

# Individual and State Land Dispute Management System in Ethiopia: An Appraisal of the Legislative Framework

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## Abstract

Land is a major source of disputes in the world. Land dispute composes various types of disputes which ranges from the simple boundary dispute to the wider ownership rights claim. Land related dispute is serious regardless of the dispute since land is an important economic asset, source of livelihood and closely linked to community identity, history and culture. Land conflicts in general have negative effects on individual households as well as on the nation's economy. The land dispute should, therefore, seen carefully to minimize the negative impact it brought to an individual and the stability of the country in general. In Ethiopia, the right to own rural and urban land as well as natural resources belong to the state and the peoples. Land is an inalienable common property of the nations, nationalities and peoples of Ethiopia and shall not be subject to sale or to other means of transfer. Accordingly, the individual has only holding rights over the land not the ownership rights. Land is a source of dispute in Ethiopia like another part of the world. The dispute is a bit serious in our country due to absence of good land administration. The issue of the land dispute between the individual and the state in Ethiopia arises when there is expropriation by the state land under the holding of individuals. There is no absolute right over the property and this is true for land regardless of the kinds of rights exercised over it. The writer prefers to appraise the land dispute settlement mechanism in case state involved due to the fact there is a separate scheme for the settlement unlike that of dispute between individuals. The appraisal of the existing legislations governing the dispute settlement mechanism in Ethiopia in line with property rights theories demonstrates as, there is a limitation on the subject matter of the complaint, the administrative organ to hear grievance is not an independent as they are politically appointed persons, individual disputant is required to hand over the land to lodge an appeal. The existing dispute settlement mechanism in general can be said inappropriate as the land taker is empowered to handle the dispute. This in turn is making the land holders to face multifaceted social and economic hardship. The dispute settlement scheme must be, therefore, rectified by establishing an independent organ empowered to hear the grievance which may specialized court for this purpose.

**Keywords:** land, land dispute, dispute settlement mechanisms,

## 1. Introduction

Land is an ultimate resource for without it life on earth cannot be sustained.<sup>1</sup> Land rights are an integral part of social capital, giving people the foundation on which to assert self-determination within their society, culture, agroecosystem and economic context.<sup>2</sup> Is an important economic asset and source of livelihood; it is also closely linked to community identity, history and culture.<sup>3</sup> Article 40 of FDRE<sup>4</sup> constitution recognized property rights of individual and public ownership of land and natural resource. Dispute over land is inevitable regardless of the nature of ownership system over it. Which in other words mean whether ownership of land is given to individual or public, the probability of being a dispute arises is real. Individual land dispute may those related to boundaries and a difficult situation may not happen to resolve it when compared with that of dispute between individual and state. Land disputes between individual and state come into the picture at the moment, the government tries to expropriate the land under his/her possession. In Ethiopia, Despite there is a law which aims at setting procedure on how such a dispute must be resolved, it is not sufficient and doesn't put disputing parties at equal playing fields. It marginalizes the rights of the individual land possessor. Due to these, there are certain property right theories that posed against the dispute management system.

## 2. Land Dispute And Its Management Mechanisms: General Overview

### 2.1 Land Dispute

Land is a major source of disputes in rural societies around the world.<sup>5</sup> The reasons for this may be many and

<sup>1</sup> United Nations, *Land administration Guide line: With special reference to countries in transition*, New York and Geneva, (1996).

<sup>2</sup> FAO, *land reforms, land settlement and cooperatives*, (2002) P.7

<sup>3</sup> The United Nations interagency Framework Team for preventive Action, *Toolkit and Guidance for preventing and Managing land and Natural resources conflict*, (2012).p.8

<sup>4</sup> The Constitution of Federal Democratic Republic of Ethiopia (*Proc.No.1/1995.Fed.Neg.Gaz.1<sup>st</sup> year No.1*)

<sup>5</sup> FAO, *Land and property rights: Junior Farmer field and life school facilitator guide line*,(2010).p.16

varied. Conflict is a dispute or incompatibility caused by the actual or perceived opposition of needs, values and interests.<sup>1</sup> All land conflict, no matter how peaceful or violent they are, produces negative consequences for individual people as well as for the entire society.<sup>2</sup> It is, therefore, advisable that all care shall be taken in managing the conflict. For the purpose of this paper the term land conflict is understood to mean non-violent conflict and disagreement between the government and individual over the land under the individual possession. The term is also used interchangeably with land dispute in this paper.

Conflict may be defined as a struggle or contest between people with opposing needs, ideas, beliefs, values, or goals.<sup>3</sup> A conflict accordingly, presuppose an involvement of two people and the existence of competing interest. Land conflict occurs in many forms. It may be between individuals, families over inheritance of land and disagreement over the use of a certain plot of land. These conflicts are comparably easy to solve. A classification of land disputes can also base on the property ownerships that it arises over.<sup>4</sup> It may be a conflict arising over all types of property, special conflict over private property when land owned privately, conflict over common property and finally conflicts over state property.<sup>5</sup>

There are different causes of land disputes. The first cause is political.<sup>6</sup> Change in the political and economic system, including nationalization or privatization of land is a political cause for land conflict.<sup>7</sup> The second cause is an economic causes which are the evolution of the land market.<sup>8</sup> The third cause is socioeconomic causes.<sup>9</sup> These include poverty and poverty related marginalization or exclusion. The fourth cause of land dispute is demography.<sup>10</sup> Strong population growth is a cause for land conflict. Legislation is the fifth causes of land dispute.<sup>11</sup> Contradictory legislation, insufficient establishment of rule of law, insufficient implementation of legislation and etc. are among this category. The last cause is administration.<sup>12</sup> Insufficient implementation of formal regulation, centralization of land use planning and etc. are the administrative causes of land dispute.<sup>13</sup> Land conflicts usually have multifaceted negative effects on the socioeconomic aspects of the societies. The impacts are more viable in developing countries like Ethiopia, where is no good land administration and transaction systems.

## 2.2 Land Dispute Managements

Land conflicts in general have negative effects on individual families as well as on the nation's economy. It increases costs, slow down investment, result in the loss of property for a conflict party and reduce income tax for the state or municipality.<sup>14</sup> Where there are evictions and land grabbing by the state agencies continuously, the society's loss confidence in the government. Social and political stability suffer more when land conflicts are accompanied by violence. Long lasting confrontation and chaos are the manifestation of the disputes.

Land dispute resolutions may pass through different steps. It is necessary to have a clear and deep understanding of the special characteristics of the particular conflict, the causes of the conflict and the actors involved as well as their relations with each other.<sup>15</sup> There are stages of land conflict that should be understood to successfully manage it. The stage of conflicts reflects the changes in activity, intensity, tension and violence of conflict over time from first movement to of tension to their resolution.<sup>16</sup> Once the land dispute has been identified, the next step is how to resolve it. The dispute settlement mechanism may take different forms depending on the type of the dispute and the existing legislative framework. This can involve the classical or alternative ways of conflict resolution. There is increasing recognition that while many disputes can be resolved, there is no single formula to decide which resolution process is suitable for appropriate to a conflict resolution.<sup>17</sup>

<sup>1</sup> UNEP(2009), as cited in The United Nations interagency Framework Team for preventive Action(2012), *Toolkit and Guidance for preventing and Managing land and Natural resources conflict*, p.23

<sup>2</sup> Babette Wehrmann, *Land conflicts: A practical guide to dealing with land dispute* ,Deutsche Gesellschaft fur, Germany,(2008).p.8

<sup>3</sup> Understanding conflict and conflict management, *the foundation coalition*, <http://www.foundationcoalition.org/teams.pdf> ( accessed on: March 2016)

<sup>4</sup> See Babette Wehrmann, *supra note 7*, 14.

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*, 27

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*, 28.

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*, 31.

<sup>15</sup> *Id.*, 35.

<sup>16</sup> *Id.*, 38.

<sup>17</sup> Law Reform Commission ,*Alternative Dispute Resolution*, (2008),p.15

Accordingly, there are various ways of resolving disputes over the land; however, these approaches can be generally categorized as consensual and non-consensual methods.

#### 2.2.1 Consensual land dispute management

Consensual approaches are alternative dispute mechanisms to adjudication or litigation. Alternative dispute resolution encompasses a variety of methods for the resolution of disputes between parties.<sup>1</sup> Consensual approaches are those land dispute resolution mechanisms which aimed at finding a solution that negotiated by the parties to the dispute. These mechanisms re-establish peace as there is no winner and loser in the strategies. These approaches in general are considered as amicable method of dispute resolution mechanisms. Consensual approaches are: consultation, conciliation and mediation.<sup>2</sup> They are generally faster and cheaper than non-consensual approaches. Consultation is a negotiation that refers to the efforts of the parties themselves to resolve an area of contention before resorting to calling in a third party.<sup>3</sup> Consultation is a dispute resolution mechanism which involves discussion and agreement among the parties to the disputes. Conciliation is the process by which one or more independent person(s) selected by the parties to bring about a settlement of their dispute through consensus between the parties by employing various techniques.<sup>4</sup> Conciliator basically discuss the matters separately with disputing parties with the aim of creating a basis for the direct talk. Mediation is a consensual dispute resolution process by which a party brings in a neutral party to help them find solution to a dispute.<sup>5</sup> The role of the mediator is not judgmental, nor does he/she take a position on behalf of one party or the other.<sup>6</sup> In land dispute, mediation can be done by an expert in mediation or by a land expert who have received a special training in mediation.<sup>7</sup> The mediator is responsible for the whole process of the negotiation.

#### 2.2.2 Non-consensual land dispute management

Non-consensual land dispute management is characterized by third party decision making. One of the prominent non-consensual dispute resolution methods is adjudication or court litigation. Adjudication is a dispute settlement mechanism before the court of law. The decision maker is a judge at a court of law or tribunal established for this with specialized judge on land. The process of complaint lodging and decision making follows formal legal procedures. In the decision making process, there will be definitely a winner and a loser. Adjudication, unlike consensual dispute settlement mechanisms, cannot re-establish the relationships between the parties. In such a procedure the current land dispute may resolve, but hostility may continue. Consequently, it shall only be considered if the consensual methods are unsuccessful. Adjudication is hindered in many countries because of the fact it creates case overload before the court. An alternative dispute settlement to adjudication is arbitration. It is one of the oldest methods of dispute resolution mechanisms. Arbitration is a method dispute resolution mechanism whereby the parties choose an arbitrator of their own and submit the case to it. Just like a court third party involved in the decision making process. The only difference is that in case of arbitration the third party is selected by the parties.

### 3. Rural Land Valuation And Compensation In Ethiopia

Fear of the fairness of land valuation and the inadequacy of compensation for land expropriated by the administrative agencies may create tenure insecurity among rural landholders.<sup>8</sup> Addressing such fear in valuation and compensation laws and, more importantly in applying these laws in a fair and equitable manner is essential to enhance tenure security.<sup>9</sup>

Land taking by regional governments for the expansion of cities, towns and for lease to investors in agriculture and industry is rising rapidly.<sup>10</sup> The Ethiopian laws on rural land expropriation and compensation, having been crafted by the agencies that are taking land seem to disfavor those that are losing the land.<sup>11</sup> Lack of standardized valuation and compensation methods and procedures are causing different valuations by different

<sup>1</sup> Vinod K. Agaewal, *Alternative dispute resolution methods*, United nations Institute for a Training and Research (2001).

<sup>2</sup> *Id.*, 57.

<sup>3</sup> Carol Daugherty Rasnic, *Alternative Dispute Resolution Rather than Litigation? A look at current Irish and American laws*, *Judicial studies Institute Journal* (2004) No.4 Vol.2.

<sup>4</sup> The United Nations interagency Framework Team for preventive Action, *supra note 3*, 9.

<sup>5</sup> *Id.*, 17.

<sup>6</sup> Carol Daugherty Rasnic, *supra note 24*, 183.

<sup>7</sup> *Id.*

<sup>8</sup> The appraisal process and concepts of value, Georgia department of revenue, p.22 <<http://etax.dor.gov/put/gcp/LGS>> (Accessed: 25 June 2012).

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

<sup>11</sup> Solomon Bekure, et.al. *Removing limitation of current Ethiopian Rural land policy and Administration*: paper presented at the work shop on land policies and legal empowerment of poor, the World Bank (*unpublished*), Washington D.C, Nov.2-3, (2006), P.9

land taking agencies, resulting in different compensation values for similar lands.<sup>1</sup> Furthermore, regional agencies, mainly municipalities that are zoning large expanses of land for lease to housing and real estate developers are facing cash flow problems.<sup>2</sup> While they are evicting farmers from urban areas and have to pay compensation immediately, they will be leasing the land and receive fees in the future. No government account set in advance for compensation. This is leading to undervaluing urban land and property to match the available fund, which is unfair to those losing their lands and have to establish new livelihoods.<sup>3</sup>

Where land is expropriated by regional governments for leasing to agricultural and industrial investors, there is a large variance between what the investors pay and what is paid out in compensation in many cases. Many farmers complain why government agencies are taking their land to lease it to another individual or firm. They believe that the investors should negotiate directly with landholders on the conditions and terms of the lease because the land laws allow them to lease land. In their opinion, the government should play the role of a mediator but not a land taker.

The most worsening aspects of rural land expropriation in Ethiopia is that the evicted individuals are farmers who don't have skills other than farming. If they didn't get another piece of land, their livelihood is at stake. In practice, the authority simply took the land without worrying about the fate the evicted farmers.<sup>4</sup> No mechanisms crafted to permanently settle the farmers and equip them with the necessary training to enable them maintain their lively hoods. Consequently, the small amount of cash given to them spent improperly and the families became homeless and jobless. Both the federal and regional governments shall give due attention to the problems before it reaches a point of no return.

#### **4. Land Dispute Management Between Individuals And The State In Ethiopia: Appraisal Of The Legislative Framework**

##### **4.1 Background Of The Causes Of Land Disputes Between State And Individual In Ethiopia**

The Ethiopian People's Revolutionary Democratic Front (EPRDF) that took over power after the Derg regime was ousted in 1991 continued the same policy of state ownership of land of the previous regime. This was even enshrined in the 1995 Constitution making land ownership an inflexible policy instrument. Article 40(3) states:

*The right to own rural and urban land as well as natural resources belongs only to the state and the people. Land is an inalienable common property of the nations, nationalities and peoples of Ethiopia and shall not be subject to sale or to other means of transfer.*<sup>5</sup>

This indicates that individual person has only holding rights over the land he seizes. The Ethiopian rural land administration and land use proclamation further define the scope of individuals land use rights and states that such rights can be to some extent leased and bequeathed.<sup>6</sup> The land rights themselves cannot be sold or exchanged or used as collateral, but private property improvements on the land can be sold or exchanged. This legislation vested the power to administer land to the regional state and stipulated that their land administration and land use policies conform to the national and regional constitutions and federal land legislation.

Land is a source of dispute in Ethiopia like another part of the world. The dispute is a bit serious in our country due to absence of good land administration. As per the statics stated by Federal Justice and legal research training module the rate of cases lodged before the Federal cassation bench has been highly increasing. The issue of land disputes between individual and the state in Ethiopia arises when there is expropriation by the state land under the holding of individuals. There is no absolute right over the property and this is true for land regardless of the kinds of rights exercised over it. The only limitation to this is the procedure, how expropriation is carried on.

The major source of tenure insecurity in Ethiopia rests on the fear of a government taking of individual land holdings. Expropriation is the process by which land can be seized from one citizen and utilized for other government purpose. With the need for infrastructure and investment, citizens dread a takeover of their individual interest in the land to complete these important investments.<sup>7</sup> The government could use any land for public purposes and only need to provide compensation for the improvements of the land. This low threshold was used frequently to make landholders uneasy in their interest in property.

The 1995 FDRE Constitution raised the legal standard where Expropriation under the constitution is

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<sup>1</sup> *Id.*

<sup>2</sup> *Id.*

<sup>3</sup> *Id.*

<sup>4</sup> In Ethiopia it is observable that many farmers whose land is expropriated by the government agency face difficulties in starting up their new life without farming. They don't have skills to run a business. They simply use the money given as compensation for consumption purpose and finally endup their life by being employeed as a guard of the enterprise taking the land. Their children don't go to school and their future career remains at stake.

<sup>5</sup> The Constitution of Federal Democratic Republic of Ethiopia, *supra note 4*.

<sup>6</sup> The Ethiopian Rural land administration and land Use proclamation (*pro.No.456/2005.11<sup>th</sup>year No.44*), Art.2 (4)

<sup>7</sup> *Id.*

allowed for any public purpose.<sup>1</sup> Specifically, "the state may expropriate private property for public use with the prior payment of adequate compensation.<sup>2</sup> The standard for taking of land continues to remain for "public purposes."<sup>3</sup> Without proper clarification any government taking can be easily justified as a public purpose. This is the major trend in our country in general. Any land, whether it is rural or urban holding is subject to this practice. The adequate amount of compensation called for in the Constitution is an important piece in providing assurances to farmers that they will be remunerated for any improvements that they make to the land, the process has not been as positive as the language. The expropriation that has taken place has generally provided inadequate compensation. John Locke states that "government is set up to ensure the property rights of those own it."<sup>4</sup> The essence of this theory is expressing the responsibility of the government in securing the property rights of individuals. In legislating and execution activities the government should take care of the property rights of the individual as the source of the power for the government is the individuals. The law must be for the good of the people.

The fear of unfair valuation of land, lengthy and inadequate compensation for land taken under the powers of eminent domain can create a high degree of tenure insecurity and anxiety among rural landholders.<sup>5</sup> Addressing such fear in valuation and compensation laws and, more importantly in applying these laws in a fair and equitable manner is essential to enhance tenure security.

Land taking by regional governments for the expansion of cities, towns and for lease to investors in agriculture and industry is rising rapidly.<sup>6</sup> Lack of standardized valuation and compensation methods and procedures are causing different valuations by different land taking agencies, resulting in different compensation values for similar lands.<sup>7</sup> While they are evicting farmers from urban areas and have to pay compensation immediately, they will be leasing the land and receive fees in the future.

Where land is expropriated by regional governments for leasing to agricultural and industrial investors, there is a large variance between what the investors pay and what is paid out in compensation in many cases.<sup>8</sup> Many farmers complain why government agencies are taking their land to lease it to another individual or firm at a lower rate.

One of the impacts of rural land, taking is that the households who are evicted are farmers who don't have another skill to establish their life other than farming. Consequently, they face hardship to maintain their life. Mechanisms are not in place to train them in new skills and provide them with social, financial and management advice on starting new livelihoods. If they may secure a job in the company established on their farm. Some the evicted individuals, spends the compensation they receive not knowing what to do with it. Both tiers of government in the country must give due attention to the problem and come up with a policy direction that may put in place a way forward to come out of the problem.

Article 3 of the federal democratic republic of the Ethiopia Expropriation of land holdings for public purposes and payment of compensation, hereinafter, the proclamation,<sup>9</sup> provides the power of government to expropriate rural or urban land for public purpose. This provision of the proclamation is in line with the provision of the constitution regarding expropriation of land.<sup>10</sup> This provision of the proclamation is in line with the provision of the constitution regarding expropriation of land.<sup>11</sup> The term public purpose is broad and is subject to abuse. It is therefore advisable that some caution should be taken in employing it. It can be read from article 2(5) of proclamation 455/2005 that:-

*"Public purpose is defined as the use of land by the decision of appropriate body in conformity with the 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 socioeconomic development."*

The in-depth looking of this provision gives broad power to the administrative organ to decide what constitute public purpose. In practice land is expropriated under the guise of public purpose and given to the investor. The investor after collecting many plots of lands will later sale to other individuals without any

<sup>1</sup> The Constitution of Federal Democratic Republic of Ethiopia, *supra note 4*, Art.40 (8).

<sup>2</sup> *Id.*

<sup>3</sup> *Id.*

<sup>4</sup> Godber W.Tumushabe, the theoretical and legal foundations of community based property Rights in east Africa: *ACODE policy research series*, (2005), No.12, p.2.

<sup>5</sup> The appraisal process and concepts of value, Georgia department of revenue, *supra note 35*, 22

<sup>6</sup> *Id.*

<sup>7</sup> Solomon Bekure, et.al. *Supra note 37*, 9.

<sup>8</sup> *Id.*

<sup>9</sup> The federal democratic republic of Ethiopia Expropriation of landholdings for public purposes and payment of compensation (*Proc.No.455/2005.Fed.Gaz.11<sup>th</sup> year No.43*). Art.3

<sup>10</sup> The Constitution of Federal Democratic Republic of Ethiopia, *supra note 4*, Art.40 (8).

<sup>11</sup> *Id.*

improvements on land. This is an indication as the concept of public purpose is not properly implemented.

Article 10(1) of the same proclamation provides, when rural land is expropriated, the property situated thereon shall be valued by a committee of not more than five experts having relevant qualification. The problem here is whether there exist qualified expert in far woreda level administration and this is a cause for many land disputes arising in rural area. What the committee does in practice is that measuring the size of the land and multiplying the size with the rate fixed by the executive organs. This act of the committee directly contradicts the regulation issued by the council of the ministers for the implementation of proclamation 455/2005. The council of minister's regulation no. 135/2007<sup>1</sup> on payment of compensation for property situated on landholding expropriated for public purpose has set some guidelines on how valuation and payment of compensation shall be effected. This regulation<sup>2</sup> sets some baseline rules on valuation and compensation of both rural and urban land expropriations. The working procedure of expropriations and valuation of land is generally said to be not in line with the law in place regarding the subject matters and it becomes a major source of land dispute between individual and state in Ethiopia. In general, inadequate compensation and lack of standard rules on valuation of compensations are the major causes of a land dispute between individual and state in Ethiopia.

#### 4.2 Appraisal Of Legislative Framework

In Ethiopia, the law enacted with the aim of governing land dispute between individual and state is The federal democratic republic of the Ethiopia Expropriation of land holdings for public purposes and payment of compensation proclamation.<sup>3</sup> This law provides some guidelines as to how the dispute between individual and state resolved. It, however, failed to put the rules which equally treat the disputant parties. It is more favorable to the state and even empower the state to sit over the case. The followings are some of the problems experienced in the legislation.

##### 4.2.1 Limitation on the subject matters of complaint

In Ethiopia, when comes to land dispute settlement mechanisms, the proclamation seems to favor non-consensual approaches. Article 11(1) of proclamation 455/2005<sup>4</sup> provides, compliant regarding the amount of compensation can be submitted to an administrative organ to hear grievances. When one looks at this provision of the proclamation, the subject matter for complaint is limited to only the amount of compensation. It is only on the amount of compensation that the land possessor can lodge his/her complaint to the administrative organ hearing grievance or the ordinary court where such organ is not established. The question here is that why a complaint is limited to the amount of compensation. One may argue that the state has full right to expropriate the land under the guise of 'public purpose'. But what if it is proved that expropriation is not for a public purpose is an important question which seeks a response. At least a chance should be given to the evicted person to challenge the appropriateness or not of the expropriation. For one thing the term 'public purpose' itself is broad and needs justification for an act to fall under this category. The definition under proclamation 455/2005 though gave broad power to an administrative organ to determine what constitutes a public purpose has put some elements which constitutes it. It is to ensure the interest of the peoples to acquire direct or indirect benefits from the use of the land and to consolidate sustainable socioeconomic development.<sup>5</sup> The holder of the rights should, therefore, given the chance to challenge the inappropriateness of the expropriation. The holder may argue that no direct and indirect benefits the public acquire from the expropriation and no socioeconomic gained. If this is not maintained, public interest can be a ground of abuse by the land taking organ.

##### 4.2.2 Complaint mechanisms and appropriateness of the organ hearing grievances

In Ethiopia, when individual evicted want to complain over the amount of compensation determined by the valuation committee, he/she may complain to the organ specified in proclamation 455/2005.<sup>6</sup> Article 11(1) of the proclamation<sup>7</sup> provides, compliant regarding the amount of compensation can be submitted to an administrative organ to hear grievances. The complaint is obviously made in written form and submitted to the organ to hear grievance by the government. The organ to hear grievance is basically established by the government agency taking the land and many questions specifically those regarding the competence and impartiality may be posed against this organ.

The first concern raised regarding the organ is the questions regarding its qualification. The organ is composed of individuals on the basis of their loyalty not merit. Due to this fact, it may not properly interpret the

<sup>1</sup> The council of ministers regulation on payment of compensation for property situated on landholding expropriated for public purpose, (*fed.Neg.gazeta.pro.no.135/2007, year 13<sup>th</sup>, No.36*).

<sup>2</sup> *Id.*

<sup>3</sup> Ethiopian federal government state Expropriation of landholdings for public purposes and payment of compensation,*supra* note 50.

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

rules pertaining to the issues. Even in interpreting it may favor the government because they are part of the problem. The proclamation didn't specify the specific qualifications the individual constitutes the organ to hear grievance should possess.

The other concern is regarding the independence of the organ established to hear the grievance. This organ is established by the state. The state obviously selects the individual over which it has loyalty. It is the land taking government agency which established this organ. They are a political appointee and it is less likely that they are independent. It can be said that the government, which took the land involved in entertaining its own case where individual lodge the suit. The proclamation, therefore, didn't establish an impartial organ which can equally treat the disputant parties.

#### 4.2.3 Handing over of the land as a prerequisite to appeal against the decision of an administrative organ to hear grievances

The Proclamation 455/2005<sup>1</sup> established an administrative organ as body to hear the grievance of parties in relation to the amount of compensation. The decisions of an administrative organ to hear grievance is not final. Once the administrative organ rendered final decision, the aggrieved individual may appeal to ordinary court. Individual litigant aggrieved by the decision of the organ may appeal to the ordinary court. Article 11(4) of the proclamation<sup>2</sup> state, appeal to court is possible, but only when the aggrieved party accompanied his appeal with document proofing hand over of the land and further the same provision sub-article 11(7) states execution of an expropriation order may not be delayed due to a complaint regarding the amount of compensation. The critical examination of this provision dictates as the dispute settlement favors the state. From the begging the administrative organ to hear the grievance established is part and parcel of the state and not assumed a neutral organ. When appeal taken to a regular court, the landholder should first hand over the land to the administrative authority. This on the other hand is another mess for the holder as it totally takes over the right away. Had he held the land and the decision of the court is in his favor and the organ refused to pay compensation, he would have retained the land and able to bargain with the land taking government agencies. The provision stating execution appropriation is not delayed due to a complaint over the amount of compensation is a clear indication as the dispute settlement mechanism is ineffective and only favoring the state. The state agencies can evict the holder despite the fact he/she is not satisfied with the amount of compensation. This is against the theory of property by **John Rawls**, "*which states property rights include immunity from loss without one's consent*".<sup>3</sup> It is known that landholder has no ownership rights over the land, but have ownership over what he has invested in it and should be entitled to immunity. John Locke states that "government is set up to ensure the property rights of those own property."<sup>4</sup> The essence of this theory is expressing the responsibility of the government in securing the property rights of individuals. In legislating and execution activities the government should take care of the property rights of the individual as the source of the power for the government is the individuals. The Law must be for the good of the people. The critical examination of the proclamation which forced an individual to hand over the land to complain over the decision of the administrative organ to hear grievance is against the John Locke labour theory of property and the constitution of Ethiopia which crafted in line with the theory.

#### 4.2.4 Appropriate mechanisms of dispute settlement where state and individual involved

The proclamation discussed above failed to establish the neutral organ that can determine fair, adequate and timely compensation. It did not give bargaining power to the landholder as it gave the land taking government agencies to expropriate the land at the rate it fixes. The expropriation doesn't even take into account the regulation issued by the council of ministers aimed at setting the guidelines as the calculation of compensation. The same problem reflecting in dispute settlement mechanism. The proclamation didn't establish an independent organ resolving the dispute over the amount of compensation. If this is not done, the property rights of individuals can be endangered. The dispute settlement mechanism, therefore, should either consensual which gives the landholder to bargain or non-consensual which established an independent organ properly entertain the dispute in an impartial manner.

In general, the appropriate organ that shall handle the dispute between individual and state shall be either specialized court on the land matter or independent organs composed of an expert of law and economics to handle the issues. These organs for one thing are an independent organ to litigate disputes between individual and state and they are an expert on the area for others. Taking into account the human power of the country and other compelling factors either of the two dispute settlement mechanisms shall be adopted by the country. This is so because the existing dispute settlement which does not establish an independent organ are substantially affected the rights of disputant individual and creating an atmosphere of despair among aggrieved individual party by the amount of compensation and other expropriation related matters.

<sup>1</sup> *Id.*

<sup>2</sup> *Id.*

<sup>3</sup> Godber W. Tumushabe, *supra note 45*, 3.

<sup>4</sup> *Id.*, 2.

## 5. CONCLUSION AND RECOMMENDATION

Land is an ultimate resource for without it life on earth cannot be sustained. It is widely recognized that property rights in land are critical for economic growth, sustainable development, social security and good governance. There are different systems of ownerships of the land. Article 40(3) of FDRE states the rights to ownership of land and natural resource is exclusively vested in the state and the people. The important issue raised in relation to property rights of land is a land administration, which is a process by which the land resources are put to good effect. Land is a major source of disputes in rural societies around the world. Land dispute is indeed a widespread phenomenon and can occur at any time or place regardless of the system of ownership.

Land is a source of dispute in Ethiopia like another part of the world. The issue of land dispute between individual and state arises in Ethiopia in case of expropriation. There is legal standard laid in the constitution under which expropriation carried out. The expropriation carried out provides inadequate compensation and become a source of dispute. The law governing dispute settlement mechanism between individual and state in Ethiopia, Proclamation 455/2005, provides the procedure under which expropriation should be carried out and the dispute settlement mechanism. It is only on the amount of compensation that the land possessor can lodge his/her complaint to the administrative organ to hear grievance or the ordinary court where such organ is not established. This limited the complaint rights of the individual to the amount of compensation. The administrative organ to hear grievance is not an independent as they are a political appointee by land taking organs. The individual disputant is required to hand over the land to lodge an appeal over the decision of an administrative organ to hear the grievance. This makes an individual to despair and not properly litigate his case. The existing dispute settlement mechanism in general can be said inappropriate as the land taker is empowered to handle the dispute. This in turn is making the land holders to face multifaceted social and economic hardship.

It is therefore recommended that:

- There must be established an independent organ empowered to entertain the dispute over the valuation and the amount of compensation which may be a specialized court for this purpose.
- The existing legislation must be amended in a way to protect equally the parties to the dispute, especially individual party as he/she has less litigating power compared to the State.

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