

Public Purpose as a Justification for Expropriation of Rural Land Rights in Ethiopia

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Abstract

Expropriation of private land rights involves two contradictory interests: there is a public need for land; and landholders expect security of tenure and protection of their private property rights. A satisfactory expropriation policy must strike a balance between these interests. Legislation must therefore only authorize the government to expropriate land rights for a clear and limited public purpose under the supervision of an independent body. The author argues that Ethiopia's rural land laws have defined the public purpose for the expropriation of rural land rights in different ways depending on the nature of the landholders. For peasants and pastoralists the public purpose requirement is defined vaguely and broadly, whereas for investors the concept is limited to projects implemented by government. The author argues that the protection of private property rights and security of tenure are further undermined by a legislative failure to authorize affected people to appeal to an independent body on the basis that the public purpose requirement has not been satisfied.

Keywords

Land expropriation, public purpose, balancing interests, rural land laws, Ethiopia

INTRODUCTION

In any modern nation the realization of sustainable development requires the government to make available public facilities and infrastructure that ensure safety and security, health and welfare, social and economic enhancement, and the protection and restoration of the natural environment. The acquisition of appropriate land is the first step to accomplishing these aims. Nevertheless, the required land may not be in the hands of the government or available for sale at the time it is required. In order to obtain land when and where it is needed, governments therefore have the power of expropriation: the right of the nation or state, or a body to whom the power has been lawfully delegated, to condemn private property for public use and to appropriate the ownership and possession

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of that property without the owner's or occupant's consent upon paying the owner due compensation to be ascertained according to the law.¹

Land expropriation, also known as compulsory acquisition, eminent domain, compulsory purchase, land acquisition or resumption,² is a policy dialogue area that is filled with tension. On the one hand, it may ultimately bring benefits to society by enhancing social and economic development and protecting the natural environment. On the other, for those individuals whose land is expropriated, it means the displacement of families from their homes, farmers from their fields and businesses from their neighbourhoods. These divergent outcomes of land expropriation require a balance between the public need for land and the private expectation of security of land tenure and private property rights.³

One of the basic principles underlying this necessary balance is limiting the government's use of its expropriation power to cases where there is a public purpose justification for taking private land rights without attaining the owner's/occupant's consent. Accordingly, governments should only expropriate private land rights for clear public purposes and should use their power sparingly, not extensively.⁴ Moreover, while legislation determines what constitutes a public purpose, it must be sufficiently clear so as to eliminate the risk of land rights being lost through discretionary bureaucratic behaviour.⁵ Besides, property holders whose land is acquired on the ground of public purpose must be given the right to appeal to an independent court of law if they believe the purpose of the project for which the land is acquired does not serve any public purpose.⁶ In contrast, ambiguity in the law and excessively wide interpretation of the term "public purpose", without the checks and balances provided by an independent body, may create incentives for corruption by private investors. Such investors may try to influence the expropriation process to their advantage, which would seriously undermine land tenure security and the private property rights of individuals. Thus, prevailing legal opinion asserts that land expropriation needs to occur only to achieve specific and well-defined public purposes and that those affected should be given the right to appeal to the judiciary to prevent the bureaucratic abuse of state powers.⁷ Ultimately, when legislation addresses this process poorly by creating

1 D W/Gebriel "Compensation during expropriation" in M Abdo (ed) *Land Law and Policy in Ethiopia Since 1991: Continuities and Changes* (2009, Ethiopian Business Law Series vol III, AAU Printing Press) 193 at 194.

2 Food and Agricultural Organization (FAO) "Compulsory acquisition of land and compensation" (2008, Land Tenure Studies 10, Rome) at 1. The author employs these terms interchangeably.

3 Ibid.

4 K Deininger *Land Policies for Growth and Poverty Reduction* (2003, the World Bank and Oxford University Press) at 173.

5 Id at 170; see also FAO "Compulsory acquisition", above at note 2 at 6.

6 Deininger *Land Policies*, above at note 4 at 6 and FAO "Compulsory acquisition", above at note 2 at 6 and 45–48.

7 K Deininger and S Jin "Securing property rights in transition: Lessons from implementation of China's rural land contracting law" (policy research working paper 4447, The

ambiguous statutes without impartial application and judicial oversight, it results in a reduction of land tenure security for landholders.⁸

As a developing country, Ethiopia is faced with rapidly growing urbanization of its population and modernization of its infrastructure and agricultural investments. Most towns and cities have been expanding in size and incorporating previously rural areas. Moreover, since 1991 the country has opened its doors to foreign and national investment on the basis of a free market economy and encouraged private investors to participate in the establishment of large-scale commercial farms and agro-industries. As a result, a large amount of land is required to advance private and public investment, to expand existing and establish new urban centres, and to support the construction of roads, infrastructure and public utilities in all areas of the country.

One of the means by which the government of Ethiopia can make such land available for this purpose is by expropriating private landholdings on the basis of public purpose. Nevertheless, while employing “public purpose” as a justification for expropriating private landholdings, the government should act in a manner that balances the two competing interests stated above. This article considers how the justification for land expropriation (public purpose) has been treated under the Ethiopian legal framework for rural land and how effectively it maintains the critical balance between the competing interests involved during expropriation. Preserving those interests requires that clear expropriation guidelines are adhered to uniformly and applied in a neutral and just manner to all landholders, regardless of their status.

The first section of the article provides a general understanding of public purpose within the context of expropriation, and is followed by a discussion of the authority and manner by which public purpose is determined. The third section presents the primary means associated with public purpose that can serve to maintain the balance between the public need for land, and the provision of tenure security and the protection of private land rights. The next section is devoted to analysing how public purpose, as a justification for taking private rural land rights, is treated under Ethiopia’s rural land laws. The conclusion pinpoints, *inter alia*, the areas that need legislative revision with respect to the rules regulating expropriation for public purposes so that the required balance is maintained.

GENERAL UNDERSTANDING OF THE CONCEPT OF PUBLIC PURPOSE

The concept of public purpose, which identifies the purpose for which the power of land expropriation is exercised or provides the justification offered

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World Bank Development Research Group Sustainable Rural and Urban Development Team, December 2007) at 5.

8 See FAO “Compulsory acquisition”, above at note 2 at 6.

for taking private land rights against the wish of the holder of the property, is also identified by different terminology in the legislation of different countries. To express the same idea, different states' constitutions and laws employ terms including public use, public good, public interest and public benefit.⁹ Although these terms are coined to express the same principle and tend to be used interchangeably, their meanings have different nuances and are sometimes controversial. For instance, compared to other terms, the notion of "public interest" is a broader concept and creates more leeway for arbitrary and unaccountable decision making. For example, the expropriation of land to make it available for lease to private investors may well be in the public interest if it generates an important source of income for the state.¹⁰

Aside from existing differences in terminology, the underlying meaning of the term "public purpose" has become elusive and ambiguous, as different literature has defined it differently. It is neither efficient nor necessary to delineate all the definitions exhaustively. Instead, the remainder of this section will focus on an examination of two of them. To begin, the dictionary defines "public purpose" as: "an action by or at the direction of the government for the benefit of the community as whole".¹¹ This definition implies that public purpose represents a justification for the governmental act, including eminent domain which has been exercised to "benefit the public in general and not [an] individual".¹² However, this definition is defective in that it does not specify the nature of the benefits society is expected to derive from the proposed project for which the compulsory acquisition is conducted. This situation lends itself to a dual interpretation of the nature of benefits. One plausible understanding may be that the project is actually being done for, and hence available for actual use by, the general public, as is true for example in the case of a public park or highway.¹³ The alternative way to understand the general definition of public purpose is that it may include both actual public use and indirect public benefit, such as an improvement in the locality's tax base or employment market without the direct use of the expropriated land.¹⁴

The second definition considered in this research is provided by George S Gulic, who more clearly defined "public purpose" as: "[a] public benefit or

9 Id at 10; see also W/Gebriel "Compensation during expropriation", above at note 1 at 195. In Ethiopia as well, different terminologies are adopted in legislation for the same concept. For instance, Ethiopia's Constitution and federal rural land law employ the phrase "public purpose", whereas the rural land laws of Amhara and Benishagul Gummuz States and of the Southern Nations, Nationalities and Peoples have adopted "public service" and "public use", respectively, for the same concept.

10 P De Wit et al "Land policy development in an African context, lessons learned from selected experiences" (land tenure working paper 14, FAO, October 2009) at 72.

11 HC Black (ed) *Black's Law Dictionary* (7th ed, 1999, West Publishing Co) at 1245.

12 RM Muzaffar *Compulsory Acquisition of Land* (1967, Lahore, Civil law Publications) at 40.

13 DA Dana "Exclusionary eminent domain" (2009) 17/ 1 *Supreme Court Economic Review* 7 at 14.

14 Id at 15.

public advantage and may embrace anything tending to enlarge the product of capacity or resource of the community and to promote the general welfare and prosperity".¹⁵ This definition seems sufficiently clear in determining the nature of the benefits to society that justify the expropriation. The definition has adopted both actual and indirect benefits to the community, while considering anything that tends to promote the general welfare of society to constitute public purpose. Therefore, the meaning of public purpose is ultimately based on the widely accepted understanding that the general interest of the community, or a section thereof, overrides the particular interest of the individual.

Nevertheless, these two definitions of public purpose are still not sufficient to specify exactly what activities constitute public purpose. It is therefore necessary at this juncture to appreciate its component parts. In earlier times, expropriation of private property was viewed as equivalent to providing states' traditional functions, such as education, highways and defence.¹⁶ Nevertheless, nowadays the concept tends to encompass various complex socio-economic activities, which is why the ambit of public purpose is highly influenced by the development of economic, social and political aspects of a particular society.¹⁷ Again, countries' legislation still varies on the components of public purpose. The reason for this is the inherently subjective nature of the concept itself and its openness to the influence of a prevailing view of "fairness" and of the party with the greater bargaining power.¹⁸ Meanwhile, based on its broad survey of both developed and developing countries, the Food and Agricultural Organization (FAO) has identified the following as accepted public purposes for land expropriation:¹⁹ transportation uses including roads, canals, highways, railways, bridges, wharves and airports; public buildings including schools, libraries, hospitals, factories, religious institutions and public housing; public utilities for water, sewage, electricity, gas, communications, irrigation and drainage, dams and reservoirs; public parks, playgrounds, gardens, sports facilities and cemeteries; and defence purposes.

Beside these purposes, the FAO has also made determinations on the controversial situation that occurs in some countries when private land is acquired by a government and then transferred to private investors, developers, or large businesses with the justification that the change in ownership or use will benefit the public. Here it is argued that the development of inefficiently used land indirectly benefits the wider public, by creating economic growth and jobs and by increasing the tax base, which in turn allows the government

15 GS Gulic and RT Kimbrough (eds) *American Jurisprudence* vol 26 (1966, The Lawyers Cooperative Publishing Company) at 665.

16 HC Dunning "Law and economic development in Africa: The law of eminent domain" (1968) 68/7 *Columbia Law Review* 1286 at 1298.

17 VG Ramachandran *The Law of Land Acquisition and Compensation* (1963) at 321.

18 M Langford and U Halim "Path of least resistance: A human rights perspective on expropriation" in *FAO Land Reform, Land Settlement and Cooperatives* (2008, FAO) 33 at 39.

19 FAO "Compulsory acquisition", above at note 2 at 11.

to improve its delivery of public services.²⁰ However, in such cases, the FAO advises governments to undertake “a *public scrutiny on proposals to use compulsory acquisition of land to ensure that the balance between the public need for land and the protection of private property rights is properly considered, and that the compensation reflects the profit potential of the land to be acquired*”.²¹

MANNER AND POWER OF DETERMINING PUBLIC PURPOSES

Traditionally, the functions of government are divided into three broad classes: legislative, executive (or administrative) and judicial (or adjudicatory). Yet, “it is not always easy, or indeed possible, to determine under which head a particular task of government falls,” although the organs which primarily perform these functions are distinguishable.²² Moreover, countries vary in how they assign the tasks of government among these organs. A function assigned to the legislative organ in one country may be allocated to the judiciary or executive organ in another country.

One such area of variation occurs in the authority to specify what constitutes a public purpose justifying the compulsory acquisition of land. In some countries, a constitution may include a specific list of the purposes for which land may be compulsorily acquired, without assigning this power to any specific government organ. Two prominent instances in this regard are the constitutions of Ghana and Chile. These two constitutions include provisions detailing exactly what kinds of projects allow the government to use its powers of compulsory acquisition.²³ In other countries, however, this power is delegated to the legislative organ. For instance, Poland’s Expropriation Law of 1991, enacted by the legislative organ, lists the public purposes.²⁴ Alternatively, in other nations the task of determining appropriate public purposes is delegated to the judicial organ. Here, the expropriating organ first compulsorily acquires the private land rights without the holder’s consent. Nevertheless, the land holder may challenge such a decision and take his grievance to the judiciary, objecting that the purpose of the project does

20 Id at 12.

21 Ibid (emphasis added).

22 KSA Ebeku “The separation of powers in local government in Nigeria” (1992) 36/1 *Journal of African Law* 43 at 44.

23 FAO “Compulsory acquisition”, above at note 2 at 7. For instance, art 20 of Ghana’s Constitution of 1992 provides: “(1) No property of any description, or interest in or right over any property shall be compulsorily taken possession of or acquired by the state unless the following conditions are satisfied: (a) the taking of possession or acquisition is necessary in the interest of defence, public safety, public order, public morality, public health, town and country planning or the development or utilization of property in such a manner as to promote the public benefit.” Nevertheless, this is also not an exhaustive listing, but seems to leave open the inclusion of other conditions through interpretation by an organ empowered to interpret the constitution.

24 FAO “Compulsory acquisition”, above at note 2 at 11.

not serve any of the public purposes. Thus it is the judiciary that has the final say in determining the permissible public purposes for the expropriation of land. The United States is a good example of this approach.²⁵ The fifth amendment of the US Constitution mandates that: “[n]o person ... shall be deprived of ... property, without due process of law; nor shall private property be taken for public use without just compensation.” Moreover, legislation has not defined any constituting elements. Rather, it seems to be left to interpretation by the courts. This is well illustrated by the changing scope of public purpose over time in the country. Initially, the approach taken by the United States was a narrow one, literally requiring that the public derive gain from the expropriated property.²⁶ However, without the promulgation of any federal law, interpretation by the US Supreme Court has judicially widened the scope of public purpose, allowing the state to take the private property of one individual to give to another private individual, when that would incidentally result in positive benefits for the public through economic development. Such reallocations of land between private individuals have been found to meet the “public use” requirement.²⁷

Finally, in some other countries, stipulating the constituent elements of public purpose is left entirely to the executive organ. Currently, Ethiopia’s prevailing legislation reveals the application of this approach. In fact, Ethiopia’s legislature has placed some restrictions on the executive’s power to determine the components of public purpose; however, it has not subjected the latter’s decision to judicial review.²⁸

It is possible to identify three different ways of listing the components of public purpose. The first is an exclusive listing, whereby the legislation of the concerned state lists all possible purposes for which the government can compulsorily acquire private land rights, to the exclusion of any purposes not listed. This approach reduces ambiguity by providing a comprehensive, non-negotiable list beyond which the government may not compulsorily acquire land.²⁹ Nevertheless, the problem with this approach is that it may be too rigid to provide for the full range of contemporary or future public needs. This becomes problematic if the government may one day need to acquire land for a public purpose that was not considered at the time the law was enacted.³⁰ This is because, in order for the expropriation to be

25 Id at 7.

26 G Alexander *The Global Debate Over Constitutional Law* (2006, The University of Chicago Press) at 65.

27 *Kelo v City of New London* 545 US 469 at 478–80 (2005) (dissenting judgment), arguing for the “public use” requirement to be read to allow the taking of property only if “the government owns, or the public has a legal right to use, the property, as opposed to taking it for any public purpose or necessity whatsoever”.

28 Expropriation of Landholding for Public Purposes and Payment of Compensation Proc No 455/2005, Fed Neg Gaz no 43, year 11, (Land Expropriation Proc), art 2(5).

29 FAO “Compulsory acquisition”, above at note 2 at 11.

30 Ibid.

legitimate, the legislation would need to be amended to add newly emerging public purposes. The problem is exaggerated when the exclusive listing of the components of public purpose is made in a country's constitution, since constitutional amendments generally need to satisfy stringent prerequisites.

The second approach is an inclusive listing containing a list of some permissible purposes, along with an open-ended clause to allow necessary flexibility. This approach identifies specific purposes for which land may be acquired and then adds a word or phrase implying the government's ability to expropriate land rights for purposes similar to those listed. This approach provides the flexibility to expand the list of eligible purposes when required and, at the same time, limits the scope for expansion only to purposes similar in nature to those illustrative examples listed.³¹

The final approach is that the legislation may neither exhaustively nor in an open-ended manner list the purposes for which a government can compulsorily acquire land rights. Instead, legislation may leave determination of the public purpose to the appropriate executive body or to judicial interpretation.³² This approach provides the determining body with discretionary power which is unchecked by legislative guidance.

Generally, apart from these distinctions, an exercise in compulsory acquisition is more likely to be regarded as legitimate if land is taken for a purpose clearly identified in legislation.³³ Further, in order to reduce the scope for arbitrary and discretionary action by individual bureaucrats, legislation should be clear in its circumscription of the state's right to expropriate land for clearly identifiable public interests.³⁴ Furthermore, to maintain the equilibrium between the public need for land and the protection of private property rights, the standards discussed in the next section must be observed in specifying the public purposes for which the expropriation of land rights is permissible.

BALANCING THE COMPETING INTERESTS INVOLVED IN EXPROPRIATION THROUGH THE PUBLIC PURPOSE REQUIREMENT

The process of balancing conflicting interests is commonplace in many areas of the law; in laws concerning expropriation, it is of primary importance. Critical review of the available literature reveals that the proceedings of land expropriation involve apparently conflicting interests. On the one hand, there is a public interest, represented by the government, in acquiring land. On the other, private land holders have an interest in protecting their private property rights and land tenure security. A workable legal framework therefore requires a balance between these opposing interests.

31 Ibid.

32 Land Expropriation Proc, art 2(5).

33 FAO "Compulsory acquisition", above at note 2 at 11.

34 Deininger *Land Policies*, above at note 4 at 170.

In fact, there are various means for realizing this end goal. The public purpose requirement is the most widely used option. To establish the intended equilibrium, the justification for the expropriation, ie the intended public purpose, must satisfy several standards. First, the government should expropriate individual land rights only for clearly identified public purposes.³⁵ In other words, an exercise in compulsory acquisition is more likely to be regarded as legitimate if land is taken for a purpose specifically codified in legislation.³⁶ Further, in order to reduce the risk of arbitrary or discretionary action by individual bureaucrats, legislation should be drafted so that it unambiguously delineates the scope of the state's right to expropriate land under clearly identifiable public interests.³⁷ This is most easily achieved when the legislation lists such public purposes in an exhaustive or illustrative manner, as seen in the section above. However, serious difficulties occur when legislation leaves the components of public purpose to be determined by the executive or by judicial interpretation. In this case, the individual landholder's legitimate expectation of tenure security is undermined by the uncertainty of not knowing for what types of projects their land may be expropriated.

In addition to being clear, the components of public purpose should be tailored narrowly enough to maintain the balance between the public's need for land and the private individual's needs. As per the discussion above, the components of public purpose may range from direct or actual use of the expropriated land by society at large, to expropriating land to transfer it to another individual investor who can benefit society indirectly by creating job opportunities or by increasing the tax base. Meanwhile, extensive or arbitrary use of state power to expropriate land seriously undermines the tenure security of individuals.³⁸ Nevertheless, there is no agreement among legal scholars on how narrowly to define the "public purpose" requirement.³⁹ However, they unanimously recognize the dangers posed by an excessively wide interpretation, which may provide an incentive for corruption by allowing private investors to influence the expropriation process to their own advantage.⁴⁰ Such a situation would allow wealthy, powerful or influential individuals essentially to take land from peasants in order to develop it for their own financial gain.

To curtail this problem, in the author's opinion, it is best to conduct public hearings regarding any expropriation of private land rights on grounds other than those listed by FAO and noted above.⁴¹ The rationale for this is that, since

35 Ibid.

36 FAO "Compulsory acquisition", above at note 2 at 11.

37 Deininger *Land Policies*, above at note 4 at 170.

38 Id at 173.

39 MP Harrington "The original understanding of the so-called takings clause" (2002) 53/1 *Hastings Law Journal* 345.

40 DB Kelly "The public use requirement in eminent domain law: A rationale based on secret purchases and private influence" (2006) 92/1 *Cornell Law Review* 1.

41 De Wit et al "Land policy development", above at note 10 at 72.

the expropriation is intended to promote the economic betterment of the public, the public should be given an opportunity to decide whether the proposed project would be beneficial. This, in turn, involves the public in supervising and guarding against the government's "carte blanche for compulsory transfer of private property from ordinary citizens to politically-powerful" investors or real estate entrepreneurs.⁴²

The final standard needed to realize the balanced approach of land expropriation through the public purpose requirement is granting the private land right holder the right to appeal to an independent body the decision to expropriate his property. Significantly, the World Bank has noted that the involvement of the courts in expropriation proceedings is one mechanism to protect private land right holders from abuse.⁴³ Moreover, FAO has also implied that, to maintain the balance, individual land right holders should be given the chance to contest the expropriation decision to a body that is independent from the acquiring agency; and legislation should provide opportunities for owners and occupants to appeal against the compulsory acquisition of their land. This is based on the concept that access to appeal procedures protects the rights of affected people by giving them an opportunity to have an independent entity evaluate their grievance.⁴⁴

Further, while legislation allows appeals in this regard, it also specifically establishes the permissible grounds on which an appeal may succeed. One such ground of appeal is to challenge the public nature of the project.⁴⁵ Here, the affected landholders assert that the project does not serve any of the public purposes for which compulsorily acquisition is allowed. They may also challenge expropriation by showing that their specific land parcels are not needed for the project or that the project would be best located elsewhere.⁴⁶ The affected landholders can best prove this challenge when the constituent elements of public purpose have been listed exhaustively, since the purpose identified by the acquiring agency must be on the list. On the other hand, when the constituent elements are listed in an open-ended or illustrative manner, the identified purposes provide guidance and a measure of restraint. The intended purpose of the project should be evaluated against

42 A Lehavi and AN Licht "Eminent Domain, Inc" (2007) 107/7 *Columbia Law Review* 1704 at 1705.

43 Deininger *Land Policies*, above at note 4 at 173.

44 FAO "Compulsory acquisition", above at note 2 at 16 and 45.

45 The other grounds are appeal against the procedures used to implement the expropriation and against the compensation value. While compulsorily acquiring land, the government may fail to follow the legislatively established procedures, including improper notice, improper processing of a compensation claim, delay in payment or payment to the wrong person, and unreasonable haste in pursuing acquisition. At the same time, appeal against the compensation value occurs when the affected people perceive that the compensation offered to them for their land right is inadequate, and they claim an entitlement to more money or another form of compensation.

46 FAO "Compulsory acquisition", above at note 2 at 46.

those enumerated and a radical departure from the list may allow the review body to declare that the purpose of the project is not legally permissible.⁴⁷ However, in the absence of such a listing in the legislation, it is extremely difficult for those adversely affected to argue successfully that the expropriation is not essential and not for a public purpose.

Despite the paramount role judicial review plays in maintaining the balance of interests, it still requires necessary care to be taken. This is because “a heavy volume of expensive and time-consuming state litigation continues, posing the serious problem of holdup suits by the affected peoples using dilatory litigation as a bargaining technique”.⁴⁸ In other words, frivolous or illegitimate challenges may be brought by displeased citizens for the purpose of delaying an appropriate and badly needed public project. This would undermine the quick implementation of the intended project and postpone the realization of sustainable development, in addition to wasting resources and further bogging down the courts. However, this potential problem can be mitigated by limiting the appeal procedure to certain situations, such as when the expropriation is undertaken for projects other than those found in FAO’s listing or on grounds that are not explicitly listed in legislation. In short, affected individuals should only be given the opportunity to appeal against expropriations conducted to transfer the land right to third parties and those which do not follow the public purpose grounds included in the legislative listing.

To recap, countries are expected to incorporate these standards into their legislation to ensure a balanced approach to expropriation. Otherwise, failure to regulate the public purpose requirement, as per the above standards, results in the abridgement of private property rights and undermines the land tenure security attached to them. This article now evaluates Ethiopia’s legislation in this respect.

PUBLIC PURPOSE REQUIREMENT UNDER ETHIOPIAN RURAL LAND LEGAL FRAMEWORK

Ethiopian Constitution

Article 40 of the Constitution of the Federal Democratic Republic of Ethiopia (the Constitution)⁴⁹ provides general rules determining the manner of acquisition, nature and restriction of rural land rights. In fact, the Constitution has created differential treatment on these points based on the identity of the rural land holder. After providing joint ownership of land to the Ethiopian peoples and the state,⁵⁰ it guarantees peasants and pastoralists free access to

47 Ibid.

48 “State constitutional limitations on the power of eminent domain” (1964) 77/4 *Harvard Law Review* 717 at 718.

49 Proc No 1/1995, Fed Neg Gaz, 1st year, no 1.

50 Id, art 40(3).

rural land,⁵¹ whereas investors are allowed rural land use rights through a payment arrangement.⁵²

Moreover, the Constitution also empowers the government to expropriate property rights in general for public purposes upon the payment of compensation.⁵³ However, it does not clearly define the constituent elements of such public purposes. The pertinent section states: “[w]ithout prejudice to the right to private property, the government may expropriate private property for public purposes subject to payment in advance of compensation commensurate to the value of the property.”⁵⁴

Nevertheless, the cumulative reading of this provision along with article 40 (2) of the Constitution seems to imply that the government’s power to expropriate the land rights of peasants and pastoralists is not sanctioned by the Constitution. This argument is deduced because first, as noted above, the Constitution has authorized the government to acquire private property compulsorily for public purpose. Secondly, the working definition provided for “private property” in the Constitution excludes the rural land rights of peasants and pastoralists. The Constitution has defined “private property” as: “any tangible or intangible product which has value and is produced by the labour, creativity, enterprise or capital of an individual citizen, associations which enjoy juridical personality under the law, or in appropriate circumstances, by communities specifically empowered by law to own property in common”.⁵⁵ Therefore, since the Constitution has granted peasants and pastoralists the right to obtain rural land without payment, that land does not fall under the ambit of “private property” according to this definition. This is because, although the right may have value, it is not the product of the peasants’ or pastoralists’ “labour, creativity, enterprise or capital”, which is one element of the definition. On the other hand, since investors acquire rural land use rights upon payment, such land rights satisfy the “private property” definition in the Constitution. So, expropriation of investors’ rural land rights is expressly covered under the Constitution, unlike those of peasants and pastoralists.

This situation may lead someone to argue the constitutionality of the government authority to expropriate the rural land rights of peasants and pastoralists. However, based on the practice of almost all modern nations in the world, the nature of the protection of peasants’ and pastoralists’ land rights, citizens’ right to sustainable development, and the socio-economic objectives specified in the Constitution itself, it is still possible to argue that the government has the sovereign power to expropriate Ethiopian peasants’ and pastoralists’ rural land rights for public purposes. Compulsory acquisition of land

51 *Id.*, art 40(4) and (5).

52 *Id.*, art 40(6).

53 *Id.*, art 40(8).

54 *Ibid.*

55 *Id.*, art 40(2).

rights exists everywhere in the world. Even in countries that offer the strongest protection of property rights and recognized private land tenure, the land rights individuals enjoy have never been left entirely unrestricted. However, efforts to interfere with private land rights are severely limited by the government's authority to expropriate such land rights when needed for the public interest at large.⁵⁶ Thus, there is no unique ground to prohibit the expropriation of peasants' and pastoralists' land rights in Ethiopia if the land is needed for the greater societal interest.

In addition, the protections that have been granted to Ethiopian peasants and pastoralists concerning their land rights under the Constitution include immunity against eviction and displacement, respectively. That is, the Constitution protects peasants and pastoralists from being deprived of their land rights arbitrarily without payment of compensation. This baseline protection from forced eviction and displacement is needed in order to ensure that unjust expropriations are less likely to occur.⁵⁷ In granting immunity against eviction and displacement, the Constitution is not prohibiting the government from compulsorily acquiring peasants' and pastoralists' land rights for public purpose upon payment of compensation in accordance with expropriation legislation; instead, it is requiring the government compulsorily to acquire their land rights by paying compensation that restores them to the position they would have been in, had they not been evicted and displaced.

This argument may also be supplemented by the national policy objectives enshrined in the Constitution itself. More specifically, economic and social objectives demand that the government endeavour to protect and promote the health, welfare and living standards of the working population of the country through ensuring that all Ethiopians (including rural residents) have access to public health and education, clean water, housing, food and social security.⁵⁸ The realization of these developmental goals may require the government to access rural land to establish necessary infrastructure. Therefore, it may be argued that the drafters of the Constitution have presupposed the existence of the government's power to acquire rural land without the holder's consent for such public purposes. Again, this is inferred from the stipulation of the right to sustainable development under the Constitution.⁵⁹ This is because, in order to realize these rights of citizens, the government is required to provide public facilities and infrastructure that may ensure safety and security, health and welfare, social and economic enhancement, and the protection and restoration of the natural environment.⁶⁰ The first step in the process of providing these facilities and infrastructure is the acquisition of

56 Deininger *Land Policies*, above at note 4 at 28.

57 Langford and Halim "Path of least resistance", above at note 18 at 41.

58 The Constitution, arts 89(8) and 90.

59 Id, art 43(1) states that "The peoples of Ethiopia ... have the right to improved living standards and to sustainable development".

60 FAO "Compulsory acquisition", above at note 2 at 1.

appropriate land for their construction. The existing land held by the state may not be sufficient or convenient to the purpose at hand, and the purchase of land through a land market system from private land holders is not allowed, as the Constitution prohibits the transfer of land rights through sale.⁶¹ Then, in order to obtain land when and where it is needed to further the specific objective of sustainable development for citizens, the only option left to government is the power compulsorily to acquire land.

Moreover, it is possible to justify the government's power to expropriate rural land rights in Ethiopia by employing the *a fortiori* [for even stronger reasons] canon of legal construction. The Constitution, as mentioned above, expressly authorizes the government compulsorily to acquire "private property" (ie products with value and produced by the labour, creativity or capital of individuals and on which they have established a complete bundle of rights) for a public purpose upon advance payment of compensation commensurate to the value of the property.⁶² Then, *a fortiori*, the government has the power compulsorily to acquire rural land, which peasants and pastoralists have acquired for free by the operation of law and on which they have partial property rights, where that is deemed necessary to serve a public purpose.

Consequently, based on these justifications, the author believes that the government of Ethiopia is also constitutionally authorized compulsorily to acquire peasants' and pastoralists' land rights for public purposes. However, the Constitution seems to leave the definition and constituent elements of the term "public purpose" to the federal legislative body. This is inferred from the division of power found in the Constitution. Particularly, when the Constitution empowers the federal government to enact laws for the utilization and conservation of land and empowers state governments to administer those laws in accordance with federal law, it is in effect authorizing the former to determine what precisely constitutes a public purpose. Moreover, the Constitution has expressly recognized the rights of Ethiopians to access justice, to participate in national development and, in particular, to be consulted regarding policies and projects affecting their communities. The author has therefore critically scrutinized the definition and components of public purpose as stipulated under the subsidiary laws and how they have employed the standards discussed above, to balance the public need for land, and the protection of property rights and land tenure security for rural landholders.

Rural land laws of Ethiopia

In Ethiopia, rural land tenure is regulated by both federal and state rural land laws. This article now analyses the public purpose requirement for the expropriation of rural land rights under federal and some state rural land laws.

61 The Constitution, art 40(3).

62 *Id.*, art 40(8).

Federal rural land law, particularly the Expropriation of Landholdings for Public Purposes and Payment of Compensation Proclamation, has defined “public purpose”⁶³ as: “the use of land defined as such by the decision of the appropriate body in conformity with [sic] urban structure plan or development plan in order to ensure the interest of the people to acquire direct or indirect benefits from the use of the land and to consolidate sustainable socio-economic development”.⁶⁴

This definition has interpreted the concept of “public purpose” very broadly, which allows public authorities to consider virtually any activity as serving the public purpose. Moreover, it has employed neither the exclusive nor inclusive listing of a public purpose approach, either of which would limit the discretion of public authorities in determining the purpose for which land is compulsorily acquired. Rather, it employs its own unique approach whereby a public purpose alleged to serve the goal of development is left to be determined by other appropriate bodies or delegated officials. However, the federal legislation fails to specify the appropriate body to which this task is assigned, although it seems to be the government body entrusted with the power of expropriation, ie the *woreda* administration (the lowest administrative unit above *kebele*) or the higher regional or federal government body. Further, the legislation has specified two basic standards that may serve to identify the types of activities which may fulfil a public purpose. First, the potential activity that will be carried on within the compulsorily acquired land must conform with the urban structure or development plan. Secondly, besides the conformity standard, the intended activity for which a peasant land holding is expropriated must ensure direct or indirect benefits to society. However, these unclear guiding principles regarding what determines a valid “public purpose” for eminent domain means that expropriation is often seen as

63 On the other hand, under the rural land laws of Amhara and Benishangul Gummuz regions (among the federating states of the country), the concept of “public purpose” has seemingly been defined in a narrower sense compared to the federal legislation. In the same fashion, the laws of both regions have employed the terminology of “public service”, defining it as follows: “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”: Revised Amhara National Regional State Rural Land Administration and Use Proclamation, Proc No 133/2006, Zikre Hig, 11th year, no 18, art 2(15) and Benishangul Gummuz National Regional State Rural Land Administration and Use Proclamation, Proc No 85/2010, art 2(24). Here, the legislation of the two regions has defined the concept of “public service” in an illustrative manner providing some examples of public service. However, again in this definition the power of determining the other “public services” is left to the respective region’s regulatory body based on the standard of “direct or indirect benefit to the society” without involving citizens through the use of public hearings in the process. Thus, the “indirect benefit of society” standard employed in both laws would enable the governments of these regions compulsorily to acquire rural land held by peasants for transfer to investors.

64 Land Expropriation Proc, art 2(5).

arbitrary and inconsistent across the country. Further, there is a substantial risk that officials will inappropriately define “public interest” purposes for land expropriation.⁶⁵ Thus, because the law does not specifically spell out such “public purposes”, it is possible to argue that the government has virtually unrestricted power compulsorily to acquire rural land.

When the federal legislation sets “direct benefits to the society” as the standard for determining public purpose, it implies that the land is expropriated for those activities listed above as commonly accepted public purposes based on the FAO’s survey of developed and developing countries. On the other hand, the standard of indirect benefits to society is aimed at indicating the following two scenarios as public purposes for land expropriation. First, when peasants’ and pastoralists’ landholdings are expropriated to lease to investors who indirectly benefit society at large by creating economic growth and jobs, this increases the tax base, which in turn allows the government to improve its delivery of public services.⁶⁶ Secondly, indirect benefits to society emanate from situations where peasants’ and pastoralists’ holdings are expropriated in furtherance of urban expansion, making land available for urban growth to lease to urban dwellers for residential purposes, which creates another income source for the government to improve its delivery of public utilities.⁶⁷

As W/Gebriel has noted, the incorporation of public purpose in its wider sense in federal legislation is justified by the country’s eagerness for development as a developing country and its high dependence on whatever investment can be made in its land by public entities, private investors, associations or other organs of the federal and regional governments.⁶⁸ As result, the magnitude and pace of pro-poor expropriation may be outstripped by pro-big business expropriation. Thus, the current vision of development in Ethiopia is favouring “big” over “small” development. In particular, expropriating peasants’ land rights for transfer to investors who wish to engage in large scale farming should not be considered as a “public purpose”. This is because, as the World Bank has conceded, small-scale farmers are economically more efficient than large farmers.⁶⁹

In fact, this definition and manner of determining “public purpose” for the purpose of rural land expropriation is not applicable to investors. This is because federal law has employed another method for defining and determining the public purpose requirement when expropriating investors’ rural landholdings. Investors’ rural landholdings, acquired through lease arrangements

65 World Bank *Options For Strengthening Land Administration Federal Democratic Republic Of Ethiopia* (report no 61631-ET) at 3.

66 FAO “Compulsory acquisition”, above at note 2 at 12.

67 World Bank *Options*, above at note 65.

68 See W/Gebriel “Compensation during expropriation”, above at note 1 at 196 and Land Expropriation Proc, art 3(1).

69 Langford and Halim “Path of least resistance”, above at note 18 at 39.

on the basis of payment, are to be expropriated if and only if the holdings are required for development works to be undertaken by the government itself.⁷⁰ In other words, unlike peasants and pastoralists, in order to expropriate investors' rural landholdings before the expiry of the lease period, the development activity must be carried out by the government, as activities undertaken by other investors, co-operative societies or organs are not considered a "public purpose" sufficient to justify the expropriation. This is inferred from the federal legislation which states:

- (1) A woreda or an urban administration shall, upon payment in advance of compensation in accordance with this Proclamation, have the power to expropriate rural or urban landholdings for public purpose where it believes that it [sic] should be used for a better development project to be carried out by public entities, private investors, cooperative societies or other organs, or where such expropriation has been decided by the appropriate higher regional or federal government organ for the same purpose."
- (2) Notwithstanding the provisions of Sub-Article (I) of this Article [referring to the above paragraph], no land lease holding may be expropriated unless the lessee has failed to honor the obligations he assumed under the Lease Proclamation and Regulations or the land is required for development works to be undertaken by government."⁷¹

At this juncture, one may question the rationality of this discriminatory treatment in the legislation between peasants and pastoralists, on the one hand, and investors on the other. The government's rationale for expropriating rural land rights of peasants and pastoralists to transfer their holdings to investors is simply based on economic justifications. To be precise, the government believes that, if the land is given to investors rather than peasants and pastoralists, it may be more efficiently utilized and become a stronger base for tax and employment opportunities, which will allow for much needed foreign currency to enter the economy and contribute to long-term food security through the transfer of technology to small-scale farmers.⁷² The author cannot find any reason or logic not to use the same justification for the compulsory acquisition of investors' rural land rights. This is because, in the same fashion, a new investor to whom rural land is transferred may utilize it in a more productive way, create greater job opportunities and a larger tax base, and facilitate the entrance of more foreign currency and better technology

70 The Constitution, art 40(6) and all rural land laws of the federal and state governments indicate that investors can acquire rural land use rights by means of a lease from the government.

71 Land Expropriation Proc, art 3(1) and (2).

72 The Oakland Institute *Understanding Land Investment Deals in Africa* (country report: Ethiopia, 2011) at 1.

than the previous investor. As result, in the author's opinion, this discriminatory provision of the legislation has no logical foundation.

In addition, providing expropriated rural land for transfer to investors contradicts other legislative provisions. This is especially true with regard to the stipulations made in the rural land laws, which prioritize providing access to rural land to peasants, pastoralists and semi-pastoralists over others, particularly private investors.⁷³ Here, the legislature has made a logical and rational decision in giving a priority right to peasants and pastoralists in accessing rural land by considering the purpose for which land is claimed: the peasants and pastoralists seek rural lands to sustain their livelihood, whereas private investors seek to obtain it for investment profit. However, this priority right of peasants and pastoralists becomes meaningless if the government is authorized to expropriate tomorrow the peasants' and pastoralists' landholdings given today, in order to lease them to private investors on the ground of public purpose. It may, perhaps, be argued that the existence of the priority right of peasants and pastoralists simply enables them to claim compensation if the land is expropriated and transferred to private investors. Nevertheless, the problems in the valuation and determination of compensation to be paid for the loss of these land rights would seem to counteract this benefit.⁷⁴

Variations also exist between federal rural land law and its counterparts in some regional states in how they define and the manner in which they determine "public purpose". A prominent example of this can be found in the rural land laws of the Oromia and Southern Nations, Nationalities and Peoples (SNNP) States. Compared to federal rural land law, the regional laws define public purpose narrowly, in order to protect individuals' property rights and provide more stringent security of tenure for individuals. In fact, Oromia State rural land law has not defined the public purpose clearly. Yet, it is accompanied by some remarks that indicate the extent to which the interpretation of the concept goes. Accordingly, under Oromia law, the term "public use" permits the expropriation of rural land for urban growth, provided that the community has consented.⁷⁵ However, the law does not consider acquiring land to lease for private development (investment) to be a public use. This is inferred from the fact that the legislation prohibits the government from renting out rural land that is held by peasants or pastoralists.⁷⁶

On the other hand, SNNP state rural land law defines the concept of public purpose in a way that implies that the expropriation of rural land may be

73 Rural Land Administration and Land Use Proc No 456/2005, Fed Neg Gaz year 11, no 44 (Rural Land Proc), art 5(4).

74 See W/Gebriel "Compensation during expropriation", above at note 1 at 196 and Land Expropriation Proc, art 3(1). W/Gebriel has tried to show the problems in the valuation system and the amount of compensation awarded for affected people.

75 Proclamation to Amend the Proclamation No 56/2002, 70/2003, 103/2005 of Oromia Rural Land Use and Administration, Proc No 130/2007, Megelata Oromia 15th year, no 12 (Oromia Rural Land Proc), art 13(2).

76 *Id.*, art 11(1).

conducted for projects from which the public derives direct or actual benefit. Under this law, “public use” is defined as “public common service obtained from infrastructures such as school, health, road, water, etc”.⁷⁷

According to this definition, public use is interpreted in an open-ended manner, referring only to the direct benefits society would derive from the purpose for which peasants’ and pastoralists’ rural landholdings are compulsorily acquired. This has limited the discretion of public authorities in determining the purpose for which peasants’ rural landholdings may be compulsorily acquired. Thus, the government can expropriate peasants’ rural landholdings only for purposes from which society is able to derive a direct benefit. Since the listing in the legislative definition is not exhaustive, the government can include other purposes as well, provided that they are similar in nature to those listed. Consequently, it avoids the possibility of expropriating land for the purpose of transferring it to private investors. Nonetheless, the regulation promulgated to implement this regional proclamation has opened a loophole for the government to include the “indirect benefits to society” standard in specifying the public purpose. This is inferred, while the regulation obliges rural landholders to surrender their holdings in cases where a project (either government or private investor owned) is believed to contribute to the development of the region in general and the growth of the particular area that has been prepared.⁷⁸

However, the difference between federal rural land law and the Oromia counterpart regarding the stipulation on the purpose for which the government can expropriate peasants’ rural land rights exposes peasants in the region to a double standard of treatment. In particular this situation arises due to the federal law’s consideration of the acquisition of land by the government for development by private investors as a “public purpose”, while the Oromia Region’s laws do not. Indeed, legally speaking, this difference may not be considered a sufficiently apparent conflict to warrant using the rules of legal interpretation to identify the prevailing law. This is because they regulate and apply in different situations: the federal law provision applies in rural land expropriation decisions to be made by the federal government based on its powers and functions enshrined in the Constitution, whereas the regional equivalent was put into operation regarding expropriation decisions by the regional government in accordance with its constitutional powers and functions. Nonetheless, these dissenting rules again govern the same subjects: peasants with rural land rights in Oromia Region.

Moreover, although this exclusion under Oromia Region’s land law narrows the possibility of peasants’ eviction compared with under federal legislation, the question of legality does arise. To answer this it is necessary to examine

77 The SNNP Regional State Rural Land Administration and Utilization Proclamation, Proc No 110/2007, *Debub Negarit Gazeta* 13th year, no 10 (SNNP Rural Land Proc), art 2(23).

78 The SNNP Regional State Rural Land Administration and Utilization Regulation, Council of Regional Government Reg No 66/2007, *Debub Negarit Gazeta* 7th year, no 66, art 13(3)(a).

the Constitution on the division of powers between the federal and state governments. After adopting the federal system, the Constitution apportioned power and functions between the two levels of government. According to the Constitution, the federal government has exclusive authority on the powers and functions listed under article 51; the federating states hold the residual powers and functions that are not given exclusively to the federal government or concurrently to the federal and state governments.⁷⁹

One such division of powers revolves around the issue of land. Under article 51(5), the Constitution authorizes the federal government to enact laws relating to the utilization and conservation of land while allotting the task of administering land (referring to the performance of the government's executive duties) to the federating polis in accordance with federal law under article 52(2)(d). Both entities are given different aspects of the same subject matter. From these provisions we can infer that enacting rural land utilization and conservation laws is an inherent power of the federal government, and administering rural land utilization and conservation in accordance with federal law is the prerogative of regions. However, the Constitution is not sufficiently clear in specifying the content of federal rural land law, since it does not define the phrase "land utilization and conservation".

Nevertheless, for the author, the Constitution seems to entitle the federal government to enact rural land laws that define the rural land tenure system that determines the nature and content of property rights in land, the conditions under which these rights are to be held and enjoyed, and the restrictions imposed on them.⁸⁰ This is because, in order to establish a single economic community in the country (which is one of the Constitution's objectives), the statutory land tenure system that regulates Ethiopian peasants' and pastoralists' rural land rights must be uniform throughout the country.

Hence, the author believes that the Constitution has empowered the federal government to enact rural land laws that define a rural land tenure system that delineates the nature and content of property rights of the landholder, the conditions under which these rights are to be held and enjoyed by the landholder, and the restrictions imposed on such landholder rights. In other words, it constitutionally grants power to the federal government to define peasants' rights, how such rights are acquired, their constituent elements, how they operate in the holding, transfer and inheritance of land, and how they may be extinguished, one ground being "public purpose".

Furthermore, federal rural land law does not fully detail all the rules of rural land tenure. It has left by way of delegation some rules of land tenure to be determined by state law.⁸¹ The fact that this is done in accordance with the Constitution, authorizes the federal government to delegate its

79 The Constitution, art 52.

80 CMN White "A survey of African land tenure in Northern Rhodesia" (1959) 11/4 *Journal of African Administration* 171 at 172.

81 Rural Land Proc, art 17(1).

constitutionally granted powers to states when necessary.⁸² While delegating the power of enacting rural land use laws to each state, the federal government has claimed the states' laws to be in conformity with the framework law it has enacted and required them to be detailed enough to implement it.⁸³

However, since defining the grounds for extinguishing peasants' land rights is one aspect of land tenure, it is the federal government that determines those grounds. One ground is the compulsory acquisition of land rights for a "public purpose". Therefore, it is the federal government that has the power to determine the constituent elements of "public purpose". As noted above, the federal government has already determined the component of public purpose that includes transferring land to an investor. To that effect, while excluding the acquisition of land for investors from the scope of "public purpose" for the expropriation of peasants' and pastoralists' land rights, Oromia Region's land law seems to regulate beyond the delegation.

Federal rural land laws do not require public participation in scrutinizing the satisfaction of the "public purpose" requirement. Rather it is the rural land laws of some states that clearly require public consultation. This is, in fact, in line with the constitutional rights of citizens to be consulted regarding policies and projects affecting their community.⁸⁴ Moreover, it somehow limits the discretionary power of public authorities in determining the purposes to which land is expropriated, thereby attaining the intended balance. Nevertheless, these laws are not similar in regulating it. The rural land laws of Oromia and SNNP States seem to restrain the state's power to expropriate holdings of peasants or pastoralists for public purpose thorough participation by the local community.⁸⁵ On the other hand, some states' laws limit public hearings for the expropriation of peasants' or pastoralists' land holdings to certain situations. For instance, Amhara State legislation demands a public hearing for the *kebele* residents where it is found that the purpose of expropriating land is directly interrelated with development of the local community or where the community itself is required to pay compensation.⁸⁶ To be more effective, however, it is better to extend public hearings to situations where the purpose of expropriating the land is assumed to benefit society indirectly, such as expropriation to enable the land to be leased to private investors. This is because public scrutiny is mostly needed to ensure the balance between the public need for land and the provision of land tenure security, in the case of expropriation for the indirect benefit of society.⁸⁷

82 The Constitution, art 50(9).

83 Rural Land Proc, art 17(1).

84 The Constitution, art 43(2).

85 Oromia Rural land Proc, art 13(2) and SNNPR Rural land Proc, art 13(11).

86 Amhara National Regional State Rural Land Administration and Use System Implementation, Council of Regional Government Reg No 51/2007, Zihikre-hig, year 12, no 14 (Amhara Rural Land Reg), art 29(2).

87 FAO "Compulsory acquisition", above at note 2 at 12.

Finally, this discussion has revealed that the conflicting interests involved in expropriation proceedings are balanced when the legislation guarantees affected peoples the right to appeal to an independent body. That is why the FAO has demanded legislation to guarantee the procedural rights of affected peasants, including the right to be heard, and the right of appeal to an independent body during compulsory acquisition procedures, so that a balance is maintained between the public need for land, and the protection of property rights and security of tenure for affected people.⁸⁸

Under Ethiopia's rural land laws, however, affected people are not allowed to challenge the purpose for which their rural landholding is compulsory acquired or appeal to a court of law or independent body.⁸⁹ The *woreda* administration or higher federal or regional government organ is not subjected to checks and balances through the courts with regard to its power of determining public purpose. This is implied from laws that expressly entitle affected people to action a grievance on the level of compensation.⁹⁰ Thus, the flip side of this stipulation reveals that, unless affected people are aggrieved with the amount of compensation awarded, they have no opportunity to access justice from an independent organ on other grounds, such as objecting that the project for which the expropriation was conducted does not satisfy the public purpose requirement.

Moreover, challenging expropriation decisions on this ground would be highly difficult for affected people in Ethiopia if it were allowed. This is because the purposes for which compulsory acquisition of land is authorized have been not listed in either an exhaustive or open-ended manner in the legislation.

Nonetheless, under Amhara Region's rural land legislation it appears that affected people are authorized to challenge an expropriation decision on the ground that the purpose for which their land has been expropriated does not satisfy the public purpose requirement within the administrative body. This is indicated where the region's law states: "[w]here a land holder or user who may be concerned in the matter has legal ground for his rejecting the request of land expropriation, he may submit his [complaint] to the Authority government office next to the body who has given the decision within 15 days from the date of his communication of the notice in writing. The decision given by the Authority government office shall be final."⁹¹

However, the problem with the Amhara Region's rural land law is that it will not consider a challenge against the purpose for which compulsory

88 Id at 5 and 55.

89 It is again difficult to assume that courts are sufficiently independent and competent enough to handle the public purpose issue if allowed to do so in Ethiopia.

90 Land Expropriation Proc, art 11(1) and (4); Amhara Rural Land Reg, art 33(1) and (5); and Benishangul Gummu Region's Draft Rural Land Administration and Use Regulation, drafted in 2010, art 31(1) and (5).

91 Amhara Rural Land Reg, art 29(5).

acquisition of land has been made, as a legal ground to demand an administrative review of the expropriation decision. Moreover, the reviewing administrative body is not independent, as it is the authority government office next to the expropriating body. Hence, in the author's opinion, the existence of administrative review of an expropriation decision on the ground of the non-fulfilment of the public purpose requirement is questionable.

CONCLUSION

It can be seen from this analysis of Ethiopia's rural land laws that the essence of "public purpose" in the expropriation of rural landholdings is interpreted broadly and vaguely, leaving the details to be determined by the public authority. No-one can be sure prior to expropriation what may constitute a public purpose or be able to predict what the possible public purposes are, particularly in relation to peasants' and pastoralists' landholdings. Concerning investors, they are at least sure that their rural landholding will not be expropriated unless it is needed for development projects carried out by the government. This differential treatment is not supported by any economic justification. Rather, it contradicts with the priority right guaranteed to peasants and pastoralists to access rural land.

Moreover, this situation affects the property rights of peasants and pastoralists and undermines their security of tenure by allowing the state extensive use of the power of expropriation, creating a loophole for abuse of power and incentives for corruption by private investors who try to influence processes to their own advantage. Although there is doubt about its legality, this problem is somehow mitigated in Oromia State since its rural land law prohibits the expropriation of peasants' and pastoralists' landholdings for transfer to investors. However, the problem is aggravated throughout the country because of the legislative failure to allow the involvement of independent well-established processes in determining the "public purpose" by means of appeal.