

Analysis of the Ethiopian expropriation process

- In rural areas in the Amhara Region

Johan Faust
Henrik Handeland

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Both authors have together contributed to this thesis.

Fastighetsvetenskap
Lunds Tekniska Högskola
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221 00 Lund

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Analys av den etiopiska expropriationsprocessen

Master of Science Thesis by:

Johan Faust, Master of Science in Engineering, Surveying and Land Management, LTH, Lund University

Henrik Handeland, Master of Science in Engineering, Surveying and Land Management, LTH, Lund University

Supervisor:

Klas Ernald Borges, Senior Lecturer, Department of Real Estate Science, LTH, Lund University

Examiner:

Ulf Jensen, Professor, Department of Real Estate Science, LTH, Lund University

Opponents:

Frans Martinsson, Master of Science in Engineering, Surveying and Land Management, LTH, Lund University

Viktor Rosengren, Master of Science in Engineering, Surveying and Land Management, LTH, Lund University

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Abstract

Ethiopia is a country in a strong economic development. Most of the population are living in rural areas with small-scale agriculture as their livelihood. There is a correlation between efficient agriculture and a country's economic status. One way to improve effectiveness of agriculture is achieved by irrigation systems. When cities grow and new projects are projected, the need of land increases. Agricultural land is often used for developing projects.

In Ethiopia, all land is state-owned and no open market for land exists. When land is required for development, expropriation is the common way to deprive the individuals from their right to use the land. How expropriation shall be carried out in Ethiopia is regulated by legislation.

Theories of expropriation contain three requirements: public purpose, adequate compensation paid in advance and a fair process. Ethiopian law contains all of these requirements, but theory and practice differ.

This thesis is written with focus on Amhara, one of Ethiopia's 11 self-ruling regions. The purpose of this study was to analyze differences between the statutory expropriation procedure and the procedure carried out in practice, in rural areas.

To study the purpose, a fieldwork was made in three different areas where farmers have been expropriated. Two of the areas were expropriated for the construction of dams for irrigation systems. In the third area a private investor wanted to create a more efficient large-scale agriculture. A questionnaire was created and Ethiopian experts in expropriation acted as interpreter during the fieldwork. The questions were customized to the high level of illiteracy that prevails in rural areas.

The fieldwork indicates major deficiencies throughout the entire expropriation process. The affected farmers were dissatisfied how the expropriation was handled, from initial phase to the actual compensation. The authors have had limited opportunities to verify the farmers data with the documentation of the authorities and valuers, but differences can be confirmed.

The authors have been able to take part of other studies that strengthen the veracity and quality of farmers' opinions.

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The analysis indicates that the classical definition of expropriation is an inappropriate term for the Ethiopian approach. The authors think, in most cases, it is more appropriate to use the terms requisition and nationalization.

Sammanfattning

Etiopien är ett land på stark ekonomisk frammarsch. Stor del av befolkningen är bosatta på landsbygden och livnär sig på småskaliga jordbruk. Det finns ett samband mellan effektivt jordbruk och ett lands ekonomiska ställning. Ett sätt att effektivisera jordbruket är att anlägga konstbevattningssystem. I takt med att städerna växer och nya projekt projekteras ökar behovet av mark. Det är ofta jordbruksmark som används då utvecklingsprojekt skall anläggas.

I Etiopien är det staten som äger all mark och ingen öppen fastighetsmarknad existerar. Då mark behövs för samhällsutvecklande åtgärder är expropriation det vanligaste förfarandet för att frånta individens rättighet att bruka fastigheten. Hur expropriation skall utföras i Etiopien är reglerat i landets lagstiftning.

Expropriationsteorier innehåller tre olika rekvisit, allmännyttan, adekvat förhandsbetald kompensation och en rättvis processhantering. Etiopisk lagstiftning inrymmer dessa rekvisit men teori och praktik skiljer sig åt.

Detta examensarbete är skrivet med fokus på Amhara, som är ett av Etiopiens 11 självstyrande områden. Syftet med detta examensarbete var att undersöka skillnaden mellan det lagstiftade expropriationsförfarandet och det tillvägagångssätt som utövas i praktiken i landsbygdsområden.

För att studera syftet gjordes en fältstudie på tre olika områden där bönder blivit exproprierade. Två av områdena hade exproprierats för anläggning av dammar till konstbevattningssystem. I det tredje området ville en privat investerare skapa ett mer effektivt storskaligt jordbruk. Ett frågeformulär arbetades fram och etiopiska experter inom expropriation agerade tolkar under fältarbetet. Frågorna anpassades efter den höga nivå av analfabetism som råder i de rurala områdena.

Fältstudien visade på stora brister genom hela expropriationsprocessen. De berörda bönderna riktade missnöje med hur expropriationen hanterats, alltifrån initiala skedet till det slutgiltiga kompensationsbeslutet. Författarna har haft begränsade möjligheter att verifiera böndernas uppgifter med myndigheters och värderingsmännens dokumentation. Författarna har dock kunnat ta del av andra studier som stärker sanningshalten och kvaliteten i böndernas angivna svar.

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Analysen indikerar att den klassiska definitionen av expropriation är en inkorrekt term för det etiopiska tillvägagångssättet. Författarna anser att det, i de flesta fall, egentligen är mer passande att använda termerna "requisition" och "nationalization".

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The authors want to thank Orgut for the scholarship that has been given to finance the fieldwork in Ethiopia. The work has been carried out at the Department of Real Estate Science at Lund University.

We want to thank all people at the Institute of Land Administration (ILA) at Bahir Dar University and the people that have made this adventure so memorable. Many thanks to our supervisor Klas Ernald Borges at the Department of Real Estate Science for all your help, important comments and thoughts. Without you we would not have been given the opportunity to go to Ethiopia and finally end up at the finish line in Mora. Finally, we want to give a special thanks to Andrea Molnár and David Ödön Boros for their carefulness during our stay in Ethiopia.

Lund, March 2013

Johan Faust and Henrik Handeland

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Abbreviations

KTH - Royal Institute of Technology

LTH – Faculty of Engineering at Lund University

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1 Introduction

Institute of Land Administration (ILA) is part of the Bahir Dar University, and received its first students in the Bachelor of Science Land Administration program in 2006. The department had in spring 2012 so far graduated 95 students. ILA has through the years been in collaboration with KTH and thus tied companionships with Sweden and even LTH. This thesis has been financed through a scholarship from Orgut.

1.1 Background

Federal Democratic Republic of Ethiopia¹ is a part of the well-known Horn of Africa and located in the Eastern part of the continent. Ethiopia is the continent's third most populous country and had in July 2012 an estimated population of 91.2 million (CIA, 2012a). Ethiopia is also in terms of areal one of the largest countries in Africa and slightly more than 2.5 times the size of Sweden (CIA, 2012b).

Ethiopia is one of the world's least developed countries and agriculture accounts for a major part of its economy. The labour market is dominated by agriculture, about 85 % are engaged in some form of agricultural activity (CIA, 2012c). The urbanisation rate is low and it is estimated to be 18 % in 2012 (CIA, 2012a), corresponding for Sweden is 86 % (CIA, 2012d). Ethiopia's population went from 34 to 74 million between 1983 and 2007 (SARDP 2010). In 2040 the population is estimated to 160 million (ibid).



Figure 1. Africa's ten fastest-growing non-oil economies. Annual average GDP growth 2006-2011, % (The Economist, 2012, p. 80).

Despite what has been written above, the future economic prospects for Ethiopia are good. In recent years Ethiopia has been the non-oil producing country in Africa with the fastest economic growth. The strong economic growth of Ethiopia is something foreign investors have drawn attention to. Foreign companies are increasingly choosing to invest in the country (The Economist, 2012).

¹ Federal Democratic Republic of Ethiopia will hereinafter be named Ethiopia.

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Expanding of urban areas is a natural process for a developing country that is facing such economic boost. The degree of urbanisation will increase as a result of mechanized farming is becoming more common and the infrastructure is improved. When agriculture will become more efficient, less farmers are needed to produce the same quantity (or more) of food.

Ethiopia has over 90 million inhabitants, but nevertheless few big cities. The capital Addis Ababa is the most populated city in Ethiopia and has approximately 3 million people (UNFPA, 2008). The second largest city Dire Dawa, has population of about 380 000 (ibid). The boundaries between urban and rural areas are very sharp. When the cities in Ethiopia grow horizontally, it is usually on expense of agricultural land. Expropriation is the common method to utilized land for community developmental actions. In Sweden is the method only used as a last option if the parties not can reach an agreement, in Ethiopia it is more to be considered as a standard procedure.

1.2 Purpose

The purpose of this study was to analyze the difference between the statutory expropriation procedure and the procedure carried out in practice in rural areas in Amhara Region, Ethiopia.

1.3 Issues

The authors have worked with following questions to achieve the main purpose of the thesis.

- How the Ethiopian law framework is structured?
- The individual's right to land when it is owned by the State?
- How does the expropriation process in the Amhara region work?
- How to determine the compensation?
- What are the consequences of an expropriation for the affected farmer?

1.4 Limitations

The Ethiopian legislative text separates expropriation of land for rural and urban areas. This means the processing of the expropriation in these two areas are different. This thesis will focus on expropriation in rural areas in the Amhara region.

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1.5 Methods

The authors have chosen a structured, qualitative method. A qualitative method will result in verbal formulations, written or speaking. The statements are made verbally and the instrument is the word (Backman, 2008). The main reason for the authors' choice of method is that many of the interviewees are illiterate. The fact that interviewees' inability to read would make their contribution less informative is obliterated by Lindström (2006), p 49:

“Speech and writing are two completely different languages. It actually has much less to do with each other than many people think. If you want to round out the whole thing you can almost say that the spoken language is the real language, and written language only an offshoot or a pale copy. The spoken language is doing well without the script, but the script would never be able to exist if there was no spoken language. But in our culture, with its penchant for standards and simplifications, the written language has a much higher status.”²

More details on the method and the factors for the fieldwork are described in section 9.1.

1.6 Disposition

This thesis is built up by two parts. The first part is a theoretical part to make the analysing second part more understandable. The theoretical part gives the reader an introduction to the Ethiopian history and how its current society is built. It continues to describe the Ethiopian legal land holding and expropriation framework and take the reader through the process. Different terms and theories are also described in the theoretical part. These will be used together with the result of the interviews in the analysing part to get to the final conclusion.

² Authors' translation from Swedish

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2 History

Science and researches indicates that the first mother to the modern human is from Africa. Lots of fossil bones have been discovered in the African continent. The discovery of the hominid Lucy was in Northern Ethiopia in 1974 (Marcus, 1994). It is not just the fact that Ethiopia may be the cradle of mankind, which makes the country's history special.

During the second half of the 19th century, the European powers started to conquer land on the African continent and it has been known as "The scramble for Africa". During 1884-85 the Congo Conference in Berlin leaders from several European countries met and decided how Africa should be divided between the European powers. Ethiopia became an exception. The country was never colonized and has never been, except from the relatively short Italian occupation between 1935-1942 (Gillespie, 2003).

The purpose of this section is not to present Ethiopia's entire history. But it is relevant for the purpose of the thesis to pick out and describe some selected parts. This is done to increase the reader's insight how the land tenure system in Ethiopia has changed over time and makes it more understandable why and how it appears today. To make this as structured as possible, the section is divided into two different eras, the imperial period and the post imperial era.

2.1 The imperial period (-1974)

The area of Ethiopia has varied slightly during its existence as country and various emperors have ruled the country during a few thousand years. The last Emperor, Haile Selassie, was overthrown in 1974 (Young, 1997). During the imperial period, the Ethiopian landholdings were characterized by a several land tenure systems, with some complexity. The meaning of the systems could vary from region to region (Bogale, 2008). However, a generalization of the most common systems will now be made.

2.1.1 The Rist system

The Rist system was mostly occurring in Northern Ethiopia, and particular in the Amhara region. This system can be described in the following way.

A family or a clan owned a communal land area. Both male and female descendants to the origin landholder could claim the right to use the land (Ofcansky, 2004).

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Landholders during the Rist system were called Ristgna. Only the ones that could prove kinship with the family were allowed to use and receive profit from the land (Bogale). Right to use land could be inherited by future generations, but it was not possible to donate or bequeath to someone who does not belong to the family (Ofcansky). In addition there was no possibility to sell the right to use the land.

Problems with the Rist system were that individual land users did not have a specific plot within the Rist at their disposal. The family had to make an agreement on the right to cultivate where. Conflicts were also frequently occurring regarding the kinship of the person. It was often difficult for an individual to prove their kinship (Bogale).

2.1.2 The Gult system

Gult was another form of land tenure. Public civil servants were given Gult from the Emperor or other provincial rulers instead of salary. Nobles could also receive this kind of land tenure (Ofcansky). The Gult was no right to use or exploit land. Instead, it was a right to impose taxes from the farmers that already cultivated the land in the obtained Gult area. The Emperor received in his turn a part of the imposed taxes (ibid). The gultholder had the possibility to bequeath the right to his dependents (ibid).

During the imperial era many inhabitants in the country were a part of the feudal Ethiopia. Farmers were serfs because of the relation between them and the gultholders. However, farmers had their right to cultivate their piece of land and were never slaves to the gultholder.

In March 1942 the emperor decided to introduce a new additional tax system that reduced the gultholder's actual income from the Gult. The tax system entailed a fixed tax depending on the fertility on the land (ibid). The officers and nobles in the Amhara region refused to pay this new tax and the Emperor made an exception for this region. The protests were simply too strong.

In 1966 the government introduced salary in cash to public civil servants. That meant Gult ended as a payment method and became progressively less common (ibid).

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2.1.3 The Rist-Gult system

Rist-Gult was a combination of Rist and Gult. This type of land tenure occurred in the southern parts of Ethiopia, and differed from the communal land use in the north. Rist-Gult was the most secure right of land in Ethiopia (Bogale). The landholder owned the land and could cultivate the property on his own. He could also choose to have farmers as tenants and let them pay rent, taxes and fees. The Empire gave Rist-Gult land to members of the higher nobility. The landlords were now allowed in greater extent to decide on fees and tax levels to charge the farmers. The Rist-Gult system increased the rightholders independence from the Emperor (ibid).

There are disagreements in the literature whether it was possible to sell and lease the land or not (ibid). But most of the literature considers that Rist-Gult gave the right to sell, lease and also mortgage the property (Ofcansky).

2.1.4 Land owned by the church

During the Imperial period the church owned about 10-20 percent of the Ethiopian agricultural land. This tenure was called the Samon-system. Farmers could choose to cultivate land owned by the church. The relationship between the church and farmers was similar as the relation between officials and farmers in the Gult-system. The Samon-system was an alternative for farmers that rather paid tribute to the church than the Emperor (ibid).

2.2 Post-Imperial era (1974-)

The discontent among the Ethiopian people increased at the end of the imperial era. Drought and crop failure led to food shortages in the country. Many of the country's middle class felt underpaid and that their situation was aggravated (ibid). The emperor was accused for deliberately not do anything at all about this problem.

The military recruited people from the countryside that already suffered hard from the food shortages. The farmers were dissatisfied to be a part of the feudal society, and the exploitation from the emperor and nobility. It came to a situation where the soldiers refused to accept orders from their officers, which led to the start of a massive corruption and disorder in the army (ibid).

At the end of June 1974 a military committee was created. The original purpose was to maintain law and order among the population and curb corruption in the army. The committee gained more and more political power in Ethiopia. Within a couple of months, the committee had received permission from the Haile Selassie to imprison

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military officers and government officers. Eventually Haile Selassie was imprisoned and the military junta, known as The Derg, turned the ruler of Ethiopia.

The Derg was initially popular among the farmers. The junta made actions of great importance for the land tenure in Ethiopia. During the Imperial era, people with privileged positions in the feudal social hierarchy (the emperor, nobility and the Church etc.) had the possibility to get ownership right to land. The leaders of the Derg were influenced by socialist ideologies and removed all kind of private ownership to land. All land should be under state ownership, which meant that feudalism in Ethiopia was history. The Rist and Gult-systems ceased to exist.

The Derg regime founded an organisation called the Peasant Associations. This association controlled the Ethiopian land, and membership was mandatory for the farmers. The management of the Peasant Association was empowered to manage the interests of the Ethiopian land. It could involve such issues as expropriation and equitable distribution of land between farmers (Bogale).

The Derg determined that each farmer would be entitled to agricultural land that was consistent with the farmer's needs. Farmer family A, which was twice as large as farmer family B would also have access to twice as much land. Justice would prevail the Ethiopian land use. Some restrictions were made, for example the right to land could not exceed 10 ha (ibid). Farmers were not allowed to sell, mortgage or lease the right to use land. However, they could bequeath the using right to their spouse and children (ibid).

The Derg's popularity declined when it was revealed that members of the resistance organizations to the military junta were severely punished, and frequently executed. At the same time as the Derg came to power, the Ethiopian Civil War began. There were regions that fought for their independence. Eritrea was one of these regions. Additionally Somalia did attempts to invade Ethiopia. The wars required recruiting of farmers to the army. This was one of the reasons why food production in the country decreased. During the mid-1980s, the country was also hit by an extreme drought and a national famine disaster was a fact.

During this era Ethiopia was a socialist state. The regime received aid from the Soviet Union. When the Soviet Union and other communist states began to fall in the late 1980's and early 1990's, the Ethiopian socialist era came to an end as well.

The current land tenure system idea of privatisation of Ethiopian land became an essential issue after the Derg regime. Some international organisations considered

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privatisation of land to be a necessary cause of action towards an increased efficiency in the country's agriculture (ibid). However, the Ethiopian government decided that Ethiopian land will continue to be under state ownership, and it was amended into the constitution in 1995.

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3 The administrative divisions of Ethiopia

The following part of this chapter will focus on the Amhara region. The chapter will also give the reader a brief introduction to administrative and court system of Ethiopia.

3.1 The Ethiopian regions

Ethiopia is a federal state divided in independent regions. The Amhara region is located in the Northern part of Ethiopia and has a population of 17 million spread over 170 000 km² (SARDP, 2010).

Ethiopia's nine states:

- Afar
- Amhara
- Benishangul Gumuz
- Gambela Hizboch
- Hareri Hizb
- Oromiya
- Somali
- Ye Dehub Biheroch
Bihereseboch na Hizboch
- Tigray



Figure 2. Ethiopia's 11 independent regions (EGOV, 2013).

There are also two federal cities:

- Addis Abeba (The capital)
- Dire Dawa

The two federal cities have the same degree of independency as the regions.

3.1.1 Zones

Amhara region is divided into 11 administrative Zones and the Zones can be considered as provinces of the region (ibid).

3.1.2 Woreda

Each Zone is further subdivided in districts called Woredas. There are 130 Woredas in Amhara region (ibid).

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3.1.3 Kebele

Kebele is the smallest administrative unit in Ethiopia and can be described as a block in a village or urban area. The Amhara region is divided in approximately 3000 Kebeles (ibid).

3.2 The Ethiopian court system

Ethiopia has two parallel court structures. There is a federal system with the Supreme Court as the highest instance. The Federal Courts deal with cases concerning the federal law, cases involving more than one region and issues of national importance.

Each of the self-ruling regions has their own court structure. In accordance to the Ethiopian Federal Constitution³ Article 78 (3), the Amhara region's court system is built by: First Instance, High Instance and finally the State Supreme Court. The first instance is the Woreda Court (The World Bank, 2004).

3.2.1 How to appeal in Amhara Region

In the Amhara region the Kebeles also have a Social Court that deals with minor civil disputes of land possessions, totalling up to 1500 Birr⁴ (Mariam A H, 2002). This instance works as a filter so that small disputes not need to be settled in legal courts unnecessarily.

The judges have generally a low level of education in the Social Court. Few have any legal training at all, and many of the judges are illiterate (ibid).

If the dispute involves an amount exceeding 1500 Birr, the Woreda Court is the first instance for appeal. The lack of educated judges is a problem in the entire Ethiopian court system. A law degree is not a requirement to be an Ethiopian judge. It is not even required in the federal supreme federal court (The World Bank, 2004).

³ Proclamation of the Constitution of the Federal Democratic Republic of Ethiopia No.1/1995

⁴ This info regarding the amount is from 2002. Birr is the Ethiopian currency and the value of 1500 Birr can be converted to 81,42 USD, according to Coinmill March 1, 2013.

4 The Ethiopian legal system

4.1 The Ethiopian legislative system

This section will describe how the legislative system in Ethiopia is constructed. Just as in the court system there are two parallel legislative systems, federal and regional. The difference compared to the court system, is that federal and regional legislative structures goes hand in hand. The regions in Ethiopia have the right to issue their own laws, but those laws cannot oppose the federal counterpart. A characteristic difference between the federal and regional versions is that the legislative text issued in the Amhara region is far more detailed. The Ethiopian laws can be categorized and divided into a hierarchy that is most easily described in an illustration.

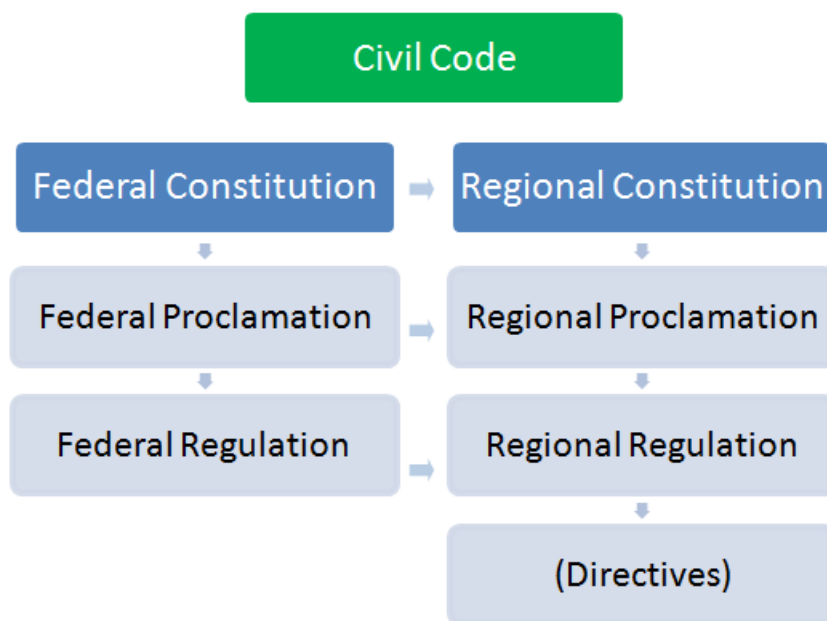


Figure 3. *The Ethiopian legislative hierarchy*

The Civil Code is first in the hierarchy but without reference to the other laws (see figure 3 above). That means the Civil Code is just applicable in issues that current legislative do not cover (Ambaye, 2010).

The Constitution have the highest status in this hierarchy and all laws in Ethiopia are based on the Federal Constitution. The Constitution is very general. Both the federal and regional versions will be presented in more details below.

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Proclamations are issued for a specific juridical area, such as administration of rural land and expropriation. Regulations are in turn a more detailed laws that can, for instance describe how compensation shall be calculated regarding expropriation. Further on will relevant Proclamations and Regulations within the scope for this thesis be describe and discussed.

There are also Directives, but they have no formally legal value. They are as guidelines for different authorities how they should implement the law in their organisation.

4.1.1 The structure of Ethiopian legislative text

All Ethiopian legislative text is written in Amharic⁵ and translated to English. The Amharic and English versions are presented in the same legislative document. In most cases, the Ethiopian legislative text is formulated with male allusions. However, women has the same right as men despite the formulation. In order to make this thesis as readable as possible, the authors have chosen to use the same principal.

Ethiopian laws are, regardless if it is a Constitution, Proclamation or Regulation, structured in the same way. The legislative text is divided in Articles, and some Articles are divided in Subarticles. The example below illustrates how Article 40 and Subarticle 1 is presented in the Federal Constitution, in this thesis referred as Article 40(1).

- Article 40*
The Right to Property
1. Every Ethiopian citizen has the right to the ownership of private property. Unless prescribed otherwise by law on account of public interest, this right shall include the right to acquire, to use and, in a manner compatible with the rights of other citizens, to dispose of such property by sale or bequest or to transfer it otherwise.

*Figure 4. Example from the Constitution
(Federal Constitution, 1995).*

Ethiopian legislative text sometimes use terms that may not have the same meaning in the international literature, but the authors will use the words as they are written in the law.

⁵ Amharic is one of the official languages in Ethiopia.

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5 Legislative text concerning land

This chapter will mainly describe how to obtain the right to rural land in the Amhara region. It is necessary to start in the federal constitution and proceed down to the regional proclamations and regulations.

5.1 Federal Constitution

The Federal Constitution⁶ was established in August 1995 and act as the constitution for entire Ethiopia. According to Article 52(2b) each region has the right to issue its own Constitution and Proclamations. Thus, the Regional Constitution and Proclamations cannot oppose the federal counterpart.

5.2 Amhara Regional Constitution

Amhara region has published its own Constitution⁷ in accordance with the Federal Constitution's Article 52(2b). The Regional Constitution has the same structure as the federal version. If they are read in parallel, the reader will perceive the two as identical. The only difference is that the Regional Constitution is formulated and adapted to the Amhara region. There are also some Articles that are formulated with a slightly different terminology.

5.2.1 Right to property

Article 40 of the Regional Constitution treats the rights to property. Subarticle 3 defines following central paragraph, regarding Ethiopian land tenure:

"The rights to ownership of rural and urban land, as well of all nature resources, are exclusively vested in the state and the people as whole. Land is a common property of the people of the regional state and hence shall not be subject to sale or to other means of exchange."

⁶ Proclamation of the Constitution of the Federal Democratic Republic of Ethiopia No.1/1995

⁷ Amhara National Regional Constitution Approval Proclamation no. 59/2001

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This means that land is not considered as private property in Ethiopia in general, and it applies of course in the Amhara region as well. The definition on right to ownership is stated in Subarticle 2:

"...any tangible or intangible product which has value and is produced by the labour, creativity, enterprise or capital of any Ethiopian individual residing inside or outside the state, nation-wide or regional associations which enjoy juridical personality under the law, or in appropriate circumstances, by communities specifically empowered by law to own property in common."

In addition Subarticle 7 applies the following:

"Any Ethiopian residing inside or outside the regional state shall have the full right to the immovable property he builds and to the permanent improvements he brings about on the land by his labour or capital. This right shall include the rights to alienate, to bequeath, and, where the right of use expires, to remove his property, transfer his title, or claim compensation for it. Particulars shall be determined by law."

The first sentence can be interpreted as a development of Subarticle 2 that defines private property. It states that the property fixture added by the landholder to the state-owned land is considered to be the person's private property. The second sentence declares that this right cannot be repealed without compensation.

5.2.2 Right to land

According to Subarticle 4, a farmer settled in Amhara state should always have the right to pursue his profession. If farmers do not have access to land, the State is obliged to provide land, free of charge, so that the person can practice his farming activity. Even pastoralists that live in the Amhara region shall have the right to free land for cultivation- and grazing land, according to Subarticle 5.

Subarticle 6 raises the possibility of private investors to get access to Ethiopian land in the following way:

"Without prejudice to the people's right to the ownership of land the regional state shall ensure right of private proprietors to the use of land on the basis of payment arrangements established by law."

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5.2.3 Right to expropriation

Expropriation of private property is according to Subarticle 8, a process the State can use for public purposes. If expropriation is applied, the affected person shall in advance be compensated for the value of his private property. The legislative text says:

"Without prejudice to the right to private Property, the regional state may expropriate Private property for public purposes subject to payment in advance of compensation commensurate to the value of the property in question."

5.3 Federal Rural Land Proclamation

Article 52(2d) in the Federal Constitution stipulates that the Federal Rural Land Proclamation⁸ shall regulate how rural land and its natural resources are to be managed. Furthermore each region is entrusted with implementing the provisions of the agreement with the federal law.

5.3.1 Right to land

Article 5 of the Federal Rural Land Proclamation defines the right to rural land, Subarticle 2 state:

"Any person who is member of a peasant farmer, Semi-pastoralist and pastoralist family were having the right to use rural land may get rural land from his family by donation, inheritance or from the Competent Authority".

Subarticle 1a defines that farmers engaged in agriculture for a living shall be given rural land free of charge. If a farmer for some reason is landless, he has the right to get land allotted free of charge, so that he can pursue his profession. The allocation of land shall be made by a competent authority regarding to Subarticle 2.

A farmer shall obtain rights to cultivate rural land when becoming 18 years old. If a child has gained access to rural land for example through inheritance, a legal guardian shall manage the child's right to land until the minor turns 18 year, Subarticle 1b.

⁸ Federal Democratic Republic of Ethiopia Rural Land Administration and Land Use Proclamation No. 456/2005

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The person who has earned the right to rural land shall receive a certificate⁹ from a competent authority. The certificate shall specify the size of land, land use type and cover, level of fertility and borders. The holders' rights and obligations shall also be specified regarding to Article 6(3).

As mentioned above, land is not an object for buying, selling or any kind of bartering. However, according to Article 8(1) the peasant farmers, semi-pastoralist and pastoralist who are given holding certificates may lease land to other farmers or investors. There is one condition, the land must still be appropriate for the farmer and serve the intention of the lease. The period of the leasehold contract shall be regulated by local conditions for validation of a land leasehold contract. It must be verified that all parties who are entitled to use the land have reach an agreement. The land lease agreement must also be approved and registered by a competent authority.

The land use right that peasant farmers, pastoralists and semi-pastoralists possess shall have no time limit according to Article 7(1). Anyone who has received use right of rural land and is evicted shall receive a compensation that is:

"...proportional to the development he, has made on the land and the property acquired, or shall be given substituted land thereon. Where the rural landholder is evicted by the federal government, the rate of compensation would be determined based on the federal land administration law. Where the rural landholder is evicted by regional governments, the rate, of compensation would be determined based on the rural land administration laws of regions." Article 7(3)

The first sentence in this statement gives opportunity to compensate the landholder in cash or substituted land.

Article 8(5) declares that the right to land can be inherited from a family member. Definition of family member is clarified in Article 2(5):

"Family member means any person who permanently lives with householder of holding rights sharing the livelihood of the later."

⁹ Read more about Land holding certificate in Chapter 6.2

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Regarding to Article 5(2) there is also a possibility to donate land to the family. The expression "family member" is not mentioned in this paragraph. Hence, it is not clear how the word family shall be interpreted in this regulation.

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5.4 Amhara Regional Rural Land Proclamation

Regional Rural Land Proclamation¹⁰ is a more detailed version of the Federal Rural Land Proclamation, intended for the Amhara region.

5.4.1 Right to land

Farmers' right to pursue their profession are stated in Article 7(1) of the Regional Rural Land Proclamation. A farmer who is over 18 years and landless is able to apply for a piece of land for free according to Article 6(1). In Article 7(1), it is stated that the landless farmer shall submit the application to the local Kebele. The Kebele Administration act the "competent authority" mentioned in the Federal Rural Land Proclamation Article 5(2) and have the right to distribute the land.

Most of the Regional Rural Land Proclamations are the same as the Articles of the Federal version. However, most of the provisions are described in further detail in the Regional one. Focus in this section will be on what is clarified and deviating from the Federal Proclamation.

It is noted in Regional Proclamation that land rights can be obtained by inheritance. The terms of inheritance are determined in Article 16(1). This paragraph gives the right to bequeath to any farmer as long as it does not affect the deceased's spouse or children, Article 16(3). According to the Federal version, family members can only inherit land.

Article 7(1b) gives the landholder the right to donate land. The gift can be made to children, grandchildren or other family members who live in the Amhara region. According to Article 17(1a), the requirements are that the gift recipient lives in the Amhara region, engaged to agriculture and not already holder of a piece of land at the time of the donation. It is clarified in Article 17(1b) that the landholder can also donate the land to a person who has worked for the landholder for three consecutive years. That means more open terms than in the Federal Rural Land Proclamation.

All landholders of rural land are allowed to rent land to any person, Article 18(1). Investors have the right to rent land for use. Agreements can be arranged through private landholders or the State, as long they comply with the conditions in Article 6. Rental agreements exceeding 3 years shall be in written. The agreement shall contain

¹⁰ The Revised Amhara National Regional State Rural Land Administration and Use Proclamation No. 133/2006

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the rented land area, contract period, amount of rent, how and when the amount of rent shall be paid. If the rented area is on communal land, all landholders must accept the rent contract. If not, the contract is invalid. The agreement is also invalid if not all required elements is specified in the rental contract.

Rent agreements cannot be arranged for more than 25 years. There is no obstacle for the parties to resign a new contract for another 25 years in the end of the current contract period. If the agreement is signed for a longer period, it is still valid but will be interpreted as a contract for 25 years. It is possible to arrange a contract whereby the lessee may sublet. This condition is only valid if it is clearly specified in the written contract. All rent agreement shall be registered by branch office of the Authority in the local Woreda. The Federal Rural Land Proclamation also allows leasing of land but the Regional version is more detailed about the conditions.

5.4.2 The right to land can be deprived

A person's right to land is without time limit, regarding to Article 5(3). Even if the right to use land has no time limit, there are a number of situations, when the right to land can be deprived from the land user. Article 12 deals with these situations:

- The detail to be determined in regulation, where he is engaged in non-farming activity and earns for his livelihood thereto, Article 12(1a).
- Where he disappears from his residence for 5 consecutive years without notifying his whereabouts and not renting his land or without assigning a representative to administer his land, Article 12(1b).
- Where he fallows his land for consecutive 3 years and above or 1 year and above where the land is cultivable in irrigation, Article 12(1c).
- The detail to be determined by a regulation, where gross damage occurs over his land due to his mismanagement, Article 12(1d).
- Where he notifies to the concerned body that he has withdrawn from his holding right, Article 12(1e).

Article 12(2) handles situations where the disappeared landholder's spouse or minor children do not have access to land. In this case Article 12(1b) and (1c) are not applicable. The Articles shall not be applied if there are accidental reasons. If the land right is taken based on these Subarticles, land can be assigned to other farmers who are in need of land.

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A person who loses the right to cultivate due to Article 12 shall be compensated for the permanent improvements he had made to the land, Article 12(4).

5.5 Amhara Regional Rural Land Regulation

The Regional Rural Land Regulation¹¹ is to be considered as a clarification of the Regional Rural Land Proclamation.

5.5.1 Right to land

Article 4(2) stipulates that all individuals that move from urban areas for a life on the countryside have the same right, to apply for free agriculture land. The size of the required plot may not be less than 0.25 ha if the land is cultivated by rain and 0.11 ha in areas where irrigation system is implemented in accordance to Article 5(1). The maximum size of land anyone can be granted in high and semi-high land is 7 ha, in the low land is the limit 10 ha, Article 5(3).

Regarding to Article 7 the minimum acceptable plot size in Amhara region is 0.06 ha respectively 0.2 depending if the land is cultivate through irrigation or not.

In the Proclamations it is defined that land is a common property of the people and shall not be subject to sale or to other means of exchange. The expression "exchange" is in this case meant when a piece of land is traded for a private property. Regional Rural Land Regulation's Article 8 stipulates that it is accepted to exchange land to land, if it will make the use of land more effective. Examples of exchanges are stipulated in Article 10(1). The Article says that a landholder may voluntary exchange his plot in order to consolidate the land and make it contiguous. The Authority's Woreda representative office shall support and give the landholders legal advice and technical assistance regarding to Article 10(2). This kind of change in the land tenure shall be registered, Article 8. The landholders shall get their landholding certificate¹² updated for free, Article 10(3).

¹¹ Amhara National Regional State Rural Land Administration and Use System Implementation Council of Regional Government Regulation no. 51/2007

¹² Read more about Land holding certificate in Chapter 6.2

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This certificate shall contain (mentioned in section 5.3.1) the landholder's rights and obligations. These obligations are stated in Article 16 and a clarification of the Rural Land Proclamation's Article 20. Examples can be to protect the planted crops from weeds and plough the land in accordance with customary local practice. If they are not followed, the landholder shall obtain a written or/and oral warning¹³, Article 17(1). The landholder who has received such warning must adjust his failure according to Article 17(2). If the user continues to repeat the same fault after two years from receiving the final warning, the authority's Woreda Representative Office may deprive the landholder from the land for five years. The land can during these years be rent to other farmers, 17(2a). If the landholder still not follows the obligations after received the land back, and the same warning procedures have been repeated, the landholder can permanent be deprived from the land, Article 17(2b).

¹³ The warning procedure contains both oral and written warnings, Article 18(1). The Kebele Land Administrate and use committee gives the initial oral and the following preliminary written warning, Article 18(3). The written warning is to be given totally tree times, Article 18(2). These warnings shall be given in different harvesting years regarding Article 18(1). The second and third warning is sent by the Authority Woreda Representative Office in according to 18(3).

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6 Land administration

The two following chapters will prepare the reader for the Ethiopian expropriation process in chapter 8.

6.1 BoEPLAU

BoEPLAU stands for Bureau of Environmental Protection, Land Administration and Use. BoEPLAU is responsible for the land administration in the Amhara Region and independent under the regional President (SARDP, 2010). BoEPLAU was before the hierarchical upgrade from authority to bureau in 2009 called EPLAUA (ibid), which is most common used in the literature sources. The ANRS Proclamation 47/2000 established BoEPLAU in 2001 and shall according to the law ensure (ibid):

- The implementation of the regional land and environmental laws and policies
- Design and implement a land registration program, draft policy and legal instruments having to do with land administration and environmental protection
- Establish systems for effective environmental impact assessment

BoEPLAU¹⁴ in the Amhara region have in less than four years almost registered all the rural land in the region, issued landholding certificates to 98 % of the landholders and is considered as the most advanced in the country (ibid).

6.2 Land holding certificate

The book of holding or the Green book as it called among the landholders, is the legal land holding certificate showing who has the right to use the land (Regional Rural Land Regulation, Article 20 (4)). The book was established as a step to increase the land tenure security (SARDP, 2010). Without any security from getting evicted, the farmers did not make much of improvements or treat the land well in fear of losing what they have invested (ibid). The common disputes between landholders who actually have the right to use the land can now easier be solved and has rapidly declined (ibid). The certificate is also a legal document needed to be entitled compensation in cases of expropriation. Today about 98 % (ibid) of the farmers have

¹⁴ With Financial support from Sida of Sweden, technical support from ORGUT, a strong commitment from the Amhara National Regional State, as well as staff from BoEPLAU.

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this certificate in the Amhara region. The book can beside individuals be issued to married couples or groups of people that have an agreement to use one or several parcels of land together (ibid).

The book shall contain (The Regional Rural Land Regulation, Article 21):

- Basic rights and obligations from Regional Rural Land Proclamation
 - Personal data – name, sex, age, photograph, address to landholders and list of family members
 - Type of service the land is used for
 - Fertility standard of the land
- Official certificate, verification stamps and signature from land administrator in the Woreda and the chairman of Land Administration Committee in the Kebele

The book will after some survey work is done, be complemented by a secondary certificate. This certificate includes a parcel map of the area created by the geographical coordinates of the plot boundaries. During the survey work also boundary corners are marked with permanent stones (SARDP, 2010).

The effects of issuing landholding certificate and registration of land have shown (ibid):

- Increased investments in farming equipment
- People are aware of the value of certified rights to a piece of land
- Tree planting has increased
- The number of land disputes has declined
- The self-esteem of the farmers has been strengthened
- Farmers now dare complain to authorities and politicians
- Because both the husband and the wife are named as land users, women's rights are strengthened
- More land is rented to other users
- Agriculture production has increased

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7 Expropriation

7.1 The word Expropriation

Ownership is one of the strongest rights the individual has in the Western society. Something that since ancient times been an unwritten rule for tangible things have developed over time to extensive regulations regarding both tangible and intangible things.

The National Assembly of France adopted in the late 1700s the "*La déclaration des droits de l'homme*" which means "*the declaration of human rights*" (Ferbos, 1979). In the declaration from 1791 ownership is mentioned as "*sacred and inviolable*" and the Article 545 of the French Civil Code from 1810 states:

"No one may be compelled to give up his property, except for reasons of public utility, and against fair and previously payable compensation...."
(Wortley, 1959)

What is meant by public utility was not defined in the French law more than that the Appropriate Body shall explain the object as "*some major material or moral interest of a group of citizens*" (Baudry, 1947). Could that expression be equated to public utility, then expropriation for public utility against adequate and prior compensations has its origin from the French Civil Code (Wortley).

Different words are used for expropriation in different countries, for example is the term eminent domain often used in the United States of America (Kayden, 2009). In Ethiopia the term expropriation is used in the legislative text. Regardless which term is used they are all derived from the situation when the government take property from someone to be used for another purpose.

To have the legal power to expropriate land without the consent of the owner three conditions have to be fulfilled (ibid):

- public use
- compensation is paid
- fair process is followed

The compensation part contains limits for the expropriating power. The U.S. Constitution for example states: "*nor shall private property be taken for public use, without just compensation*" (ibid). According to the Ethiopian Federal Constitution

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Article 40 (8), the compensation has to be paid in advance and commensurate to the value of the property in question. Therefore can the Ethiopian expropriation according to its legislative text be considered as the Western definition of the term expropriation. Further investigation has to be done to see if the law is practiced to make the final judgment.

7.2 Different types of Expropriation

Expropriation for adequate compensation can be divided into three categories (Wortley, 1959). The first category is called the Classical type of expropriation and shall comply the conditions mentioned in section 7.1 (ibid). The just compensation shall be calculated so the expropriated person can put himself into the same situation as before (ibid).

Expropriation by “requisition” is when adequate compensation cannot be paid in advance and the land is needed for urgent needs (ibid). Requisition has often been used for defence purposes or a method for a nation to safeguarding the economic life (ibid).

The third type of expropriation is “nationalization” and is often an act of a national political program to strengthen the industry using existing companies or a nationally controlled industry (ibid). The term “nationalization” can have the same juridical characteristics as “socialization” of an industry when they can be connected either to classical expropriation or a requisition (ibid).

7.3 Involuntary Resettlement

The concept involuntary resettlement means when individuals or communities do not have the right to refuse land acquisition that results in displacement (IFC, 2006). In Ethiopia this happens in cases of lawful expropriation. Involuntary resettlement includes physical and economic displacement. Physical displacement refers to relocation or loss of shelter and economic displacement is connected to all kind of economic loss as a result of the expropriation (ibid). The involuntary resettlement under development projects often result in serious economic, social and environmental¹⁵ threats (The World Bank, 2001). The World Bank has developed objectives and required measures that shall permeate their development projects to prevent such problems (ibid). The organisation’s main policy objectives are:

¹⁵ The environmental risks will not be discussed in this thesis.

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- Involuntary resettlement should be avoided where feasible, or minimized, exploring all viable alternative project designs.
- 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.
- Displaced persons should be assisted in their efforts to improve their livelihoods and standards of living or at least to restore them, in real terms, to pre-displacement levels or to levels prevailing prior to the beginning of project implementation, whichever is higher.

The only responsibility that the implementing agency has according to the Ethiopian Federal Expropriation Proclamation¹⁶ is stated in Article 5:

1. Prepare detail data pertaining to the land needed for its works and send 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.
2. Pay compensation in accordance with this Proclamation to landholders.

One of the reasons for issuing The Federal Payment of Compensation Regulation¹⁷ was except for make the compensation part more clear in the expropriation law, “...*to assist displaced persons to restore their livelihood.*” That is written in the introduction to the regulation but nothing specific in procedures can be found in the main text.

¹⁶ Expropriation of Landholdings for Public Purposes and Payment of Compensation Proclamation No. 455/2005

¹⁷ Payment of Compensation for Property Situated on Landholdings Expropriated for Public Purposes Council of Ministers Regulations No. 135/2007

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7.4 The meaning of public purpose in Ethiopia

The Federal Constitutions require that the intention of taking private property through expropriation must serve a public purpose, Article 40(8). But the term “public purpose” is not defined anywhere in the Federal- or Amhara National Regional Constitution. The Expropriation Proclamation of 2004¹⁸ defined the term public use and the landholder’s right to compensation. There is a quite narrow definition of the term and limited to government agencies that received the right to expropriate for purposes, as stated in the following way:

“...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.”

Article 2(2)

The proclamation was not prolonged and was replaced by today's current expropriation law (Federal Expropriation Proclamation, Article 15(1)).¹⁹ For the first time the definition of “public purpose” was established and reads as follows:

“...means the use of land defined as such by the decision of the appropriate body in conformity with urban structure plan or development plan in order to ensure the interest of the peoples to acquire direct or indirect benefits from the use of the land and to consolidate sustainable socio-economic development.”

Article 2(5)

This means a much broader meaning and creates new opportunities to take land for various purposes. Both direct and indirect benefits can be accepted, which means that there is a larger scope and a more difficult assessment process.

¹⁸ Appropriation of Land for Government Works and Payment of compensation for property Proclamation No.401/2004

¹⁹ Expropriation of landholdings for Public Purposes and Payment of Compensation Proclamation No.455/2005

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The Amhara Region is at the forefront in comparison to other regions regarding the development of expropriation provisions. They have in their Regional Rural Land Proclamation used the definition of "public service" as:

"...a service given to the public directly or indirectly, such as government office, school, health service, market service, road, religious institutions, military camps, and the likes, and includes activities assumed important to the development of people by the Regional Government and to be implemented on the rural land."
Article 2(15)

This is a narrow definition of the term, similar to the one of the 2004 proclamation. In the same regional proclamation from 2006, when describing the definition of "expropriation from land holding", public interest is suddenly used as the term:

"Expropriating from land holding means taking the rural land from the holder or user for the sake of public interest paying compensation in advance by government bodies, private investors, cooperative societies, or other bodies to undertake development activities by the decision of government body vested with power."
Article 2(18)

On the 11th of May, 2007, the Council of regional government in Amhara region issued a new regulation connected to Regional Rural Land Proclamation. Public service is used in connection to the articles regarding expropriation. One week later The Federal Payment of Compensation Regulation was established and is a clarification of the compensation part of the expropriation law, the term public purpose is used in the new regulation.

Terms such as "public purpose", "public use", "public interest" and "public service" are used in connection with expropriation in the constitutions, proclamations and regulations. Different terms are sometimes used in the English versions of the law for the same purpose. The reader is advised to consider the terms as one and the same from now on, with knowledge of that in the federal legislative texts public purpose is used that contains a wider definition and public service at the region level with a narrower definition.

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8 The expropriation process in the Amhara region

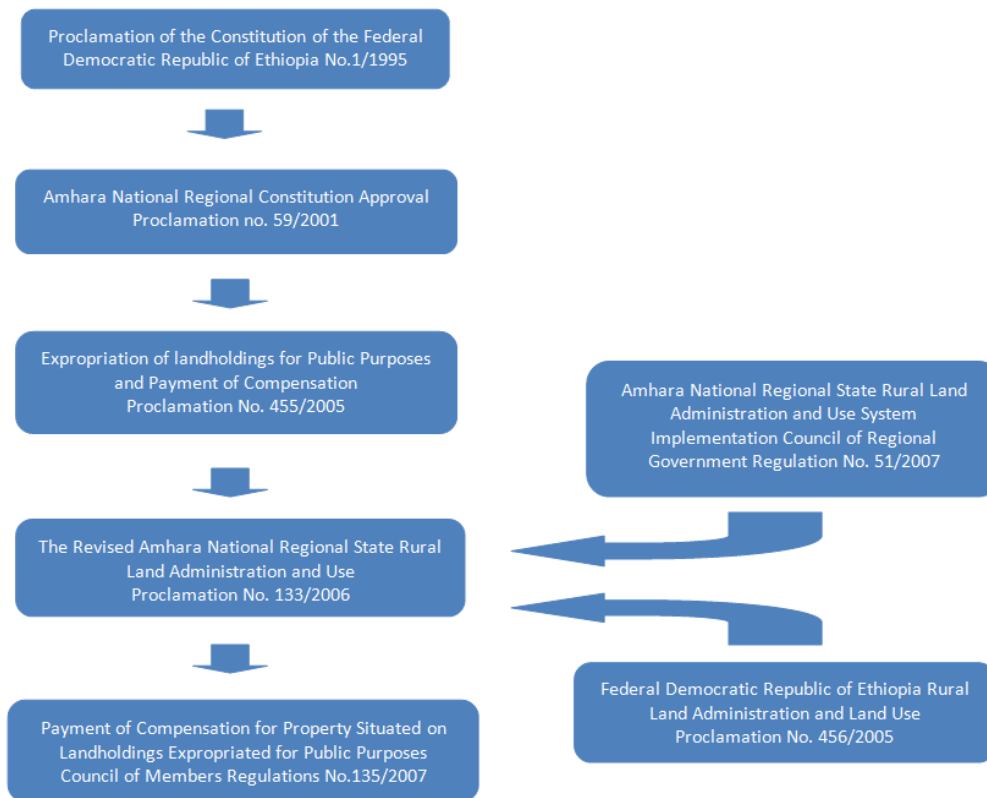


Figure 5. An illustration of the laws concerning expropriation

The figure above of the federal and regional laws does not mean a hierarchical structure of the Ethiopian laws concerning expropriation. The flow chart illustrates an appropriate order to read the laws, and provides an overview of the system of expropriation in rural areas in the Amhara region.

8.1 Preparatory phase

The expropriation process starts when an interested party take initiative to expropriate land. *“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...”* have the right to be initiators to an expropriation process, (Federal Expropriation Proclamation, Article 3(1)).

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In order to prevent disorder during the expropriation process, an authority is required to approve and issues expropriation permissions. In the Amhara Region, BoEPLAU act this authority and has the power to expropriate rural land for public purpose (Regional Rural Land Proclamation, Article 2(2), 28(1)). The initiator to the expropriation process (Implementing Agency) has to "*prepare detail data pertaining to the land needed for its works*" (Federal Expropriation Proclamation, Article 5(1)). The detailed data shall contain the location of required expropriation area and a motivation why the project will serve a public purpose (Regional Rural Land Regulation, Article 29(3a)). The detailed data shall be sent to BoEPLAU at least one year before commencement of the planned expropriation (Federal Expropriation Proclamation, Article 5(1)). BoEPLAU will locate and identify the planned land of expropriation and its current landholders. BoEPLAU investigates if the expropriation serves a public purpose and if there are any better alternatives to implement the expropriation. The expropriation cannot be implemented on the requested area if there is another area more suitable for the purpose (Regional Rural Land Regulation, Article 29(3b)).

There are some other requirements in the text below that must be fulfilled for an expropriation to be legally implemented.

8.2 Public meeting

A public meeting shall be arranged for the people living in the concerned Kebele (Regional Rural Land Proclamation, Article 28(2)). The purpose is that the Kebele people will get information about the intended expropriation, opportunity for discussion and a majority vote will take place (ibid). This procedure shall be done before BoEPLAU make a final decision regarding the expropriation (ibid).

8.3 Inventory phase

A committee of maximum five experts designated by the BoEPLAU shall assess expropriated land in rural areas (Regional Rural Land Regulation, Article 32(2)). These experts shall have relevant qualifications (Federal Expropriation Proclamation, Article 10(1)). In situations where special knowledge and experience is a requirement, a separate committee of experts shall value the expropriated property (Regional Rural Land Regulation, Article 32(3)). This special committee shall also be designated by BoEPLAU (ibid).

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BoEPLAU shall establish the working procedure for the committee (Federal Expropriation Proclamation, Article 10(4)).

According to the legislative text, certificated private institutions or consultants can also be competent to perform the valuation on basis of valuation formulas adopted at the national level (ibid, Article 9(1)). There are Federal formulas (see chapter 8.4) but if they are addressed in practice is not known by the authors. The recommendation is therefore to see the selected committee as the only legitimate valuers (ibid, Article 9(2)).

The costs of valuation process shall be covered by the Woreda administration (Federal Payment of Compensation Regulation, Article 23(1)). If expropriation is made upon its request, the implementing agency shall pay to the Woreda and cover the final valuation costs (ibid, Article 23(2)).

8.4 Compensation

As mentioned above and according to the Regional Rural Land Proclamation the expropriated land users in rural areas have the right to a reasonable compensation in advance, Article 28(1). This is stated but not clearly defined in the legislative text. As comparison, in Sweden the reasonable compensation is decided by the current market value of the property plus 25 %.

In Ethiopia there is no private market for properties and therefore the law is determining what is considered to be proper compensation. Different compensation categories and formulas are found in the legislative text (see below).

Although land can never be regarded as private property, Federal Constitution Proclamation Article 7 determines that:

"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 labour or capital."

Expropriated landholders have the rights to receive payment of compensation for their property and the improvements they made to the land (Federal Expropriation Proclamation, Article 7(1)). The amount of compensations shall be determined on the basis of replacement cost of the property (ibid, Article 7(2)). How the replacement cost will be calculated is provided by Federal Payment of Compensation Regulation.

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The permanent improvements category includes agricultural infrastructure works such as clearing, levelling, terracing and water reservoir or similar actions to improve the land (ibid 9). The farmer will receive compensation for the value of capital and labour required to make the improvements (Federal Expropriation Proclamation, Article 7(4)).

The landholder can be compensated in two different ways. The Federal Payment of Compensation Regulation states in Article 15 that the landholder should be offered comparable land as compensation if possible. If there is no land to offer, the landowner will receive pure cash compensation. In the Amhara region it is common to pay only cash compensation due to the lack of available land (ELTAP, 2007).

The displacement compensation shall be equivalent to ten times the average annual income from the cultivating during the five years²⁰ prior to the expropriation (Federal Expropriation Proclamation, Article 8(1)). In case of temporary loss of expropriated land the compensation is calculated in the same way, but the farmer will only receive compensation for the waiver period (ibid, Article 8(2)). The compensation for temporary loss can never exceed the amount for a permanent expropriation (ibid). Landholders that have received comparable substitute land shall receive the average annual income for one year (ibid, Article 8(3)).

They also have the right to get compensation for the relocation of the property so the new property can continue its service (ibid, Article 7(5)). This includes the market value of labour, material and transportation for removing, transferring and installations required (The Federal Payment of Compensation Regulation, Article 10).

Compensation for relocated property =

- cost of removal +
- cost of transferring +
- cost of reinstallation

(ibid, Article 13(5))

Regardless if the landholder received cash or land they have the right to following compensations listed below. The amount of compensation for buildings should correspond to constructions cost for a new comparable building. This also includes all additional costs such as demolishing, reconstructing and connecting utility lines (ibid, Article 3(1-2)). If the expropriated land was compassed with fence, the compensation

²⁰ If possession of land has been shorter than five years, use the average yield for actual years. When no annual yield been given use the standard rule of yield for similar land in the area.

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should correspond to construction of a similar fence (ibid, Article 4)). In Article 13, calculation formulas for different compensations categories are found.

Compensation for building =

- cost of construction (or value) +
- cost of permanent improvement on land +
- the amount of refundable money for the remaining term lease contract

(ibid, Article 13(1))

Compensation for unripe crops shall correspond with the intended market value of the harvest. If the crops are ripe before the time of cession,²¹ the farmer has the right to take the benefit from the crops (ibid, Article 5(2)). For unripe perennial crops the compensation is based on the estimated costs for growing the plant (ibid, Article 6(1)).

Compensation for ripe perennial crops should correspond to the average annual yield that the crops had generated on the current local market (ibid, Article 6(2)). Trees generate compensation according to a model based on the level of growth and the square meter price for the wood or unit prevailing on the local market (ibid, Article 7(1)). The farmer may choose to cut the trees and keep the wood before the time of cession instead of obtaining compensation (ibid, Article 7(2)).

Protected grass is covered by the same rules for compensation as for trees (ibid, Article 8). The following formulas are for calculating the above-mentioned replacement categories.

Compensation for crops =

- the total area of the land (in square meters) x
- value of the crop per kilogram x
- the amount of crop to be obtained per square meter +
- cost of permanent improvement on land

(ibid, Article 13(2))

Compensation for unripe perennial crops =

- number of plants (legs) x

²¹ Time of cession refers to the date in the written notice according to Expropriation of Landholdings for Public Purposes and Payment of Compensation Proclamation No. 455/2005 Article 4(1)

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- cost incurred to grow an individual plant +
 - cost of permanent improvement on land
- (ibid, Article 13(3))

Compensation for ripe perennial crops =

- the annual yield of the perennial crops (in kilograms) x
 - the current price of the produce of the perennial crops +
 - cost of permanent improvement on land
- (ibid, Article 13(4))

Compensation for protected grass =

- area covered by the grass per square meter x
 - the current market price of the grass per square meter
- (ibid, Article 13(6))

The landholder will not receive any compensation for none of these compensations categories for activities done after he is served with the expropriation order (ibid, Article 19). Landholders shall also show proof of legitimate possession of the expropriated landholding and ownership of the property to be justified to claim compensation in accordance with legislative text (ibid, Article 22). Proof of possession is the land holding certificate, without it the landowner risk to be without compensation.

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8.5 Written notice

The Woreda administration shall send a written notice to the expropriated landholder. In the legislative text, this written notice is called the expropriation order. The notification shall include information when the land has to be vacated and the amount of compensation (Federal Expropriation Proclamation, Article 4(1)). After received compensation is he landholder guaranteed at least 90 days to prepare his withdrawal from the land or 30 days if there is no property on the land (ibid, Article 4(3-4)). Landholders who have received a written notice shall hand over the land to BoEPLAU within 90 respective 30 days after paid and received compensation (ibid, Article 4(3)).

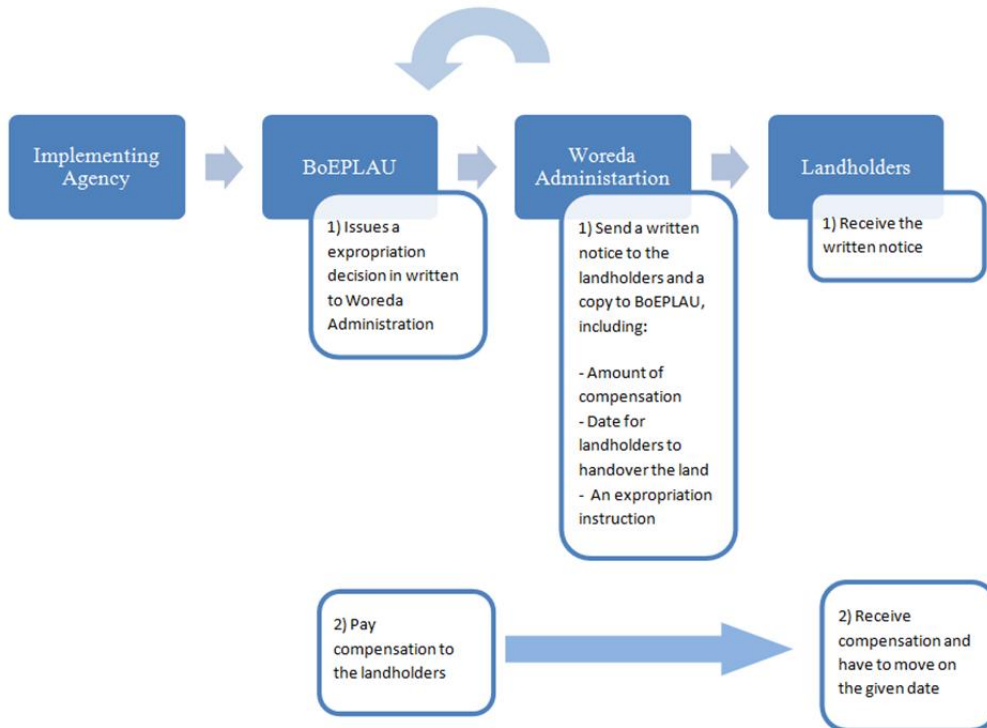


Figure 6. The process of issuing the written notice

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8.6 Deposition of compensation

The Implementing Agency can deposit the amount of compensation on a blocked bank account, in the name of BoEPLAU, if the landholder refuses to receive the payment (ibid). Payment in advance from the Implementing Agency is thus an elementary and important criterion for a legal expropriation (ibid, Article 5(2)). BoEPLAU has not the right to carry out the expropriation if the compensation to landholders is not paid in advance (ibid, Article 3(1) & Regional Rural Land Proclamation Article 28(1)).

8.7 How to appeal in the expropriation process

Farmers who are not satisfied with the offered compensation or the condition of payment have the possibility to complain. The first action is that the farmer refuses the payment, and a procedure like section 8.5 will occur. When the Implementing Agency has deposited the amount, the farmer will receive warning instructions. The affected party has an appeal period of 30 days after received warning instructions. The appeal is submitted to the Grievance Review Committee, appointed by BoEPLAU (Regional Rural Land Regulation, Article 33(1-2)).

The committee will correspond between the complainer and the valuers, and make a decision in the case (ibid, Article 33(3)). The committee shall notify BoEPLAU and the appellant their decision in written (ibid, Article 33(4)). The decision can be appealed to High Court which decision is the final (ibid, Article 33(5-6)). The appeal will not affect the farmer's obligation to handover the land (ibid, Article 33(7)).

There is also a possibility to complain about the expropriation order. The landholder who doubts that the expropriation is made on a legal ground can complain to BoEPLAU 15 days after reception of the expropriation order (ibid, Article 29(5)). The decision that BoEPLAU takes is final. There is no possibility appeal to court.

9 Fieldwork and practice of expropriation

A fieldwork was done in order to better understand the practice of the expropriation process. A sample was created with individuals that have abandoned their land due to expropriation. Interviews were done with these persons. Expropriation had been done within the framework of three different projects in four rural areas in the Amhara region.

9.1 The Development of the questionnaire and field methodology

In order to analyse if there is a difference between the statutory expropriation procedure and the procedure carried out in practice, a questionnaire was created based on the Ethiopian laws.

The interviews were held with interpreters because of the authors' lack of ability to communicate in Amharic. There is a high rate of illiteracy in the field areas and to reduce the risk of erroneous interpretations the chosen interpreters are experts within expropriation.²² The writers had a consultation with the experts²³ during the development of the questionnaire.

The following points have been analysed and taken into account in developing the questionnaire and will be discussed below:

1. Interpreters understand the purpose of each question
2. Interviewed persons should be able to understand the meaning of the questions
3. A sequence of similar questions that ensures that the interviewed person understood the previous issues
4. Neutral questions that do not lead the interviewed people in any direction
5. Creating the trust of interviewees, the authors should appear as a neutral party in this context
6. A common thread through the questionnaire

²² The experts are ILA PhD students

²³ The experts will from now on be mentioned as interpreters

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1. The interpreters understand the authors' purpose of each question

The authors and interpreters might misunderstand each other in many different stages. The authors have to understand the Ethiopian laws that have been translated to English by the legislative makers. The English texts sometimes contain typos and different terms referring to the same definition. This could initially seem confusing for the observer. The authors also have to frame a question in English based on the legislative text. The interpreter has to interpret the question in a language that is not his native language, and ask the question in Amharic to interviewees with limited knowledge of the subject. Therefore, it is very important that interpreters understand the authors' intention with the question in order to obtain an answer that is in the direction of the question's purpose.

Method:

Discussions were held with the interpreters before each field study. Both parties could express questions and concerns. During the interviews, the authors sometimes asked follow-up questions, and answered the questions interpreters might have regarding the questionnaire.

2. Interview objects should be able to understand the meaning of the questions

The level of education at the Ethiopian countryside is low. Most of the respondents lack basic education. The majority of the interviewed persons are illiterate and the ability to assimilate written information is reduced, also knowledge and understanding in economics and law.

Method:

Wherever possible, the authors have chosen to formulate several short questions instead of having fewer questions requiring longer answers. Many questions are asked as confirmative issues (yes or no). Other questions require an answer on a simple graded scale. In addition the interviewed persons have been given opportunity to explain in their way ("speak freely") about how they have experienced certain situations during the expropriation process.

Example:

1.1) Was there a meeting for public discussion about the expropriation?

Yes

No

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1.4) How satisfied are you with the information you received during the meeting?

Please grade your answer on the scale below.

<i>Unsatisfied</i>	<i>Less satisfied</i>	<i>Moderate</i>	<i>Satisfied</i>	<i>Very satisfied</i>

5.12) Is there something in this questionnaire that is not mentioned about expropriation that you want to point out?

3. Questions that ensures that the interviewee understood the previous issues

Interviewed persons can of courtesy to the author or personal pride, choose to give an answer even though they have not really understood the meaning of the question for stated reasons.

Method:

Follow-up questions on earlier questions were used, so that contradictory responses could be identified. The interviewer could quickly see that the respondent did not understand the latest or the previous question and try to explain it again.

Example:

1.6) If yes in question 1.5, did you use the opportunity to express your opinion?

Yes *No*

1.7) If yes in question 1.6, did your opinion get an acceptance?

Yes *No*

4. Neutral questions that do not lead interviewees in any direction

It is not unusual for a requested Ethiopian to give the answer that he thinks the questioner wants. The interpreters explained this for the authors that experienced this in different contexts.

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Method:

The questions have been formulated as neutral as possible without trying to ask leading questions.

Example:

4.5) *The compensation decisions transparency?*

Not transparent

Transparent

5. Creating the trust of interviewees, the authors should appear as a neutral party in this context

It is very important that the interviewees dare to respond truthfully to questions without fear of negative consequences for them.

Method:

The interpreters had previous experience of similar situations. The questions were therefore formulated strategically, so the interviewees should understand that their answers would not be used against them.

Contact was then made with BoEPLAU. They arranged a contact person in the interview areas and asked to gather a group of people who have been subject to an expropriation process. The neutrality might be dubious when the authority chooses the contact person for the area, but from what the writers have understood during the interviews, the responses did not appear to be affected.

The contact person, interpreters and the authors had a short meeting before the actual interviews and went through the questionnaire. Then there was a brief introduction with the people before the interviews started.

The Authority has not taking note of the answers and the interviewed could answer the questionnaire completely anonymously. In additional, no payment was made to any party during the interview process.

6. A common thread through the questionnaire

There are many steps in an expropriation process and a questionnaire concerning the process can be perceived as confusing and incoherent. Therefore it is important that there is a clear structure in the form. It makes things easier for the interviewer and creates a flow in his work asking questions, the interviewed can easier following

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through and remembering back on the process and gives also the authors an overview that makes the compilation much easier.

Method:

A point system was used in which the different stages in the process were divided into several main sections, which in turn have underlying section (examples above). This means that references to previous questions could easily be made. A questionnaire with so many issues would otherwise seem unstructured and time consuming for the interviewer and the interviewee.

9.2 The fieldwork projects

9.2.1 The need of irrigation system

A large part of the Ethiopian population lives in the countryside and makes their living from agriculture. Thus, agriculture is the most important part of the Ethiopian economy. In order to improve the country's economic situation, it is of utmost importance to enact legal instruments that contributes to increase the productivity of agriculture. A key step in this process is to increase conditions for better harvests.

In Amhara region the difference between rain and dry season is very apparent. During the dry season water availability can be a major obstacle for the farmers.

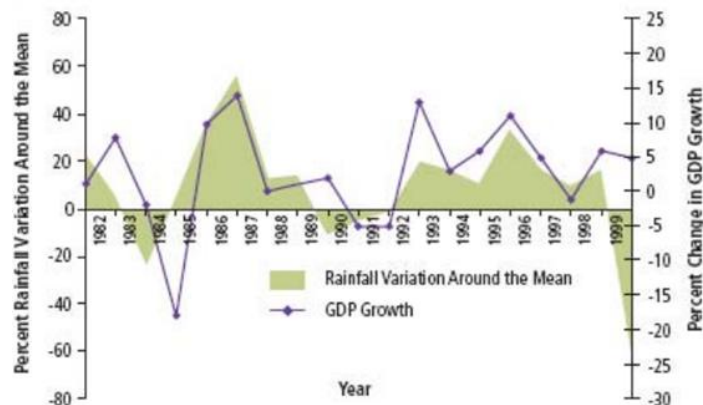


Figure 7. The correlation between the rainfall in Ethiopia and the country's GDP (World Bank, 2006, p. 2).

Figure 7 above shows the relationship between rainfall and the Ethiopian economy. For better harvest and extended cultivating areas, the construction of irrigation dams is a proven method. Two of the three projects that have been targets for the fieldwork are Dam projects.

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9.2.2 Ribb dam project

Ribb dam is an on-going project and located 150 km Northeast from Bahir Dar. The implementing of the irrigation Ribb dam is a part of large project with intention to reduce the climate variability between the rain and dry season. This reduction will increase the agricultural productivity (Castalia strategic advisors, 2008).

The Ribb dam project covers a total area of 17 700 ha and the total cost is estimated to 53 million US-Dollar (ibid). The government and World Bank will fund the irrigation project during the first years. However, the farmers will pay a tariff for the access to the irrigated land. The tariff will increase over the years – see figure 8 below.

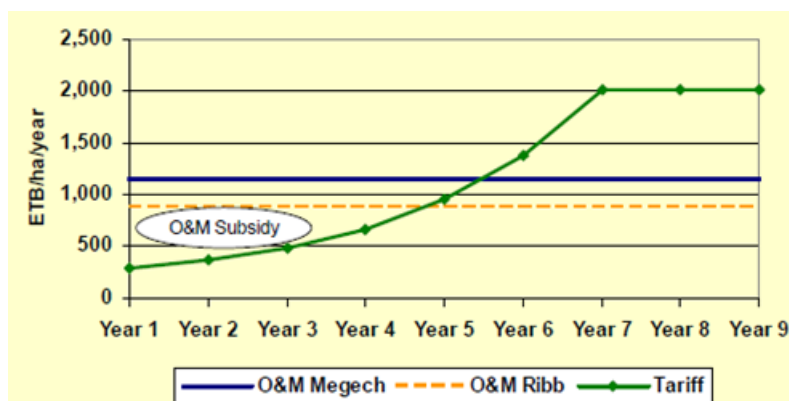


Figure 8. A chart over the tariffs in Ribb Dam area (Castalia strategic advisors, 2008, p. 3)

A study shows that 98 % of the farmers in the Ribb area are willing to pay a tariff to connect their land to the irrigation system (ibid).

The average income for the households²⁴ in the Ribb area are expected to increase from 5 049 Birr²⁵ per year without irrigation, to 22 900 Birr in the irrigation area after seven years of use (ibid).

²⁴ The average landholding in the Ribb area is 0,75 ha

²⁵ Birr is the Ethiopian currency and the value of 1000 Birr can be converted to 54 USD, according to Coinmill March 1, 2013

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9.2.3 Koga Irrigation and Watershed Management Project

The Koga irrigation system consists of a main dam and a saddle dam. The saddle dam act as a 2 000 ha reservoir for the water that will be released to canal network leading to the farm plots (Eguavoen, 2011). The irrigation system improve the agricultural production in the area of 7 000 ha and 57 000 people lives in the command area. The project started 2002 and was inaugurated 2008 (ibid). The land cultivated by rain generated an average income of 2 635 Birr²⁶ per annum. With the irrigated land the average annual income was planned to increase to 8 267 Birr per household (African Development Fund, 2001).

9.2.4 Private Investment project

The Private Investment project is located approximately 30 km Northeast from Bahir Dar. A private investor expropriated the area. The purpose was to improve the efficiency of the agriculture. The problem is that the developer has not used the land for the specified purpose. This means that the land has been uncultivated for a couple of years.

9.3 Summary of the interviews

This section is a summary of all the interviews made during the fieldwork. A qualitative method has been used and every interview took approximately 40 minutes.

9.3.1 The Ribb dam interviews

In the Ribb dam area 17 interviews were held in October 14, 2012.

Information during the meeting

All interviewed farmers confirmed that a public meeting (see chapter 8.2 Public meeting) was held before the expropriation process began. For different reasons all of the farmers could not attend to the meeting. Some individuals said that they were not in the village that day. Other farmers said they had not been informed in advance when the meeting would take place.

The majority of the farmers were satisfied with the information that was given during the public meeting. The meeting also meant to be an opportunity for the participant farmers to give comments and express their opinions. Some farmers took the

²⁶ Birr is the Ethiopian currency and the value of 2 635 Birr can be converted to 143 USD, according to Coinmill March 1, 2013.

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opportunity to express their opinions, but they felt that they did not get any response for their views. The majority of the farmers said that they were not comfortable to express their true opinions at the meeting because of fear. Even though there was no voting the farmers thought the project served a public purpose.

Compensation and valuation

The affected party in this area received the compensation as a lump sum. This makes it impossible to control the compensation of each specific category. The farmers have no possibility to compare the compensation decision to the inventory. During the inventory the farmers were given the opportunity, together with the valuers, to inspect the expropriated land and discuss the compensation categories. The farmers considered that the valuers did not take everything into account, and therefore received an insufficient compensation.

Fences, trees, protected grass, permanent improvements on rural land were not taken into account during the inventory. The compensation was also paid after the expropriation.

The most common type of compensation in cases of expropriation over the years has been substitute land. The purpose is that the farmer should be able to conduct their farming activities in the same way as before the expropriation took place. The farmers said they were initially promised this kind of compensation but did not receive land.

In Amhara region, there is lack of substitute land. This means that all the interviewees instead received only cash compensation. The cash compensation led to dissatisfaction among the farmers. All interviewees had preferred to get a new equivalent land as they were originally promised.

Furthermore, even some of the individuals had their common grazing land expropriated where the livestock previously grazed. New grazing land has not yet been allocated.

Considerable personal consequences can be the result of cash compensation for the affected farmers and their families. Cultivation of the land is their livelihood.

Most interviewees expressed that the cash compensation they received, had already been consumed. The money has been spent on food, shelter and to feed their livestock.

Some people said that they managed to rent land from others in order to build new houses.

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More than a third of the respondents said they were not given the opportunity to participate in the inventory process. Remarkably, if the farmers could not attend the date they were assigned, there was no possibility of rebooking for new inventory.

A large majority of persons in the inventory stage said that they did not get any response to the comments and observations they expressed to the valuers. Some even felt a discomfort to confront the valuers.

All farmers considered that the compensation decision was not transparent. They could not understand how the final compensation was calculated. The compensation decision did not contain a specification of each compensation category. All respondents were very dissatisfied with the amount of compensation they received, and consider that the compensation does not correspond at all the actual damage.

Written notice

According to the law, persons who have their land expropriated should obtain a written notice in advance. In the current project, very few farmers receive such notice. Those who received a notification said that it included both the amount of compensation and the date they had to move. The authors could not control whether time limits specified in notice was accordance to the law.

Appeal

The majority claims to know their legal rights regarding the expropriation process. The authors doubt that this is a truthful answer and that interviewees responded in this way to avoid appearing uneducated. These doubts are based on that the majority did not know their legal right to appeal to the Court. Those who knew the right to appeal did also use the opportunity. The farmers said that they had talked to the local Kebele administration to submit their appeal. But in this stage, many of the farmers were discouraged and advised to not go further with their appeals. They were told that there was no meaning to do so. The farmers were also told that they had to pay a deposit representing 10 % of the claimed compensation, if they wanted to appeal. The deposit was an obstacle for many of the farmers to appeal. Very few farmers have the financial ability that is required to go further in the process.

There is one way to avoid the deposit. This requires that the person has obtained proof of insufficient economy. The chairman of Land Administration Committee in the Kebele issues such document. This procedure got all except one to withdraw their

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appeal. The person who chose to move on with his appeal is still waiting for the judgment. This means that the authors could not take part of the outcome.

Investments in rural land and privatisation of land

The majority would not make more investments in the land in case of private ownership. They say they treat the land as their own, even if it belongs to the State. However, they prefer a private ownership of land. The discussion of land ownership was dominated with arguments like, "*on the private real estate market there is always the option to buy new land*". They also believed that the land would eventually get a higher value if the land was privatized.

Individuals who indicated that they preferred the current system and a state ownership of land had generally hard to understand the meaning of the free market. The authors tried, in a neutral way, provide as understandable explanation as possible. It was difficult for these farmers to relate to the information. The conclusion of their reasoning was that they knew how the current system works, but felt uncertain about a change.

9.3.2 The Koga interviews Area 1

Two different areas were used for interviews regarding the Koga project (Area 2 is presented in chapter 9.3.3). They will be examined separated because it is a big project and different from case to case. Eight interviews were made, four for each area. The date for the interviews was 25 October 2012.

Information during the meeting

All of the respondents had been called to the public meeting. They all attended the meeting and even if no voting were held they all agreed that the project served a public purpose. Three out of four considered the information received during the meeting as moderate while the remaining participant was less satisfied. During the meeting, the respondents had the opportunity to ask questions. They all took the opportunity to do so. The response to their questions was in most of the cases positive and they had no greater fear to express their opinions.

Compensation and valuation

Compensation was given for houses, crops and two of them received compensation for trees. They were upset because the formula that was used for calculating the quantity of trees during the inventory process. The method was unfavourable for them.

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Three out of four believes that the considerations of their crops and buildings during inventory process are incorrect.

They were promised water and sewage, electricity and phone lines to their new houses, which were built at the new location they were moved to. Nothing of this has been obtained, after waiting for several years they are convinced that they will never get what they were promised. Instead they had to pay and build their own wells to get water. They are now exposed to diseases, because the lack of pure water.

The compensation for their former buildings was paid in advance, and how satisfied they were with the compensation was scattered from “very dissatisfied” to “satisfied” on a graduated scale. For crops, three of them answered “moderate” and only one of them had received payment in advance. Compensation for perennial crops has been paid afterwards to one landholder and the other three landholders have not received anything at all.

Participation in the inventory process was high among the respondents. However their presence gave no sympathy for their views. Some felt that they could express their views without any form of unpleasant feelings while others felt more uncomfortable. The majority did not understand how the compensation was calculated and thought there was no transparency in the decision. The total compensation they received as a result of given up their previous land was not in proportion to the harm they suffered or in accordance with what first was promised.

Land compensation

All individuals in this area received land to land compensation in addition to previous mentioned compensations that are paid in cash. The new received land was of smaller size but was more fertile said one of the respondents. The fertility was not so much better that it compensated for the smaller area and no compensation have been paid for the difference in size. The land they received in compensation is very far from the location of their new houses. One way takes about three hours to walk, which makes it very inconvenient for farming. No compensation has been given for the reduced effectiveness. One individual stated that he rather would have received cash instead of new land because of the long distance. It can be emphasized that it is very rare that farmers prefer compensation in money instead of a piece of new land in Ethiopia (Ambaye, 2010).

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Written notice

All of the interviewed had received a written notification containing the date they had to move and the amount of compensation.

Appeal

Half of the respondents say they know their rights in the expropriation process. The majority said they were given and took the opportunity to express their dissatisfaction towards the compensation. Only one individual received a positive response to his view. Two individuals appealed the decision and one got through. One person felt that he did not feel safe to appeal.

Investments in rural land and privatisation of land

Different views were given about the alternative of privatisation of ownership of land and about their dedication/decisions to invest more in their land.

Some felt that the land feels to be their own. They can perform all rights and still make investments even without privatisation. Other answers say that if land was privatized they could grow what they want, which they apparently did not dare to do today. One farmer said that with a privatisation, improvements could be made to the land without reservations and investments without restrictions. In addition, the landowner can provide the land to whomever he wants which is not possible today.

9.3.3 The Koga interviews Area 2

Two different areas were used for interviews regarding the Koga project (Area 1 is presented in chapter 9.3.2). They will be examined separated because it is a big project and different from case to case. Eight interviews were made, four for each area. The date for the interviews was 25 October 2012.

Information during the meeting

All of the interviewed attended at the public meeting about the expropriation. The majority found that the information given under the meeting was moderate. All expressed their opinions and no one felt any discomfort in doing so. No sympathy was given for their opinions. They all agreed that the expropriation served a public purpose even if no voting were held.

Compensation and valuation

Representatives from the authority have made an inventory process without the landholders' awareness. The majority of the interviewed found the compensation

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decision not transparent and they did not understand how the compensation was calculated. The amount of compensation, compared to the actual damage, is very small according to the farmers.

Two landowners were upset that they only received compensation for their old almost dilapidated buildings but not for the newer ones (discussion will pressed in conclusion).

Only one had received compensation in advance for buildings, and the majority were completely dissatisfied with the compensation determined. They also received compensation for crops, perennial crops and trees. Noteworthy was that compensation was paid out in advance for certain categories but not for others. Compensation for perennial crops was very small in general.

Land compensation

All farmers have received land-to-land compensation but not of equal size. One farmer received compensation, due to a smaller area. The compensation for smaller area in combination with better soil fertility made him not suffer from a decline in the productivity. Another farmer described the opposite situation where declining fertility has not been compensated and his productivity has been reduced.

An interesting observation is that only one person of the interviewed preferred replacement land instead of cash compensation. The others prefer cash compensation for loss of land, which has not been the case in other expropriation projects except the first area concerning the Koga project. The reason is also here that the land they received is very far from the location of their new houses, which makes it very inconvenient for farming. They mention that with a privatisation of land, they will have the opportunity to buy and chose their own land instead of receiving a piece of land that someone else has chosen.

Written notice

Only one person received the written notification in advance concerning date to move, but no amount of compensation were specified.

Appeal

Two of the respondents said they knew their rights in the expropriation process. Three persons said that they were given and took the opportunity to express their dissatisfaction towards the compensation. Their views were not received with any sympathies and they felt uncomfortable to express their dissatisfaction.

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Three persons knew their right to appeal to court. One person did that and got acceptance for his appeal.

Investments in rural land and privatisation of land

Most of those interviewed would make more investments in their land if it had been their own (privatisation of land). The land would be more effectively used and they would take better care of the land because the risk to get evicted by the State will be reduced. The possibility to sell or transfer land without restrictions, to any person, is another expected advantage from the farmers' point of view.

If land will get privatised the farmers fear that people would sell their land, which results in urbanisation. A few rich individuals will be owners of most of the land in the rural areas with poverty as a result.

9.3.4 Private Investment Project interviews

Four persons were interviewed on October 22nd, 2012.

Information during the meeting

A public meeting was held regarding the expropriation process. One farmer chose to not attend the meeting. He made it as a protest against the expropriation. It is apparent that farmers have been well informed when the meeting would take place. Participant farmers were not very satisfied with the information they received at the information meeting. All of the farmers said there was an opportunity to express their views during the meeting, but they were not comfortable with doing so. They were worried to ask the wrong questions or be too critical. People who have been too critical about the project have been imprisoned for a few days. The interviewed persons considered that it was not worth to get that kind of punishment.

Compensation and valuation

The Ethiopian law defines the compensation categories that are relevant for compensation, i.e., applicable to the requirements of expropriation. In this project, farmers only received compensation for crops, but all interviewees have stated that trees that were planted but not considered in the inventory process.

All interviewees have received cash compensation. None of the participating farmers preferred this kind of compensation. The farmers had preferred to get a new equivalent land, so they could continue to cultivate land as before. But due to lack of

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replacement land in Amhara region it was not possible. All farmers had access to other land assets beside the area that was expropriated. Therefore, they were able to continue their farming activities, but in lesser extent.

All interviewees have been invited to participate in the inventory process, and all farmers attended to the inspection. The farmers considered that the valuers did not take everything into account during this process. Therefore, they found that they received insufficient compensation. The interviewed also expressed this opinion to the valuers, but they did not get any positive response during the inspection. None of the farmers felt comfortable to dispute the valuers. When farmers tried to challenge the valuers during the inventory process, they received the advice from them to accept what they proposed. The farmers were also told if they later felt dissatisfied with the compensation decision, they could appeal the decision to court.

All farmers considered that the compensation decision were not transparent. They could not understand how the final compensation was calculated. No calculation formulas were presented. Even though compensation was paid only for crops, the farmers wanted to know how the compensation was calculated. The interviewees said that the compensation did not reflect their loss of land.

Written notice

None of the interviewees have received the notice in this expropriated area.

Appeal

None of the farmers were aware of their legal rights through the expropriation process but they had been told that it was possible to appeal the compensation. All the interviewed landholders had also tried to appeal the decision and had taken contact to the local Kebele administration. When contacting the local Kebele, the administrators told them that it was not worthwhile to proceed with an appeal. Therefore the farmers never appeal.

The land expropriated from the farmers is currently undeveloped. The investor has so far not done anything to the expropriated land. The farmers were really upset that there had not been made any research about the expected benefits of the expropriation, such as job opportunities. If the investor continues without proceeding with the claimed land development, the farmers feel that it would be more relevant to revert the land to them. They say that an alternative could be if the investor rent out the land in the meantime. The farmers feel it very provocative when the land is

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unused, as the farmers need more land. Amhara Rural Land Proclamation states several conditions when the right to land can be deprived. Regarding to Regional Rural Land Proclamation Article 12(1c) the landholder is not allowed to fallow the land for more than 3 years. Article 12(2) open up possibilities for the local farmers to actually get the land back for their use.

Investments in rural land and privatisation of land

All participants in the interview considered that they would invest more in the land if it had been their private property. There would be no risks associated with the construction of buildings or other improvements to the land. They also said that the costs for the investments would be recovered in a sale and an increased value of land would be possibly. Another issue focussed during the discussion was that increased investment would result in higher harvest and income.

These arguments indicate that the interviewees in this area have a basic understanding of market economy. Three out of four would prefer a privatisation of land. In general they prefer to have more control and power over their land. That would increase the potential for a higher return on their investments. The only person with a negative idea about privatisation argued that if the State continues to own the land, it would ensure that future generations have the opportunity to get land allotted.

9.4 Changed conditions and sources of error

The authors have not been able to take part of the documents of the expropriation process to determine the fairness of the compensation decision that was the original purpose. The material from the authorities was needed in order to make a comparison between the landholders' inventory, valuers' inventory and the calculations that lead to the final compensation decision. According to the authority the director in charge was not available during the fieldwork period, and was the only person that could provide such documents. However, a project description for one of the projects was provided. The act contained compensation tables and calculations, but even the Ethiopian expertise could not understand the calculations. It was impossible to connect one individual to the compensation for his landholdings. The English version was also incomplete.

From the interviewed farmers, none of the compensation categories could be observed since in most cases they only received an unspecified lump sum. The answers during the fieldwork regarding compensation for a specific category are therefore based on the farmer's opinions in relation to the inventory done by the

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valuers. Even though, the farmer's economic situation after the expropriation is the most relevant to determine if a reasonable compensation has been issued. He shall be in the same position after the expropriation taking place. Therefore, the analysis of the compensation level is easier to do after some time to observe the effect on the affected party. In the examined projects a couple of years have passed since the landholders left their landholdings and farmers receiving substitute land could see the economic outcome from their new land and delayed compensation should now have been paid.

An analysis of the expropriation process and the compensation was done by ELTAP of the valuation process in the Amhara region. It indicates that the landholders' experience of the valuation process and the compensation is not satisfactory. It also proves the veracity of the landholders' explanations during the interviews.

"In general in Amhara region, administrative bodies at Regional, Zonal and Woreda levels of Amhara region generally recognize that valuation methods and compensation practices greatly vary depending upon the causes of expropriation, the institutions and Woreda/locality involved, and time-periods of expropriation/compensation. Numerous cases and instances of inconsistent variation methods, subjective estimations and/or variant compensation practices were also reported at nearly all levels for land expropriated for similar purposes among, and even within, Woredas." (ELTAP, 2007, p. 61)

In chapter 8.4 the compensation formulas can be found. The permanently expropriated farmer has the right to a compensation totalling ten times the average annual income. In the Bahir Dar area (the capital city in the Amhara Region and where the BoEPLAU office is located) the standard compensation in practice was in the best cases corresponding to three times the average annual income (Ambaye, 2010).

Some of the legislative texts still had not been approved when the Koga project started. But much of the recent legislative texts are basically clarifications of the previous ones. The general conditions and requirements of the laws do not differ greatly.

9.5 Conclusions for the Amhara region based on the fieldwork

This chapter contains the authors' own reflections based on the interviews from the investigated areas, using the theoretical basis in the previous chapters.

9.5.1 The importance of the public meeting

In the Amhara region the statutory initial meeting as defined in the expropriation process have been hold in the three projects. This meeting is very important, because oral communication is the only way to inform most of the affected parties due to the high level of illiteracy. Therefore it is not advisable that farmers deliberately choose not to attend to this meeting. Such silent act will not help them in the process even though they think that no sympathy will be given to their opinions. Another reason to this act can be fear of expressing their opinion in the presence of the authority.

The interviews have clearly shown that some farmers fear the authority. This might be a result of the Ethiopian history and the current ruling system. A military junta ruled the country until 1991 and the opposition had during their regime been severely punished. Additionally, there may be a connection to the system during the feudal era that still affects the social hierarchy. A mandatory attendance would not be a feasible solution, but it is important provide opportunities to influence, as a way to develop the democratic process.

9.5.2 The contents of the public meeting

The information communicated to the interested parties during the meetings has been of varied quality. Confusion and irritation among the interested parties is frequent. Instead of exchanging information between the parties, the farmers get into a defensive position. The meeting does not achieve its original purpose. The quality and the exchange of the meeting will increase considerably if the farmers could prepare themselves before the meeting. As the elementary school system is becoming mandatory even on the countryside, the education level rises and assimilation of written information will increase. In the current situation the young educated people act interprets to their relatives. The best scenario would be if some written information regarding the process and the farmers' rights were provided in advance. Pending on the current lack of literacy, more meetings should be arranged in an earlier stage in the process. The affected would then be able to absorb the basic information during a first meeting and then consider it and then be more prepared for the next meeting.

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Farmers have been given promises during the meetings, without being fulfilled. There could be different reasons. A project can run out of budget or plans be modified. Nevertheless, that is not an acceptable reason as the compensation shall be paid in advance before the farmers leave their land.

One crucial question is the responsibility of the authority when issuing an expropriation decision without knowledge of the compensation budget. Are there lacks of knowledge or calculating errors? The fieldwork showed that in one the projects the compensation budget was spent even though it was supposed to cover all the registered compensations. Corruption could reduce the available budget for compensation. It has not been any purpose in this thesis to analyse the potential occurrence of corruption. The colleagues during the fieldwork declared that it is not the case. The authors have limited their observations to this statement. However, some kind of control levels of the compensation budget's sufficiency and accounting might be relevant. The main perspective ought to be that a confirmed compensation budget and adequate calculations are needed before an expropriation decision is issued.

One strategy for the land developer could be to give promises as a way to keep parties calm and to avoid resistance and complaints. There is no sign of anxiety from the developer knowing that these promises will not be kept. The main concern is to keep the upset farmers as calm as possible during the process. In some projects, resistant farmers have been put in prison for a couple of days. This is to maintain order among the affected farmers before the decision is taken.

In the expropriations cases regarding the dam projects all landholders agreed on the public purpose in contrast to the Private Investment Project. But the mandatory vote among the Kebele people has not taken place during the meeting. The legal meaning of this vote is not clarified in the proclamation. It just says that it should be held before a decision is taken, not if the decision depends upon the vote or whether it is more a guideline for the authority. This is another occasion where the rules are not enforced in practice.

It is not clear in the proclamation when and how the notice of the meeting shall be communicated to interested parties. It has been shown that several farmers have not been informed about the meeting in advanced. The opportunity to be prepare is then lost and the meeting will not be that useful when it rather turns more into a monolog.

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9.5.3 Conclusion regarding inventory and valuation

According to the law the valuation has to be done by experts appointed by BoEPLAU. The problem is that these experts often have no relevant education and knowledge (Nigussie K D, 2006). In addition, there are no valuation manuals and standard methods for property valuation. This might be according to the authors the main reason why landholders have not received compensation for permanent improvements to the land. Simply, there is a great lack of practical knowledge. This creates an uncertainty among the landholders about the probability of no compensation for improvements. The far reaching land registration process and the issued book of holding will lose some of the purpose to provide the tenure security. The incentives for landholders to invest and take better care of their land will be affected. In turn the opportunity to increase productivity and ensure economic growth and food security will be affected.

The valuers must get tools to prevent the problem of uncertainties in the valuation methods and process. BoEPLAU that appoints the valuers should also make sure that the valuers have good conditions to do a valuation correctly. This includes routines, valuation formulas and other tools. The interviews showed that none of the farmers understood how the compensation was calculated and that the transparency in the valuation process was very limited. A specified compensation decision must exist, i.e., more than a lump sum. This affects the possibility of make an appeal on the compensation. The farmers can only base the compensation on the lump sum they received and the inventory process (if they were included in this process). The compensation decision ought to be completely based on the inventory, but if no specification is available, such a decision will be totally unclear. The importance of transparency of this process is obvious. Without transparency there is also a possibility to hide unreasonable compensations.

The regulations do not define whether the landholders have the right to attend during the inventory stage or not. Regardless, different situations during the fieldwork have been identified. Some farmers were given the opportunity to take part and others were completely unaware that an inventory had taken place. If they could not take part no new opportunity was given. As long as the system continues with lack of transparency it could be recommended a mandatory rule that the affected party to take part in the inventory. Many misunderstandings could be sorted out in the field. Both parties would have great benefit from and reach a better understanding with an increase transparency. Basis for an appeal from the farmer's side would be much

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easier when he directly can observe what has been taken into account during the inventory.

9.5.4 Conclusion regarding compensation and privatisation of land

The fieldwork clearly shows that the compensation received by the landholder in their opinion was insufficient to the actual damage. The authors have mentioned above they could not verify data from the valuers. But previous studies (Ambaye, 2010), shows that the information used for the valuation regarding the market prices for construction materials and crops is several years old. No adjustments had been made for inflation that during the years had increased substantially. This generates a significantly smaller value of the buildings and the compensation will be even less adequate. The authority shall provide the valuers with the relevant information needed to make an accurate valuation. Updated price lists, at least adjusted for inflation should be easy to provide and thereby avoid some errors in the calculations.

Permanent improvement on land is almost never compensated, as the valuers do not know how to do such assessment. It is obvious that the deficiencies in the valuation process cause unfair compensation that affects the landholders. This is also the case with land-to-land compensation. Landholders should be in the same position after the expropriation. The received suitable land, provided by the authorities should be comparable to the expropriated one. Less fertility or size difference should obviously generate compensation as long it does not generate the same yield, but this is not mentioned in the law neither how to appeal in this situation.

Another factor that should be mentioned about compensation and valuation is the geographical location of the land. In countries with an open real estate market, the location is an important factor to the value of the property. In Ethiopia this is not taken into consideration at all. The distance from the farmland to the farmer's residence in addition to the fertility determines the value of agriculture land on a real estate market. Longer distance will reduce the possibility to operate efficient agriculture and therefore generate a lower price. Ethiopia does not have a market for real estate units, but it is not reasonable to receive replacement land three hours walk from their homes without compensation for the decreased efficiency it will cost them. The affected farmers said that they rather would receive economic compensation because of the long distance. But, what should they do with the money if new land cannot be purchased? This calls attention to the system of land tenure, i.e., if privatisation could provide better conditions.

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One farmer explained the situation during the interview in the statement below. It connects the compensation alternatives, state ownership and the sustainability of the current system in line with the rapid development that currently takes place in Ethiopia.

“The risk of privatisation is that people are selling land during temporary tough times when money is needed. It generates only a temporary solution and when the money runs out, they have no income anymore. When the State is the owner, the land cannot be sold, but leased for a time in need of money.”

The problem mentioned above should not depend on whether the land is privatised or not. There is nothing to prevent the individual from subleasing the land even in private ownership. The temptation is evident to get a large sum of money from a sale that is not used to reinvest to obtain a new income. Such temptation might arise in tough times and get the individual not acting rationally. This problem occurs in cases of expropriation with only cash compensation. The money is consumed without securing a new income. This problem is increasing.

The availability of land decreases due to population growth and urbanisation. There are farmers on waiting lists to get land to farm, which they should be entitled to receive according to the federal constitution. Today 55 % of the Ethiopian population is younger than 20 years (SARDP, 2010), and you are allowed to apply for land when you turn 18. This means that in the future, it will be an even harder pressure to obtain land from the State. How priorities are made on this list in different cases will not be discussed more than in following situation, whether the available land should go to people on the list or people affected by expropriation as land-to-land compensation. As long as it is not stated in any legislative text, the Woreda make the decision who will be given the preference to land. A fair system would be if farmers already on the list waiting for land get precedence when the expropriated farmer has the right to receive economic compensation instead of land. Without legal restrictions, you could receive cash compensation for expropriation and sign the list. They would be compensated twice, but in areas with lack of land this would be very unlikely.

The compensation system is not sustainable. The system is primarily based on compensation in land, a limited resource that cannot be bought or sold. When land cannot be offered, the conditions have changed, which requires a change of the system. If the land will be kept as state land, people need to get some kind of help to reinvest their compensation into something that can give them a new income. This is

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very critical for landholders in rural areas who are unwilling and afraid to move to urban areas to get a new job and be able secure an income. One farmer expressed such view:

“If they privatized land, there is a risk that people start to sell the land and that a few owners are buying up huge amounts of land. It will create a stream of people who immigrate to urban areas”.

The authors need to highlight the use of the word immigrate to urban areas in the above statement. It clearly shows that they see it as a big change and the image of the farmers and city dwellers as "we" and "them" is increasingly clear. The writers observed a fear among the interviewed, a fear of leaving their profession and way of life for something new and strange. The change to suddenly adapt to a life in urban areas is too many farmers unthinkable.

9.5.5 Conclusions regarding the written notice

The written notice should be considered as a receipt for the affected parties that compensation has been paid, and determines when landholders have to handover their land. The fieldwork indicates that Woreda Administration is less efficient when it comes to this important part of the expropriation. The effect of the absence of written notice has to be analysed properly. The affected parties are turned into a difficult legal situation, if they do not receive a written notice.

The written notice is the evidence for the authority and the implementing agency, that they have paid compensation to the expropriated farmer. Likewise, it is the farmer's confirmation for received amount of compensation. As mentioned above, landholders in the fieldwork received compensation in form of a lump sum, without specification. The authors think that it would be sensible if the written notice could be improved to include a description of calculation of the compensation. There are compensation categories presented in the legislative text, and these would be appropriate to follow. If the amount of compensation was specified in the written notice, it would be easier for the farmer to check the amount, i.e. if being in accordance with the assets of his property unit. A specification of the paid compensation would simplify an eventual appeal. Any of the specific compensation categories could be claimed in an appealing process.

The affected parties seldom received a written notice at all regarding the compensation. For them it will be very difficult to appeal the compensation, as they have no proof for their compensation assessment.

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A written notice shall also include the date for handing over the land. Very few of the expropriated farmers had obtained this notification. That means they must have received the information orally. The legislative text states the time limit for leaving the land after received compensation. None of the interviewees could remember the days between the paid compensation and their relocation. Hence, the authors could not check if the farmers were given the 90 days or not. Even if no obvious complains about a stressful eviction were notified during the interviews there is no excuse to neglect to send out a written notice in advance to the farmers. They need to know and have their rights and in this case it is the obligation of the Woreda Administrations to inform.

One thing that is very remarkable is the situation that occurred with the buildings that were not paid compensation for in the Koga project. According to the law:

“There shall be no payment of compensation with respect to any construction or improvements of a building, any crops sown, perennial crops planted or any permanent improvement on land, where such activity is done after the possessor of the land is served with the expropriation order.”

(Federal Payment of Compensation Regulation, Article 19)

Note the use of following words "served with the expropriation order". The expropriation order is the written notice as described above. If there are no translation faults in the law because of using the wrong term "expropriation order" it means that the farmer in practically speaking can be entitled to compensation for the activity he starts on the land just before receiving the expropriation order even if he has knowledge about the expropriation. It should be unlikely, but there is a system failure because the written notification contains the compensation decision. This means that an appeal always have to be done to get the compensation in cases similar to the non-compensated buildings above and the expropriation process have also gone way too far.

In the legislative text it is stated that expropriation cannot be issued if not compensation is paid in advance. It is also stated that a written notice shall be submitted to the affected parties. The law does not require that the expropriation must be done with a written notice. The question is how the authority and implementing agency then can prove that they have paid compensation. If the expropriated

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landholder has not received a written notice and in return signed a receipt for accepted compensation, it is doubtful if that shall be considered as a legal base to issue an expropriation. In order to strengthen the affected party's position in expropriation cases, it would be advisable to clarify the importance of the written notice in the law or the authority's guideline.

9.5.6 Conclusions regarding appeals

The interviews indicate that the farmers had varied knowledge about their legal rights regarding expropriation. Most of the affected parties said that they had no knowledge at all. Some individuals claimed to know their rights, but when more detailed questions were asked it appeared that they did not know. A few farmers actually knew their rights and had performed a proper appeal.

Interestingly, many affected parties had made attempts to appeal. But for various reasons they never manage to do so. Many farmers in the Ribb dam area were discouraged when they were told that they had to pay a deposit of 10 % of the contested amount. The authors have not found any thing that proves that a deposit would be a standard procedure. The Ethiopian experts who attended during the interview were also doubtful concerning this phenomenon. Interviewees in other areas never mentioned anything about being forced to pay a deposition.

Another reason why the appeals were not submitted was that the interested parties had been told that it were not worthwhile, because their appeals would not get any approval. Of all respondents, only one interested party received the requested compensation after submitted appeal. Another farmer's appeal is under process.

The usual resistance the affected parties meet for submitting an appeal might be a method or strategy to avoid appeals. They might not have skills to manage them properly. Nothing says that the Grievance Review Committee (see chapter 8.6) have more knowledge than the valuers, especially when it is BoEPLAU's responsibility in the first place to appoint valuers with the right competence.

The party that appeals the committee's decision takes the risk that the court have no specific knowledge of the Federal Expropriation Proclamation (ELTAP, 2007). The Proclamation actually says that courts should process matters concerning compensation disputes in cases of expropriation.

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Some farmers had submitted the appeal to administrative organs that are not competent to process such kind of legal issues (ibid). Studies show that the population in Ethiopian rural area have difficult to understand the difference between administrative organs and courts (ibid). The farmers find it too complicated to submit an appeal to the courts, with formalities and procedures before the appeal is processed (ibid). Affected parties prefer, for that reason, to submit an appeal to the administrative bodies, but it also means that their appeal could not be processed.

It is obvious that something must be done about this situation. Farmers' knowledge of their rights must be improved. Above all, the judges' education level must be increased. Some actions have been done. Farmers may have access to information brochures about their rights regarding land issues (ELTAP, 2013). One problem is that these brochures are administered to a social group with a lack of reading skills, hence there is a risk that not everyone can obtain the information. However, it is determined that this booklet has helped landholders in the right situations regarding land rights (ELTAP, 2013). Training programs for judges are introduced constantly and hopefully gradually increasing competence in the profession (European Commission, 2007).

In addition, there is a possibility to complain about the expropriation order (see chapter 8.6). This refers to farmers who did not think that the expropriation serves a public purpose, or that the expropriation could better take place somewhere else. They may complain to BoEPLAU. But in practical, the authors doubt if this possibility is anything worth because of how the law is written. In the legislative text, the expropriation order is equal to the written notice containing compensation decision and information concerning date to handover the land. This means that the expropriation order is submitted when the valuation already is done, and the process has gone very far. The complaint shall be sent to BoEPLAU and it is unlikely that the bureau will change its decision so late in the process. There is no possibility to appeal to any court in this case, as BoEPLAU is the final level.

10. Final conclusion

The authors have analysed the Ethiopian expropriation process and discussed the result of the fieldwork. The thesis has now reached a stage where this analysis has to be put into a larger context. Following conclusion is seen from the authors' Western European perspective.

Many developed countries want to support the development of Ethiopia, and in particular the current fast growth. This also means that the Western vision of society and structure influences this support. This can be constructive but it is far from certain that the Western "recipe" is adequate for them. The biggest reason for the large gap that currently exists between the Ethiopian legislative text and the approach implemented in practice is that the legal system is based on a western model, which might not be relevant for Ethiopia at this development phase.

The country's conditions form the society. Ethiopia has had a fast development and changed the regime several times. The population has more than doubled during the last decades. It has resulted in some kind of "growing pain" where many parts of the society not keep pace with the rapid development. This is clearly seen in the laws that at first glance look decent but many times far from being followed. The gap will likely be filled as time goes by, but in anticipation of growth in to the implemented system community residents will suffer various hard.

The study shows that rural landholders that lose land after an expropriation will be facing a hard time. They have lost their income and entire identity as a farmer. Without possibility to rent land or work for another farmer, they are forced to find a new source of income. Former landholders have to move to the cities for a new job, which for many of them is both frightening and difficult due to lack of education.

The authors think that deployed resources should be used to help expropriated farmers to reinvest the compensation into something that generates a new livelihood. Basic education that directly could lead to a job and help to facilitate the change for the farmer to becoming an urban working citizen should be offered. In the long term urbanization is inevitable, especially when 55 % of the population is below 20 years old and most of them will soon have the legal right to apply for land, land that does not exist. The lack of land means that the work guarantee, due the legal right to free rural land for all individuals over 18 years old, obviously not can be kept by the state. This law create a false sense of security among the population. The lack of agricultural land is the same as the lack of a source of income, and today 90 % of the population lives on agriculture. The situation does not get better with an increasing

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number of foreign investors having access to land to grow crops which are then shipped out of the country and not available to the domestic market and therefore also threatens the food security.

Authorities should make great efforts in trying to comply with the laws and regulations that exist. It creates a sense of security and justice in society, unless they follow the rules why should the individual do it. A system based on the compensation of the land that in rare cases can be offered should perhaps be read over and redone. Definitely when the alternative compensation, based on ten times the annual yield, according to this study, so far never been paid in the Amhara Region.

Studies show that courts do not have the skills required to deal with compensation disputes relating to expropriation. One change could be to form a special land court to increase the skills of the Ethiopian legal system on land related issues. The court would increase the capacity of handling of cases, and improve reasonable verdicts.

According to the law, only the amount of compensation can be appealed in the expropriation process. In order to avoid unfair and inaccurate procedures during the process, the process itself also would need to be guaranteed, i.e., by the possibility to appeal. This will create an incitement to follow the rules. The legislatively text also have to be more specific in some parts to avoid system failure, for example the one mentioned about the time and routines for issuing the expropriation order. This could easily be solved if the legislatively text separated the expropriation order as one document and the written notice including compensation decision and date for hand over the land as another.

A classic expropriation consists of three conditions: public purpose, adequate compensation paid in advance and fair process. The fieldwork show that the process in many cases was not fair and that the compensation is not paid in advance. The requirements are not fulfilled and therefore it is not to be considered as an expropriation according to the literatures definition of the term.

The authors think that the process in Ethiopia has more relations to requisition and nationalization. Ethiopia's population is growing rapidly, and food security is increasingly important. The political programs seek to build dams and irrigation systems in order to increase food production and safeguard the country's economic life. This is nationalization, the state try to secure agriculture production, the country's single most important industries that employ nearly 90 % of the population. Actions sometimes need to be done very quickly to prevent urgent needs. Difficulty to obtain

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capital for compensation can make it hard to pay compensation in advance. A requisition case applies clearly to Ethiopia, especially when no proper compensation budgets are made.

Ethiopia uses a Western expropriation model that in the current situation cannot be applied in practice. Decision-makers in Ethiopia should therefore take a good look at World Banks involuntary resettlements objectives and required measures to prevent the negative consequences affecting the expropriated landholders.

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