration of affordable public healthcare facilities to frontier Sub-Cities (e.g. Kolfe-Keranio, Nifas-Silk-Lafto) where such facilities are either scarce or unaffordable. About 64 percent of the respondents said that the distance from the current homes to the nearest affordable healthcare facility (relative to the distance in the old villages) is very far.

- ii. **Impact on social networks and neighborhood ties**

According to Cernea (1989):

Forced displacement tears apart the existing social fabric and induces powerlessness. Life sustaining informal networks of the reciprocal help, local voluntary associations, and self-organized mutual service arrangements, are dismantled. The social capital lost through social disarticulation remains

unperceived and uncompensated by planners. This loss is bigger in projects that relocate families in a dispersed manner, affecting severely their prior ties rather than relocating in-group and social units (Cernea, 1989).

One of the possible consequences of displacement and resettlement is the breakup of the neighborhood and social life ties that existed for many years. The sample household heads were asked about the loss encountered due to displacement. About 26 percent of the sample households have felt that their previous neighborhood and social life ties had been broken and they have lived with new neighbors in the new settlement areas. Data from Focus Group Discussion (FGD) and key informants showed that neighborhood and social life ties were not considered in the process of displacement and resettlement. This implies that the displacees lost their neighborhood ties that had much mutual socio-economic assistance especially among the poor.

### **iii. Road network and transportation problems**

Road network planning is considered as the most important part in urban planning. This is because roads have multi-functions. Appropriate road network is useful for the installation of drainage, sewerage system, electric lines, water supply, etc. Furthermore, planned road layout is useful for effective and smooth flow of traffic and reduction of its accidents.

As many studies showed, in Addis Ababa in general, and the redevelopment area in particular, roads are not properly planned and maintained. It has poor quality and standard with lack of pedestrian walkways and drainage facilities. Thus, traffic congestion, both automobiles and humans, is common especially at the inner city (Yntiso, 2008). Senga-Tera redevelopment area in Lideta Sub-City is one of the places with dense road networks. There are a number of city buses and taxis passing through it. However, resettlement sites especially the Anbesa-Garage area in Nifas-Silk-Lafto Sub City has problems in transport access.

The field survey result shows that there was no transportation problem before displacement. 100 percent of the sampled displacees proved that they were highly satisfied about the transportation access before displacement. On the contrary, all respondents have no satisfaction on transport access after displacement. FGD participants and key informants also confirmed that high transport price and lack of transport access are the main problems in the new settlement areas.

The researcher had observed that transportation problem due to long distance from inner city has affected livelihoods of displacees. Furthermore, the long distance travel and the high cost of transportation forced some relocatees to quit their jobs. For example, Zeleke (2006) reported that one of his informants continued to work for Tesfa Laboratory after relocation and earned 120 ETB per month. However, she was forced to quit her job because 63 percent of her monthly income was spent on transportation. Another informant also said that she quit her job because retaining it demanded leaving her house before 5:30 pm, and this presented a security concern.

#### **Box 8-2: Transportation problems of Displacees**

##### **Transportation problem of displacees**

I usually wake up at 3 pm, prepare meal, and feed my four children whose father has died. Then at 6:00 am, I take a nearby taxi to the main road where I get bus that goes to piazza. I then take another taxi or bus to the place where I work which is near Denbel city center. By so doing, I arrive at my work place usually at 9 am,

which always makes me quarrel with my boss for being late. Finally, I was forced to resign the job. Now, I am unemployed. Before I was displaced, I reached to my work place on time. The displacement and resettlement cost my job, which the lives of my four children and mine depend on (Zelege, 2006).

This shows that displacees are located far away from nurseries, primary/secondary schools, healthcare facilities, and market places. The necessity to travel to the workplace, market, school, and other places has required the allocation of a budget for transportation. Respondents in the new resettlement area replied that they have to walk 10-15 minutes to the bus stop. Those commuting back to the inner city for work have reported leaving their homes as early as at 5:30 pm to queue up for the bus. While in the old village, there was no transportation problem because of its locational advantage. 95 percent of the interviewed respondents replied that they are living in an area where there is no road and other public services near to the new resettlement site. They also said that they spend lots of money on transportation in the new villages due to distance.

### **8.5.6 Participation of the affected people in the process of expropriation**

The field survey result revealed that most of the displaced people were unhappy with the land acquisition process that had affected them. Although they were not against government action on expropriation, they had some reservations on the implementation. The case in point here is that one of the interviewees named Mr. Kebede in Kolfe-Keranio, Bethel area had the following to comment. He said that:

He has been holding the land since the Imperial era (before 1975). It is accessible to all infrastructures and convenient for part time work for his children. Now comes the government, takes it away from me and gives it away to some rich people from the cities, who by themselves do not need this land for their livelihood. They just want to use for seeking profit. My family and I need this land for our livelihood but the government seems not to care. Can you tell me what the logic of taking this land from me and giving it to some business man for making profit? What do I benefit from it? For the property I lost at the center of the city, I was paid very unfair compensation, and I was thrown away to the periphery of the city which lacks basic public facilities.

**Table 8-7: Participation of the affected people in the process of expropriation**

No	Description	Frequency	Percentage (%)
1	Yeas	39	59
2	No	27	41
Total		66	100

Source: Field survey (2011)

A significant number of affected people (41 percent) did not participate in the expropriation and compensation assessment process. Although the remaining balance 59 percent of the claimants participated during the public discussion forum and inspection of the property, they did not engage in the valuation and compensation determination. The claimants were also annoyed by the time they were given to evacuate the area. This totally contradicts with the Federal expropriation laws<sup>50</sup>, the World Bank's operational policy

<sup>50</sup>There are some points in the expropriation laws that are not properly treated. However, the main problems that are prevailed in the expropriation and compensation process is the inadequate implementation of the laws on the ground.

statement (O.P 4.12-Involuntary Resettlement) and the directives of the City Administration of Addis Ababa itself. 75 percent of the respondents replied that they were not given sufficient time to prepare mentally, materially and financially for the reaction of the displacement. Moreover, they said that the expropriation and valuation procedure was not transparent and inviting.

The claimants were also annoyed by the delay of compensation payments after their properties had been assessed. The expropriator did not communicate the expropriatees in time about what had happened after they inspected and expropriated properties. The value of money declined from time to time due to uncontrolled inflation and they were not paid additional compensation for the delay of payment and asset appreciation occurring after the determination of compensation. This result in failure to reach replacement costs that contradicts with the law. As a result, the amount of cash compensation made is not enough for recipients to purchase equivalent.

### **8.5.7 Reasons for opposing expropriation**

**Table 8-8: Reasons for opposing expropriation**

No	Reasons for opposing expropriation	Degree of Relevance							
		Most important		Important		Less important		Not important	
		No	%	No	%	No	%	No	%
1	Inadequacy of Compensation	58	88	1	1	1	1	6	10
2	Not public purpose	0	0	1	2	50	76	14	22
3	Emotional attachment to property	11	17	38	57	6	9	11	17
4	Unclear procedure	3	5	53	80	3	5	7	10

**Source:** Field survey (2011)

As shown in Table 8.8, inadequacy of compensation was the most important reason why property expropriation was opposed by landholders<sup>51</sup>. It was evident from the respondents that about 89 percent of the respondents replied that the amount of compensation paid was by far less than the value of the expropriated property and the compensation paid was unfair and inadequate. Unclear procedure and emotional attachment to property were ranked second and third with 85 percent and 74 percent respectively to oppose expropriation.

Taking land compulsorily for public development projects is understood and accepted as a proper use of powers of acquisition that is why only one percent of the respondents oppose this issue. However, it is not convincing for the respondents when eminent power is used for taking privately held land and transfer it to another profit seeking private individuals.

<sup>51</sup> The weights used why the expropriatees oppose expropriation are 1=most important; 2= important; 3= less important; 4=not important at all. The respondents were asked to score their answers based on these scales.

### ***8.5.8 Expropriatees' and valuers' Knowledge of expropriation and compensation laws***

**Table 8-9: Knowledge of expropriation and Payment of compensation laws**

No	Description	Expropriatees		Property valuers	
		Frequency	Proportion in (%)	Frequency	Proportion in (%)
1	Know very well	0	0	7	54
2	Partly Knowledgeable	10	15	6	46
3	Do not know at all	56	85	0	-
	Total	66	100	0	-

Source: Field Survey (2011)

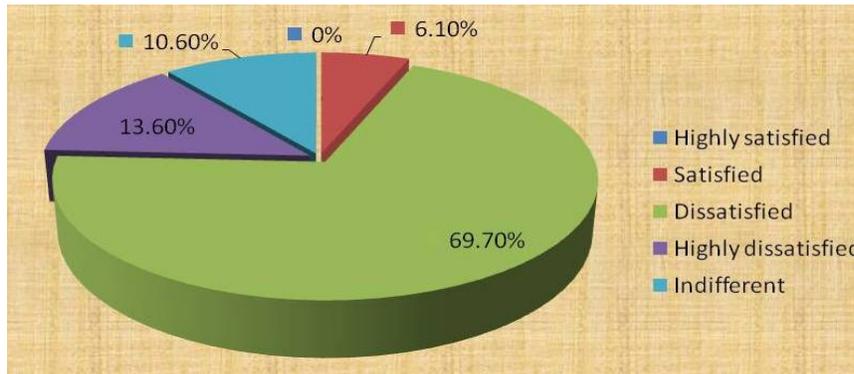
As indicated in table 8.9, the survey result shows that from the interviewed property valuers, 54 percent know the laws very well and the remaining 46 percent know the laws partially. On the other hand, 85 percent of the interviewed expropriatees did not know anything about the laws of expropriation and payment of compensation laws. Only 15 percent of them know the laws partially. This shows that it is very difficult to implement the laws properly if both the affected people and property valuers and other concerned parties are not well aware about the laws.

### ***8.5.9 Fairness of compensation payment and complaints***

The amount of compensation paid depends on the place, the circumstances (the understanding of the law, the valuation method applied, the kinds of property deemed compensable, the rates that are applied, and the skill of the valuers) and the availability of financial resources etc<sup>52</sup>. The variation of these factors from place to place results in inequitable application of the concept of fair compensation and becomes a source of dissatisfaction among affected people. One of the key displaced woman informants in Nifas-Silk-Lafto who had been expropriated about 1711 square meters of land, for instance, had been offered only 450 square meters of land as compensation, while a man living in the same area and lost 46 square meters of land had been offered 75 square meters of land as compensation. This shows that the affected people who are displaced due to public development projects were not treated uniformly. Those affected individuals who had very small land holdings were benefited while those displacees having large amount of land holding size were victims of the compensation procedure according to the Addis Ababa City Administration directive No.3/2009. This situation shows the limitation of the expropriation and payment of compensation laws and the gap between what the law says and the practice implemented on the ground.

<sup>52</sup> Thus, it is not unusual in Regional Government financed projects, particularly urban expansion cases, for the available budget to determine the amount of compensation a landholder receives. Sometimes, the valuation processes are deliberately skewed to make the compensation amounts low enough to be accommodated by the available financial resources (Anteneh, 2007).

**Figure 8-1: Levels of respondents' satisfaction on compensation paid.**



**Source:** Field survey (2011)

Affected respondents were also asked about the level of compensation and their satisfaction. 83 percent of them replied that they were not satisfied and 11 percent of them were indifferent while only 6 percent were satisfied with the compensation made. The affected individuals' view is supported by the evidence obtained from the field survey that the actual compensation made and the market value of their expropriated property had a significant monetary value difference. The actual average compensation made was 226,147 ETB, whereas the estimated average market value of the expropriated property was 3,696,970 ETB (Table 9.10). This suggests that adequate compensation remains a main issue that needs to be addressed despite it requires the financial capacity of expropriators. Furthermore, all affected individuals did not get compensation for the cost of removal, transportation, erection and other related expenses despite the statement in proclamation No.455/2005, Article 7(5) stated.

The Addis Ababa City Administration pays compensation for those who are affected by the expropriation process if they have to assure that the land holding is titled or have evidence of possession. But this contradicts the World Bank's operational statement policy (O.P 4.12-Involuntary Resettlement) which says the absence of a legal title to land and other assets should not prevent affected people from receiving compensation, and that amount of compensation should be sufficient to replace lost assets, income and living standards.

It is interesting to note that complaints regarding compensation amounts are made from both sides of the fence. The affected landholders complain that the amount / rate of compensation is too low or inadequate or varying, citing several reasons that include improper inventorying of properties and recording system, underestimation of values and use of non-market indicators or inaccurate market indicators, as well as the sheer bias of valuers for government. Many affected landholders also complain that reductions are made even from the small amount of final compensation by the authorities for what are dubbed as "costs", the nature or cause of which remains unknown to them. They also point out that, although they have been promised that they would be beneficiaries from the realization of social and economic development projects, they have not generally been able to reap the benefits.

On the other hand, compensation payers complain that the estimates are too high. Local authorities are concerned when unduly high estimates are made at one place because there is a tendency to push estimates to the higher side in other places. This is because valuation estimates leak out during the valuation processes. They argue that the expropriated landholders are potential beneficiaries from private investment and public

development projects, so they should not insist to be paid compensation that is beyond the capacity of the government.<sup>53</sup> Box 9.3 presents the Prime Minister’s response for the question raised in the parliament on the adequacy of compensation.

**Box 8-3: The Prime Minister’s response on adequacy of compensation**

**The Prime Minister’s response on adequacy of compensation**

On October 14, 2011 (Tikimet 6, 2003 E.C), there was a motion following the President’s speech to the Parliament. One of the members of the Parliament asked the Houses of Speakers to incorporate the amount of compensation that would be paid to the displaced farmers for urban expansion and increased public development projects. The Prime Ministers replied for the question was as follows:

The amount of compensation that has been paid for expropriatees due to urban expansion and increased public development projects was/is not as such small as it is said; rather it is exaggerated and high. For example, the amount of compensation paid to displaced farmers due to Tekeze and Fincha electric hydro power as well as Kombolcha industry village was very high. He further added that some people assumed that the government pays high compensation that would not be comparable with the property taken. However, when the compensation amount/ rate is high, it affects not only the implementation of the projects but also the limited budget of the government. Thus, we have to work on both sides to benefit proportionally the affected people and the government (ETV, Tikimet 6, 2003 E.C)

**Table 8-10: Comparison between open market value and actual compensation paid (in thousands)**

Description	Full sample	Nifassilk-Lafto	Kolfe-Keranio
Compensation paid (N)	14926 (261)	13983 (269)	943 (96)
Open market value (N)	244000 (18884)	242000 (19483)	1745 (211)
Difference of Compensation paid and Open market value	-229074 (18823)	-228017 (19420)	-802 (137)
Percentage difference relative to open Market value	-94	- 94	-46
Average compensation paid	226	226	236
Average open market value	3697	3903	436
Percentage of average compensation paid to open Market value	6	6	54

**Note:** Values in parentheses are standard deviations

**Source:** Field Survey and Computed by the Researcher, (2011)

Table 8.10 shows whether actual compensations paid are higher or lower than the price that would result in a non-expropriation situation. One proxy of such estimates that was utilized in this study is the open market value

<sup>53</sup> What is stated here is the perception of those on both sides of the fence i.e. - those who pay and those who are paid compensation.

of properties. The key informants were asked about the estimated market value of properties if they were allowed to sell the properties in the open market value<sup>54</sup>.

Based on the data provided in Table 8.10, actual compensation paid for the full samples of displacees from the Senga-Tera Locality is 94 percent less than the open market value of similar properties on average. It is also not uncommon with the rates prescribed by the enabling compensation statute which are usually at variance to the market determined value. Dividing the sample into geographic sub-samples reveals that the percentage difference from open market value ranges from a high of 46 percent for properties in Kolfe-Keranio (Bethel area) to 94 percent for properties located in Nifassilk-Lafto (Anbesa Garage area). This result suggests that compensations paid are consistently below the open market value of similar properties, though the magnitude of differences varies across sub-samples. Consequently a paired t-value was conducted for systematic differences between compensations paid and open market value. To test the null hypothesis of no difference between compensations paid and open market values, the following t statistic was used:

$$t = \frac{x}{s/\sqrt{n}}$$

Where x and s represent the mean and standard deviation, respectively, of the difference between compensation paid and open market values, and n is the number of pairs considered. The result is summarized in table 8.11.

**Table 8-11: Results from means tests applied to compensation data to detect significance of premiums Within sub-samples**

Description	Full sample	Nifassilk-Lafto	Kolfe-Keranio
Percentage of the difference relative to open market value	-94	-94	-46
t-statistic for difference from zero	7.036*	4.933*	6.609*

\*significance at the 2.5 % level or higher

Source: Field Survey and Computed by the Researcher (2011)

The paired t- test results in table 8.11 indicate that the mean differences between compensation paid and open market value for the whole sample and all sub-samples are significantly different from zero, suggesting that compensation data examined in this study are lower than prices observed in non-expropriation transactions.

- **Compensation for Severance and other Incidental Losses**

According to Bashar (2008), “The remedy consists not only in the payment of the market value for damage or injury occasioned on crops, economic trees, building or the land itself, but also for other elements, such as disturbance and injurious affection arising from the execution of the works carried out on the land acquired.”

<sup>54</sup> To avoid biasness of respondents, the researcher tried to convince them to forward the actual information. Moreover, the questionnaire is prepared in a way to cross check the reliability of the information provided in each question. Lastly, information collected from property valuers and officials also used as a reference to cross check the reliability of the information obtained from the expropriatees.

As it has been discussed in the literature, where only part of an owner's/holder's property is taken, compensation for severance of and injurious affection to the part retained may be allowed. Compensation for severance is based on the reduction in value of the retained land, which need not be contiguous but must be in the same ownership and functionally related. It is necessary to consider the principal losses likely to be suffered in connection with the land formerly "held with" the land taken and the bases on which claims for compensation should be prepared. Compensation in which part of a property is taken falls under three main heads: land taken, severance and other injurious affection to land held therewith; and other incidental losses resulting from the compulsory taking. In addition to being compensated for the value of the property taken and severance and injurious affection, the affected people are also entitled to the losses occasioned by being "disturbed" from property. The right to compensation for disturbance only applies if the compensation for the property taken is based on existing use value. When an owner is forced to leave (vacate) land, there are other losses which suffer (Plimmer, 2008).

According to the Federal Council of Ministries Regulation No. 135/ 2007, Part two, Article 3 (2b), the estimated cost for demolishing, lifting, reconstructing, installing and connecting utility lines of the building should be paid as compensation when the property is demolished for public development purposes. However, the practice prevailed on the ground is contradictory to the aforementioned points. According to the participants of the Focus Group Discussion (FGD) and key informants, all displaced people did not get compensation for severance and other incidental losses except one year house rent which was very small as compared to the market house rent. The same article, sub-article, 4 and Land Development Bank and Urban Renewal office of Addis Ababa City Administration directive, directive No. 3/ 2009, article 14.1.4, states where part of the building is ordered to be taken and where the owner prefers to use the remaining part of the land provided that it conforms with the requirements of the appropriate city plan, compensation shall be paid only for the demolished part of a building but a substitute land will not be given. This shows that the affected property holder is not entitled to get compensation for the decline of land size and value due to severance and injurious affection let alone for the losses occasioned by being "disturbed" from property taken. This shows that in Ethiopia in general, and the study area in particular, compensation is not made for severance and injurious affection. On the other hand, when part of the land is taken and if the remaining land is allowed to be used by the property holder and if the value of the remaining land has increased due to the development project, the owner might be made better off even though he/ she has lost part of his/ her land. Under these circumstances, compensation cannot be set off against any increase in value of the remaining property.

- **Personal perceptions of the affected people about the adequacy of compensation**

The displaced private property holders had not seen the values of their property as assessed by independent professional valuers. It was difficult for them to assess whether assessments made for their properties were fair. However, through interviews it was established that they were quite unhappy with the rates /amount of compensation made. The compensation rates used were not similar to the ones used in the Sheraton Addis displacement project<sup>55</sup>.

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<sup>55</sup> Displacees due to Sheraton Addis five star hotel were compensated fairly and settled in the resettlement site with all public facilities (Zelege, 2006).

**Table 8-12: Expropriatees’ perception about the adequacy of compensation**

Description	Frequency	Proportion in (%)	Cumulative percentage
Very fair	2	3	3
Fair	5	8	11
Unfair	30	45	56
Very unfair	18	27	83
Do not know	11	17	100
Total	66	100	

Source: field survey (2011)

The affected respondents were also asked about the level of compensation and their perception. The majority (45 percent) of the affected displacees perceive that adequate compensation was not given and hence they were not satisfied. 27 percent of them said that the compensation amount was very unfair as compared to the open market value of the expropriated property. Only 11 percent of the respondents reported that the compensation paid was fair. The remaining 17 percent of the respondents did not have information about the fairness of compensation. This shows that the majority (73 percent) of the affected respondents perceived that the compensation given was unfair (Table8-12).

Most affected people (73 percent) believed that important factors, such as location, distance from the main road, market and access to utilities etc., which affected the value of property were not taken into consideration when the properties were valued. There was no room for strong negotiation between expropriatees and expropriators; so that the affected people did not believe that their properties were valued genuinely. According to the results obtained from the participants of FGD and key informant interviews held in the field survey, most of the affected people believed that the question of fairness is based on equal treatment. They also believed that the loss they suffered in the acquisition must be properly redressed. Thus, the claimants expected from the City Administration of Addis Ababa that the compensation made would be based on the reservation prices they fixed for their properties, which were higher than the assessed prices of their properties. However, their expectation was not met.

### ***8.5.10 Grievances and appeals in relation to compensation***

According to the information obtained from key informants at the field survey, in rare cases where affected property holders have taken recourse to the grievance dealing mechanisms (i.e., the courts), the judges were mostly reluctant to entertain the grievances or rendered decisions against the affected persons. Thus, some landholders appear to see no difference between the local administration bodies and the courts, and in fact, claim that it is better to go to the administrative bodies rather than the courts since courts have a lot of formalities to be adhered to and take time to give decisions. That is why 84 percent of the total displaced property owners appealed to the Lideta Sub-City for rechecking and revaluation of their properties.

The affected displacees have also complaining about the low amount of compensation by making comparisons as to how much benefits they could have obtained had they been allowed rent / selling their landholding directly to the investors and/or interested purchasers. According to the authorities, such landholders’ sentiments are created by land brokers or middlemen that are increasingly becoming a problem as they create confusion among

the landholders. In fact, some interviewees in the redevelopment area expressed their opinions that, since investment brings added value, the policy of expropriation of landholdings by government should continue provided that fair compensation for all inconveniences and substitute land is offered.

### ***8.5.11 Summary of survey results***

The Addis Ababa City Administration has implemented the huge and complex urban redevelopment projects without clearly designed government implementation tools (policy-plan, responsible institution, and legal framework, commitment and re-establishment schemes) and preconditions (serviced-sites and potential displacees preparation). The other problem in the project is that site selection for Local Development Program (LDP) in the city is based on cost-benefit analysis of lease price rather than urban problems (high proportion of slums and service problems). The resettlement sites are located far from the city center and lacked public facilities such as road, sewerage system, water, electricity etc. As a result of all these, they are found sources of many problems.

The final compensation paid to affected displacees was not up to the expropriatees expectation. The discrepancy is created due to lack of professional property valuers, incorrect list of property type and size, improper handling of the data collected from the field, etc. These and other unmentioned problems caused many affected people to appeal to the Sub-City for rechecking and revaluation of their properties. Moreover, different attributes such as topography, location, and distance from the main road and additional sources of income and business centers were not considered when the properties were valued. On the other hand, depreciation of the property was not considered while determining compensation. As it has been discussed in the preceding sections, the displacement and resettlement procedure and implementation was identified contrary to the World Bank's involuntary displacement operational statement (O.P 4.12), the Federal Expropriation and compensation payment laws, as well as the directives of the City Administration itself. The affected people were not compensated properly for the losses they suffered. Hence, the affected people do not lead life in a relatively good condition as they did before the displacement.

## **CHAPTER NINE: EXPROPRIATION, VALUATION AND COMPENSATION IN ETHIOPIA: The case of Bahir Dar City and surrounding**

### **9.1 Introduction**

Sustainable development requires governments to provide public facilities and infrastructure that ensure safety and security, health and welfare, social and economic enhancement, and protection and restoration of the natural environment. An early step in the process of providing such facilities and infrastructure is the acquisition of appropriate land (FAO, 2008). Driven by the demand for economic development and improvement of the well-being of citizens, governments in every country maintain and exercise the power to expropriate private properties for public purposes. While every sovereign state maintains an “eminent domain power” to advance the interest of the public, the government’s action may negatively impact on the livelihoods of those whose assets are taken (ADB, 2007).

The Amhara National Regional State (ANRS) is one of the regions in Ethiopia where there is high rate of population growth and rapid urbanization aggravating the high prevalence of urban poverty and a rapid growth in the number of the urban poor. The urban centers in the region are characterized by a poorly developed economic base, a high level of unemployment and the spread of slums. The region has been undertaking all rounded measures to overcome the prevailing problems. One such measure taken by Bahir Dar city administration, the regional capital, is the expropriation of privately possessed properties to undertake development projects and public facilities.

Even though land expropriation is undertaken for different purposes, few would question the legality of such action, assuming that once land is acquired compensation must be paid. This case study examines the legality and process of compulsory acquisition, the appropriateness of the valuation methods applied and the fairness of compensation paid in Bahir Dar city and its surrounding areas. These issues are explored in terms of their compatibility with Ethiopian law as well as with theories of property rights and theories of fairness and justice.

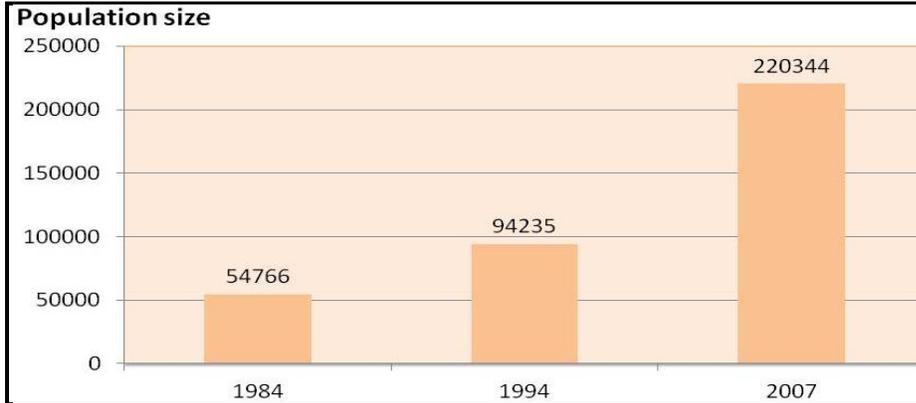
### **9.2 The Study Area**

Ethiopia is a federal country with 11 autonomous national regional states among which we have the Amhara National Regional State (ANRS). The region is the second largest in its population, after the Oromiya region. The region covers an area of about 156,960 square kilometers, and its altitude ranges from as low as 500 meters to 4620 meters above sea level at the Peak of Ras Dashen Mountain which is Ethiopia’s highest and Africa’s fourth highest mountain. The region is divided into 11 administrative zones, more than 100 rural and urban Woredas<sup>56</sup>, and about 3000 rural kebeles. According to the 2007 national population and housing census, the Amhara Region had a counted population of about 17.21million, of which males constituted 50.2% and the balance 49.8% was the share of females. Out of the total population of the region 87.4 percent live in rural areas. The population growth rate from 1984 to 1994 is 5.4 percent and from 1994 to 2007 is 13.4 percent.

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<sup>56</sup> The second from the last administrative unit in Ethiopia. In Ethiopia, there are different administrative structures out of which Woreda is the second administrative structure from the last next to kebele.

**Figure 9-1: Population size of Bahir Dar City from 1984 to 2007**



Source: CSA, (2007)

Bahir Dar, the capital city of the Amhara National Regional State, is located about 578 kilometers northwest of the capital city of the country, Addis Ababa and lies 1801 meters above sea level. It is located at 11° 38' N latitude and 37° 10' E longitude and its total area is 213.43 square kilometers. The lowest and the highest annual average temperatures of the city are 10.3°C and 26.3°C, respectively. The annual average rainfall is 1224 mm (BahirDar-CityAdministration, 2009).

The council of the Amhara National Regional State has already given “Metropolitan City Administration” status for the city of Bahir Dar under the revised proclamation No.91/ 2003. With this mandate, the city administration has been restructured as Bahir Dar Metropolitan City Administration incorporating three nearby small urban centers as satellite towns. These are: Zegie, Tis Abay and Meshenti and their very immediate rural vicinities. In general, the naming of the city called as Bahir Dar has a connection with its near proximity to the two water bodies of the surrounding (Lake Tana<sup>57</sup> and River Abay<sup>58</sup>). Like other cities in the country, the majority (63 percent) of the residents fall in the young age group, 15-59 Years of age. The population size of the city has been increasing rapidly due to population growth rate of previous years, rural-urban migration, push factors in the rural areas, and pull factors in the city and the socio-economic dynamism of the city.

**Figure 9-2: Location of the study area in Amhara Region**



Source: City Administration of Bahir Dar (2009)

<sup>57</sup> The largest highland lake of the country

<sup>58</sup> The Longest river in the world

### ***9.3 Municipal land acquisition and source of finance for compensation***

The Bahir Dar City Administration undertakes the largest number of expropriation programs, more than any other organization. The City Administration undertakes these programs for its own use or on behalf of private organizations and private investors that require land for purposes, which can be classified as public purpose according to the expropriation and payment of compensation laws (Proc.No.455/2005).

City administrations need land for their own use to construct their own buildings and other public development projects and/ or to provide land for the services and infrastructure required by the public in their locality. Although city administrations need to provide land for government bureaus and offices, their biggest demand is for the provision of land for general public development projects and public facilities. To attain the required amount of land for these purposes, city administrations expropriate privately possessed land by providing compensation for each property owner/holder.

The sources of finance for compensation vary according to the nature of the development programs/ projects and the type of financial institutions. The source of finance has also an influence on the determination of compensation rate/ amount. Small to medium scale projects are funded by regional governments where as federal government finances large scale projects or other big infrastructure development projects from treasury or borrowing.

In case of expropriation, the Bahir Dar City Administration revealed that the regional government allocates compensation budget yearly for those individuals that lose their land and attached properties for public development projects. Of course, the amount appropriated may not be sufficient in view of what is expropriated. The deficiency arises due to lack of budget or problems related to the estimation of the budget, and the subjectivity that often occurs in estimating variables such as productivity, price in rural areas and market price of construction materials in urban areas. Due to financial constraints, compensation is paid partially in advance of surrender and the remaining is paid after surrender. There is no interest payment for delayed payments (BahirDar-CityAdministration, 2009).

In addition to the annual budget allocated by the regional government, the main source of municipal funds for compensation purposes include the general municipal fund generated from municipal taxes, fees and other revenue sources. There are also funds sourced by government organizations when they acquire land from the city administration to construct their own bureaus and offices. When an individual or private organization acquires land through the city administration, it has to pay the funds to the city administration, which in turn is paid to the affected people as compensation. Therefore, funds available for the urban development projects for each year depend on these various sources and the type of projects given priority by the city administration.

### ***9.4 Purpose and rational of expropriation***

The demand for land has been increasing from time to time because of the massive construction undertaken by the federal and regional governments both in urban and rural areas. There has also been a steady demand of land for infrastructural development including roads, sewerage systems, electricity, telecommunication, etc in urban areas and for construction of big dams for electric power and irrigation, horticulture and flower industry, etc. in rural areas. Private investments both in urban and rural areas also require huge hectares of land. The

government cannot supply land for all these activities from its free land holding (government land Bank); it rather expropriates from private land holders and users.

The Amhara National Regional State (ANRS) in general and the City Administration of Bahir Dar in particular are not exceptional to this practice of expropriation to meet the increasing demand for land that comes from different development actors. This is based on the Federal, proclamation No. 455 of 2005, which states that Woreda or City Administration can expropriate private landholding and use rights and transfer it to private investors if they believe that the change in possession benefit the public.

### ***9.5 The expropriation process***

The expropriation process passes through a long procedure beginning with the awareness creation stage up to the payment of compensation. The need to acquire land may arise from the city administration itself or from government organizations or private individuals and investors. When the proposal for land is presented, the city administration checks whether the land is suitable and convenient for the proposed development project and identifies the would be affected people and their economic status, the type of holding (permit or old possession, private purchase, lease, inheritance or donation), and the legality (whether it has title or not). Once the city administration checks the suitability of the land for the proposed development project, the kebele administration organizes consultative meeting with the affected people and inform them that the land is needed for more profitable activities and a better development. Then the city administration officials, together with the local kebele leaders, undertake consecutive meetings with the affected people the aim of is to explain to the would be affected people the likely project benefits. The claimants are persuaded to become co-operative to accept the proposal and protect and work against saboteurs, assuring them that their lives would not be disturbed. They are assured of reasonable and fair compensation<sup>59</sup>, the offering of substitute land and the protection of their legal rights and are informed that the exercise is inevitable.

It is assumed that after the meeting, people would understand the issue presented to them and would be more co-operative in the whole exercise. It is also envisaged that this would reduce holdouts and unnecessary delays in the acquisition process once it was initiated. The meetings are believed to provide an opportune time for the city administration officials to explain the main issues at stake, to advise both the affected people and their leadership on various issues and on the procedure involved in the whole exercise.

After consulting the affected people, the city administration assigns the property valuers to carry out site and property inspection in order to identify the site boundary and to know the extent of the acquisition. The property valuers list and record every compensable item, encode it in the computer and then finalize the amount of compensation to be paid to the affected people. The estimated compensation amount is then announced to the affected people. If an affected person is not satisfied with the compensation amount, he/ she can appeal to the city administration complaints hearing committee (a compensation grievances investigation committee). According to Proclamation 455 of 2005, article 11(4) if the expropriated land holder is still not satisfied, he/she may appeal to a first instance court and then a “regular appellate court”. A right of appeal to the regular

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<sup>59</sup> The affected property holders were promised to be given compensation that put them in the same economic position as they were before the expropriation. According Keith (2007), “Fair compensation for the claimant is, the right to be put in so far as money can do it, in the same position as if his / her land had not been taken from him / her.”

appellate court lies within 30 days from the date the appellant is provided with the copy of the decision of the court of first instance. The decision of the appellate court is final.

## ***9.6 Survey Results***

In this section, the significance of the main findings from the field survey undertaken in Bahir Dar city and surrounding areas are indicated in brief.

### ***Primary data***

Primary data was collected through structured and semi structured questionnaires, key informant interviews and focus group discussions. There were three types of questionnaires used for collecting the data-one for eighty seven expropriatees, another for five property valuers and third for 18 higher and local officials. Since majority of the interviewees were illiterate and some of them did not have time to fill the questionnaire, the data collection was managed through schedule-structured questionnaire interviews. Detail information was gathered from focus group discussions made on different groups constituting 6 to 9 members in each and key informants selected from each kebele.

### **Sample size and the sampling method**

Given available resources, existing capacity to administer/ monitor the survey and the importance of increasing and diversifying sample sizes, a representative sample size was taken from the study area. Accordingly, in the inner city of Bahir Dar, in Kebele ten out of twenty four affected people who were displaced for the purpose of regional Bureau construction, twenty two people were selected for interview, where as in Ginbot-Haya kebele, thirteen out of fourteen affected people who were displaced for road construction purpose were selected for interview. In the surrounding rural kebeles, fifty two out of two hundred sixteen displaced people were randomly selected for interview. All (five) valuation committee members of the city were included in the sample.

The number of people who were displaced in the inner city was small in size and easily accessed, all of them who were available during the interview time were included in the sample; whereas in the surrounding rural kebeles the displaced people were found relatively large in size and live in scattered areas. Moreover, they have similar living standard and information access about the expropriation and valuation issues. Thus, systematic random sampling method was found appropriate and applied for the surrounding rural kebeles.

### ***9.6.1 Background of the Respondents***

Based on the field survey, it was seen that those whose properties have been expropriated in the inner city of Bahir Dar and its peripheral areas could be categorized into different groups. As indicated in Table 9.1, Table 9.2 and Table 9.3 the people of these areas belong to different income, employment and age groups. 95.6 percent of the sample respondents are between the ages 25 and 75. 1.1 percent is below 25 years age where as 3.3 percent of them are above 75 years old. It has a similar picture to Addis Ababa where the previous case study was conducted.

**Table 9-1: The Main characteristics of the respondents**

Characteristic	Frequency	Percentage (%)
<b>Gender</b>		
Male	73	79
Female	19	21
<b>Age</b>		
Less than 25 years	1	1
25 up to 49 years	53	58
50 up to 75 years	35	38
Above 75 years	3	3
<b>Occupation</b>		
Government employee	6	7
Private firm employee	-	-
Self employed	17	18
Farmer	52	56
unemployed	-	-
Dependant	-	-
Pension	12	13
Valuation officer	5	5
<b>Educational qualification</b>		
Illiterate	59	64
Read and Write	20	22
From grade 1-10	5	5
From grad 11-12	2	2.2
Diploma	1	1
First degree	2	2
Second degree and above	3	3

Source: Field survey, (2011)

Table 9.1 shows the employment and engagement status, gender and educational qualification of respondents. It has been observed that among the interviewed expropriatees 52 (60 percent) are basically farmers who live in the surrounding area of the city while 17 (20 percent) are self employed. From the total expropriatee and property valuer respondents 73 (79 percent) are males where as the remaining balance 19 (21 percent) are females. As far as the level of education is concerned, 59 (64 percent) of them are illiterate, 20 (22 percent) are reading and writing and 5 percent are first degree holders and above.

**Table 9-2: Monthly average income of the expropriatees in ETB before and after Expropriation**

Description	Before Expropriation		After Expropriation	
	Frequency	Proportion in (%)	Frequency	Proportion in (%)
Less than 500	7	8	32	37

Between 500 and 1000	23	27	47	54
Between 1001 and 2500	42	48	7	8
Greater than 2500	15	17	1	1
Total	87	100	87	100

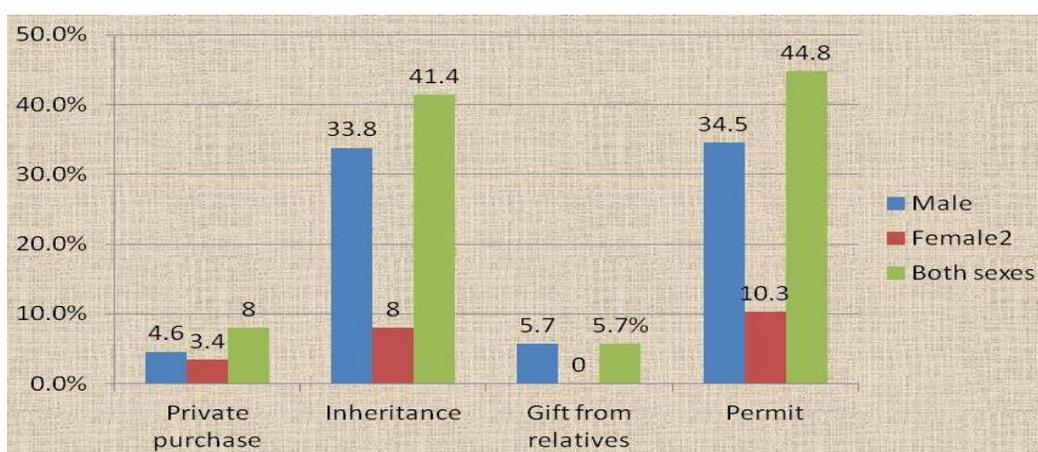
**Note:** ETB, Ethiopian Birr

**Source:** Field survey (2011)

Table 9.2 shows that 42 (48 percent) of the affected respondents earn between 1001 and 2,500 ETB per month before expropriation where as 35 percent of them earn less than 1000 ETB per month. After expropriation, the number of households earning less than 1000 ETB per month rose to 91 percent. Likewise, the number of households who were earning between 1001 and 2,500 ETB per month before expropriation decreased from 48 to 8 percent after expropriation. At the same time, those who earned greater than 2,500 ETB per month also decreased from 17 to 1 percent. This shows that although it was claimed that the expropriation process would benefit the public, it had affected the expropriatees' livelihoods very seriously. It is very similar to the situation in Lideta Sub-City displacees in Addis Ababa.

- **Property rights of affected people**

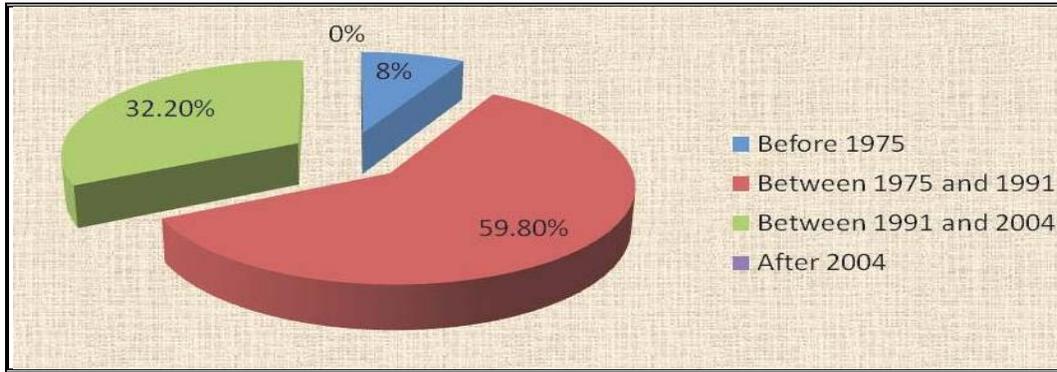
**Figure 9-3: Mode of Land acquisition by the expropriatees**



**Note:** %= percent. **Source:** Field survey (2011)

The land holding status at the time of inspection is reflected in the figure 9.4. It shows that 39 (45 percent) of the expropriatees obtained land by permit system when land was redistributed both in the previous and present government. 36 (41 percent) of them obtained land by inheritance from parents or relatives. This implies that the area has basically been taken over by the indigenous people, not by new comers.

**Figure 9-4: Periods within which land was acquired by Expropriatees**



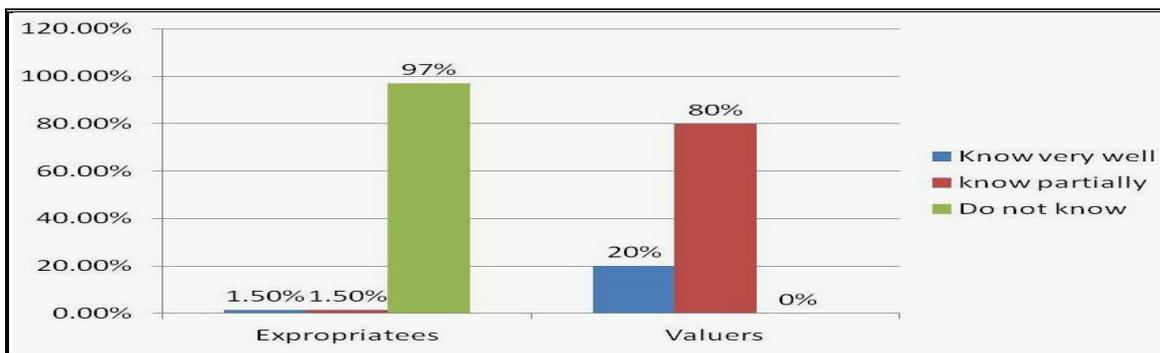
Source: Field Survey (2011)

As figure 9.5 shows, 68 percent of the respondents settled in the area more than 20 years ago. They had been there for a very long period of time. There are no recent settlers in the area. That is why especially the farmer respondents said that whatever the amount of cash compensation is they preferred their land and place where they settled for a very long period of time

▪ **Knowledge of expropriation and compensation laws**

One of the aims of the field visit investigation was to try to find out the extent to which expropriatees were aware of the rules and regulations related to expropriation, valuation and compensation. Expropriatees and property valuers were asked if they were aware of the expropriation and compensation laws and to what extent they know the law that defined basic property rights and expropriation powers. The intent was not to test expropriatee’s legal knowledge in the deeper sense of the term but to find out about legal literacy at the primary level. It has been proved in the field survey that many expropriatees were not quite clear what an expropriation and payment of compensation laws actually were or that rights to land were also governed by specific land laws. Even after careful explanation, quite a number of respondents failed to understand the terms adequately. In other way of saying, landholders do not yet have a good knowledge of expropriation and compensation laws and how they are dealt with. They do not know what their rights and obligations are in the event of being expropriated. In some instances, property valuers too do not have sufficient knowledge of expropriation and payment of compensation laws. These facts are well supported by the findings of the field survey.

**Figure 9-5: Expropriatees’ and property valuers’ knowledge of expropriation and compensation laws**

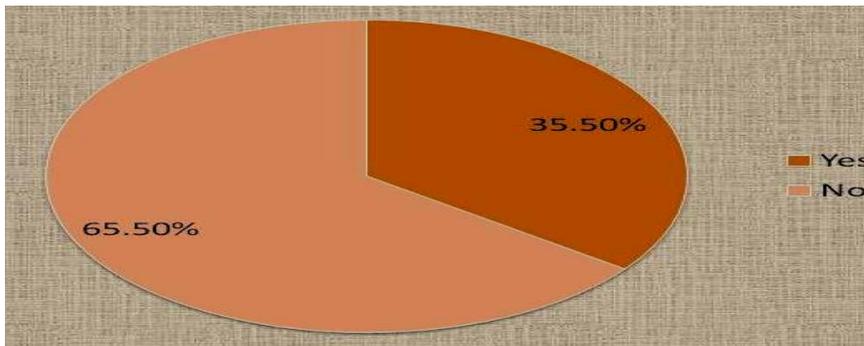


Note: %=Percent. Source: Findings of the field survey conducted in (2011).

The field survey result revealed that only 3 percent of the compensated expropriatees knew the law well where as the large majority of these affected people, 97 percent, did not know anything about the expropriation and payment of compensation laws. From the total number of property valuers interviewed, only 20 percent knew the law very well where as the remaining 80 percent knew the law partially (figure 9.6). This shows that it is very difficult to implement the laws properly if both the expropriatees and property valuers and other concerned parties are not well aware about the laws.

### 9.6.2 Participation of expropriatees in the process of expropriation

**Figure 9-6: Expropriatees participation in the Process of Expropriation**



**Source:** Field Survey (2011)

The respondents revealed that the rules and regulations are violated because the affected individuals were severely asymmetrical in respect of the information on land acquisition process. The affected respondents, especially the farmers, believed that they had no decision-making and participation rights in land acquisition. The field survey result revealed that 57 (65.5 percent) of the expropriatees did not participate in any procedure of expropriation and compensation. The remaining 30 (34.5 percent) of the claimants participated only during public discussion forum and inventory of properties (Figure 9.7). During the inventory and measurement of the property, the complaints were not allowed to comment about the field activities undertaken by property valuers. They were not even informed about the results of field survey. The respondents said there were many errors committed by property valuers; some measurements were overstated while others were understated.

Where a decision to expropriate a landholding is made, notification in writing is required to be given to the landholder as defined in the Federal Proclamation No 455/2005. Such notification is required to indicate the period within which the holding has to be “vacated and the amount of compensation to be paid”. To facilitate the notification process the Proclamation puts an obligation on implementing Agencies<sup>60</sup> to prepare detailed data pertaining to the land needed for the works and send the same, at least one year before the commencement of the works, to the organs empowered to expropriate land in accordance with this Proclamation and obtain permission from them. The minimum period of vacating a holding on which there is property is stated to be not less than 90 days from the date compensation is received while the period for land on which there is no property is not less than 30 days after receiving notification of the expropriation order. According to Article 4(4) of the same proclamation, the date of notification of expropriation order is the point of commencement for counting

<sup>60</sup> Under Article 2 (7), Implementing Agency is defined as government agencies or public enterprises undertaking or causing to the undertaking of development works with their own force or contractors

the period within which the landholder has to vacate his holdings. However, the discussions with the affected individuals and FGD participants revealed that the one-year information and data submission period is hardly followed by the implementing agencies. Accordingly, almost all of the expropriatees replied that they were not given sufficient time for psychological, material and financial preparation for the reaction of the expropriation process.

### 9.6.3 Alternative options exercised by the government to secure land for development

The sampled expropriatees were asked to forward their views on the options exercised by the government to secure land for development activities and how often it was exercised<sup>61</sup>.

**Table 9-3: Options exercised by the government to secure land for development**

Options	How it was exercised*						Total	
	Most often		Often		Seldom			
	No	%	No	%	No	%	No	%
Compulsory acquisition	43	49	19	22	25	29	87	100
Government land Bank	-	-	-	-	35	40	-	-
Joint venture	-	-	-	-	-	-	-	-
Negotiation under the threat of compulsory acquisition	-	-	-	-	-	-	-	-

Source: Field Survey (2011)

Table 9.3 presents the respondents' view on the alternative options exercised by the government for securing land for development and how it was exercised. As it can be seen from the table, 49 percent of the respondents agreed that the medium of expropriation was used most often to secure land for development. 19 (22 percent) of the expropriatees replied that expropriation was used *often* to secure land for development. 25 (29 percent) of them replied compulsory acquisition was *seldomly* used. On the other hand 40 percent of the respondents agreed that Government land bank was used rarely to secure land to carry out public development projects like public road, hospitals, schools, etc. This result shows that the medium of expropriation was the most *often* option exercised by government, followed by government land bank. Joint venture and agreement under the threat of compulsory acquisition was revealed to have never been applied, although it remains as one of the options. It could be implied from this that the expropriatees, especially farmers, did not really know the existence of these different options because of their low level of education as well as lack of access to information on what is happening in the region in this regard.

According to the respondents view, land expropriation should not be the best alternative for government to secure land for development. Other alternatives such as undeveloped land within the boundary of urban area could be used as alternative for the government to exercise different development activities. According to Usilappan (2000; cited in Allians & Daud, 2006), land acquisition is a complex process, is sensitive in nature,

<sup>61</sup> \*The weights used in this question are 1=most often; 2= often; 3=seldom; 4 =never

and needs pragmatic approach to deal with. Wherever possible, land developments should be carried through the process of normal economic supply and demand (Allians & Daud, 2006).

### 9.6.4 Reasons for opposing expropriation

**Table 9-4: Reasons for opposing the expropriation process**

Reason for objection	Degree of relevance <sup>62</sup>								Total	
	Most important		Important		Less important		Not important			
	No	%	No	%	No	%	No	%	No	%
Inadequacy of Compensation	67	77	7	8	13	15	-	-	87	100
Not purely public purpose	-	-	2	2	7	8	78	90	87	100
Emotional attachment to property	37	43	27	31	21	24	2	2	87	100
Unclear procedure	-	-	4	5	19	22	64	73	87	100

Source: Field Survey (2011)

Table 9.4 shows the reasons for the expropriatees' objections to land acquisition. Inadequacy of compensation was the most important reason held by landholders. It was evident from the FGDs and key informants (including property valuers) that the amount of compensation given to expropriatees is by far less than the value of the expropriated property. Thus, (85 percent) of the expropriatees raised inadequacy of compensation as the main reason to resist the process of expropriation and 74 percent of the respondents gave emotional attachment to property as the second reason to oppose the process of expropriation. Only 5 percent and 2 percent of the expropriatees gave "unclear procedures" and "non public purposes" respectively as reasons for opposing the process of expropriation. Furthermore, participants in the focus group discussion stated that the expropriated land was not used as intended to use. The expropriators put it idle for a long time without any development. Had it been used by initial landholders, it would have been possible to generate a huge amount of income for themselves and the public. This shows that the respondents were not satisfied with the expropriation.

**Photo 9-1: Focus group discussion participants at Robiet-Bata Kebele**



Source, Field Survey (2011)

<sup>62</sup> The weights used in this question are 1=most important; 2= important; 3= less important; 4= not important at all. The respondents were asked to score their answers based on these scales

## **Box 9-1: Opposition to the expropriation process**

### **Opposition to the expropriation**

One of the aims of field investigation was to find out the extent to which the affected individuals were convinced about the expropriation undertaken. Affected farmers were asked if they were opposing the expropriation. The intent was not to test the affected farmers' knowledge of the expropriation procedure in the deeper sense but rather to know to what extent they have been informed about why their land holding right has been taken and to what extent they have been convinced about the taking of their land. The field survey result proved that though the expropriatees did not agree to give their land, the process of expropriation was effected without allowing them to participate in the inspection and measurement of their land holding. They were not compensated for the trees they had grown for a long period of time. They were not even allowed to take the trees. Almost all affected farmers were very dissatisfied with the compensation offered. That is why they opposed the process of expropriation.

One of the key peasant informants, whose name is Mr. Worku, for instance, said "I lost my 3 hectares of land donated by my parents in 1974, when I was married and started my life independently. I am left only with 0.25 hectares of land where my residence house is located. I had been compensated 147,000 ETB; however, his money was stolen by unknown persons who came from urban area. Mine and my family life is under risk and danger."

What was surprising is that the land was taken before five years to undertake horticulture and flower farm investment. However it has been put idle without adding any value and creating opportunities for affected farmers. Now they are expecting the land to be given back to them since they were told it was taken only for ten years (Field survey, 2011).

### ***9.6.5 Advance payment of compensation***

Articles 3 (1) and 4 (3) of Proclamation 455 of 2005 make it clear that compensation in cases of expropriation should be made in advance of evicting the landholder. Although some of the authorities argue that there are very few cases of non-payment or delayed payments of compensations, the focus group discussions carried out with the affected landholders during the field visits exposed the fact that there have been several instances where:

- compensation was not paid nor replacement land provided in advance of surrender of landholdings;
- replacement of land was given in advance whereas cash payment was made after surrender; or
- Cash was paid partially in advance of surrender and the remaining was paid after surrender.

In addition, it is not uncommon for post-surrender payments of compensation (whether partial or full) to be delayed for unreasonably long periods of time. Some of the city administration authorities attribute the failure to pay full compensation in advance or the delays in such payments to:

- the long time it takes to make the inventory of properties, to value them and determine the amount of compensation, as well as the lack of the required skills to carry out these activities promptly; and

- the inability of those responsible for the cash or for providing the substitute land to make the payment promptly. This may be due to bureaucratic red tape, or more seriously, the shortage of financial resources to make the necessary payments or the difficulty of providing substitute land which, in most cases, is in short supply.

The problem is not, however, only the non-payment of advance compensation (fully or partially). There are also many cases where no compensation is paid<sup>63</sup> or substitute land is not provided at all. A very serious problem related to the non-payment of advance compensation is the practice used by both rural and urban administrations, of taking farmers' holdings by threats of force or actual use of force. Not only plenty of cases of expropriations without payment of compensation have been exposed by participants of focus group discussions and individually interviewed landholders, but local officials have also admitted, in several instances, that they have to use force to evict<sup>64</sup> farmers from their holdings even though they know that the latter have not received compensation.

The survey findings indicate that, out of the compensated landholders who were formally interviewed, 64 (74 percent) received compensation after handing over the land. Participants of FGDs and key informants also reported that they were not consulted with regard to the valuation and compensation of their properties. According to the participants, they resisted the surrender of their holdings for a number of reasons: the non-payment of advance compensation, absence of substitute land, not being informed in advance, sudden commencement of various activities related to construction and fencing of their land etc.

The focus group participants reported that the expropriatees were first encouraged to leave their land with no resistance because the expropriators promised to offer adequate compensation and/or substitute land and opportunities of employment to them. When that failed, they were advised to abandon resistance and to surrender their land peacefully and not become anti-development. Some affected individuals in some focus group discussions admitted that they had to sign agreements to the takeover of their holdings for fear of being imprisoned.

### ***9.6.6 Fairness of compensation payment and complaints***

The amount of compensation paid and its fairness depends on the place, the circumstances (the understanding of the law, the valuation method applied, the kinds of property deemed compensable, the rates that are applied, the skill of the valuers, etc.) and the availability of financial resources, etc. The variation of these factors from place to place results in inequitable application of the concept of fair compensation and as a result affected people are not treated uniformly. Although few studies have dealt with the inadequacy of compensation in Ethiopia, it has been observed that the biggest source of the inadequacy of compensation is the outdated rates

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<sup>63</sup> In the case of regional infrastructure projects such as rural roads and various water works constructions, compensations are not supposed to be paid because land belongs to the government. For example, the staffs of these organizations believe that the law allows them to use quarry materials for free, or they assume that since communities compete with each other to have a road pass through their villages they believe that they are not interested in compensation. Put differently, they expect the issue of compensation to be taken care of by the beneficiary communities themselves without involving the agencies.

<sup>64</sup> According to Proc. No.455/2005, Article 4(5), the woreda or urban administration may use police force to take over the land from the landholder where a landholder who has been served with an expropriation order refuses to handover the land within the period specified in Article 4(3) of this proclamation.

used in compensation, especially in relation to agricultural products and the methods used in determining compensation. In urban areas, everyone is certain that the expropriatees will receive compensation in the event they lose their property if they have a legal title for their possession; however, not everyone is sure whether the compensation will be “fair” and “commensurate”<sup>65</sup>.

The Federal Constitution issued in 1995 states that the “right to ownership of rural and urban land, as well as of all natural resources, is exclusively vested in the state”, and land “shall not be subject to sale or other means of exchange.” On the other hand, the constitution protects both urban and rural land holders from eviction or displacement from their holdings except where the land is required for “public purposes”. However, proclamation No. 455 issued in 2005 gives the Woreda or City Administration the power to expropriate land and evict or displace holders from their land holding on the grounds that the land is needed for “public purposes”. Compensation is paid in kind or in cash or in both, to landholders whose land is expropriated but as it has been reported in the field survey result, almost all expropriatees were dissatisfied with the compensation offered (Field survey, 2011).

The affected landholders complained that the amount/ rate of compensation is too low or inadequate or varying and cited several reasons: improper inventory of properties and valuation, underestimation of values and use of non-market indicators or inaccurate market indicators, as well as the sheer bias of valuers assigned by government. Many affected landholders also complained that reductions are made even from the small amount of final compensation by the authorities for what are dubbed as “costs”, the nature or cause of which remains unknown to them. They also pointed out that, although they have been promised by the government that they would be the beneficiaries from the realization of social and economic development projects, they have not generally been able to reap the benefits, particularly in the case of private investment<sup>66</sup>. 62 (71 percent) of the interviewed compensated households reported that the compensation payment they received was *very unfair* and 13 (15 percent) of them said it was *unfair*. This shows that almost all affected households in the field survey proved that the compensation payments made to them were unfair and unsatisfactory.

**Table 9-5: Levels of expropriatees’ satisfaction on compensation paid**

No	Levels of Satisfaction	Frequency	Percentage (%)	Cumulative Percentage (%)
1	Highly satisfied	-	-	-
2	Satisfied	12	14	14
3	Dissatisfied	19	22	36
4	Highly dissatisfied	56	64	100
5	Indifferent	-	-	100
Total		87	100	

**Source:** Field survey (2011)

<sup>65</sup> According to the Constitution of 1995, expropriatees must be paid “commensurate” compensation. The common dictionary meaning of this word is “equal”, “appropriate”, or “Adequate.” Hence, affected landholders are eligible for compensation proportionate to the property expropriated.

<sup>66</sup> One of the benefits of investment is expected to be the creation of employment opportunities to the affected landholders. In the surrounding area of Bahir Dar visited during the field trip, a lot of bitterness against investors was expressed. One of the complaints was that the investors let alone to make an effort to employ those landholders that have been expropriated or members of their families such as their children; they could not undertake the investment for the last five years

The affected respondents were also asked about the level of compensation paid and their satisfaction. 56(64 percent) of them thought that adequate compensation was not given and hence they were highly *dissatisfied*. 19 (22 percent) of them are *dissatisfied* with the compensation payment. Only 12 (14 percent) of the affected claimants<sup>67</sup> said that the compensation paid was fair and hence they are *satisfied*. This shows that the majority (86 percent) of the claimants were not satisfied with the compensation offered. This implies that the compensation paid to expropriatees was unfair and inadequate and it remains as the main issue that needs to be addressed by expropriators.

According to the results obtained from the participants of Focus Group Discussion (FGD) and key informant interviews (KII) held in the field survey, most affected people believed that all important factors which affected the value of expropriated property directly or indirectly were not taken into consideration when the properties were valued. There was no room for strong negotiation between expropriatees and expropriators since there is a big gap between the two in terms of power; thus most of the affected people did not believe that their properties were valued genuinely and independently.

Furthermore, most of the affected people believed that the lack of fairness is related to the unequal treatment of people with similar status<sup>68</sup>. They also believe that the loss they suffered in the acquisition must be properly redressed. From this perspective, the claimants expected from the City Administration of Bahir Dar and the regional government that the compensation would be based on the reservation prices they fix for their properties, which were higher than the assessed prices of their properties. Although such expectation was observed from claimants, the magnitude of the divergence was not made (Table 9.6).

The city administration or the regional government pay compensation for those who are affected by the expropriation process, when they have assured that the land holding is titled or have evidence of possession. But this contradicts the World Bank's operational statement (O.P 4.12-Involuntary Resettlement) which says that the absence of a legal title to land and other assets should not prevent affected people from receiving compensation (WorldBank, 2002). The power to expropriate land for private investment or government projects with compensation is frequently paid to the evicted landholders by the city administration or regional government; but, this is as a rule much less than the value of the property paid by the investor to the government. That is why most of the time investors do not pay directly to the affected people. The city administration uses the difference as a source of revenue. The victims of such expropriation process frequently are the poor and disadvantaged households. Box 9.2 presents the case of unfair compensation.

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<sup>67</sup> Those individuals, who were displaced in Keble Ten for Regional Bureau development purpose, were paid fairly in relative term because the regional government allocated good amount of budget for compensation.

<sup>68</sup> It appears that government valuation officers had a great deal of discretion in applying the broadly formulated compensation standards and applied them inconsistently. The field survey result indicated that affected peoples (APs) who were educated and relatively well-off and had good close contacts with valuers received much higher valuations than those who were poor and uneducated. For instance, a woman named Yalganesh Tegegne, aged 60 complained that she had been given only 105 square meters of land as compensation for the loss of one hectare of land with more than one hundred medium eucalyptus trees, while her neighbor having equal land size and a comparable house had been compensated 150 square meters of land, with additional financial payment. The only difference was that her neighbor was educated and influential in the community. This indicates that all affected persons were not treated equally and uniformly though the law states so.

## Box 9-2: Unfair compensation

### Unfair compensation

One of the key poor women informants, for instance, in Bahir Dar City, was called Enanu Temesgen, who was aged 65, and whose land was unjustly expropriated by the decision of the city administration and was given to an investor. She had inherited the land, 200 square meters in size, in 1960 from her parents who had died sometime ago. In compensation for the land she lost, the city administration offered her only 105 square meters of land in one of the resettlement sites, where public facilities such as road, water, electric power and market are not fulfilled.

Photo 9.2: One of the Resettlement sites in Bahir Dar City



**Source** Field survey, 2011

She said, “Since my young age, the land was held and used by me and my family. Financial compensation was not given at all. Even sufficient time was not given to me for, at least psychological preparation”. Since she is aged, it was hardly possible to generate income to reconstruct her residence. She did not have male relatives and kin support in the area. She is thus highly disadvantaged, vulnerable, and the evidence indicates that this was one major reason why her land was chosen for expropriation. Finally, she decided to initiate court action at the regional higher court. Enanu did not have the service of a lawyer, nor did she have any knowledge of court procedure or the technicalities of the law, all of which were to play against her. It is obvious that she had not been given compensation at least for redevelopment of the house because she was aged and poor and, because she could not afford the services of a trained lawyer. After many court appearances, the court ruled that the investor to whom the land was given should build the house in the resettlement site, but she had not been given financial compensation merely because she did not have a document that assured her possession though she possessed the land for more than twenty years. The house built by the investor is extremely low standard and inconvenient for living. Hence, Enanu lost her possession where every public facility was fulfilled and was thrown away to a place where there was no public facility. Furthermore, she lost all her sources of income and social attachment (Field survey, 2011)

When land is expropriated by local authorities for “public purposes” in rural areas, compensation could be paid in kind though it is hardly possible to offer land having equal value due to the scarcity of farm land. On the other hand, cash payment for compensation is offered only if land expropriation is undertaken at the request of a

private investor. Moreover, cash compensation is made if the land is needed for large scale public projects such as roads, dams, urban housing, and large scale horticulture and flower farms. This is because it is impossible to pay compensation in kind since the expropriators do not have excess land.

There is no tradition of consultation with rural communities when new initiatives are planned. On the contrary the common practice under the present and previous governments has been for new programs to be imposed from above (Federal or Region) governments, frequently without consulting even the local authorities who are responsible. Peasants are almost always the last to know, and they are informed only when implementation is to be undertaken.

The focus group discussions held with the community in the rural kebeles revealed the extent to which they are marginalized and the subjectivity, inconsistencies and the improper valuation of their properties. These cause a huge variation in the amount of compensation made to expropriatees having similar holdings. Participants stressed that arbitrariness of compensation practices for land expropriated for different purposes, the inconsistent application of valuation techniques (even for land expropriated for the same purpose), and the ad hoc procedures and processes involved in valuation and compensation have resulted in numerous grievances and could only be described as unfair and unbalanced. Box 9-3 presents unfair and arbitrary expropriation measures in Wonjeta and Yinesasostu Keble.

### **Box 9-3: Unfair and arbitrary expropriation measure**

#### **A. Arbitrariness in valuation and compensation practice in Wonjeta kebele**

Participants of the focus group discussions in Wonjeta kebele pointed out that arbitrary and inconsistent measurement of land and recording of compensable items resulted in not only huge variations in the compensation amounts received by expropriated landholders, but also created about controversies. A person holding in relatively large size of land has compensated less where as another person having relatively smaller size of land compensated higher.

According to the focus group discussion participants, a land held by a person, whose name is Mr. Adugna, was measured during his absence and the compensation amount was estimated to be 200,000 Ethiopian Birr (ETB). Then he was informed to take the estimated compensation amount and he took the money. After a few days, he was called and told to return some amount of the money since errors were committed when his land was measured and compensation was calculated. He refused to return the money back claiming that his property was measured and the compensation amount was determined during his absence. Because of this, he was treated unjustly by kebele administrators and officials assigned by the regional government to facilitate the project. In addition to that he was obliged to appear in court and was thrown to jail repeatedly. The case is not yet finalized.

The participants strongly claimed that when the government officials think compensation paid to expropriatees was excessive, they are obliged to return the money. If they oppose to return the money, they would be thrown to jail. Consequently, when individuals ask the expropriators to pay additional payment for low compensation, the expropriators do not give any response.

## **B: Unfair valuation and compensation practice in Yinesasostu kebele**

Participants of the FGDs in Yinesasostu kebele complained about the valuation and compensation practiced in 1999 E.C for land expropriated to undertake horticulture and flower farm investment. The expropriatees were not given substitute land and were not compensated for the perennial trees and developments undertaken on the land though it is stated in the expropriation laws.

A controversial practice that resulted in bitter grievances of unfairness (cited by FGD participants) as a result of unfair and inappropriate valuation and compensation practices undertaken. The participants stated that in 1999 E.C, the rural landholders were told to move out of their holdings for horticulture and flower farm investment. Almost all farmers undertook development activities on their land (such as farming, terracing, fencing, etc) and prepared the farm for sowing. In some cases more than 75 percent of their holdings were located in expropriated area. After having done all these activities they were informed to leave the land. The measure was not convincing to the affected farmers and they opposed the measure merely because they prepared the land for sowing and land is the only means of livelihood for them. However, to convince the affected farmers, the government agents informed them that the land would be taken only for ten years. Those farmers, who still opposed the measure, were treated unjustly and thrown to jail.

On the other hand, the valuers were assigned to measure and record the property and compensable items without the permission of the land holders. The landholders were not given a chance to comment; they were not even informed about the measurement result. Since the number of plots and the size of land expropriated were huge, the valuers were rush to complete the whole process within few days. As a result, many errors were committed. Inconsistent and arbitrary measurement of land resulted in big difference in compensation payment to affected farmers.

Photo 9.4: Focus group discussion participants at Yinesasostu Kebele



Source, Field Survey (2011)

Almost all affected farmers were not satisfied with the compensation amount and some farmers opposed to take the money. For instance, a farmer, whose name is Mr. Kassaw, aged 36, married and having 3 children, had four, plots of land located in different directions in the expropriated area. One of the plots was estimated 5000 Ethiopian Birr (ETB), but he opposed to take the money. After few days he was called and given 12300 ETB

(146 percent more). The participants said that this showed the valuation process was arbitrary and the compensation payment made was very unfair and not according to the size of the expropriated land. Furthermore, the affected farmers were not compensated for trees which have significant economic value. According to the FGD participants, a single big tree can value up to 850 ETB. A single farmer may have up to four big trees. For these trees compensation was not made though the law states.

Photo 9: 5 One of the typical uncompensated trees in Wonjeta kebele



**Table 9-6: Comparison between average actual compensation paid and estimated open Market value (in thousands)**

Description	Full sample	Inner city kebeles		Surrounding rural kebeles		
		Ginbot-Haya	Kebele Ten	Robit-Bata	Wonjeta	Yinesasostu
Actual compensation paid (N)	<b>9582</b> (139)	<b>776</b> (107)	<b>6359</b> (157)	<b>836</b> (43)	<b>439</b> (21)	<b>1172</b> (32)
Open market value (N)	<b>18565</b> (154)	<b>2702</b> (240)	<b>6638</b> (145)	<b>3320</b> (125)	<b>1595</b> (99)	<b>4310</b> (108)
Difference between compensation paid and open market value	<b>-8983</b> (113)	<b>-1926</b> (162)	-279 (79)	<b>-2484</b> (85)	<b>-1156</b> (82)	<b>-3138</b> (95)
% of the difference relative to open market value	-48	-71	-4	-75	-73	-73
Average actual compensation paid	<b>110</b> (139)	<b>60</b> (107)	<b>289</b> (157)	<b>44</b> (43)	<b>37</b> (21)	<b>56</b> (32)
Average open market value	<b>213</b> (154)	<b>208</b> (240)	<b>302</b> (145)	<b>175</b> (125)	<b>133</b> (99)	<b>205238</b> (108)
% of average actual compensation paid to average open market value	52	29	96	25	28	27

**Note:** Values in parentheses are standard deviations

**Source:** Field survey and computed by the researcher (2011)

Table 9.6 shows the descriptive statistics that whether average compensations paid are systematically higher or lower than the average price that would result in a non-expropriation situation. One proxy of such estimates that

was utilized in this study is the open market value of properties. The expropriatees<sup>69</sup> were asked about the estimated market value of properties if they were allowed to sell the properties in the open market value<sup>70</sup>. Based on the data provided in table 9.6, actual compensation paid for the full samples of affected persons in Bahir Dar city and its surrounding rural Kebles is 48 percent less than the estimated open market value of similar properties on average. Similar to Addis Ababa, the difference between actual compensation paid and estimated open market value is very high. It is also not uncommon with the rates prescribed by the enabling compensation statute which are usually at variance to the market determined value. Dividing the sample into geographic sub-samples reveals that the percentage difference from open market value ranges from 4 percent for properties in Kebele Ten to 75 percent for properties located in Robit-Bata kebele. The percentage difference of actual compensation paid from open market value in terms of geographic sub-samples is relatively low in Bahir Dar and its surroundings as compared to Addis Ababa (46 percent in Kolfe-Keranio to 94 percent in NifasSilk-Lafto).

The inadequacy of the compensation is also reflected by the big percentage difference between the average actual compensation paid and the average estimated open market value. For example, in Ginbot-Haya kebele (one of the kebeles in the inner city of Bahir Dar ), those individuals who were affected due to expropriation, on average, were paid only about 29 percent of what they were expecting from the open market value. Similarly, in Robit Bata, Wonjeta and Yinesasostu rural kebeles, those who lost their land due to expropriation process received only about 25, 28 and 27 percent respectively .These values are less than what the affected people were expecting from the open market value. On the other hand, in one of the kebeles in the inner city of Bahir Dar (Kebele Ten), the affected claimants were paid 96 percent of what they would expect from the open market value. This suggests not only that compensations paid are consistently below the estimated open market value of similar properties, but also that the affected claimants were not treated uniformly.

**Table 9-7: Actual compensation paid per square meters of expropriated land**

Description	Full sample	Ginbot-Haya	Kebele Ten	Robit Bata	Wonjeta	Yinesasostu
Quotient of actual cash paid & land size	<b>20725</b> (420.23)	<b>3495</b> (452.22)	<b>16957</b> (417.38)	<b>85</b> (1.27)	<b>73</b> (2.18)	<b>115</b> (2.23)

**Note:** Values in parentheses are standard deviations.

**Source:** Field survey and computed by the researcher, (2011).

In nearly all geographic samples and all types of purposes, actual compensation paid for expropriation was substantially lower than the estimated open market value. However, there are significant discrepancies in the degree of actual compensation paid per square meter of land to affected persons in Bahir Dar City and to those who are living in the surrounding rural Kebles. For instance, in Ginbot-Haya and Kebele Ten, on average, 3495 and 16957 ETB per square meter of land was paid as compensation for affected individuals respectively, whereas 85, 73 and 115 ETB per square meter of land was paid as compensation for those who are living in Robit Bata, Wonjeta and Yinesasostu rural kebeles respectively. The field survey result clearly shows the

<sup>69</sup> The expropriatees were asked to estimate the market value of their expropriated properties as compared to the value of comparable sold properties

<sup>70</sup> To avoid biasness of respondents, the researcher tried to convince them to forward the actual information. Moreover, the questionnaire is prepared in a way to cross check the reliability of the information provided in each question. Lastly, information collected from property valuers and officials also used as a reference to cross check the reliability of the information obtained from the expropriatees

existence of exaggerated variation between compensation made per square meter in urban and rural areas though there is some variation in terms of land value in urban and rural areas.

A paired t-test was conducted for systematic differences between compensations paid and estimated open market value. To test the null hypothesis of no difference between actual compensations paid and open market values, the following t statistic was used:

$$t = \frac{\bar{x}}{s/\sqrt{n}}$$

Where  $\bar{x}$  and  $s$  represent the mean and standard deviation, respectively, of the difference between compensation paid and open market values, and  $n$  is the number of pairs considered. The statistics is distributed as student's  $t$  with  $n-1$  degree of freedom, and the results are shown in table 9.8.

**Table 9-8: Results from mean tests applied to compensation data to detect significance of premiums within Sub- samples**

Description	Full sample	Ginbot-Haya	Kebele Ten	Robit- Bata	Wonjeta	Yinesasostu
% of the difference relative to open market value	-48	-71	-4	-75	-73	-73
t-statistic for difference from zero	7.401*	2.019*	8.662*	4.432*	6.088*	8.043*

\*significance at the 2.5% level or higher

**Source:** Field Survey and Computed by the researcher (2011)

The results in table 9.8 showed the mean differences between compensation paid and open market value for the whole sample and all sub-samples are significantly different from zero, suggesting that compensation data examined in this study are systematically lower than prices observed in non-expropriation transactions.

### **9.6.7 Main problems of compensation and valuation**

There are some points in the expropriation and payment of compensation laws that are not properly treated. However, the main problems that prevailed in the study area are the inadequate implementation of the laws in relation to expropriation, valuation and compensation on the ground. The following are identified as the main problems of compensation and valuation particularly in the study area and in the region and the country in general.

- **Inadequate compensation standard for loss of property and land use rights**

Several institutional problems exist with respect to compensation for loss of land and attached properties. First, compensation for expropriating land for either public interests or any private investment purpose is subject to the statutory limits<sup>71</sup> which are usually well below the fair market value. That is why all expropriatees (100

<sup>71</sup> According to proclamation 455 of 2005, Article 8(1) & Regulation No.135 of 2007, Article 16(3), a rural holder whose landholding has been permanently expropriated shall be paid displacement compensation which shall be equivalent to ten times the average annual income he/she secured during the five years preceding the expropriation of the land. The justification for limiting the period is unknown, and seems baseless. On the other hand, the government/municipality is authorized to lease use rights to such expropriated land to private investors at a higher price.

percent) who were interviewed in the field survey indicated that their properties were valued less than the open market value and that they were compensated, on average, only 48 percent of what they could get from the open market value (Table 9.6).

Second, no expropriation and compensation laws or government policies provide comprehensive guidance on valuation of properties to be expropriated in rural areas. Determination of compensation is thus based on average agricultural yield of the preceding five years, regardless of the farmers' investment on the land, access to road and market, potential best use of the land, local demand for such land, market price for agricultural product that the land is producing, and other factors that typically consist of the value of farmland. Chinese consultants of the RETA project reported that among the four valuation methods (agricultural yield, comparable sales, income capitalization, and expected nonagricultural market price minus infrastructure cost) tested for research purposes, the land's value was in most cases the lowest, when applying the agricultural yield method (ADB, 2007)

Third, the Federal expropriation and payment of compensation laws explicitly cap the determination of compensation for permanent loss of land, leaving virtually no legal basis for farmers to demand a higher compensation, or a compensation that affected farmers are willing to accept. In the meantime, the government is authorized to lease the expropriated land to private investors at a market price that is in most cases several times higher than the compensation paid to affected farmers.

- **Denial of the right to compensation for untitled properties**

Both federal and regional expropriation and payment of compensation laws decline to compensate for condemned properties that are unlawful because they were not built with a building permit and therefore are not titled. In most urban areas, the sole evidence of property ownership adopted by the condemner is the house certificate registered with the city administration real estate registration office. Because a certificate will not be issued to the owner of the property without a building permit, these property owners have no right to get compensation, no matter how long it has been since they built and possessed the property or how dependent they are on the property for their livelihood. However, the law is not applied uniformly and consistently on all affected people in such a situation and contradicts with the World Bank's operational statement (O.P.4.12-Involuntary Resettlement) which says that the absence of a legal title to land and other attached assets should not prevent affected people from receiving compensation.

- **Poor participation of property holders in the valuation and compensation process**

Although the law requires participation of affected people and negotiation on compensation, such negotiations are seldom practiced because of the substantial power imbalance between the expropriator and the expropriatee. Property owners especially those living in slums and rural areas under condemnation are usually powerless, with inadequate sources of information, and without access to unbiased appraisal organization. According to the Focus Group Discussions (FDGs) and key informants, most often, upon approval of the expropriation, the expropriator assigns property valuers to assess the value of the structure under condemnation and to come up with a certain value. If the expropriatees object or disagree, the expropriator often threatens them for obstructing urban development and for acting against "public interests". On the other hand, the affected landholders could

not be able to assign property valuers on their side due to lack of legal support and independent professional property valuers.

- **Ambiguity in the definition of “public purpose.”**

Although both the Federal and Regional expropriation and payment of compensation laws require the state to expropriate privately held property for public purpose, the term “public purpose”<sup>72</sup> is not defined explicitly in either statutory or case law, giving the government virtually unlimited power in taking property for any purpose. Allowing government exercise of eminent domain power for private investment purpose gravely distorts the land market, resulting in government intervention in land transactions that could be otherwise achieved through private negotiation.

- **Unable to provide land to land compensation**

Land is the primary means of subsistence for most affected peoples. Cash compensation itself may not be able to provide a sustainable source of income and living support for affected landholders, especially those farmers living under marginal conditions. The Federal expropriation and payment of compensation proclamation 455 of 2005, article 3, says that where the Woreda Administration confirms that a substitute land which can be easily ploughed and generate comparable income is available for the land holder, it can be offered as compensation for the affected farmer. But city administrations could not be able to provide land so that they give money for compensation. Sometimes the city administrations may give money and substitute land only for residence for those who need to live in the peripheral areas of the city. Rowan-Robinson (1990) commented that ‘compulsory purchase is one of the harshest impositions by the State upon its citizens’. In many land acquisition cases, people suffer more than they gain, thus land acquisition needs to be dealt more pragmatically (Allians & Daud, 2006).

With rapid economic development and urbanization taking place in the country in general and the study area in particular, farmlands have been demanded for investment activities at an unprecedented pace. For instance, in 1999 E.C, Seven hundred seventy seven hectares of farmland was taken for horticulture and flower investment activities. According to the questionnaire survey conducted in the field survey, more than 50 percent of the affected farmers reported that their living standard had been affected negatively due to expropriation. This is a clear indication that the expropriation and compensation practices undertaken on the ground might have failed to meet what the constitution and expropriation and payment of compensation laws stipulated that affected people’s livelihood should not be lowered because of expropriation for necessary economic development projects.

- **Absence of procedural safeguards**

Expropriatees’ right to notice, participation, and appeal in land expropriations is seriously lacking in both the legal regime and in practice. Although the law requires notifying the affected people of the planned expropriation, this notification is hardly implemented on the ground. Moreover, the expropriation laws authorize the state to enforce the expropriation plan and to take actual possession of the land even if disputes concerning compensation and resettlement are not resolved. According to the participants of the focus group

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<sup>72</sup> The Expropriation and payment of compensation laws should be amended in such a way that an elaboration of the definition of “public purpose” by listing the activities that obviously and directly serve the public interest.

discussion and key informants, the process of property inventory, valuation and determination of the compensation amount was not transparent and the process was open to subjectivity and unfairness.

### **9.6.8 Summary of survey results**

The findings of the study show the existence of a big gap between what is stated in the laws and the actual practice on the ground. Lack of using standardized valuation methods and procedures have created situations of unfair valuation and compensation regimes. As a result of this, equal rights of landholders provided under Federal and State Constitutions have been infringed upon. The assessment and findings of the study ascertain that the problems associated with the legal, technical, institutional and financial aspects of property valuation and compensation practices are numerous and the practices are full of inconsistent, unfair and lack of standardization.

The protection of private land use rights and establishing fair, transparent, and efficient expropriation and compensation procedures are fundamental to the objectives of proclamation No.455/ 2005. However, the findings of this study revealed that these objectives were not met. The literature review and survey results revealed that the main issue of expropriation is the quantum of compensation which is perceived by the expropriatees as inadequate to fulfill the notion of adequate compensation under the spirit of the Constitution. Although there is a broad acceptance that market value is the appropriate basis for compensation for property taken, perhaps there is also a general feeling that a premium should be paid to compensate the claimant for the compulsory nature of the acquisition

In the study area, all the affected people were not compensated according to the market value, let alone get additional premium value to maintain their reservation price. Most of the respondents perceived that land expropriation need not necessarily present the best alternative for government to secure land for development. Other alternatives such as undeveloped land within the boundary of city administration are the alternatives available for government to exercise rather solely depending on land expropriation powers. According to Usilappan (2000; cited in Allians & Daud, 2006), land acquisition is a complex process, is sensitive in nature, and needs pragmatic approach to deal with. An impartial interpretation of the law and a better understanding of the principles and practice of valuation will lead to an adequate compensation settlement.

Finally, the problems of compensation are more than just a matter of law and valuation; they are a matter of justice between society and man.

## **CHAPTER TEN: LAND ACQUISITION AND COMPENSATION IN ETHIOPIA: The case of Gondar-Debank Road redevelopment project**

### **10.1 Introduction**

Economic prosperity is the result of a large number of processes spanning the whole range of human activity and government intervention including expenditures on public transport, health care, education, housing, innovation, environmental improvement & conservation, and social welfare. Traditionally transport, usually interpreted as road construction, has been accorded a special place in government expenditures with an explicit claim that investments in this area increase economic success (Whitelegg, 1994). “ Investing in road transport is often viewed as an effective economic development strategy, particularly for underdeveloped rural areas” (Warr, 2005).

A well-developed road transport sector in developing countries is assumed to fuel the growth process through a variety of activities of the development endeavors of a nation. Among these, creation of market access opportunities for agricultural products is the major one. The issue of market access is more relevant for a country like Ethiopia where rural population accounts for about 85 percent of the national population who are engaged in production for both the domestic and international market. Moreover, road transport facilities play a role in both the production and consumption decisions of every household in their day-to-day activities. Besides, road transport facilities are essential for expanding education, health service provision, trade facilitation – both within the country and the export market, and better public as well as private service provisions, including banking and insurance services, to the destitute and marginalized rural dwellers. Likewise, roads serve as key infrastructural units, which provide linkages to other modes of transportation like railways, shipping, and airways (Buys, Deichmann, & Wheeler, 2006). Other potential benefits include reductions in travel time, lower vehicle operating costs, and cost savings for local consumers as goods and services become more competitively priced. Hence, a well-established road network is essential to enhance and promote trade and commerce as well as furnishing easy access to social infrastructure.

In Ethiopia, road transport is the dominant mode and accounts for 90 to 95 percent of motorized inter-urban freight and passenger movements (ERA, 2007). However, because of its limited road network, provision of infrastructure has remained one of the formidable challenges for the country in its endeavor towards socio-economic development and poverty reduction. The Ethiopian Road Authority<sup>73</sup> (ERA) investigated the link between the country’s development plan and the road sector policy.

In the 1990s, the Government of Ethiopia knew that a major expansion of the road network was necessary to meet its development goals to advance the private sector; expansion of essential infrastructure; and conservation of the environment. Considering these factors, the government formulated the 10-year (1997-2007) Road Sector Development Program (RSDP<sup>74</sup>), for the arterial road network to address one of Ethiopia’s main problems hindering economic development. The program was later extended to the end of June 2010.

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<sup>73</sup> The Ethiopian Roads Authority (ERA) was established in 1951 through proclamation No.63/1963. This law includes responsibilities for the construction, improvement and maintenance of the country’s road network.

<sup>74</sup> In 1997, the RSDP was implemented. The purpose was to address the road networks that are limited (have deteriorated), and correct those in a deplorable state.

The Gondar-Debark Road redevelopment project was one of the 10 years road sector development programs. However, the implementation of the Gondar-Debark Road redevelopment project was not free from pitfalls. The execution of this project has forcefully displaced people from their landholding owned and occupied for many years presumably under the constitution and expropriation and payment of compensation laws of the country.

This case study, therefore, is designed to examine how expropriation, valuation and compensation practices were implemented, and the implication of the people displaced from their landholdings adjacent to the road redevelopment project. Furthermore, the appropriateness of the valuation method applied, the procedures followed, and the fairness of compensation paid, based on the laws, and to theories of fairness and justice is discussed.

## ***10.2 The study area***

The Gondar – Debark Road is located in Amhara National Regional State (ANRS) in the northern part of Ethiopia. It is part of one of the major south-north links in the country. The existing road was originally built during the Italian occupation between 1936 and 1940. The road was constructed mainly using manual labor. The aim was to limit the size and height of the major drainage structures. It was also intended to minimize earthworks. This closely follows the natural contours of the land. The narrow curves of the mountainous and hilly sections provide a gentle, vertically aligned gradient for the highway (Bashar, 2008).

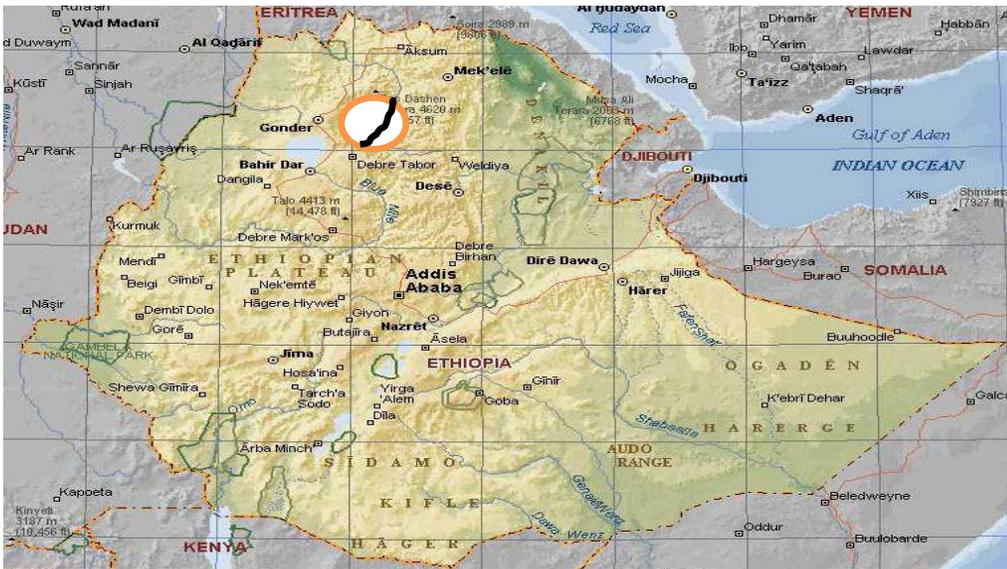
The Gondar-Debark Road is a major link providing access to a large part of the Amhara Region, and it offers a short cut to important agricultural and tourist areas in the Seimin Mountains<sup>75</sup>. The poor state of the road imposes significant difficulties with high costs for the movement of goods and people. As a result, the road's condition hinders national and sub-regional development and integration. The project road starts at Martyrs Square in Gondar; the big round about 720 meter from the Gondar Telecom building at the centre of the Town, and it ends 103 kilometers (existing road length) shortly after the Debark town passage. According to ERA (2006), the initial surface has completely deteriorated. It has a few patches existing roadway which was reverted to gravel. The road conditions are generally described as poor. The width of the existing gravel/Telford carriage way is 5.5 to 6.0 meters with shoulder-widths of about 1.0 meter each. In many respects the existing Gondar–Debark Road section lacks basic road/traffic safety requirements (e.g. narrow/sub-standard curves, poor bridge approaches). Overall, the existing road conditions cause hazards and extreme discomfort to road travelers.

Between Gondar and Debark, the road passes through a number of villages and towns. These are: Weleka, Amba-Georgis, Gedebeye, Dabat and Woken. The topography along the Gondar-Debar Road section can be described as predominantly rolling with some hilly and mountainous sections: 6.3 kilometer or 6.2 percent mountainous, 11.2 kilometer or 11 percent hilly, 8.5 kilometer or 8.4percent rolling to hilly, 75.4 kilometer or 74.4 percent rolling (ERA, 2007).

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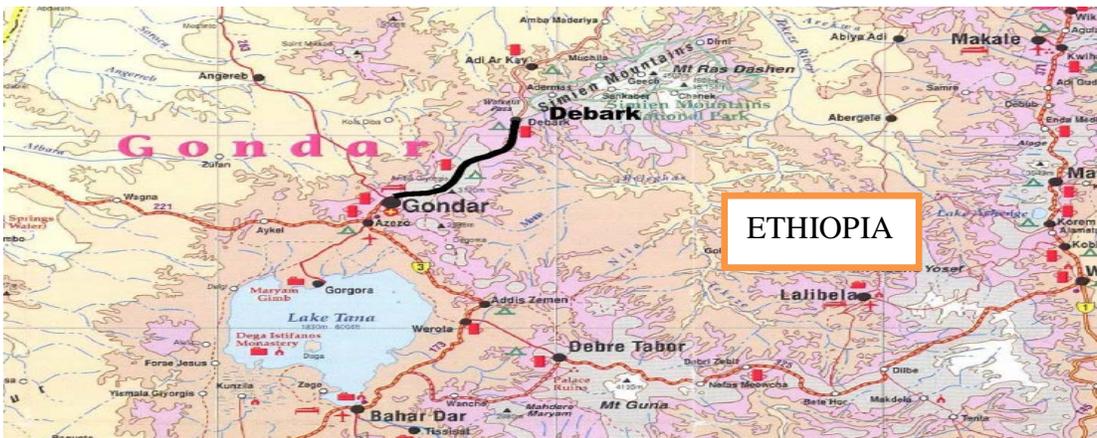
<sup>75</sup> Near the end of the project road (about 30km east of Debark) lies one of Ethiopia's finest natural tourist attractions, the Simien Mountain National Park. It is a protected zone measuring about 180 square kilometers. The park hosts some of the world's most interesting endemic wild life; waliya (Abyssinian) Ibex, gelada baboon, Seimin red fox and a variety of beautiful birds.

**Map 10-1: Gondar –Debark Road Project Location**



Source, ERA (2006)

**Map 10-2: Gondar –Debark Road Project Map**



Source, ERA (2006)

Ninety five percent of the Gondar-Debark Road area is agricultural, of that 65 percent is crop cultivation, 20 percent is grassland, and 10 percent is tree plantation including bush and shrub land. The remaining 5 percent of the land use is not utilized (e.g. rocky areas) (ERA, 2007).

Ethiopia has three climatic zones: a cool zone on the high plateau above 2,400 meters. The temperate zone is between 1,500 to 2,400 meters, and the hot lowlands are below 1,500 meters. The climate in the project area lies predominantly within the cool zone. During the day, temperatures are rarely above 30°C in Gondar and 25°C in Debark. It rarely falls below 10°C and 6°C respectively. The average mean temperature is 21°C in Gondar and 14°C in Debark.

The width of the existing road is about 8 meters with a gravel surface carriageway of 5 to 6 meters. For the first 38.5 kilometers up to Amba-Georgis, the road pavement is in fair to poor condition with a number of potholes, rut, corrugations, erosion gullies, etc. This road section also was regravelled in 2004. Beyond Amba-Georgis to the end of the project road in Debark, the gravel base has worn away. For lengthy sections of the road base is exposed. The surface is in very poor condition. Travel along the roadway is hazardous and extremely uncomfortable. Traveling speed is 40 km/h or less (ERA, 2007). Most of the existing major structures between Gondar and Debark are arch structures, bridges and culverts, constructed from masonry type stone. Other structures are concrete boxes and pipe culverts, and slab concrete culverts and bridges. A visual assessment of the substructures and superstructures reveals with a few exceptions, that they are in fair to good condition.

### **Plan 10.1: Project Location Plan**



**Source:** ERA (2007)

The Gondar–Debark Road forms part of the Bahir Dar to Axum route corridor and, apart from localized connectivity it provides between the two trip ends, serves as alternative access to major Ethiopia’s travel and tourist destinations, comprising sites of natural, historic as well as cultural heritages. Travel and tour destinations, situated in the northern part of the country along ‘the historic tourism route’, comprise the town of Bahir Dar and the Lake Tana areas. It is located south of project road, the medieval city of Gondar and the Seimen Mountains National Park (SMNP). North of the Project Road, some 350 kilometer from Gondar, is the ancient town of Axum. These tourist attraction sites, notably Gondar, Axum and Seimen Mountain National park (SMNP) are among the UNESCO enlisted World Heritage Sites in Ethiopia.

**Photo 10-1: Gondar area of the Gondar-Debark Road redevelopment being under construction**



Source: Field survey, (2012)

**Photo 10-2: Wogera area of the Gondar-Debark Road redevelopment under construction**



Source: Field survey (2012)

### ***10.3 Socio-Economic condition of the project area***

- **General sociological characteristic of the project area**

From agro-ecological and socio-ecological point of view, the Gondar–Debark Road area is relatively homogenous. The area is situated in the Highland zone between 2,200 meters and 3,000 meters above sea level and falls in the agro-ecological category of the ‘Dega zone’. Rainfall is between 900 and 1,500 millimeter/year with temperatures of less than 16°C on average. This zone has been intensively cultivated. The road from Gondar to Debark passes through four Woredas from Gondar to Amba-Georgis over Dabat to Debark. The entire road is located in the North Gondar zone of the Amhara National Regional State. The settlement pattern of the project area indicates that there is high concentration of people on Gondar to Debark where intensive mixed agriculture is being practiced. The population of the Woredas along the project area is shown in Table 10.1

**Table 10-1: Woreda Population in the Gondar-Debark Road redevelopment area**

Region	Zone	Woreda	Population			Area (Km <sup>2</sup> )
			Male	Female	Total	
Amhara	North Gondar	Dabat	73,852	71,657	145,509	1,199
		Debark	80,274	78,919	159,193	15,12
		Gondar special zone	98,120	108,924	207,044	40
		Wogera	112,445	108,121	220,566	1287

Source: CSA (2000, 2007)

**Table 10-2: Town Population along Gondar-Debark Road**

Location (Km existing Road)	Town	Population		
		Male	Female	Total
0	Gondar city	98,120	108,924	207,044
38	Amba-Georgies	5,393	6,749	12,142
59.4	Gendebeye	3,021	3,501	6,522
73.2	Dabat	5,662	6,912	12,574
86.5	Woken	1,427	1,820	3,247
99.3	Debark	9,420	11,419	20,839

Source: CSA (2007)

#### ▪ Economic activities

Economic activities undertaken in rural areas and urban centers are quite different. Agriculture is the main source of income of the majority of the Ethiopian people in the rural areas. These activities mainly include farming and cattle rearing which is called mixed farming. Urban inhabitants are mainly engaged in the trade of various natures while others are employed in the private, governmental and non-governmental institutions. Some urban dwellers also rely on farming, especially those who live in small towns on the outskirts of larger towns.

The project area is a high potential zone, and it is dominated by a mixed type of agricultural production with limited cash crops. The area is prone to erosion since appropriate protective measures are rarely taken throughout the project area. The major cereal crops grown include wheat, millet, barley and teff. Small scale traditional irrigation is limited in most parts of the project area. In the hilly areas, along the roadside and in the vicinity of villages and towns, eucalyptus plantations are found. Most parts of the area are stony and rugged, but nevertheless cultivated. Only small plots of land are left for livestock grazing. The sheep and horse populations are high especially in the Dabat and Debark areas. The main market centers are: Gondar, Amba-Georgis, Dabat and Debark. One of the major economic activities in the Gondar-Debark region is tourism. In Gondar, the Fasil Castle (17th century), the DebreBerhan Selassie church and the town itself are famous tourist destinations. In the Debark region the Seimen Mountain National Park and the Lemalimo National Park are the most attractive spots of the region. According to the road side interviews with local residents and business people the Gondar-Debark Road redevelopment-it is expected to prompt considerable development in the agro-industrial sector and

primarily in the tourism sector as the project area is endowed with potential resources.

The Gondar–Debark Road section has strategic significance by linking the country with northern Ethiopia up to the border with Eritrea. It has the potential for tourist and agricultural development in addition to providing connection between Addis Ababa and northern Ethiopia.

### ***10.4 Project benefits and costs***

According to the Ethiopian Road Authority (ERA, 2007), the redevelopment and construction of the road benefits the nation's economy as well as enhance the overall network of the country's transportation.

The benefits include:

- promote and enhance the social and economic development of the people along the project road corridor and its catchment area;
- improve the general conditions of the Ethiopia's road network;
- reduce vehicle operating cost (e.g. fuel consumption, maintenance cost); and
- increase road safety and reduce noise, air pollution and dust annoyance.

As stated above, the Gondar-Debark Road redevelopment has a number of benefits. Reduce costs of vehicle operation; increase traffic volume from within and outside the area; and enhance land use and values. Since the Gondar-Debark Road links the capital of North Gondar zone, Gondar city, to the rural Woredas and the Seimen Mountain National Park (SMNP), it is important to facilitate and access the people these areas. The government wanted to further improve the entire national road network as the country moved from a predominantly subsistence economy to one in which external and inter-regional trade were increasingly important. The road network became a vital agent of development (McKay and Hameer, 1973; cited in E.ndjovu, 2003) and since agriculture played a dominant economic role, good road facilitated the marketing of agricultural produce, opening up areas of great potential by removing marketing bottlenecks and exposing the under-utilized ones. They also facilitated the movement of people, as the car became a dominant means of passenger transport. The advantage of having a road in an area helps the quick transportation of agricultural sector inputs that improve yields such as fertilizer; pesticides, herbicides and improved (select) seed easily find their way to the remote areas. Moreover, veterinary medicines are easily supplied if the area is accessible. Farmers can also easily have access to markets for their produces.

Roads can also create good opportunities for the traders to find new market areas where they can buy and /or sell their goods. They can supply consumers with what they need on time. People can easily reach health and education services, which have impact on the economic activities of an area. Roads sometimes alter the economic engagement of a community. That is, settlement by the new road will develop changing farmers to, for example, merchants and thus the agricultural activity may decrease to some extent. Though the merit of the road by far outweighs its demerit, it would not be free from creating the following negative impacts:

- Sometimes the road construction may pave the way for erosion that makes the farmland unsuitable for agriculture. This may result eventually in complete loss of fertility of the land or minimize its productivity and eventually results in changes in the land use pattern;

- Attracting squatter settlements in the town sections;
- Creating temporary discomfort on passage ways for humans and animals;
- Affecting farm lands through soil dumping, temporary camps etc; and
- Land dispossession and demolishing of houses cause people landless and homeless.

### ***10.5 The Ethiopian Road Authority strategy for expropriation and compensation***

According to the Ethiopian Road Authority (2007), the objective of the strategy is to avoid or reduce to a minimum, the detrimental effects of road operations on the livelihood of the people intended to be served by the roads. However, if adverse social impacts induced by project operations are inevitable, the ERA's strategy stresses that project affected people (PAP) should be consulted and compensated for loss of their properties. To achieve the social mitigation goal, the Ethiopian Road Authority (ERA) allocates a yearly budget for expropriation and compensation expected during project implementation. Adhoc valuation committees are established by the right-of-way<sup>76</sup> agents in the jurisdiction of the local governments (Woredas) which population has been identified to be negatively affected by road operations. Subprojects therefore have more than one valuation committee. The committees are composed of experts from the Ethiopian Road Authority (ERA) as an observer, civil servants from the local governments (Bureau or Department of Agriculture, Bureau or Department of Works and Urban Development, Police, etc.) and representatives of project affected people and other relevant stakeholders. The compensation rate and amount for structures, crop, trees and others, is calculated by the Ethiopian Road Authority's legal division (right-of-way agent) in concert with the valuation committee. The payment is effected by the finance division of Ethiopian Road Authority (ERA) in concert with the contract administration division.

### ***10.6 Ethiopian road authority resettlement / rehabilitation policy framework***

In line with the main principles held by the World Bank, the 1995 Constitution of the country and the expropriation and payment of compensation laws, project affected people are entitled to the compensation that would enable them to restore their livelihood at least the pre-project situation. Apart from these broad policy frameworks, the Ethiopian Road Authority (ERA) prepared a resettlement action plan (RAP) as a main reference and guiding principles as stipulated in its resettlement and rehabilitation Policy Framework. The principles in the framework are adopted basically from the World Bank's policy<sup>77</sup> on resettlement and rehabilitation. The following statement is quoted from the Ethiopian Road Authority's (ERA's) resettlement and rehabilitation framework to show when and where a Resettlement Action Plan (RAP) is required.

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<sup>76</sup> The ERA Right-of-Way branch, part of the construction contract implementation division, is responsible for making available the required land for road/highway construction and maintenance, the establishment of materials sources (borrow pits and quarries) and camp sites and for implementation of Resettlement Action Plans.

<sup>77</sup> By signing the credit agreements for the Road Sector Development Program (RSDP) with International Development Association (IDA), the Federal Democratic Republic of Ethiopia committed itself to abide the involuntary resettlement policy of the World Bank and both parties do agree on the fact that development projects should not be realized at the expense of the people affected by the projects. Thus, the legal framework of the RSDP are the Ethiopian constitution as transcended into the ERA procedures and the World Bank Operational Directive (OD) 4.30 on involuntary resettlement and its operational policy (OP) as spelled out in the resettlement and rehabilitation guidebook (ERA, 2007)

At project identification, social screening/social impact assessment (SIA) of the subprojects will be conducted with the aim to determine whether or not a subproject would require detailed resettlement action plans as specified in World Bank policy. The principles of compensation/rehabilitation will be triggered wherever there will be land acquisition and adverse social impacts. Should, however, the SIA findings reveal that more than 200 persons are affected by a subproject, a resettlement action plan will have to be prepared (ERA, 2002)

The World Bank OP 4.12 states:

Where it is not feasible to avoid resettlement, resettlement activities should be conceived and executed as sustainable development programs, providing sufficient investment resources to enable the persons displaced by the project to share in project benefits. Displaced persons should be meaningfully consulted and should have opportunities to participate in planning and implementing resettlement programs (WorldBank, 2002).

The affected landholders along the Gondar-Debank Road redevelopment project would be entitled to various types of compensation and resettlement support. According to the ERA's Resettlement and Rehabilitation Framework and the World Bank's operational policy (OP 4.12), lack of title<sup>78</sup> or permit would not be a bar to compensation. The resettlement action plan of Ethiopian Road Authority (ERA) has been prepared in recognition of the provisions stated in both the country's laws and the World Bank's guideline. Nevertheless, where there is conflict the Bank's provisions must take precedence (ERA, 2007).

### ***10.7 The expropriation procedure***

The expropriation procedure, similar to the previous two case studies, passed through a long process from the awareness creation stage up to the payment of compensation. The right- of –way agent and other concerned officials of the Ethiopian Road Authority (ERA) have contacted different governmental bodies to discuss a range of issues around the proposed road redevelopment. The discussion focused on the benefits and possible discomfort during the road construction and other possible implications.

Discussions were also conducted at community level with Kebele administration officials and groups/individuals who were met along the project road so as to get their impression on the proposed road upgrading. The discussion at this level mainly focused on knowing the general attitudes of the public towards the proposed road project, its implication on the livelihood of the communities, and to identify possible negative and positive socio-economic impacts. The community members are persuaded to become co-operative to accept the proposal and protect and work against saboteurs, assuring them that their lives would not be disturbed. They are assured of reasonable and fair compensation and the protection of their legal rights and are informed that the exercise is inevitable. Joint session town meetings (ERA agents, project consultant, town administration officials, representatives from Woreda and Kebele) were held in order to have a common understanding of the

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<sup>78</sup> Given the key role of land as a determinant of access to economic opportunities, the way in which land rights are defined, recognized and protected, landholders can obtain ownership or possession of it through land titling. City Administrations and / or Regional governments do not pay compensation unless the affected landholder presents land titling certificate that assures it possession. However, in case of Federal funded projects, land titling is not a pre requisite for compensation.

town's future development plans and the proposed benefit enhancement measures of the envisaged project. In general the purpose of the town meeting was:

- to provide information on the objectives of the Gondar-Debark Road redevelopment project in general and the town passages in particular;
- to discuss about possible impacts on public/social facilities, pedestrians and housing units in the towns located along the project; and
- to obtain first hand information on possible problems (e.g. drainage, parking, accident/traffic safety issues) and planned developments, which solutions and requirements may be considered in the subsequent review/update of the engineering designs and the planning of mitigation and benefit enhancement measures

After consulting concerned stakeholders, the contractor's surveyors measure the land for the road project and presented the proposal to the Ethiopian Road Authority (ERA). The ERA in turn presented the proposed land size to the Region and each Woreda where the road passes. Each Woreda administration after approving the required land size set a valuation committee headed by the deputy Woreda administrator including the right-of-way-agent as an observer. The right-of-way agent with the valuation committee identifies the would be affected people and their economic status, and inspect and measure the affected properties to know the extent of acquisition. The valuation committee list and record each and every compensable item and then determine the amount of compensation to be paid to the affected property holders. The estimated compensation amount is then disclosed to the affected people. In case where dispute arises between the principal two parties – the Ethiopian Road Authority (ERA) and subsidiary other local government authorities in the project affected area on the one side and the project affected people on the other side; the most preferred way of settling the issue by both parties is arbitration<sup>79</sup>. This is permissible under Ethiopian law (Articles, 3325-3336 of the Civil Code).

However, if an affected person is not still satisfied with the compensation amount, he/she can appeal to the court. According to proclamation No. 455/2005, in case of expropriation in rural areas, grievances against the amount of compensation are submitted directly to a regular court of competent jurisdiction. If the expropriated landholder is still not satisfied, he/she may appeal to the "regular appellate court". However, in case of expropriation of urban landholdings, first instance complaints and grievances are required to be submitted to the city administration complaints hearing committee (a compensation grievances investigation committee). If the affected landholder is not still satisfied with the decision, he/she can proceed the case to "the regular court having jurisdiction". In both cases, a right of appeal to the regular appellate court lies within 30 days from the date the appellant is provided with the copy of the decision of the court of first instance. The decision of the appellate court is final.

As indicated above, compensation procedures include three steps: (a) Establishment of valuation committee, (b) Inspection of all compensable items and (c) Assessment of values of identified assets for compensation. The

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<sup>79</sup> To address the problem of project affected landholders, a grievance redress committee would be established in project affected kebeles. The main task of the committee would be arbitration and negotiation based on transparent and fair hearing of the cases of the parties in dispute between projects affected landholders and the implementing agencies. The committee gives solution to grievances related problems (compensation amount, delays in compensation payment or provision of different type of resettlement assistance). However, if any of the parties disagree, the aggrieved party has the right to appeal to the courts of law in their locality.

valuation committee constituted of representatives of local governments, representatives of project affected persons (PAPs) and the Ethiopian Road Authority's right-of-way agent as an observer. It establishes the compensation rates, taking into account, Federal expropriation and compensation laws and World Bank's requirements. The estimated compensation amount would be reported to the Federal Ethiopian Road Authority (ERA) for payment through the right-of-way agent. The compensation amount is paid directly to affected landholders through their nearest bank. According to Proclamation.No.455/2005, all compensations should be effected ahead of the civil works

## ***10.8 Survey results***

In this section, the main field survey results obtained in the Gondar-Debank Road corridor are presented in brief. The findings are based mainly on data gathered from respondents selected from expropriatees and property valuers. Detail information was gathered from focus group discussion made on different groups and key informants selected from each Woreda as well as from higher and local officials.

### **Primary data**

One of the research instruments that were used in collecting primary data consists of questionnaires that were administered on one hundred six randomly selected samples of expropriatees and 12 property valuers. Since majority of the interviewees were illiterate and some of them did not have time to fill the questionnaire, the data collection was managed through schedule-structured questionnaire interviews. Detail information was gathered from focus group discussions made on different groups and key informants selected from each Woreda.

### **Sample size and the sampling method**

Given available resources, existing capacity to administer/ monitor the survey and the importance of increasing and diversifying sample sizes, a reasonable sample size was taken from the expropriatees who were displaced from the Gondar-Debank Road redevelopment project. Accordingly, out of the four Woredas including Gondar City that the Gondar-Debank Road passes, Wogera and Dabat Woredas and Gondar City were used to select expropriatees to be included in the sample. Out 530 affected property holders who have lost considerable part of their land and attached properties, 106 affected people were selected randomly for interview. In addition to that 12 out of 15 property valuers who were available during the interview time included in the sample. Furthermore, detail information was gathered from focus group discussions made on different groups and key informants selected from each Woreda as well as from higher and local officials.

In Gondar –Debank Road redevelopment project, the displaced people were found relatively large in size and live in scattered areas. Moreover, they have similar living standard and information access about the expropriation and valuation issues. Thus, random sampling method was found appropriate and applied in the area. On the other hand, the number of property valuers in each Woreda was small in size (five in each Woreda) and easily accessed. All property valuers who were available during the interview time were included in the sample.

### 10.8.1 General profiles of respondents

Gondar-Debark Road corridor transverses four Woredas including the capital of the north Gondar zone, Gondar City and it is inhabited by numerous people of varying socio-economic characteristics in terms of age, sex and income. According to the survey conducted by the Ethiopian Road Authority in 2005, about 1500 households<sup>80</sup> could have been affected directly by acquisition and property demolition at different degrees. Out of which 1350 are male headed and the remaining 150 are female headed households. Out of 1500 affected property holders 530 from whom the sample selected lost considerable part of their land and attached properties. A total of 400 hectares of land would have been dispossessed permanently while about 570 hectares of land would have also been affected for temporary use like for detours, camp sites and borrow pits. As indicated in table 10.3, 10.4, 10.5, and 10.6, the affected people along the Gondar- Debark Road corridor belonged to different age, income and employment groups.

**Table 10-3: Age structure of the respondents**

Age group	Number of People	Proportion in (%)	Cumulative percentage (%)
Less than 25 years	1	1	1
25 up to 49 years	65	55	56
50 up to 75 years	52	44	100
Above 75 years	0	0	0
Total	118	100	

Source: Field survey (2012)

The affected people were mostly young and productive have an age between 25 and 50 years accounting for 55 percent of the entire interviewed sample households. The remaining 44 percent of the affected interviewed households were between 50 and 75. Gender composition of these heads of the affected households indicated that 69 percent of them were male as opposed to 31 percent headed by female.

**Table 10-4: Employment status and educational qualification of expropriatees**

Description	Sex				Total	
	Male		Female		Number	Proportion in (%)
	Number	Proportion in (%)	Number	Proportion in (%)		
<b>Engagement</b>						
Government Employee	9	13	3	8	12	11
Formal self employed	21	31	18	49	39	37
Informal self employed	7	10	13	35	20	19

<sup>80</sup> A person who lost a single tree and an individual who has lost considerable part of his/her land and attached properties were included with in the same project affected people category. Hence, only 530 households who lost considerable part of their land and attached properties were considered for sample selection and hence, 106 expropriatees were selected randomly for interview

Unemployed	-	-	-	-	-	-
Farmer	32	46	3	8	35	33
<b>Total</b>	<b>69</b>	<b>100</b>	<b>37</b>	<b>100</b>	<b>106</b>	<b>100</b>
<b>Educational qualification</b>						
Illiterate	45	65	25	68	70	66
Read & Write	16	23	5	13	21	20
From Grade 1-12	8	12	4	11	12	11
Diploma	-	-	3	8	3	3
First degree holders	-	-	-	-	-	-
<b>Total</b>	<b>69</b>	<b>100</b>	<b>37</b>	<b>100</b>	<b>106</b>	<b>100</b>

Source: Field survey (2012)

Table 10.4 shows the employment and engagement status, gender and educational qualification of expropriatees. It has been observed that among the interviewed expropriatees (33 percent) are basically farmers who are living in the rural areas along the Gondar-Debank Road corridor while 67 percent are government and self employed engaged in different economic activities in urban areas along the road corridor. From the total number of surveyed sampled expropriatees, 3 percent are diploma holders whereas the large majorities (66 percent) are illiterate. This implies that it was difficult for the affected people to argue through using courts and other procedures when they faced problems related to expropriation and compensation matters

**Table 10-5: Educational qualification of property valuers**

	Sex				Total	
	Male		Female		Number	Proportion in (%)
	Number	Proportion in (%)	Number	Proportion in (%)		
Diploma	8	67	-	-	8	67
First degree holders	4	33	-	-	4	33
<b>Total</b>	<b>12</b>	<b>100</b>	<b>-</b>	<b>-</b>	<b>12</b>	<b>100</b>

Source: Field survey (2012)

Table 10.5 shows the educational qualification of real property valuers having different expertise and employed by different government organizations. From the total number of interviewed property valuers, 67 percent are diploma and 33 percent are first degree holders.

**Table 10-6: Monthly average income of the expropriatees in ETB before and after expropriation**

Description	Before Expropriation		After Expropriation	
	Frequency	Proportion in (%)	Frequency	Proportion in (%)
Less than 500	14	13	26	24
Between 500 and 1000	16	15	43	41
Between 1001 and 2500	60	57	34	32

Greater than 2500	16	15	3	3
Total	106	100	106	100

**Note:** ETB, Ethiopian Birr  
**Source:** Field survey (2012)

Table 10.6 shows that 28 percent of the affected respondents earned less than 1000 Ethiopian Birr (ETB) per month before expropriation whereas 57 percent of them earned between 1001 and 2500 ETB per month before expropriation. After expropriation, the number of households earning less than 1000 ETB per month increased to 65 percent. On the other hand, the number of households who were earning between 1001 and 2500 ETB per month before expropriation decreased from 57 percent to 32 percent after expropriation. At the same time, those who earned greater than 2500 ETB per month before expropriation also decreased from 15 percent to 3 percent. Though, the level of income that the affected people lost seems exaggerate<sup>81</sup>, it was clearly shown that the level of income earned by affected landholders before expropriation decreased highly due to expropriation. This shows that although it was claimed that the road redevelopment would benefit the public, it had affected seriously the livelihoods of affected landholders.

### 10.8.2 Property rights of expropriatees

**Table 10-7: Mode of land acquisition along Gondar-Debank Road corridor by sex**

Description	Male		Female		Total	
	Number	Proportion in (%)	Number	Proportion in (%)	Number	Proportion in (%)
Private Purchase	10	15	11	29	21	20
Inheritance	28	41	13	34	41	39
Gift from relatives	13	19	6	16	19	18
Permit	17	25	8	21	25	23
Total	68	100	38	100	106	100

**Source:** Field survey and computed by the researcher (2012)

Formation of property rights along Gondar-Debank Road corridor is very similar to what has been discussed in chapter Nine. As indicated in table 10.7, the majority of the people obtained their land through inheritance (39 percent) followed by permit system (23 percent). Private purchase<sup>82</sup> and gift from parents and relatives accounted for 20 percent and 18 percent respectively. This clearly shows that almost all people along the road corridor were not new comers. In Ethiopian context especially in rural areas, agriculture is the mainstay of livelihood. Displacing a landholder from its holding has many implications.

<sup>81</sup> To avoid biasness of respondents, the researcher tried to convince expropriatees to forward the actual information. Moreover, the questionnaire was prepared in such a way to cross check the reliability of the information provided in each question. Lastly, information collected from property valuers and officials also used as a reference to cross check the reliability of the information obtained from the expropriatees.

<sup>82</sup> Although according to the 1995 constitution, land and natural resources belong to the people and the state and completely forbidden to sale land, the practice in rural areas shows that farmers transact their land holdings.

**Table 10-8: Periods within which land was acquired along the Gondar-Debark Road**

Description	Male		Female		Total	
	Number	Percentage	Number	Percentage	Number	Percentage
Before 1975	28	41	14	37	40	38
Between 1975 & 1991	33	49	20	53	53	50
Between 1991 & 2004	8	10	4	10	13	12
After 2004	-	-	-	-	-	-
Total	68	100	38	100	106	100

**Source:** Field survey (2012)

Table 10.8 indicates that the majority of the affected people settled in the road corridor area for a long period of time. Among the interviewed affected sample households (88 percent) were settled in the area more than 20 years ago, whereas the number of people settled in the area after 1991<sup>83</sup> were very marginal. For example land acquisition between 1991 & 2004 accounted only 12 percent. This indicates that the area was occupied by the indigenous people since a long period of time.

### **10.8.3 The expropriation procedure**

From the field survey result it was revealed that about 79 percent of the claimants did not participate in any procedure of expropriation and compensation. The remaining 21 percent of the affected land holders participated only during public discussion forum and inventory of properties. The discussion at this level mainly focused on knowing the general attitudes of the public towards the road development project, its implication on the livelihood of the communities, and to identify possible negative and positive socio-economic impacts. A focus group discussion held with the community and key informants in the field survey revealed that local officials and kebele administrative officials strive to facilitate the road development rather than stand at the side of the affected people. Most of the affected individuals were not the part of the decision. Most of the time, the affected people were not considered as part of the decision of the process of expropriation, valuation and compensation (Field survey, 2012).

Although the expropriation and payment of compensation laws of the country stipulates that prompt compensation should be paid in the event of compulsory acquisition of private holding properties, the acquiring authorities did not pay for all affected people uniformly before the taking of the property. Since the Gondar-Debark Road redevelopment is a Federal development project, the Federal government allocated a budget for compensation. However, the compensation payment took a long process. A valuation committee including the right-of-way agent of the Ethiopian Road Authority (ERA) as an observer, established by the City/ Woreda administration to inspect and value the project affected properties. The committee after inspecting and valuing the compensable properties sent the report to Ethiopian Road Authority (ERA) through the right-of-way agent for payment. The ERA financial division effected the payment in concert with the contract administration division. The payment was made through Bank deposit. But most of the affected people especially the rural farmers are living in areas where there is no bank access. They have to move far distance to withdraw their money. Furthermore, most of the affected people are illiterate and it was not easy for them to manage the

<sup>83</sup> The present government took over the ruling of the country since 1991

process. Because of all these problems, the compensation was not paid promptly to all affected people. From the total number of interviewed expropriatees, 31 percent received their compensation before handing over of the property where as the large majority (69 percent) received their compensation after handing over of their property<sup>84</sup>. This shows that most expropriatees were paid after handing over of their properties which is contrary to the law. Moreover, they did not receive any extra money what they were expecting from the acquiring authority for the late payment of compensation.

#### **10.8.4 The expropriation order notification**

Where a decision to expropriate a landholding is made, notification in writing is required to be given to the affected landholder as defined in the Federal proclamation No. 455/2005 Article 4(1). Such notification is required to indicate the period within which the holding has to be “vacated and the amount of compensation to be paid”. To facilitate the notification process the proclamation puts an obligation on implementing agencies to prepare detailed data pertaining to the land needed for the works and send the same, at least one year before the commencement of the works, to the organs empowered to expropriate land in accordance with this Proclamation and obtain permission from them. However, the discussions with affected individuals, property valuers, and focus group discussion participants have revealed that the one-year information and data submission period was hardly followed by implementing agencies. Due to this reason almost all of the expropriatees replied that they were not given sufficient time for searching alternatives<sup>85</sup>.

The practices in all areas along the Gondar-Debank Road project, formal written notification of an expropriation order was not given by both the Woreda and Urban Administrations. In lieu of formal notification the measures taken are to make the landholders aware about the project and, since the advent of Proclamation 455/2205, about their rights to be paid compensation. The process of expropriation commences by undertaking “consultations” with the local community at large, and it is at that point that the landholders that are going to be affected, or at least those who are present at the meeting, become aware of a planned project for which land is going to be expropriated.

During the field work, a number of regional bureau and agencies that fall within the definition of “implementing agency” had been visited and discussions as regards both themselves as well as the federal implementing agencies were held<sup>86</sup>. The discussions have revealed that one of the legal requirements, i.e., the submission of written information and data at least one year prior was hardly followed.

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84 In general the mode of payment of compensation is in cash since the ERA could not be able to provide substitute land. The main reason for the delays of compensation payment is that after the valuation committee estimated the compensation amount it has to be sent to the Federal ERA through the ERA focal person for payment. The final decision should be made by ERA at federal level and then the money has to be sent to the affected people through the nearest bank and it needs time until it reaches to the affected people.

85 If the expropriatees were informed with reasonable time in advance, it could have been possible for the affected landholders to be ready psychologically, financially and materially and could search different alternatives (rentable house for residence and business for urban residences and rentable farm land for rural farmers) to continue their life as before expropriation

86 Regional implementing agencies include the bureau of Water Resources and Urban Development and Public Works, Rural Roads Authorities, and the Water Works Construction Enterprises and Municipalities, while Federal agencies include the Water Resources Development, as well as agencies such as the Ethiopian Roads Authority, Ethiopian Electric Power Corporation and Ethiopian Telecommunications Corporation etc.

### **10.8.5 Legal rights and awareness about expropriation and payment of compensation laws**

Analysis of the population along the Gondar-Debank Road corridor showed that majority of the claimants is illiterate with very few endowed with secondary school or college education. Most of them are quite ignorant of their Constitutional rights and laws relating to compulsory acquisition. Landholders are not yet well aware about compensation issues and how they are dealt with. They do not know properly what their rights and obligations are in the event of being expropriated. Expropriatees and property valuers were asked if they were aware of the expropriation and payment of compensation laws that defined basic property rights and expropriation powers. 16 percent of the compensated expropriatees replied that they know the law partially where as the large majority (84 percent) did not know anything about the expropriation and payment of compensation laws. That is why most of the expropriatees did not file court cases against their complaints about the unfair payment of compensation. Out of the total number of affected land holders, only 10 percent appealed to first instance court whereas the large majority (90 percent) did not appeal to courts. On the other hand, in some instances, property valuers<sup>87</sup> too did not have acquired sufficient knowledge of expropriation and payment of compensation laws and did not get additional training how to apply these laws.

From the total number of property valuers interviewed 10(83 percent) knew the laws partially where as the remaining 2(17 percent) did not know anything about the laws. As compared to the previous two case studies, the legal illiteracy of both affected landholders and property valuers is worse. This shows that it is very difficult to implement the laws properly if both the affected people and property valuers are not well aware about the laws.

### **10.8.6 Reasons for the resistance of expropriation**

Despite the fact that the affected people along the Gondar-Debank Road corridor knew that the development of the road has a paramount economic advantage, they had some reservations on the process of expropriation due to inadequacy of compensation and/or absence of substitute land and other related matters.

**Table 10-9: Reasons for the resistance of expropriation**

Description	Degree of relevance <sup>88</sup>								Total	
	Most important		Important		Less important		Not important			
	No	%	No	%	No	%	No	%	No	%
Inadequacy of Compensation	56	53	32	30	17	16	1	1	106	100
Not purely public purpose	-	-	-	-	4	4	102	96	106	100

<sup>87</sup> Property valuers are selected from different government bureaus and offices having different disciplines and assigned as property valuers in addition to the task they have been assigned before. The valuers are also responsible to value expropriated properties due to other cases.

<sup>88</sup> The weights used in this question are 1=most important; 2= important; 3= less important; 4= not important at all. The respondents were asked to score their answers based on these scales

Emotional attachment to property	3	3	70	66	31	30	2	2	106	100
Unclear Procedures	-	-	23	22	80	75	3	3	106	100

**Source:** Field Survey and Computed by the researcher (2012)

Table 10.9 shows the reasons for affected people's resistant in land acquisition. Inadequacy of compensation was the most important reason why property expropriation was resisted by landholders. It was evidenced from the focus group discussion and key informants (including property valuers) that the amount of compensation given for expropriatees was not reasonable as compared to the value of the expropriated property. That is why the majority (83 percent) of the affected respondents raised inadequacy of compensation as the main reason to resist the process of expropriation where as 69 percent of the respondents used emotional attachment to property as the second important reason to resist the process of expropriation. 22 percent of the compensated households reported that the unclear procedure was used as one of the important reasons to resist the process of expropriation. However, the large majority of expropriatees believed that the government has been under taking the Gondar-Debank Road project for the benefit of the public. That is why; the large majority (96 percent) of the affected households did not take not purely public purpose as a factor to resist the process of expropriation. This implies that inadequacy of compensation is the main issue that should be considered by the expropriators at least to convince the affected people and continue their life as before expropriation.

### ***10.8.7 Compensation payment, its fairness and complaints***

In the previous two case studies, the compensation payment made by the City Administration which was as a rule much less than the value of the property paid by the investor to the City Administration. The City Administration uses the difference as the source of revenue whereas in the case of Gondar-Debank Road redevelopment project, the compensation payment was made by the Ethiopian Road Authority (ERA) directly to the affected people. In addition to that legal title to land was not used as a bar for compensation payment. This supports the World Bank's operational statement (O.P 4.12-Involuntary Resettlement) which says the absence of a legal title to land and other assets should not prevent affected people from receiving compensation.

The Constitution of 1995 as well as other Federal and Regional laws of the country supports the payment of "commensurate" and "fair" compensation for expropriatees. However, from the point of view of affected people the amount of compensation paid was not really commensurate and fair. In the field survey, Focus Group Discussion participants (FGDs) and key informants identified the following as a source of discontent among others in this regard:

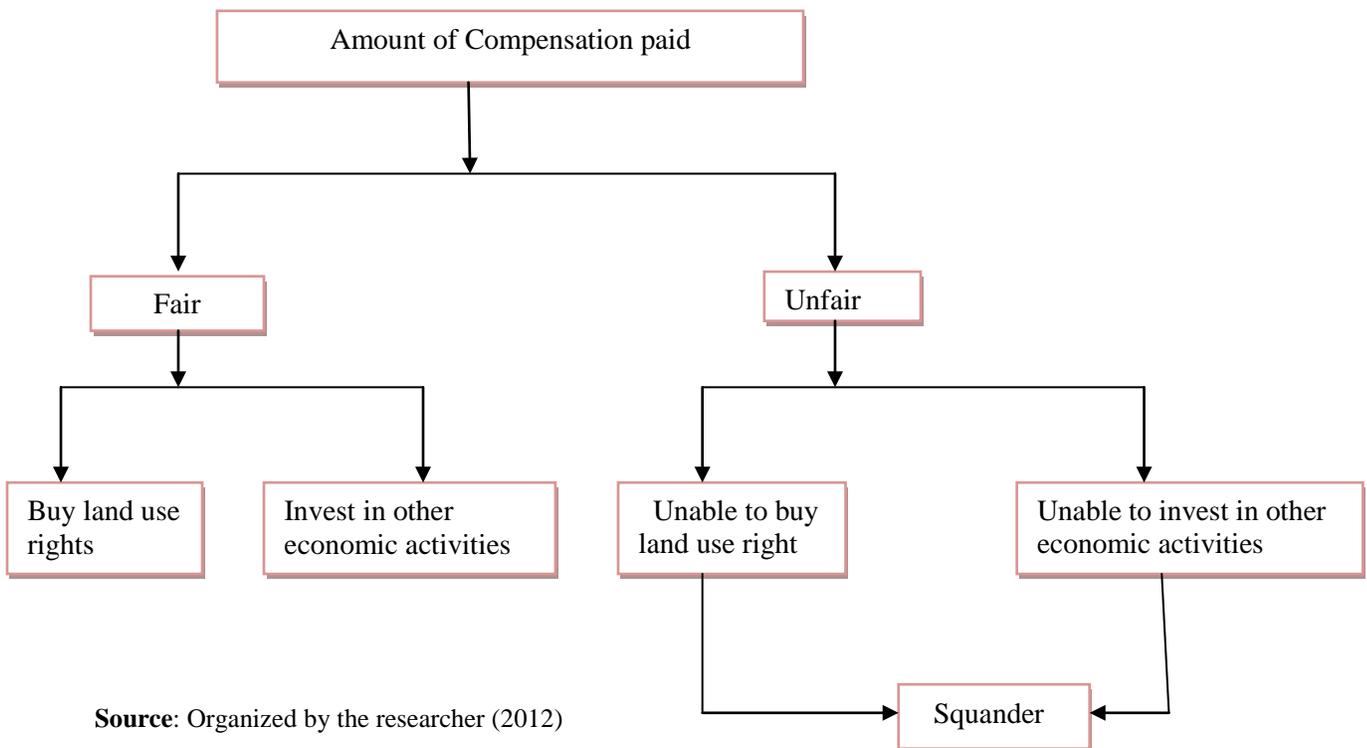
The first argument is that the amount of compensation is not enough in comparison to possessing the land itself. The rural land holder is entitled to use the land during his life time. Land for a rural farmer is a strong base and an unshakable life security. It provides the means by which he and his family, and perhaps generations to come, subsist. The value of expropriated land compared to the amount of compensation paid seems inequitable. The rationale was that since farmers are entitled to life time holding and use rights, the compensation should be based on the assumption of a life time income.

The other source of discontent for the sampled farmers along the Gondar-Debank Road corridor in relation to the taking of land was the special attachment farmers have to their land. The land, for a farmer, is beyond

economic value. It has another dimension, too. Although not compensable, possession of land is a source of pride and dignity in the society. But most importantly, it is the only means and way of life farmers can understand and be confident of. Even at a generous compensation, farmers do not prefer compensation in terms of money. Almost all farmer respondents favored land-to-land compensation. Uneducated and alien to urban life, most farmers do not want to change their profession, for farming is the only skill they know. Additional problems arise due to the lump payment of compensation to those who have lost their land. Onetime payment does not create a sustainable form of compensation because the sum is often squandered by farmers of little experience in handling cash capital. The source of discontent in urban areas along the road corridor was that the compensation payment did not take in to consideration all consequential losses and the locational advantages of the property taken. Furthermore, land-to-land compensation was impossible due to the scarcity of land in urban areas. Due to all these factors, they argued that the compensation payment was unfair as compared to the value of the property taken.

The focus group discussion participants and key informants in the field survey raised the question that if land-to-land compensation was impossible, why the government did not pay reasonable compensation equivalent to the value of the property taken. 39 (37 percent) of the interviewed compensated households reported that the compensation payment they received was very unfair and 48 (45 percent) of them said it was unfair. However, only 19 (18 percent) of them said that the compensation payment was fair. This shows that 82 percent of the compensated households assumed that the compensation payment made to them was unfair.

**Figure 10-1: Fairness of Compensation**



As indicated in Fig 10.1, if the compensation paid to affected land holder has been fair, the first priority especially for a rural land holder has been using the money to purchase/rent land use rights from other

landholders having excess landholdings. If the affected landholder decides not to purchase/ rent land use rights from other landholders, he/she can have two options; either to invest in other economic activities or to squander the money. Normally, a rational and wise landholder uses the money either to purchase/rent land for cultivation or invest in other economic activities. On the other hand, if the compensation paid has been unfair and low, the affected landholders could not be able to maintain his/her living standard as before the expropriation. Still he/she has an option to purchase/ rent less size and low quality land or invest in other economic activities that requires small amount of finance. If the compensation paid has not been enough either to purchase/ rent land use rights or invest in other economic activities, the last option that has been left to the affected landholder is squandering the money and become a poor person without having an asset at last.

The study findings in field survey indicate that some of those whose landholdings have been wholly expropriated and were even compensated handsomely failed to manage a new way of life in an alien environment. Such expropriatees must be helped to manage the money they received to put it to productive use, beneficial to themselves and their family.

**Table 10-10: Levels of respondents’ satisfaction on compensation paid**

No	Levels of Satisfaction	Frequency	Proportion in (%)
1	Highly satisfied	1	1
2	Satisfied	20	19
3	Dissatisfied	59	56
4	Highly dissatisfied	26	24
5	Indifferent	-	-
	Total	106	100

**Source:** Field survey (2012)

The affected landholders along the Gondar-Debark Road corridor were also asked about the level of compensation and their satisfaction. 26 (25 percent) of the expropriatees thought that adequate compensation was not given and hence they were highly ‘*dissatisfied*’. 59(56 percent) of them were ‘*dissatisfied*’ with the compensation payment. Only 20 (19 percent) of the affected claimants said that the compensation paid was fair and hence they were ‘*satisfied*’. This shows that the majority (80 percent) of the claimants were not satisfied with the compensation offered. Although it seems better as compared to the previous two case studies, still the compensation paid to expropriatees was unfair and inadequate and it remains the main issue that needs to be addressed by government and other concerned parties.

According to the results obtained from the participants of Focus Group Discussion (FGD) and Key Informant Interviews (KII) held in urban and rural areas in the field survey, in urban areas all important factors which affected the value of expropriated properties (locational advantage, good will for business men, etc) were not taken into consideration when the properties were valued, whereas in rural areas, the payment of compensation did not consider the life time loss of properties. Similar to the previous two case studies, there was no room for strong negotiation between expropriatees and expropriators so that most affected people did not believe that their properties were valued genuinely and independently.

According to the Federal regulation No.135/2007, article 3(4), compensation shall be paid only for the demolished part of a building where the owner prefers to use the unwanted part of the property. However, the practice along the Gondar-Debank Road redevelopment project showed that the City Administrations took the whole property although landholders preferred to use the unwanted part of the land. This is because the compensation was paid by the Ethiopian Road Authority (ERA) and the City Administrations leased the unwanted part of the land to investors and generate revenue for their budget.

**Box 10-1: The Laws and their implementation**

**The laws and their implementation**

The case in point here is that two of the interviewees named Mr. X and Ms. Y in Ambageorgies town, Wogera Woreda had commented the following:

Due to the Gondar-Debank Road redevelopment project, they lost some part of their landholding and attached properties. They had been paid compensation for the expropriated attached properties though the payment was unsatisfactory. The unwanted part of the land was enough for them to continue their previous economic activities. The affected property holders, as stated in Regulation No.135, 2007, Article 3(4), decided to continue their previous economic activities. However, the City Administration told them that the land was needed for investment activities and they were not allowed to continue their previous activities which insecure their property rights. They tried to appeal to higher level officials but they did not get positive response. This completely contradicts what the law says (Field survey, 2012).

**Table 10-11: Comparison between average actual compensation paid and estimated open market value (in thousands)**

Description	Full sample	Gondar City	Wogera	Dabat
Actual compensation paid (N)	<b>3665</b> (37934)	<b>1458</b> (30)	<b>957</b> (39)	<b>1250</b> (45)
Estimated market value (N)	<b>5784</b> (50)	<b>2323</b> (36)	<b>1648</b> (61)	<b>1812</b> (53)
Difference between compensation paid and market value	<b>-2119</b> (25)	<b>-865</b> (20)	<b>-692</b> (25)	<b>-563</b> (28)
% of the difference relative to estimated market value	<b>-37</b>	<b>-37</b>	<b>-42</b>	<b>-31</b>
Average actual compensation paid	<b>35</b> (38)	<b>36</b> (30)	<b>38</b> (39)	<b>30</b> (45)
Average estimated market value	<b>55</b> (50)	<b>58</b> (36)	<b>66</b> (61)	<b>44</b> (53)
% of average actual compensation paid to average estimated market value	<b>64</b>	<b>62</b>	<b>58</b>	<b>68</b>

**Note:** Values in parentheses are standard deviations.

**Source:** Field survey and computed by the researcher (2012)

Table 10.11 shows the descriptive statistics that whether average compensations paid are systematically higher or lower than the average price that would result in a non-expropriation situation requires an estimate of the price of each property would bring in an alternative market situation. One proxy of such estimates that was utilized in this study was the estimated market value of properties<sup>89</sup>. The expropriatees<sup>90</sup> were asked about the estimated market value of properties if they were allowed to sell/transfer the land use right in the open market value or transfer to third party through lease or other means. Based on the data provided in table 10.11, actual compensation paid for the full samples of affected persons in Gondar-Debark Road redevelopment is 37 percent less than the estimated market value of similar properties on average. Dividing the sample into geographic sub-samples reveals that the percentage difference from estimated market value ranges from 31 percent for properties in Dabat Woreda to 42 percent for properties located in Wogera Woreda.

The inadequacy of the compensation is also reflected by the percentage difference between the average actual compensation paid and the average estimated open market value. For example, in Gondar City, those individuals who were affected due to the Gondar-Debark Road redevelopment project, on average, were paid about 62 percent of what they were expecting from the estimated market value. Similarly, in Wogera and Dabat, those who lost their land and attached properties due to the road redevelopment received about 58 and 67 percent of what they were expecting from the estimated market value respectively. Despite the compensations paid are consistently below than from of what the affected people were expecting from the open market value, as compared to the previous two case studies, the compensation payment made by the Ethiopian Road Authority (ERA) would be better. This result suggests that the fairness of compensation payment depends upon the type of project, source of finance and institutions involved.

**Table 10-52: Significance of difference between actual compensation paid and estimated market value**

Pair: Amount of compensation paid minus estimated market value	Paired differences						
	Mean	Std.Deviation	95% confidence interval of the difference				
			Lower	Upper	t*	df	Sig. (2tailed)
Full sample	-19992	25131	-24832	-15152	-8.2	105	.000
Gondar	-21617	20250	-28094	-15141	-6.8	39	.000
Wogera	-27677	25362	-38145	-17208	-5.5	24	.000
Dabat	-13720	28149	-22605	-4836	-3.1	40	.000

\*significance at the 2.5% level or higher. Source: Field survey and computed by the researcher (2012)

<sup>89</sup> To avoid biasness of respondents, the researcher tried to convince them to forward the actual information. Moreover, the questionnaire is prepared in a way to cross check the reliability of the information provided in each question. Lastly, information collected from property valuers and officials also used as a reference to cross check the reliability of the information obtained from the expropriatees.

<sup>90</sup> The expropriatees were asked how to estimate the market value of their expropriated properties. In urban areas, they can estimate the value as compared to the value of comparable sold properties, whereas in rural areas, affected farmers can estimate the value as compared to the money they generate through leasing to other farmers and with the value of the produce they get from the land yearly. If the land is taken permanently they estimate the value by multiplying the number of years that they use the land with the value of produce they generate yearly.

Similar to the previous two case studies, a paired t-value was conducted to test whether there is a difference between actual compensations paid and estimated open market value. The t-test results also substantiate the theoretical and numerical findings. As results indicated in table 10.12 the mean differences between compensation paid and estimated market value for the whole sample and all sub-samples are significantly different from zero, suggesting that compensation data examined in this study are also lower than prices observed in non-expropriation transactions.

### ***10.8.8 Compensation for severance, injurious affection and other incidental loss***

In addition to severance, where only part of the land is taken a diminution in the value of the retained land may arise from the construction of the project for which the land was acquired (temporary loss) or the subsequent use and operation of the project (permanent loss). The temporary loss is normally fairly easily assessed, however, the permanent loss, for instance, the possibility of crops being damaged by fumes or dust from a new road etc. are almost impossible to deal with by a formula-based approach.

In Ethiopia, both the Constitution and expropriation and payment of compensation laws decline to compensate injurious affections and incidental losses due to expropriation. Accordingly, in practice crops being damaged by fumes or dust from a new road, productivity of farm lands being reduced due to detours, borrow pits and quarries, and health problems due to dust and heavy traffic on the road were not taken in to consideration for payment of compensation in the Gondar-Debark Road redevelopment project.

**Photo 10-3: One of the productive farm land used for borrow pits and quarries along Gondar- Debark Road**



**Source:** Field survey (2012)

According to the participants of the focus group discussion and key informants held in the field survey, there was no injurious compensation for those farmers affected by the road project. The affected farmers who lost their land temporarily for detours, quarries and borrow pits, had been given only temporary displacement compensation until the land has been returned back but there was no compensation for the loss of productivity and other incidental losses. As it has been observed in the field survey, the temporarily used land was not recovered as its original productivity level when returned back to landholders although it has been planned by the project to reinstate the temporarily taken land to its original position. A case is presented in Box 10.2.

## Box 10-2: Unfair treatment of the affected landholders in Dabat Woreda

### Unfair treatment of the affected landholder in Dabat Woreda

One of the key informants, for instance, in Dabat Woreda, named Mr. Liwulseged, aged 45, had lost 0.75 hectares of land out of his one hectare of land including more than 2000 eucalyptus trees due to Gondar-Debarq Road redevelopment project. In addition to that his family members had lost their additional source of income that was raised through making different traditional materials from the surrounding clay soil. For all these losses he and his family had been compensated only 30,000 Ethiopian Birr (ETB).

He said, “I have rented one hectare of land from others having excess landholding for about 500 ETB for two years from which half of the produce and residuals will be taken by the landholder. When I compared the compensation paid with the value of land I lost, it was not fair. The compensation payment could not cover the value of residuals let alone the value of the produce when I compared it with my life time land use right.” (Field survey, 2012)

### Photo 10-4: Focus group discussion participants in Dabat Woreda



Source: Field survey (2012)

According to the Federal regulation No. 135/ 2007, Part two, article 3 (2b) the estimated cost for demolishing, lifting, reconstructing, installing and connecting utility lines of the building in urban area should be paid as compensation when the property is demolished for public development purposes. However, the practice prevailed on the ground is contradictory to the aforementioned points. According to the participants of the focus group discussion and key informants, all displaced people did not get compensation for severance and other incidental losses except one year house rent in urban areas which was very small as compared to the market house rent.

Article 3(4) of the same regulation says, where part of the building is ordered to be removed and if the owner prefers to use the remaining part of the building provided that it conforms with the requirements of the appropriate city plan, compensation shall be paid only for the demolished part of a building but a substitute land will not be given. This shows that the affected property holder is not eligible for severance compensation for the decline of the size of land (Box 10.1). The unfairness of compensation can also be seen from different angle.

Suppose two property holders have adjacent landholdings. The value of their landholding increased due to the new project undertaken. The first landholder lost part of his land despite the value of the remaining part increased and the second property holder did not lose at all. Should we then say that the value of the first landholder has increased as compared to the second landholder who did not lose any part of his land but the value increase due to the new project? Does it not make the first property holder poorer relative to his neighbor whose property was not expropriated? This shows that the fairness of compensation should be seen above and beyond paying compensation for the properties lost due to expropriation.

### ***10.8.9 Main Compensation and valuation problems***

The legal framework for compensation and valuation has shortcomings that could and should be addressed in policy dialogue with the Federal and Regional Governments. But the more substantial shortcomings have resulted from their inadequate implementation on the ground. The following are identified as the main problems of expropriation, compensation and valuation in the Gondar-Debarq Road redevelopment area.

- **Unable to provide land-to-land compensation**

For Ethiopian rural farmers, land has more than economic value. It is the main stay of livelihood. According to proclamation No.455/2005, Article 2(1), compensation can be made in cash or in kind or in both. In the case of community development projects in rural areas, the normal practice of compensating expropriated landholders is the provision of substitute land. However, the fairness and equitability of this approach, in practice, has many shortcomings as affected landholders in many cases are given substitute lands that are not comparable either in size, fertility or distance from residence. In the Gondar-Debarq Road redevelopment project many farmers were displaced and no one was given substitute land as compensation although the law says.

- **Unable to pay compensation for affected landholders according to World Bank's principle**

The Ethiopian Road Authority (ERA) Resettlement Action Plan (RAP) principles are adopted basically from the World Bank's policy on resettlement and rehabilitation. By signing the credit agreements for the Road Sector Development Program (RSDP) with International Development Association (IDA), the Federal Democratic Republic of Ethiopia committed itself to abide the involuntary resettlement policy of the World Bank and both parties do agree on the fact that development projects should not be realized at the expense of the people affected by the projects. Thus, the legal framework of the RSDP are the Ethiopian Constitution as transcended into the ERA procedures and the World Bank Operational Directive (OD 4.30) on involuntary resettlement and its operational policy as spelled out in the resettlement and rehabilitation guidebook (ERA, 2007). However, the affected people along the Gondar-Debarq road corridor had not been compensated as the World Bank's resettlement policy that all consequential losses must be compensated so as to maintain them as before the expropriation.

- **Baseless displacement compensation for rural landholders**

Displacement compensation represents the compensation given for the loss of the land itself. It is a kind of compensation scheme that tries to compensate the loss of the entire land permanently or temporarily. According to proclamation No.455/2005, Article 8(1) a rural landholder whose landholding has been permanently expropriated shall be paid displacement compensation which shall be equivalent to ten times the average annual

income he secured during the five years preceding the expropriation of the land. However, no justification was given how it was determined. It has not economic or legal basis, and as a result, it remains a source of discontent, complaint and frustration for those of the farmers who had lost their holding (Field survey, 2012). In Ethiopia, rural landholder has been given a life time use right. So it seems unjustifiable to take the landholder use right merely by limiting the compensation only for ten years. Furthermore, there was not any additional subsidy payment when the initial displacement compensation was not enough to maintain affected farmers' original quality of life level.

- **Limited consequential loss compensation**

Under the current expropriation and compensation laws, consequential financial loss payments are very limited. Although the cost of removal, transportation and erection shall be paid as compensation for a property that could be relocated and continue its services as before, payment of other consequential financial losses such as the cost of finding alternative accommodation, extra costs for living in a new area, fees for discharging mortgages, etc. are not allowed. For non-residential occupiers, there is no explicit provision for the compensation of economic losses due to ceased production or operations. Accordingly, temporary business losses pending removal, loss of business goodwill, costs of notifying customers/clients about the removal, and other related losses were not compensated. In rural areas, there was no compensation for crops being damaged by fumes or dust from a new road, productivity of farm lands being reduced due to detours, borrow pits and quarries, and health problems due to dust and heavy traffic on the road.

- **Unable to recover and return temporarily taken land as its original condition**

In Gondar-Debank Road redevelopment project many farmers were displaced due to the temporary use of the land such as quarries, borrow pits, detours and access roads. In the area where there is a scarcity of cultivable land, taking land for these purposes could cause considerable disturbance to the local farming practice. Although it has been planned by the project to reinstate the temporarily taken land to its original position and provide as compensation for affected farmers, as it has been observed in the field survey and the report of affected respondents showed, it was hardly possible to recover the land in its original position and provided as compensation.

- **Problems with market value assessment**

For the acquisition of urban properties situated on the land, the Federal regulation No.137/2007 and the Amhara National Regional State directive No.35/ 2008, allows eligible dispossessed people to be compensated with market value. However, there is no definition of market value in the laws. On the other hand, the law allows the relevant people's government to assign valuation committee and to use replacement valuation method for assessing market value. This provision gives the authorities a large flexibility and often leads to a miscarriage of justice. In rural Ethiopia, particularly in remote rural areas, property markets are not sufficiently active to provide reliable information about prices. Markets do not provide reliable information about the value of the expropriated property. In addition to that there is no proper transaction between the expropriatees and expropriators in case of compulsory acquisition. Because of all these reasons the expropriated properties were not valued at fair market value.

- **Knowledge of expropriation and compensation laws**

The survey result shows that the number of affected people that know the laws about expropriation and related matters is very low. It is very difficult to implement the laws properly if the affected people and other concerned parties are not well aware about the laws. Creating awareness on existing laws, regulations and directives on expropriation, valuation and compensation is core to the protection of landholders' rights, and to implement fair and consistent valuation and compensation methods and procedures. No law can be implemented or implemented properly unless all the stakeholders are familiar with it and have a grasp of its basic workings.

- **Asset appreciation and under-compensation**

Asset appreciation occurring after the determination of compensation results in a failure to reach replacement costs. By law, the valuation cannot consider this increase, yet the purchase price of replacement property in the vicinity will be affected. So the amount of cash compensation, even if properly valued, is based on pre-project rates, which is not enough for recipients to purchase equivalent property at higher post-project rates. In addition to that there is no statutory stipulated interest payment for delays of compensation payment, it under-compensated affected people.

#### ***10.8.10 Summary of survey results***

Gondar-Debank Road redevelopment project displaced many people and resulting in impoverishment. The compensation provided to affected landholders had fallen short of both the country's laws and the World Bank's involuntary resettlement operational policies. The compensation and valuation procedures had been implemented in line with the convenience of the acquiring authorities rather than for adequately reimbursing dispossessed people. The biggest problems with the current compensation principles include the non-existence of just terms compensation principle in compensation laws, limited consequential financial loss payments, lack of a market value definition, non uniform compensation standards, and a lack of transparency. The real problem is on the one hand the short comings in the legal framework and government's lack of determination to force the necessary changes and on the other hand inadequate implementation of the legal framework. Absence of certified property valuers, lack of knowledge of people about laws related to land and related matters, lack of independent lawyers and valuers to assist dispossessed people in assessing their compensation entitlements and the reasonable compensation payments, attribute to the low level of compensation payment.

## **CHAPTER ELEVEN: ANALYSIS AND DISCUSSION**

### **11.1 Introduction**

In this section, the assessments and findings on valuation and compensation practices on land and attached properties expropriated for various purposes in each of the case studies are discussed. The descriptions and analyses of the conditions and issues relating to valuation methods and compensation practices in each case study are based on primary information obtained through the individual household level interviews and focus group discussions, as well as the discussions held with key informants, officials and experts at different levels. Findings from secondary data and information obtained from different sources have also been used, where relevant, for the discussion and analysis.

The main issues that have emerged in the previous chapters in line with the objective of the research raised in chapter one are discussed in this chapter. An attempt is made to view the emerging issues in the context of the fabric of knowledge that exists. As indicated in the study, the concept of expropriation and its application in real world demands that this type of discussion be undertaken on two different, but related fronts: the expropriation of land and attached properties and the assessment of and payment of compensation. This chapter, therefore, concretizes and crystallizes the main issues discussed and proposes a way forward.

### **11.2 Property rights of affected people**

Under Article 40 of the Federal Constitution of 1995, every Ethiopian has the right to the ownership of property. This right includes the right to acquire, to use and, in a manner compatible with the rights of other citizens, to dispose of such property by sale or bequest or transfer. However, this right can be limited or modified by law where “public purpose” so demands. The constitution further stipulates that every Ethiopian shall have the right to the immovable property he/she builds, and to the permanent improvements he/she brings about, on land by his/her labor or capital including the right to alienate, bequeath and where the right of use expires, remove his/her property, transfer his/her title or claim compensation for it. It is also stipulated that the government has the power to expropriate private property for public purposes subject to payment, in advance, of compensation “commensurate” to the value of the property. Although both the Federal and Regional expropriation and payment of compensation laws require the State to expropriate privately held property for “public purposes”, these public purposes are not defined explicitly in either statutory or case law, giving the government virtually unlimited power in taking property for any purpose. Allowing the government the exercise of “eminent domain” power for private investment interests distorts the land market, resulting in government intervention in land transactions that could otherwise have been achieved through private negotiations.

As it has been reported in all the case studies, particularly in the case of Gondar-Debank Road redevelopment project and in the surrounding rural areas of Bahir Dar City, though the affected people were settled in the area more than twenty years, their property rights and interests were not protected properly. The displaced farmers were not compensated in a reasonable way and substitute land was not given as an alternative compensation, though the law allows that.

In Federal funded projects, lack of titled deeds do not bar landholders from getting compensation, whereas in the case of regional/ municipal financed projects, property holders should have title deeds so as to be eligible for compensation. For instance, in the case of Lideta Sub-City redevelopment project in Addis Ababa and Bahir Dar City and its surrounding rural kebeles, it was clear that the affected people who had no title deeds were not eligible for compensation, whereas in the case of Gondar-Debark Road redevelopment project such requirements were not made to pay compensation. In Addis Ababa and Bahir Dar City and its surrounding rural kebeles, the compensation was made by the regional governments and /or the City Administrations, whereas in Gondar-Debark Road redevelopment project the compensation was financed by the Federal government. This shows that the law is applied and practiced inconsistently and differently at various levels. No matter how beautifully the expropriation and payment of compensation laws are designed and structured, if the rights of property holders are not properly protected, and if the laws are not implemented evenly to all affected people, the outcome of the expropriation process would be unfair, because it would not compensate those who deserve it.

### ***11.3 Knowledge of expropriation and payment of compensation laws***

The survey results in all case studies show that the level of knowledge of expropriation and the payment of compensation laws is very low. Out of the interviewed expropriatees in Addis Ababa, only 15 percent know the law partially. The further one goes from Addis Ababa, the capital city of the country, the level of illiteracy about the law increases. For instance, in Bahir Dar City and its surrounding, 97 percent of the affected land holders did not know anything about the expropriation and payment of compensation laws. Similarly, of the total number of interviewed affected land holders in Gondar-Debark Road redevelopment project, only 16 percent know the law partially.

Though property valuers are expected to know the law very well, the field survey result in all case studies revealed that their level of knowledge of expropriation and payment of compensation laws is also low. From the interviewed property valuers in Addis Ababa, only 54 percent said they know the law very well. In Bahir Dar City and its surrounding, only 20 percent of the valuers know the law very well, whereas the remaining 80 percent know the law partially. Similarly, in Gondar- Debark Road redevelopment project, only 25 percent of the valuers know the law very well. Though Addis Ababa seems better in the legal literacy of both affected landholders and property valuers, the overall knowledge of expropriation and payment of compensation laws is found to be very low. This indicates that it is very difficult to implement the laws properly if both the affected people and the property valuers and other concerned parties are not sufficiently knowledgeable about the laws. Creating awareness on existing laws, regulations and directives on expropriation, valuation and compensation is important to the protection of landholders' rights, and to implement fair and consistent valuation and compensation methods and procedures in all affected areas. No law can be implemented or implemented properly unless all the stakeholders are familiar with it and have a grasp of its basic workings.

### ***11.4 The expropriation procedure and transparency***

Most countries with reasonably developed legal systems have adopted procedural guidelines for expropriation of assets that place some significant constraints on state power, help better balance the information asymmetry, and at least partially, protect the rights of affected people against excessive expropriation and unjust compensation the government's expropriatory power. Expropriation statutes in most countries require that the

state notify affected people regarding the state's plans to expropriate land and attached properties and to compensate or resettle affected people. Affected people's access to information, their full participation in the process of expropriation, and the ability to enforce their rights are not only components of democratic development, but also effective mechanisms of institutional check (ADB, 2007). Effective procedures include the right to receive adequate notice and information, the right to participate and influence decision making, and the right to appeal on decisions to independent bodies such as courts.

The Ethiopian expropriation and payment of compensation laws state that where a decision to expropriate a private landholding is made, notification is required to be given in writing to the landholder. Such notification is required to indicate the period within which the holding has to be "vacated and the amount of compensation to be paid". To facilitate the notification process, the law puts an obligation on implementing agencies to prepare detailed data pertaining to the land needed for the work and send the same, at least one year before the commencement of the works. However, the field survey in all case studies indicated that formal written notifications of expropriation orders were not given by the expropriators. Due to the complete absence of procedural laws, the expropriating authorities are not obliged to consult with the affected peoples on compensation and resettlement, to hear the affected people's concerns about their future, to make adjustments based on such concerns, or to address grievances through additional support measures.

Participation of affected people in the process of expropriation plays a crucial role in safeguarding their legitimate interests from being infringed upon by government actions and prevents discretionary or arbitrary land expropriations. Given the relatively low levels of education and unfamiliarity with governmental or legal procedures of the affected peoples—rural farmers in particular—the right to participate before decisions are made is the key to prevent unjust or even disastrous outcomes. Cernea (2000) argues that "...participation through consultation with potentially affected people is indispensable", and dysfunctional or inadequate communication between decision makers and affected groups is one of the root causes for compensation and resettlement plan failure (Cernea, 2000). Because of the close relationship between stakeholders' right to due process and their right to just compensation and resettlement, virtually all developed countries have and implement specific legal rules concerning affected people's participation in the process. Participation of affected peoples is, however meaningless unless it can influence decision-making processes. Therefore, many governments have established various forums and channels of different degrees of formality for affected peoples to voice their opinions and to impact on decisions.

One of the common problems experienced in all case studies was lack of transparency in the determination of property values for compensation purposes. Though some of the property owners/ holders participated when the property was inspected and measured, valuation workings and property values were kept secret from property owners. This disturbs the property owners who think it is their right to know how the values were derived and what rates had been used. It is based on these arguments that the claimants believe that "confidentiality" of the valuation workings increases the chances of inconsistencies and arbitrary use of valuation rates and amounts.

Property owners, especially those living in rural areas and peri-urban areas under expropriation, are usually powerless, with inadequate sources of information, and without access to unbiased property valuers. Most often, upon approval of the expropriation, the government agents (Woreda or City Administrations) assign property valuers to assess the value of the property under expropriation. When the expropriatees have objections or disagreements, the expropriator often threatens the expropriatees for obstructing public development for "public

purpose”. This clearly shows that the expropriatees’ rights to notice, participate, and appeal<sup>91</sup> in relation to land and attached properties expropriation is seriously lacking in practice. Moreover, the expropriation laws authorize the state to enforce the expropriation plan and to take actual possession of the land even if disputes concerning compensation and resettlement are not resolved.

## ***11.5 Laws and their implementation***

In addition to the points that are not treated properly in the written laws, the implementation and practice of laws influence the fairness of compensation paid to affected landholders. The practice that is the way the expropriation was carried out was important in assessing whether the exercise was fair or not.

### ***11.5.1 Expropriation and assessment of compensation***

#### ***11.5.1.1 Expropriation***

Since land is state owned in Ethiopia, expropriation of land only involves “withdrawal” of land use rights. Compensation for expropriation of private properties in the Ethiopian context, therefore, only involves structures, including buildings, houses, fences, etc. The 1995 Constitution and the expropriation and payment of compensation laws provide power to the government to expropriate privately held property for public purpose. However, the right holder is entitled to a vaguely phrased “commensurate compensation” as stated in the constitution and “fair compensation” as indicated in the expropriation and payment of compensation laws. These two terms are not further explained in the laws. Although Ethiopian laws require commensurate or fair compensation to the holder of land use rights, when such rights are withdrawn in certain situations, the character and quality of land rights are severely impacted by the law on expropriation of land and attached properties. On top of that, the amount of cash compensation is not determined by market valuation of the condemned structure and disregards its locational<sup>92</sup> advantages. Both the Constitution and expropriation and payment of compensation laws outline broad compensation principles. Details of compensation and adjustments are to be determined by the respective regional governments and municipalities directly under the central government. Since each authority has its own considerations and objectives when formulating the standards, there is bound to be a wide disparity in their standards.

Though details of compensation are prescribed in the laws, disparity still exists. For example, compensation to dispossessed farmers in Gondar-Debank Road redevelopment project which was financed by the Federal government is higher in relative term than the compensation given to dispossessed farmers in Bahir Dar City and surrounding, which were funded by the regional government/city administration. Why farmers dispossessed from Bahir Dar City and surrounding are treated differently is because the source of finance for compensation was the Regional Government/ City Administration. The property owner is entitled to moving expenses and transitional resettlement subsidy. Resettlement subsidy can be in the form of either cash subsidy or provision of a transitional home. In the case of non residential structures, an “appropriate compensation” should be made for losses sustained by the property owner if such expropriation causes termination of production or business.

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<sup>91</sup> The right of appeal provides affected people with an important check against arbitrary or illegal administrative decisions on land expropriations. The right to appeal varies substantially by jurisdiction in terms of formality and the extent of reviewable issues

<sup>92</sup> A market valuation of the house taking into account the factor of location might reflect at least part of the value of the land on which the structure is erected

However, the practice in all case studies showed that the resettlement subsidy was not given uniformly to all affected persons. In Addis Ababa and Bahir Dar, the affected individuals were given one year house rent, though it was not compatible with the market house rent whereas, in rural kebeles and towns, the affected land holders were not given resettlement subsidy.

One of the distinctive features of Ethiopian expropriation and payment of compensation laws is that private investors and developers are not allowed to conduct expropriation and pay compensation directly to affected property holders. Instead, the government, Federal or Regional is authorized to expropriate the property and give compensation to the affected property owners upon the receipt of land use rights and approval of condemnation. Under this legal framework, the government uses its agents (City Administration) in urban areas and (Woreda) in rural areas to expropriate privately held land and attached properties after paying compensation. The City Administration, after taking the land use rights from private holders, transfer it to private investors and developers in the form of lease the price of which is higher than the money paid as compensation to affected landholders. The City Administration uses the difference as a source of revenue to run its activities. This type of government intervention distorted the land market and transaction that could be otherwise achieved through private negotiation. This happens in the case of regional and/ or municipal financed projects. In the case of Federal financed projects, the compensation is paid directly to affected landholders by implementing agencies. For instance, affected landholders in the Gondar-Debarq Road redevelopment project were paid by the Federal Ethiopian Road Authority. Such practices create unequal treatment of people with similar status.

### ***11.5.1. 2 Assessment of compensation***

Since the assessment of compensation is statutorily provided, a valuer does not decide about the desirability of the methodology specified in the statutes, but follows the principles provided in the statute. Though the statutes specify the rules of assessing compensation, they do not specify the quality of compensation desired. The Constitution, which gives powers to the government to acquire land, describes compensation desirable as one which is “commensurate” to the value of the property. The important question is whether the basis of valuation stipulated in a particular statute affects the fairness or the adequacy of compensation. The statute says that compensation to be paid must be “commensurate” and “fair”. The basis of valuation is the value of the unexhausted improvements i.e. for property the utility of which has not expired and displacement compensation for loss of agricultural land in rural areas. The amount of compensation for property situated on the expropriated land shall be determined on the basis of replacement cost of the property. The cost of removal, transportation and erection shall be paid as compensation for a property that could be relocated and could continue its service as before. The assessment is based on the value of the structures at the time the notice of acquisition is given, and any improvement made after that date is disregarded. Under the expropriation and payment of compensation laws of Ethiopia, the heads of compensation are limited and there is no reference to just terms compensation. The expropriation laws disregard the probable future value enhancement i.e. hope value and also the damages experienced due to injurious and inconvenience effects. The practice in all case studies reveals that there was no transitional income support for those workers losing employment in the process of expropriation. Employment training and income support were not given for those who have been affected due to expropriation. Access to customers and suppliers and its locational advantages were not taken into consideration for compensation assessment. Project affected people in all the case studies were not treated uniformly in providing transitional assistance, such as moving expenses and temporary residence and allowance.

### ▪ **Property valuation methods**

The method of valuation used varies from time to time and region to region during the earlier time. For example, during the earlier period income capitalization was used, whereas in the later period the replacement cost method has been used. However, after proclamation No. 455/ 2005 and regulation No.135/ 2007 were issued, all valuations depend entirely on the cost approach. Valuers had relied on their personal individualized sources of data on costs and no centralized form of data bank existed. Informal, friendly or unofficial exchanges of data and experiences among valuers were the accepted norms. Valuation of crops and trees and agricultural products depended heavily on the outdated data obtained from agriculture bureau and its branch offices. Valuation rates varied from region to region, from Federal funded projects to regional funded projects, from one urban location to another, from one crop to the other and from one age group to the other. For instance, in Gondar –Debark Road redevelopment project, compensation for the loss of eucalyptus tree had been calculated using the following rates, though there was no clear indication within each rate:

- Big trees 200 ETB<sup>93</sup>/tree
- Medium 60 ETB /tree
- Small 25 ETB /tree
- Seedlings 3 ETB/ tree

Whereas in Bahir Dar City and the surrounding rural kebeles, the rate of compensation for the loss of eucalyptus trees had been calculated using the following rates:

- Big trees 150 ETB/tree
- Medium 23.26 ETB /tree
- Small 5 ETB /tree
- Seedlings 3 ETB/ tree

This shows that the expropriated property is not rated and valued consistently and the expropriatees were not treated uniformly.

### ▪ **The cost method and its adaptation and use**

The method of valuation used for structures in all the case studies was the replacement cost method with no adjustment<sup>94</sup> for depreciation and displacement compensation for the loss of agricultural land. According to the property valuers who were assigned by the government and its agents in all case studies, the main official reason for the extensive use of this method was the absence of active property market evidence and the general lack of comparable sales as a result of government policy and it is the easiest method used to value the expropriated property. Furthermore, the government as main expropriator will not pay more for a given property, more than the cost of producing a substitute property having the same utility. Replacement cost approach is based on the premise that the costs of replacing productive assets that have been damaged because of project activities. The approach involves direct replacement of expropriated assets and covers an amount that is sufficient for asset replacement. However, as it has been reported in all case studies, an alternative property

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<sup>93</sup> ETB stands for Ethiopian Birr

<sup>94</sup> Depreciation is an important step in the use of the cost approach representing the used up age in terms of physical, economic or/and technical obsolescence whereas in Ethiopian expropriation and payment of compensation laws, nothing is said about depreciation

could not possibly be purchased using the compensation paid that could not fully cover the purchase price. The price of an alternative property in the “open” market would normally include the value of the development of, for example, a building, the developer’s profit margin, the transaction costs involved and the land value which in this case, is not “compensated”. If compensation money were to be used in the construction of a similar house on a granted plot, then consideration must be made for the lapse of time before the houses are completed. In practice, compensation payable is based on the value of the unexhausted improvements only, which neglects all these elements mentioned. So, by using this approach the derived values are likely to have no direct relationship to the market values of the properties acquired and that is why such values are unable to totally redress the aggrieved individuals.

Asset appreciation occurring after the determination of compensation on the one hand and compensation payment delays on the other hand results in a failure to reach replacement costs. By law, the valuation cannot consider these issues, yet the purchase price of replacement land and attached properties in the vicinity will be affected. So the amount of cash compensation, even when the property is valued properly, is based on pre-project rates, which is not enough for recipients to purchase equivalent property at higher post-project rates.

The expropriation and payment of compensation laws of Ethiopia disregards the highest and best use value of land, i.e. changes in value as a result of declaration or notice of proposed acquisition, discouraging overvaluations that could encourage a claimant to transfer his property in compulsory acquisition. When a property owner sells his/her property “compulsorily” to the government, he/she is denied the land value component, which he/she would have otherwise reaped from a willing buyer if he/she had transferred it in a free market. That is why most affected landholders in all case studies said that the compensation paid is unfair, compared to the market value of the property expropriated. It appears that government valuation officers had a great deal of discretion in applying the broadly formulated compensation standards and applied them inconsistently. The field survey in all case studies indicated that affected peoples who were educated and relatively well-off and had good close contacts with valuers received much higher valuations than those who were poor and uneducated. This indicates that all affected persons were not treated equally and uniformly.

- **Displacement compensation for rural landholders**

Displacement compensation represents the compensation given for the loss of the land itself. It is a kind of compensation scheme that tries to compensate the loss of the entire land permanently or temporarily. Displacement compensation may be given in terms of money, full or partial, or in terms of land-to-land compensation. A rural landholder, whose landholding has been permanently expropriated, shall be paid displacement compensation which is equivalent to ten times the average annual income he/she secured during the five years preceding the expropriation of the land in addition to the compensation payable for permanent improvements. However, there is not any credible justification given for fixing the compensation amount only for ten years for a rural landholder who has a life time land use right. This provision has no economic or legal basis, and as a result, remains a source of discontent, complaint and frustration for most of the landholders who lost their landholdings. There is no additional subsidy payment mechanism when the initial displacement compensation is not enough to maintain their original living standard (Field survey, 2012)

In the case study areas, the valuation of farms was the most sensitive because it affected many people and touched the livelihoods of many people directly. Valuation of agricultural property, in most rural or peri-urban

areas is difficult due to scarce transactions. Rural land and houses are rarely sold nor rented in Ethiopia making it very difficult to value them using the market value. Due to the passage of time, increased prices of land and agricultural inputs and products, these rates are not updated regularly and are a source of many inaccuracies and errors, and hence create problems in displacement compensation assessment. These rates have been criticized as being unrealistic and non-reflective of the market prices. The value of a farm is a function of many factors, not simply the number of crop stems found on it, its economic value is rather reflected by its yielding capacity. The yielding capacity of the farm forms an important benchmark for the establishment of its market value, which reflects the farm in its totality, i.e. its fertility, physical features, services available, accessibility, product market etc. Unfortunately, by using the displacement compensation assessment, the valuers ignored all these factors that contributed to the value of the farm land.

It was not clear why and how the average annual income secured by the landholder prior to expropriation was used to calculate the compensation payment. It did not even consider the impact of inflation on the purchasing power of money which was secured in the previous years. It is clear that the crop values did not consider the current market prices of the respective crops. However, a view of the compensation law indicates that the law demands that the current market values be used in the valuation of expropriated assets. Valuation of crops, trees and agricultural products demand the use of government provided data, which is blamed for being outdated and unrealistic. What the law says in this regard is that any landholder who has been served with an expropriation order shall hand over the land to the Woreda or Urban administration within 90 days, or within 30 days where there is no crop, perennial crop or other property on the expropriated land from the date of payment of compensation. However, the law did not say anything about the date of valuation, payment of compensation and the new compensation rates applicable if the compensation is not paid within a reasonable period of time after valuation.

### ***11.5.2 Payment of compensation and its fairness***

As discussed in chapters Nine, Ten and Eleven, the amount of compensation paid and its fairness depends on the place, the circumstances (the understanding of the law, the valuation methodology applied, the kinds of property deemed compensable, the rates that are applied, the skill of the valuers, etc.), the availability of financial resources and the institutions involved in the expropriation process. The variation of these factors from place to place results in inequitable application of the concept of fair compensation, and as a result, affected people were not treated uniformly.

One of the main sources of inequitable application of compensation rates and amounts is the Federal rural land administration and land use proclamation, No.456/2005, Article 7(3). It states that where the rural landholder is evicted by Federal Government, the rate of compensation would be determined based on the Federal land administration law. Whereas, the rural landholder is evicted by regional Governments, the rate of compensation would be determined based on the rural land administration laws of regions. This is strange in view of the fact that basic laws governing compensation, a right enshrined in the Federal Constitution, cannot be governed by Federal and regional laws since the result will be legal provisions that are not standardized leading to unstandardized approaches, methodologies and compensation that results in unequal treatment of citizens in different areas. The other source of the inadequacy of compensation is the outdated rate used in compensation, especially in relation to agricultural products. It is argued also that the valuation method used in determining compensation does not put the affected landholder in a situation of equivalence.

Of the numerous complaints made in the case studies of Bahir Dar City and its surrounding and Gondar- Debarke Road redevelopment project, many centered on compensation rates set by the government and used by property valuers in the valuation of agricultural crops and other urban structures. The variation between what the law says and the practice on ground, and the inconsistent application of laws by Federal and regional governments and agents is also the source of discontent and complaint of affected landholders. In all case studies, many people were not satisfied with the amount of compensation, though some of them considered the compensation as reasonable and fair<sup>95</sup>. Many people had reservation value for their properties, which was higher than market value. No concrete patterns seemed to emerge out of the match between assessed values and reservation prices in all the cases examined. Reservation price indicators obtained from the study areas show how difficult it would be to either adopt claimants' reservation prices as compensation values or try to negotiate for a reasonable compensation settlement between the acquiring authority and the claimants. Where compensation was not fair, the anger and sense of frustration was vividly seen as in the case of kebele fourteen high way redevelopment projects, in which properties were bulldozed with unfair compensation. In frustration, some of the affected individuals refused to remove their belongings when the bulldozers came to bring down the houses.

The Constitution of 1995 and the expropriation and payment of compensations laws protect both urban and rural land holders from eviction or displacement from their holdings, except where the land is required for "public purposes". However, the information from primary sources in all case studies revealed that at present, there is hardly any formal and conscious exercise carried out by the Woreda and/ or City Administrations for determining the existence of public purpose for projects requiring expropriation of land holdings. The practice in the case of private and government investment projects, including infrastructural projects, as well as urban expansion also does not indicate a formal process of declaring public purpose. The interviews and discussions with focus group discussion participants in the case studies of Addis Ababa and Bahir Dar City and surrounding have made it clear that whether such projects meet the public purpose requirement as defined in Proclamation 455/2005 is not formally decided. Requests for the expropriation of landholdings are simply accepted so long as the projects are approved by the relevant authorities at the Federal, Regional, Zonal and Woreda levels.

A project that requires the expropriation of privately held land needs the declaration of public purpose. Some projects are so obviously within the traditional definition of public purpose type projects that they can be taken for granted. For instance, infrastructural projects, construction of universities and various colleges as well as hospitals, etc., are granted public development projects. However, in the case of investments of a private nature, where the driving motive is profit, it is essential that the link between the proposed project and public purpose be established unequivocally.

The large part of affected landholders in all the case studies complained that the amount/ rate of compensation was very low, inadequate and varying, and cited several reasons for improper inventory of properties and valuation, underestimation of values using out dated data source and non-market indicators or inaccurate market indicators, as well as the sheer bias of valuers assigned by government. Many affected landholders also complained that reductions are made even from the small amount of final compensation by the authorities for what are dubbed as "costs", the nature or cause of which remains unknown to them. They also pointed out that, although they had been promised by the government that they would be the beneficiaries from the realization of

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<sup>95</sup> Compensation paid for the affected landholders who were displaced for regional bureau construction purpose in Bahir Dar city was relatively fair

social and economic development projects, they have not generally been able to reap the benefits, particularly in the case of private investments.

According to the data obtained from the field survey, most affected people believed that the factors which affected the value of expropriated property were not taken into consideration when the properties were valued. There was lack of fairness in that people with similar expropriation status received unequal treatment. In one of the case studies, in Bahir Dar City and its surrounding the affected landholders were not given compensation for indigenous trees whereas, compensation was given for eucalyptus trees. In addition to that, if an affected landholder could not be able to assure that his landholding is titled, he is not entitled to claim compensation. This is because both the Federal and Regional expropriation and payment of compensation laws decline to compensate for condemned properties that are unlawful. Untitled property owners have no right to get compensation, no matter how long it has been since they built and possessed the property or how dependent they are on the property for their livelihood. However, the law is not applied uniformly and consistently to all affected people. For instance, in Gondar-Debark Road redevelopment project which was financed by the Federal Government, absence of title deed<sup>96</sup> to land and other assets did not bare the affected people from receiving compensation. In addition to that, the affected landholders had been compensated for all types of properties, including indigenous trees lost due to the project development.

Most of the affected landholders in all case studies believed that the loss they suffered in the acquisition process must be properly redressed. From this perspective, the claimants expected from the expropriators that the compensation would be based on the reservation prices they fix for their properties, which were higher than the assessed prices of their properties. However, as it was shown in all case studies, affected land holders were not compensated according to the market value, let alone be paid additional premium value to maintain their reservation value (Table 11.1).

**Table 11-1: Comparison between average actual compensation paid and estimated open market value in all case Studies (in thousands)**

Description	Addis Ababa-Lideta Sub-City	Bahir Dar City and surrounding	Gondar-Debark Road project
Actual compensation paid (N)	<b>14926</b> (261)	<b>9582</b> (139)	<b>3665</b> (38)
Open market value (N)	<b>244000</b> (18884)	<b>18565</b> (154)	<b>5784</b> (50)
Difference between compensation paid and open market value	-229074 (18823)	-8983 (113)	-2119 (25)
% of the difference relative to open market value	-94	-48	-37
Average actual compensation paid	226 (121)	110 (139)	35 (38)
Average open market value	3697	213 (154)	55 (50)

<sup>96</sup> It should be noted that in Federal funded projects, lack of title deed or permit will not be a bar to get compensation. Because, even squatters have construction costs relative to design, materials employed, workmanship and final finish.

% of average actual compensation paid to average open market value	6	52	63
Sample size	66	87	106

**Note:** Values in parentheses are standard deviations

**Source:** Field survey and computed by the researcher (2011, 2012)

Based on the data provided in table 11.1, actual compensation paid for the affected persons in Addis Ababa the case of Lideta Sub City redevelopment project, Bahir Dar City and surrounding and Gondar-Debark Road redevelopment project are 94 percent, 48 percent and 37 percent respectively, less than the estimated open market value of similar properties on average. Although the difference between actual compensation paid and estimated open market value is very high in all case studies, it is highest in Addis Ababa. The reason may be that property owners/holders are more conscious and give high personal value to their property and the value of comparable properties are very high that they could not be able to purchase with the money provided as compensation.

The inadequacy of the compensation is also reflected by the big percentage difference between the average actual compensation paid and the average estimated open market value. In Addis Ababa- Lideta Sub City redevelopment project, those individuals who were affected due to expropriation, on average, were paid only about 6 percent of what they were expecting from the open market value. Similarly, in Bahir Dar City and surrounding and in Gondar- Debark Road redevelopment project, those who lost their land and attached properties received about 52 percent and 63 percent respectively of what they were expecting from the open market value. Despite the compensations paid are consistently below than from of what the affected people were expecting from the open market value, as compared to the other two case studies, the compensation payment made by the Ethiopian Road Authority (ERA) for Gondar-Debark Road redevelopment project displacees was better. This result suggests that the fairness of compensation payment depends upon the type of project, source of finance and institutions involved.

A paired t-value was also conducted in all case studies to test the null hypothesis of no difference between actual compensations paid and estimated market value. The result is summarized in table 11-2

**Table 11-2: t-test results between average actual compensation paid and estimated open market value in all case studies**

Description	Addis Ababa- Lideta Sub-City	Bahir Dar City and surrounding	Gondar-Debark Road project
Percentage of the difference relative to open market values	-94	-48	-37
t-statistic for difference from zero	7.036	7.401	-8.20

**Note:** Significance at the 2.5 % level or higher

**Source:** Field survey and computed by the researcher, (2011, 2012)

The t-test results also substantiate the theoretical and numerical findings. As results indicated in Table 11-2 the mean differences between compensation paid and estimated market value for all case studies are significantly different from zero, suggesting that compensation data examined in all case studies are also lower than prices observed in non-expropriation transactions.

Although compensation is frequently paid to affected landholders by City Administrations or Regional governments, which as a rule is much less than the money paid by the investor to the City Administration or the Regional government, it was not implemented uniformly in all the case studies. In the case of Addis Ababa, Lideta Sub-City redevelopment project and Bahir Dar City and surrounding, the City Administrations / Regional governments paid the affected landholders less than what has been paid by the private investors and used the difference as a source of revenues whereas, in the case of Gondar-Debarq Road redevelopment project which was financed by the Federal government, the affected landholders were paid directly by the Ethiopian Road Authority (ERA). These results in inequitable treatment of people having similar status.

Mostly, the reason for the inconsistencies in the intra- and -inter case studies were attributed to the institutions involved, the source of finance, the “primitive” and “crude” valuation methodologies, the lack of qualified personnel for carrying out the valuations, the unreliability of market information and outdated data, the subjectivity of individuals and possible corruption. These factors caused estimations to vary substantially, even under similar circumstances. Most of the respondents in all case studies stressed that arbitrariness of compensation practices for land and attached properties expropriated for different purposes, the inconsistent application of valuation techniques and the ad hoc procedures and processes involved in valuation and compensation have resulted in numerous grievances and could only be described as unfair and unbalanced. It is important, however, to note that variations that occur in situations that are similar in all respects. It is, otherwise, inevitable that one should expect variations to occur depending on the value of properties varying from place to place or from market to market, as well as due to variations in the yield and fertility of the land.

With rapid economic development and urbanization taking place in the country in general and the study areas in particular, the demand for farmland for investment activities has been unprecedented. For instance, in 1999 E.C, Seven hundred seventy seven hectares of farmland were taken for horticulture and flower investment in the rural kebeles of Bahir Dar city. According to the questionnaire survey conducted in 2011 and 2012, more than 80 percent of affected land holders in Bahir Dar and its surrounding and Gondar-Debarq Road redevelopment area reported that their living standard had been reduced or substantially reduced because of a decline in their income due to land expropriation. This is a clear indication that the Ethiopian land expropriation practice might have failed to meet the minimum standard as set by the 1995 Constitution and the expropriation and payment of compensation laws of the country and the World Bank’s resettlement policy which states that affected people’s livelihood should not be lowered because of land expropriation for public purpose<sup>97</sup> development projects.

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<sup>97</sup> The definition of the public purpose for which land could be acquired had not been defined clearly both in the constitution and the expropriation and payment of compensation laws, giving the government virtually unlimited power in taking land for any purpose

## ***CHAPTER TWELVE: POLICY IMPLICATIONS AND CONTRIBUTIONS***

### ***12.1 Main conclusion***

This research work examined how expropriation, valuation and compensation were being carried out for delivering privately held/possessed land and attached properties for public and private development projects in Ethiopia. The main issues and practices related to expropriation, valuation and compensation have been discussed. The paper explored the principles and laws governing expropriation, valuation and compensation, problems that surfaced from both legal and practical sides and the strategies used to solve them. The research also examined expropriation, valuation and compensation issues from the fairness and adequacy perspective when privately held/possessed land and attached properties were expropriated for intended “public and private development” projects.

The findings of the study ascertain that the problems associated with the legal, technical, institutional and financial aspects of valuation and compensation practices are numerous and that the practices are full of inconsistencies, unfairness and lack of standardization. As a result of all these, equal rights of landholders provided under Federal and State Constitutions have been infringed upon. The valuation rates and compensation procedures vary intra- and inter-regionally; in fact they vary even within a given region, depending on the institutions engaged, valuation committees established, and the source of finance. Subjectivity, inconsistencies and arbitrariness in valuation and compensation are apparent, even in the case of land and attached properties expropriated for the same purpose.

This chapter summarizes and concludes the most important findings and recommendations made in the previous chapters. The contribution of the findings of this study to the body of theory in the field is also discussed here. Similarly, the relevance of the theories and concepts that have been used in the analyses of the issues raised, and their addition to the analytical power required in the study is acknowledged in this concluding section.

### ***12.2 Policy implications of the study***

Although the laws of expropriation and payment of compensation are based on principles that looks fair, the findings of the study showed on the one hand that the laws are not satisfactory enough to meet the needs of the affected landholders, and on the other hand there is a big gap between what is stated in the existing laws and the actual practice implemented on the ground. Expropriation as a land delivery tool could be manipulated in practice by expropriators with far reaching effects. Both the public and private development projects undertaken in all the case studies described the benefits and advantages of the projects, but rarely discuss the negative repercussions of the projects and what has happened to the affected landholders.

- **Definition of “public purpose”**

Although both the Federal and Regional expropriation and payment of compensation laws require the State to expropriate privately held property for “public purpose”, the term “public purpose” is not defined explicitly in either statutory or case law, giving the government virtually unlimited power in taking of property for any purpose. Proclamation No.455/2005 Article 2(5) defines “public purpose” as the use of land defined as such by the decision of the appropriate body in conformity with an urban structure plan or development plan in order to

ensure the interest of the people to acquire direct or indirect benefits from the use of the land and to consolidate sustainable socio-economic development. This definition is quite broad, so much so that if the authorities so desire, they may be able to deem any activity as serving the public purpose. The same proclamation does not require declaration of the existence of public purposes and give to the landholders and other interested parties the opportunity to challenge the existence of such public purposes. Allowing government exercise of eminent domain power without declaration of the existence of public purpose affects rights of private landholders and gravely distorts the land market, resulting in government intervention in land transactions that could be otherwise achieved through private negotiation.

Thus, the law should be refined and revised in such a way that an elaboration of the definition of “public purpose” by listing the activities that obviously and directly serve the public interest and protect landholders from unfair or improper actions by limiting the scope for officials to act unilaterally.

- **Compensation principles**

In the United States, United Kingdom, and most Commonwealth countries, there exists a ‘just terms compensation principle’ that is aimed at financially reimbursing a dispossessed person adequately (Chan, 2003). In the United States, the market value of the subject property is generally held as just compensation for the dispossessed landowners (Eaton, 1995). In contrast, in the United Kingdom, compensation is based on the principle of value to the owner. The value to the owner compensation principle is made up of market value together with other losses suffered by the claimant (Denyer-Green, 1994). This principle is broadly followed in most Commonwealth countries and regions such as Australia (Rost & Collins 1984; cited in Chan, 2003).

In Ethiopia, neither the principle of just terms compensation nor value to the owner is mentioned in the expropriation and payment of compensation laws. Although “market value” compensation under the expropriation and payment of compensation laws and “commensurate to the value of property expropriated” is stated in the 1995 Constitution, there is no further definition given both in the Constitution and expropriation and payment of compensation laws. Although there is a broad acceptance that market value is the appropriate basis for compensation for property taken, perhaps there is also a general feeling that a premium should be paid to compensate the claimant for the compulsory nature of the acquisition. However, as it was shown in all case studies, affected land holders were not compensated according to the market value, let alone be paid additional premium value to maintain their reservation value.

The Federal expropriation and payment of compensation laws explicitly cap the determination of compensation for permanent loss of land. Although the compensation for the rural dispossessed people is based on the annual productivity of the land taken, it deprives them of the opportunity to claim the highest and best use value for their land. It does not consider the farmers’ investment on the land, location of the land, potential best use of the land, local demand for such land, and other factors that typically determine the value of farmland. In addition to that there was no compensation for crops being damaged by fumes or dust from a new road, productivity of farm lands being reduced due to detours, borrow pits and quarries, and health problems due to dust and heavy traffic on the road. In urban areas, payments of other consequential financial losses such as the cost of finding alternative accommodation, extra costs for living in new areas, losses due to ceased production and/or a closure of business, etc., were not taken into account. Without giving compensation for all these inconveniences, it

could not be clear how “commensurate” and “market” value compensation is to be determined, and whether the amount of compensation is fair and reasonable.

As it has been witnessed in all case studies, the compensation paid to affected landholders was not compatible to the value of expropriated land and attached properties that very often lead to disputes and social unrest. The underlying goal of “fair” compensation should be to leave the owner of the expropriated land and attached properties in the same financial position as before the expropriation. In order to avoid such compensation problems arising from claimants, it is necessary to modify and revise the law to compensate affected people adequately taking into all consequential damages in to consideration in addition to market value. Furthermore, the law should also be revised in such a way that the displaced landholders should be given additional subsidy payment when the initial displacement compensation is not enough to maintain their original living standard and should be applied uniformly to all affected people.

- **Compensation standards**

The 1995 Constitution and the Federal expropriation and payment of compensation laws outline broad compensation principles. Details of compensation and adjustments are to be determined by the regions and municipalities under the central government. Since each region has its own considerations and objectives when formulating the standards, there is bound to be a wide disparity in their standards. Thus, although details of compensation are prescribed in the laws, disparity still exists. Besides disparity in compensation standards, the unchecked power of the authorities to make compensation standards is problematic. For instance, in Amhara region, a farmer dispossessed for rural road construction purpose may not be given compensation at all. If available, substitute land, mostly less fertile, may be given. Since the basis for making the discretion is not rational and transparent, it is difficult to know about the relevant criteria of the decision, which makes it easy for corruption to flourish.

One of the main sources of non standard and inconsistent value of compensation for affected individuals is the Federal land administration and land use Proclamation No.456/2005, Article 17. It gives the regions the power to enact their own rural land administration and land use laws. Article 7(3) of the same proclamation states that “where the rural landholder is evicted by the Federal government, the rate of compensation would be determined based on the Federal land administration law. “Whereas, the rural landholder is evicted by regional governments, the rate of compensation would be determined based on the rural land administration laws of regions.” On the other hand, the Federal expropriation and payment of compensation proclamation No. 455/2005, Article 3, states that expropriation shall be made by Woreda or Urban Administrations. That is in rural areas Woreda Administrations and in urban area Urban Administrations are empowered to expropriate land holdings for public purposes. Article 14 (2) of the same proclamation gives the regions only powers to issue directives and not even regulations let alone Proclamations. This shows that the two Federal proclamations are conflicting each other and create a loophole for non standard and inconsistent application of the laws.

Laws relating to expropriation for public purpose under the power of “eminent domain” are generally considered to be distinct bodies of law in their own right rather than being dispersed into other types of legislation even in terms of rural and urban land administrations. Furthermore, the application of valuation methodologies and compensation fixing cannot differ from region to region, or else the unequal treatment of Ethiopian citizens will prevail.

In order to address the problems caused by non-uniform compensation payments and standards, the current broad compensation principles should be refined. The basic laws governing expropriation and payment of compensation, a right enshrined in the Federal Constitution, should be governed by Federal and Regional laws in such a way that citizens of the country should be treated equally. The laws and their applications should be applied uniformly to all affected people in line with the following points:

First, the conflicting approach should be resolved by having a single directive based on the Federal expropriation and payment of compensation Proc. No 455/2005 to deal with expropriation issues applicable to all areas, Second, the laws should be applicable to all institutions uniformly that engage in expropriation, Third, expropriators have to allocate sufficient budget to reimburse all costs to be incurred due to expropriation, and Finally, a fair and reasonable compensation that considers all consequential losses should be offered to all affected persons uniformly.

- **Property valuation methodology**

The methodology for the valuation of structures for expropriation as stipulated by the law is the Replacement Cost Approach. The replacement cost method of valuation is based on the premise of replacing productive assets that have been damaged because of expropriation. The approach involves direct replacement of expropriated assets and covers an amount that is sufficient for asset replacement. However, the replacement cost method of valuation is based on a faulty assumption that cost is related to value. It violates the basic principles of valuation for structures with evidence of annually accruable properties like residential, commercial and industrial properties. Where the properties involved have evidence of accruing annual income, the income method is the best approach to be adopted.

The replacement cost method was applied for all types of manmade structures affected by the expropriation exercise in all the case studies. Similarly, damages, injurious affections, severance and disturbances that must have affected claimants were not included in the compensation item. In addition to that, by law, the cost replacement method does not consider asset appreciation occurring after the determination of compensation; yet, the purchase price of replacement property in the vicinity will be affected. This results in a failure to reach replacement costs. So, the amount of cash compensation which is based on pre-project rates is not enough for recipients to purchase equivalent property in a more fair and equitable situation.

It is hereby suggested that the compensation that could have been paid to affected property owners/holders ought to be valued by independent professional property valuers. In addition to that, both the Federal and Regional expropriation and payment of compensation laws ought to be amended in such a way that property valuers have to use anyone of the three valuation methods when they find them appropriate. Synchronization of valuation and compensation procedures is also necessary to avoid inconsistent, unfair, non-standardized, and subjectively determined compensation rates and amounts and make landholders more advantageous. Until independent professional valuers are established, the working Valuation Committees should be established uniformly, comprising of appropriately qualified members in terms of relevant expertise in order to undertake valuations using a multi-disciplinary approach. The committees should also include representatives of affected persons in order to ensure expropriation and compensation measures and procedures that are participatory, transparent, and accountable.

- **Prompt payment of compensation**

The long time taken, especially between property assessment and the payment of compensation, and the overall long period that is spent in order to have the expropriation process accomplished pose serious problems, to the extent of jeopardizing the success of substituting similar properties. Although the expropriation and compensation laws recommend prompt payment of compensation, the practice in the case studies did not show so. Without timely compensation, affected landholders faced great difficulty in making a living during the transition period and beyond. Delays in the assessment and payment of compensation have other undesirable effects of making life difficult for the affected people as construction costs escalate and inflation erodes the value of the intended compensation. Both the constitution and expropriation and compensation laws do not say anything about possible penalty that could be undertaken due to delays of payment.

As a way of encouraging the acquiring authority to undertake compensation payment promptly and also redress the losses the aggrieved persons are likely to suffer as a result of the delays, the law should be revised to introduce interest rate payable for delayed time, i.e. the aggrieved party should be entitled to compensation and interest thereon, at the bank rate of interest from the date possession is taken until such time that compensation is paid to the entitled people

- **Public participation and transparency**

The protection of private land use rights and the establishment of fair, transparent, and efficient expropriation and compensation procedures are fundamental to the objectives of expropriation and payment of compensation laws. However, the findings of this study revealed that these objectives were not met. One of the common problems experienced in all the case studies was the lack of full public participation and the secrecy involved in the determination of property values for compensation purposes. Property owners /holders, especially those living in rural areas under condemnation are usually powerless, with inadequate sources of information, and without access to unbiased valuation organizations. Most often, upon approval of the expropriation, the government assigns property valuers to assess the value of the structure under condemnation and to come up with a certain value. Valuation workings and property values are all kept secret from property owners. This contradicts the right of property owners to know how the values were derived and what rates had been used. If the expropriatees object or disagree, the expropriator often threatens them for obstructing public development and for acting against “public purpose”. It is based on these arguments that the claimants believed that “confidentiality” of the valuation working increases the chances of inconsistencies, and arbitrary use of valuation rates and methodology.

It is hereby suggested that communicative and participatory approaches that are to be used in expropriation ought to be encouraged throughout the process and in particular at an early stage. Full dissemination of information should take place so that those affected are fully aware of their rights and the procedures that are available to them. The acquisition project itself should be open to public challenge, and objections should be properly considered by an independent body before confirming or modifying the draft proposal [for expropriation]. It must be borne in mind that despite the use of communicative and participatory approaches, at the end of the day the exercise is still “expropriation” in which legalized compulsion in the acquisition of land rights from these individuals is permissible.

The affected people and other concerned parties ought to be allowed to consult and obtain details of the rates and the basis for compensation from the acquiring authority. Making these workings known to the property owners themselves will enable the aggrieved parties to see for themselves the rates and values derived and may compare them with the values of neighboring properties. Once such workings are made accessible and open to criticisms and challenges, valuers would be more careful in their workings, and this would guarantee some objectivity in their work and improve numerous elements of inconsistencies noted in the case studies.

If a large number of people are affected, they should be encouraged to self-organize and to select their own representatives. As a means of further empowerment, these representatives should be allowed to participate and to vote, along with other stakeholders such as developers, on important decisions including compensation methods, phasing of physical relocation, resettlement, rehabilitation assistances, and others. The actual experience in all case studies, however, clearly indicated that most of the affected people were completely excluded from the decision-making process. Large majority of the affected people were not consulted before compensation standards and amounts were determined.

Public participation and transparency eases the process of expropriation and hence it should be encouraged throughout the process. So that those affected are fully aware of their rights and the procedures that are available to them. It is therefore, recommended that expropriation and compensation measures and procedures should be participatory, transparent, and accountable and should, as a rule; involve affected persons in order to reach a negotiated settlement as deemed necessary.

- **Knowledge of expropriation and payment of compensation laws**

In developing countries, most poor people have little knowledge of their rights concerning compulsory acquisition. They cannot therefore, effectively enforce their rights if they are not aware of the existence of such rights. Although they do know that they have been deprived their rights, the majority of affected poor people probably cannot afford to retain the services of lawyers and find themselves at the mercy of government officials.

It has been observed in the field survey that many expropriatees were not quite clear what an expropriation and payment of compensation laws actually were and that rights to land were also governed by specific land laws. In other words, landholders do not yet have a good knowledge of expropriation and payment of compensation laws and how they are dealt with. In some instances, property valuers too do not have sufficient knowledge about expropriation and payment of compensation laws. Although, the expropriation and payment of compensation laws aim to establish fair and equitable process which protects landholders from unfair and inconsistent actions by limiting agencies, it is not implemented consistently and uniformly across all areas.

To exercise and protect the rights of landholders, the affected landholders, property valuers and any other concerned parties engaged in land and related matters should be aware about the laws. Free or low-cost legal aid services have proven exceedingly useful in educating poor people about their rights and helping them enforce these rights in various settings. Lawyers or paralegals of legal aid centers can employ a variety of methods to disseminate legal information, including publication in the local media, distribution of written materials, group education meetings with villagers, and individual consultations with farmers. If circumstances warrant, the lawyers may offer representation at formal proceedings. The lawyers should educate farmers and local officials,

meet with potential clients, and represent clients in negotiation or adjudication proceedings. The operation of legal aid offices should also be free from the government's direction or interference. This is vital because governments themselves are parties to cases involving expropriations.

Additionally, lawyers and judges should become skillful negotiators and mediators as alternative dispute resolution such as voluntary mediation and conciliation tend to be more effective among people who are not familiar with the formal legal systems. Training on land law, valuation, alternative dispute resolution, and other related topics may be conducted through seminars, workshops, continuing professional education, or exchange studies. The training sessions should be organized in a participatory fashion so that trainees receive practical advice.

- **Supplementary support for affected people**

The fate of expropriatees should not end at the time they receive the payment. They should be supported in order to be able to continue having some sort of sustainable livelihood, albeit in a different way of working life outside their accustomed environment. The study findings indicate that some of those whose landholdings have been wholly expropriated and were even compensated handsomely failed to manage a new way of life in an alien environment. Such expropriatees must be helped to manage the money they received to put it to productive use, beneficial to themselves and their family. The condition of those who have not been paid compensation or have been given inadequate compensation could be disastrous – they could go deeper into poverty, or be forced to leave their residence area, and some also, could face incalculable damage, both themselves and their families. There seems to be a debate around the official circles whether economic growth is acceptable while at the same time unemployment and poverty of those expropriated are increasing. While the debate could continue, rehabilitation programs and programs that could lead those evicted to a sustainable livelihood should be studied and launched as soon as possible. For agricultural families that cannot cope with new urban life, arrangements could be made to compensate them in terms of alternative agricultural land in the outer districts or regions, so that they can continue with the life they accustomed.

Training in new skills, skill enhancing programs and capacity building in running small scale and micro enterprises should be designed and provided to such affected landholders. The programs should be implemented by an appropriate institution (a separate department or agency or a coordination unit within an existing department or agency) set specifically for such purpose. This institution should also monitor and evaluate the job offers that new investment ventures give to expropriated landholders. The investors who were given the holdings should also be encouraged, and perhaps even be given certain incentives, to offer employment to expropriated landholders.

### **Concluding remarks**

This study has empirically documented and assessed expropriation and compensation theory and practice. It can be concluded that the implementation of expropriation and payment of compensation in Ethiopia, in general, and in the case study areas in particular generated controversies, lapses and disputes. Claimants whose interests had been expropriated were always at the losing end and usually left in a position far worse than they were before the expropriation. Thus, one may say that the aim of compensation has been defeated. The inadequacy in the compensation payable due to the statutory method of valuation provided has been examined in this study.

Steps should be taken to revise the current expropriation and payment of compensation laws and allow property valuers to use different techniques of valuation when they find them appropriate. Professionals should also be involved in the formation of effective valuation techniques.

The issue of replacement cost approach used in determining the value of improvements in the study areas was found to be inadequate or inappropriate in many instances. Properties capable of producing income flow would require the use of investment and cost method of valuation. Similarly, compensation for buildings and all types of economic trees and crops with the capacity of generating annual income, except seedlings, should be determined by the application of income capitalization method. The valuation of land and attached structures for compensation purposes should be left to the discretion of valuers who know the most appropriate methods for valuing all types of properties.

The other items or Heads of claim such as disturbance, severance, injurious affection, and so on, about which the expropriation and payment of compensation laws was silent, should be included as Heads of claim. This is to ensure that claimants will actually receive real compensation which puts the claimant in the same position as he/she was before the acquisition. As it was found out in all the case studies, most acquiring authorities did not pay interest on delayed payment. It is recommended that the expropriators should pay interest for compensation which has not yet been paid up till date, at least to satisfy the claimants who must have been suffering and have been restricted from carrying out their daily routines like farming. The government should endeavor to have interest on current bank rate paid for all delayed payments of compensation, and this should be included in the laws explicitly. Most of the time, the duration for expropriation notice is very short, especially with reference to the case studies, which was only 30 days. Acquiring authorities should ensure that expropriation notice get to the grassroots, especially in situations where majority of the claimants are illiterate.

Another problem observed in the process of expropriation was the non uniformity of compensation for untitled property holders. Both Federal and Regional expropriation and payment of compensation laws decline to compensate for the condemned properties that are unlawful which contradicts the World Bank's operational statement that untitled should not bar affected people from receiving compensation, however, the law is not applied uniformly and consistently to all affected people. All affected people should be treated uniformly regardless of the institutions involved, the source of finance and the location of expropriatees to ensure adequacy and fairness in the payment of compensation.

Finally, the problems of compensation are more than just a matter of law and valuation; they are a matter of justice between society and individual person. This study tried to assess how the expropriation and compensation laws were implemented and what gaps prevailed when privately held land and attached real properties were taken for public and private investment activities. However, further research should be undertaken nation-wide to explore the problems throughout the country.

### ***12.3 Contribution of the study***

The study is believed to have contributions on two main fronts, namely, on policy perspective and on academic perspective. On the policy perspective, both the theoretical and empirical findings of this study will equip legislators, policy makers and advisors and implementing agencies which deal with issues of expropriation, valuation and compensation with a lot of information. Using the information obtained from literatures and case

studies (Urban Redevelopment and Induced-Displacement in Addis Ababa: the case of Senga-Tera Locality in Lideta Sub-City, Expropriation, Valuation and compensation practice in the case of Bahir Dar city and surrounding and Land Acquisition and compensation in the case of Gondar-Debark Road redevelopment project), the policy makers will be able to compare what is actually happening in the field against what was originally stated in the laws and the gaps of the laws to meet the needs of the expropriatees. In the end, the policy makers should be able to institute corrective measures in the case of any deviation or reinforce the present practices, where things are in the right direction. On the academic perspective, the findings in this study shall be another contribution into the existing stock of knowledge in the areas of expropriation, valuation and compensation in Ethiopia. The results from these case studies of Ethiopia can, together with results from studies in other countries, be the base for more general statements about expropriation, valuation and compensation strategies.

#### ***12.4 Aspects for further studies***

The findings in this study have only made a partial evaluation of the expropriation, valuation and compensation process in Ethiopia. It cannot be claimed that all aspects of expropriation, valuation and compensation were covered. In order for one to draw a firm conclusion, more studies on various aspects of expropriation, valuation and compensation should be carried out. Such other aspects include social consequences of expropriation and the socio-economic impact of the expropriation process for the affected people. The impact of the expropriation on the affected people, especially on farmers, must be analyzed because most of them depend on agricultural activities for their usual livelihood. This sort of study needs close follow-ups, i.e. the affected people must be traced, years after the expropriation of their land and attached properties.

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