

Compensation for Expropriation in Ethiopia and the UK: A Comparative Analysis

Daniel Weldegebriel Ambaye (PhD) *

Abstract

Land expropriation, also known as compulsory purchase in the UK, is a common practice both in the UK and Ethiopia. The purpose of this paper is to compare and contrast the valuation systems and compensation methods used in Ethiopia and the UK in a bid to establish the levels of compensation paid to those who have lost their property in the interest of society. The method employed is micro-comparison, as opposed to macro-level comparison which focuses on the general aspect of comparison of two legal systems. The findings of this study show that the principle of compensation as “the full recompense of the property lost” has been observed in the UK, while this has not been the case in Ethiopia, mainly because land has no value to the holder.

Key Words: Land, Expropriation, Compensation, Valuation

Introduction

Expropriation is a forced taking of land¹ by the state for public purpose activities and upon advance payment of compensation. Expropriation is an inherent power of the state that stems from the very existence of the state. Thus it is argued that national constitutions give only recognition of this right, rather than authorization. Expropriation assumes different names in different countries, such as compulsory purchase in the United Kingdom (UK), expropriation in continental Europe, and eminent domain in the United States (US). As Ethiopia follows the Civil Law legal system in its substantive laws,

* Assistant Professor, Institute of Land Administration, Bahir Dar University. e-mail: danambaye@yahoo.com

¹ In this article the word “land” refers to the surface of the earth and any fixture of value attached to it. Of course, in Ethiopia the ground and the buildings belong to two different bodies and are also treated as two different properties. On the other hand, in the UK and many other countries, land signifies the ground and the buildings and other properties thereon.

the term expropriation is used in this country. However, in this article, all three terms will be used interchangeably, as necessary.

The purpose of this article is to compare and contrast the valuation systems and compensation methods in Ethiopia and the UK. The method employed is micro-comparison as opposed to macro-level comparison, which compares two legal systems or a broader aspect of the legal systems. Section one acquaints readers with the concept of expropriation and its limitations; section two deals with the methodology and briefly describes comparative legal research. Section three is about conceptualizing valuation and compensation methods while sections four and five deal with the compensation methods followed in the UK and Ethiopia, respectively. Finally, section six presents observations and conclusions.

1. Conceptualizing Expropriation

Sustainable development requires governments to provide public facilities and infrastructure that ensure safety and security, health and welfare, social and economic enhancement, and protection and

restoration of the natural environment.¹ An early step in the process of providing such facilities and infrastructure is the acquisition of appropriate land. Governments may use alternative land acquisition mechanisms such as purchase to secure land for public purpose activities. But it is impossible to rely completely on the land market as individuals may hold out and refuse to sell land required for projects or the land required may involve the interests of many owners, such that the exercise of expropriation power is warranted. And in some systems, land might not be put up for sale at all.

Black's Law Dictionary defines eminent domain as "the power to take private property for public use by the state, municipalities, and private persons or corporation authorized to exercise functions of public character."² An older legal dictionary, Bouvier, defines the term as "the superior right of property subsisting in sovereignty by which private property may in certain cases be taken or its use controlled for the public benefit, without regard to the wishes of the owner."³ Eminent domain is also defined in Nichols as "the power of the sovereign to take property for 'public use' without the owner's consent."⁴

In all the definitions, eminent domain or expropriation is described as the power of the sovereign state or agencies delegated by it to compulsorily take land for public use purposes. What is missing from the definitions is the "compensation" element. In some modern definitions of the terminology, the element of compensation is still left out. The FAO's definition of the term is a

¹ FAO 2008. Compulsory Acquisition of Land and Compensation. *FAO Land Tenure Studies 10*. Rome: Food and Agriculture Organization of the United Nations. p. 1.

² BLACK, H. C. 1991. *Black's Law Dictionary*. 6th ed. St. Paul, Minn.: West Group.

³ BOUVIER, J. 1984. *Bouvier's Law Dictionary*. 4th ed.: William S. Hein & Co.

⁴ NICHOLS, P. 2007 (Sackman J. et al. (eds.)). *Nichols on Eminent Domain*. Matthew Bender & Company, Inc., 1.11.

good example: “Compulsory acquisition is the power of government to acquire private rights in land without the willing consent of its owner or occupant in order to benefit society.”⁵ It must be admitted, despite the accuracy of the foregoing definition and despite the fact that the payment of compensation is not a part of the *meaning* of eminent domain, it is still an essential element of the *valid exercise* of such power. The absence of an explicit provision requiring compensation for the taking of property should not be seen as evidence of a rejection of the compensation principle. On the contrary, compensation is a well-established feature of takings by eminent domain in most countries, as we shall see in the next section.

In Ethiopia, the first systematic definition of the concept was given in the 1960 Ethiopian Civil Code. The Code, under Article 1460, provides:

*Expropriation proceedings are proceedings whereby the competent authorities compel an owner to surrender the ownership of an immovable required by such authorities for public purposes.*⁶

In this definition, the idea of the taking of private land by the state or authorities without the consent of the owner for public purpose is clearly articulated. The phrase “expropriation proceeding” is employed here instead of the word “expropriation” because of a translation error from the original French version.⁷ It is said that the original French version has defined the

⁵ FAO, *supra* note 2, § 2.1.

⁶ THE CIVIL CODE OF ETHIOPIA. *Negarit Gazeta: Gazette Extraordinary*. Proclamation No. 165/1960. (hereinafter Ethiopian Civil Code), Article 1460.

⁷ GETACHEW-DESTA. 1975. *Expropriation: Law and Practice*. Unpublished senior thesis at the Faculty of Law of Addis Ababa University. Addis Ababa, p. 6. The original draft of the Civil Code was prepared by the French comparative lawyer René David, in French, and then translated to English and from that to Amharic. There are many translation errors throughout the code, article 1460 being one of them.

term as follows: “expropriation is a procedure by which the administration obliges an owner to surrender to it the ownership of an immovable which it needs for the purpose of public utility.”⁸ And yet, like the above definitions, the rule noticeably fails to include the element of compensation in its definition.

Without undermining the above definitions, the following one may be considered as a working definition in discussing the details, as it is more comprehensive. This definition elaborates on the concept of eminent domain as follows:

*... [I]t is the right of the nation or state, or of those to whom the power has been lawfully delegated, to condemn private property for public use, and to appropriate the ownership and possession of such property without the owner's consent on paying the owner a due compensation to be ascertained according to law.*⁹

This definition seems more complete, since it includes all of the basic elements. First of all, expropriation or compulsory purchase is a right that is exercised by the state itself or its sub-branches such as municipalities and other public or private companies and people legally authorized by the state/legislature. In both England and Ethiopia it is the legislator who ultimately decides about the use of the expropriation power. The legislator,

⁸ Ibid.

⁹ AMENDOLA, F. C. et al. (eds.) 2006. *Eminent Domain Corpus Juris Secundum*. 29A C.J.S: Thomson West. § 2 (hereinafter C.J.S.).

through special statutes, authorizes government agencies, companies and private individuals to expropriate land for public purpose activities.¹⁰

The second element is that the state or the organs authorized to take such lands must follow a procedure. In the US, it is known as a “condemnation proceeding,” while in other countries, mainly in Europe, it is referred to as an “expropriation procedure.” The main idea is that the state must ensure due process of law before appropriating the property. In the UK, the process involves the administration and courts. Once an authorized public or private body, delegated by parliament, finds the activity for which the land is needed a public purpose, it serves a “notice of treat” on all interested parties. The notice should specify the amount of land and the purpose for which it is required.¹¹ If the interested party (owner or another) fails to respond to the notice, or if he disagrees on the modality and compensation amount, then the case will be transferred to the land tribunal for its final decision.¹² In Ethiopia, the process is purely administrative in nature. The “public purpose” determination as well as the decision to expropriate is carried out by the administration. Courts are involved only if there is a complaint about denial or insufficiency of compensation.¹³

¹⁰ Parliament in both Ethiopia and the UK provides expropriation power to public agencies (municipality, planning agencies, public utility agencies), to companies, or private individuals. The difference, while in the UK, parliament passed different legislations on the procedures and powers of these organs, in Ethiopia there is only one encompassing expropriation legislation that addresses all. Secondly, in Ethiopia, the power is vested only in the Woreda or the municipality. On the UK side see DENYER-GREEN, B. 2009. *Compulsory Purchase and Compensation*, London, EG Books. pp. 21-28.

¹¹ *Id.*, p. 109-111; See also the English English Compulsory Purchase Act 1965., Sec. 5.

¹² *Ibid.*

¹³ See FDRE Expropriation of Landholdings for Public Purposes and Payment of Compensation Proclamation, Proclamation No. 455/2005. *Negarit Gazeta*. Year 11, No. 43.

The third point worth discussing is the issue of “public use.” The doctrine of expropriation stands in opposition to the right of private property. Thus, expropriation requires the balancing of the public need for land, on the one hand, and the provision of land tenure security and the protection of private property rights on the other. In seeking this balance, expropriation principles include the requirement of “public interest” as one limitation on the state power of expropriation. This limitation or requirement is known by different names in various countries, such as public use, public benefit, public good, public interest, public purpose or public welfare.¹⁴ The idea is that there may be exceptional times and places in which the very foundations of public welfare cannot be laid without requiring concessions from individuals. These individuals must give up their private property in the interest of the common good.

The usual debate in relation to public purpose is the scope of its applicability to private interests. There is little controversy if land is required by a public body or company in the interest of society. The problem arises when land is needed for a private use. It is the task of the legislator in Ethiopia to delimit the scope of the expropriation power of the state. The Civil Code of Ethiopia, which is no longer applicable in determining public purpose, for instance, declared that land could not be expropriated purely for

(Hereafter cited as Federal Expropriation Proclamation), Art 11. Whether the administrative decision on public purpose or other procedural matters is challengeable is not clear. Whereas the expropriation proclamation puts the possibility as open, the new lease proclamation prohibits any appeal to regular courts except on the insufficiency of amount of compensation (See Art. 29(3) of Urban Lands Lease Holding Proclamation, Proclamation No. 721/2011. *Negarit Gazeta*. Year 18, No. 4.

¹⁴ FAO, *supra* note 2, p. 10.

financial benefit.¹⁵ But under the current expropriation proclamation, public purpose is understood as an activity that may be carried out by public bodies, private investors or non-governmental organizations, and that provides *direct and indirect benefits* to society.¹⁶ The “direct and indirect benefits” standard allows the Ethiopian government to exercise its expropriation power without limits.

In England, public purpose is not specifically defined as such in the statutes. Rather, the “public interest” definition which is stated in Article 1 of Protocol No. 1 of the European Convention for the Protection of Human Rights and Fundamental Freedoms is considered to be binding in the UK as well:

*Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.*¹⁷

Concerning interpretation of the “public interest” requirement of the European Convention, it is said that

*“in cases involving the transfer of property from one private person to another, the Court of Human Rights allows States to frame the purpose of a taking so broadly that it is difficult to imagine how a redistribution would serve a public interest in some way.”*¹⁸

The Court of Human Rights has stated that economic policy may justify the transfer of property amongst private persons. For example, the

¹⁵ Ethiopian Civil Code, Art. 1464.

¹⁶ See Article 2(5) of the Federal Expropriation Proclamation.

¹⁷ COUNCIL-OF-EUROPE 1952. Protocol No. 1 to the Convention for the Protection of Human Rights and Fundamental Freedoms. Paris.

¹⁸ ALLEN, T. 2008. Control Over the Use and Abuse of Eminent Domain in England: A Comparative View. In: MALLOY, R. P. (ed.) *Private Property, Community Development, and Eminent Domain*. Hampshire: Ashgate Publishing Limited, p. 78.

Court has found that “the public interest in managing the economy justifies consolidations of private agricultural land, majority buy-out rules in company law, and compulsory debt adjustment programs.”¹⁹ The Court has not given details on the relation between personal economic benefits and “public interest.” Instead, it seems, it is enough for the Court if the state believes that the interference with property will have a positive impact on the economy.²⁰

The appropriation or taking, mentioned in the definition, is also an important aspect or stage in the expropriation procedure. There are several types of appropriation which can occur through expropriation: total appropriation, partial appropriation, temporary appropriation, easement and right of way being the main ones. Under the Ethiopian Civil Code, the expropriation rules show that expropriation may be used either to acquire or terminate rights *in rem* such as servitude, usufruct or lease.²¹ Expropriation differs from similar concepts like police power (as it is termed in the USA) or regulations that limit the use right of the property due to public health, public safety, etc., in that it involves the loss of the core constituent right of disposal. In the latter case, what the owner loses is some part of his use right over his property, while in the former case he loses the entire property, or part of it.

The fifth element of the definition is the absence of consent on the part of the owner. The power of eminent domain/expropriation is a sovereign power of the state to take private land without the consent of the owner. What makes expropriation different from other consensual types of land acquisition

¹⁹ Ibid.

²⁰ Id., p. 80.

²¹ See Ethiopian Civil Code, Articles 1460-61.

mechanisms is the complete absence of consent on the part of the property owner. It is true that many public and private organs do also collect land through purchase and similar transactions which are based on the willingness of the owner. Even if this is not applicable in Ethiopia, in England, for example, public authorities are delegated to try to buy land by agreement first, before they resort to compulsory purchase proceedings.²²

But it may not be realistic to totally rely on the good will of the owner to get land for different reasons. The state, hence, resorts to coercive proceedings for two main reasons: first, owners may create a hold-out on public development activities, either by totally refusing to sell the land at any given price, or by requesting unrealistically high prices for the sale of their property; and second, public development projects which demand long and continuous land holdings involve the interest of many owners, and it may be difficult to reach agreement with all owners.²³ In both ways, owners try to impede the public good that could be attained by using their land.

The last principle included in the definition is the obligation of payment of fair compensation. This principle is the most important guarantee to individual property owners of their lawful possession. All major legal systems and constitutions include this concept as a guarantee to the owner and as a limitation on the power of government. The just compensation obligation requires that the state reimburse the owner for the value of the property interest taken and place him in as good a pecuniary position as if the property

²² Denyer-Green, *supra* note 11, p. 93. See also section 3 of the 1965 English *Compulsory Purchase Act*; and section 120 of the English *Local Government Act* of 1972.

²³ MERRILL, T. W. 1987. The Economics of Public Use. *Cornell Law Review*, 72, 61-116. p. 77.

had not been taken.²⁴ The assessment of compensation is extremely complicated, and countries incorporate different valuation methods in their expropriation legislation. Nevertheless, the existence of compensation makes expropriation tolerable and differentiates it from other government actions, such as confiscation, nationalization and eviction, in that these three are devoid of the state obligation to compensate for the taking.

2. Research Method

2.1 Comparative Law Method

Comparison is the operation that follows the determination of some identical or divergent elements of two phenomena. Zweigert and Kötz, authorities on comparative law, simply define the subject as “the process of comparing the different legal systems of the world.”²⁵ Comparative law describes “*the systematic study of particular legal traditions and legal rules on a comparative basis.*”²⁶ From this it follows that comparative legal research methodology is based on the comparison of legal systems or specific rules within two or more legal systems. Yntema has summed up the

²⁴ This position was held first by a US Court (in *Olson v. United States*) and became an accepted principle in almost all countries. See details in EPSTEIN, R. A. 1985. *Takings, Private Property and the Power of Eminent Domain*. Cambridge: Harvard University Press, p. 182.

²⁵ ZWEIGERT, K. & KÖTZ, H. 1998. *An Introduction to Comparative Law*. Oxford and New York: Oxford University Press, p. 2.

²⁶ CRUZ, P. D. 1999. *Comparative Law in a Changing World*. London: Cavendish Publishing Ltd., p. 3. Italics in the original.

importance of comparative law as a tool of legal research as “the constant refinement and extension of our knowledge of law.”²⁷

Researchers use the comparative method to compare and contrast the laws of different countries *on different scales, for different purposes and based on different factors/parameters*. Zweigert and Kötz identified four ways in which the comparative study of legal systems can be beneficial: as an aid to legislature, as a tool of construction (interpretation of national law), as a component of the curriculum of universities, and as contribution to the systematic unification of laws.²⁸

Comparison may be made either at macro or micro levels. The terms *macro-comparison* and *micro-comparison* are now reasonably well established in comparative legal studies.²⁹ Macro-comparison refers to the study of two or more entire legal systems, while micro-comparison generally refers to the study of topics or aspects of two or more legal systems.³⁰ A macro-comparison study is done on such subjects as legal methods, procedures, roles of professionals, and style of codification. By contrast, in micro-comparison, researchers focus on a specific legal institution or problem to be solved.

Certain factors are considered to be relevant in legal comparisons at the macro or micro level, respectively. Grossfeld lists the following determinative factors for macro-comparison: the cultural, political and economic

²⁷ YNTEMA, H. E. 1956. Comparative Legal Research: Some Remarks on “Looking Out of the Cave”. *Mich. L. Rev*, 54, 899. p. 901.

²⁸ Zweigert and Kötz, *supra* note 25, pp.16-26.

²⁹ De Cruz, *supra* note 26, p. 227.

³⁰ *Ibid.*

components of society and a particular relation of the state and citizens.³¹ Comparativists have also stressed the need for “comparability”, a similarity of the comparable legal systems in terms of stage of legal evolution. In this regard, Gutteridge, for example, notes that “[l]ike must be compared with like,” by which he means that “the concepts, rules or institutions under comparison must relate to the same stage of legal, political and economic development.”³² A similar caution was provided earlier by another comparative lawyer, Echmitthoff, who argued for “*strict observance of comparability*.” The comparison must extend to the same evolutionary stage of the legal systems which are being compared.³³

But this does not mean that the door is completely closed for the comparison of legal systems found at different stages of evolutionary development. Indeed, Gutteridge points out that ‘comparability’ would not be a serious problem if the purpose of the comparison were to illustrate the differences that operate at different stages of legal, political and economic evolution. De Cruz also stressed this line of argument, stating that “the choice of legal systems (for comparison) must, ultimately, depend on the main aims and objectives of the particular comparative investigation.”³⁴ Comparison of the *incomparable*, if made focused, may be extremely useful and illuminating.

³¹ GROSSFELD, B. 1990. *The Strength and Weakness of Comparative Law*. Oxford: Clarendon Press.

³² GUTTERIDGE, P. H. 1941. *Comparative Law: An Introduction to the Comparative Method of Legal Study and Research*, Cambridge: Cambridge University Press. P. 73.

³³ De Cruz, *supra* note 26, p. 221.

³⁴ *Id.*, p. 222.

Concerning micro-comparison, it is true that the 'comparability' requirement is also applicable, but on a less strict level. What is important is the purpose of the comparison. According to De Cruz, irrespective of their 'incomparability,' two legal systems may be compared at a micro level if the intention is, for example, to trace the development of a particular institution, in a comparable society, at a comparable stage of its legal and economic development; or to illustrate the variety of responses to similar problems that exist in societies which have totally different perceptions of law, or rights, or have a different attitude to distributive justice or, indeed, a totally different conception of all three.³⁵ But caution is required when considering whether or not to impose a Western solution, if the comparison is between Western and non-Western legal systems.

2.2 Comparison: How

The specific purposes of the comparison method are determined by the existing relations between objective properties of the compared categories. The comparison implies the use of logical instruments, such as classification, definition and analogy.

In this paper, the comparative method is employed at the micro level. A micro-comparison is made of the compensation systems of Ethiopia and the UK. It is obvious that both countries are found at different stages of legal and economic development. Furthermore, the political ideologies which both countries follow with respect to property rights are divergent. In the UK, even if in theory it is said that the Crown owns all land, the private property right

³⁵ Id., p. 228.

(freehold) to land is accepted in practice. Individual landholders have the right to use, exclude, and alienate their land freely. In contrast, in Ethiopia land ownership is vested in the state and the people, a principle which is inherited from the previous socialist government and prohibits the sale and exchange of land.

Yet the reason for comparing these systems is to show in bold terms the difference between the Ethiopian compensation system and that of a typical Western country, where private ownership is sanctified. By presenting such differences, it is possible to show how far Ethiopian law lags behind other systems, and what changes may be made to minimize this difference.

In analyzing the difference between these compensation systems, we use a doctrinal research method which is confined to the analysis of laws and cases. In other words, this research does not involve empirical data analysis. Accordingly, from the Ethiopian side, the author has employed the Federal Constitution, federal and regional land-related legislation, and the Expropriation Proclamation and Regulation. From the UK perspective, the author reviews the statutes related to Compulsory Purchase, such as the 1965 Compulsory Act, the various Planning Acts, the Human Rights Act of 1998, the Land Compensation Acts of 1961 and Land Compensation Acts of 1973, and the Local Government Act of 1972. The author has also consulted secondary sources such as books and journals articles dealing with the compulsory purchase and compensation systems of both countries.

3. Conceptualizing Valuation and Compensation

3.1 What is Compensation?

Compensation is defined as “full indemnity or remuneration for the loss or damage sustained by the owner of the property taken or injured for the public use.”³⁶ The compensation requirement under the law demands that the expropriator reimburses the expropriated for the property interest taken and places the latter in as good a pecuniary position as if the property had not been taken.³⁷

Payment of compensation is justified by socio-political and economic theories. Compensation is a means of maintaining social justice. It protects the rights of politically under-represented groups,³⁸ requiring the government to bear the inconveniences resulting from expropriation. Hence, it is argued that no single individual should bear the cost of government projects that are intended to be for the common good.³⁹ There is no compelling reason to single out one individual and oblige him to shoulder the entire burden for the benefit of society at large. This also serves as a protection against arbitrary and unauthorized actions of the legislature or the executive branches of the government. As Joseph Sax has argued, a compensation guarantee serves as a check on self-interested acts of public authorities.⁴⁰

³⁶ C.J.S., *supra* note 9.

³⁷ EPSTEIN, *supra* note 24, p. 182.

³⁸ NDJOVU, C. E. 2003. *Compulsory Purchase in Tanzania: Bulldozing Property Rights*. PhD Thesis, Kungl Tekniska Hogskolan, p. 21.

³⁹ EPSTEIN, R. A. 1993. *Bargaining With The State*. New Jersey: Princeton University Press, p. 6.

⁴⁰ SAX, J. 1964. Takings and the Police Power. *Yale Law Journal*, 74, p. 36.

Economically speaking, if the government is forced to pay for what it acquires, this may discourage it from making unwise decisions.⁴¹ It will always strive to make rational economic decisions that will bring beneficial development to all parties. In addition to this, the law has to give reasonable protection to the expectations of those who have relied on it. Should the law deny this protection and fail to protect property, owners might not be willing to take risks and invest in their properties, for the benefit may be reaped by others. Nor would banks be willing to lend money for such risky business.⁴²

3.2 Object of Compensation

There are two theories concerning the amount or level of compensation that should be paid to the owner of the expropriated property: indemnity and taker's gain theories. Under the indemnity principle, which is also called "owner's loss" theory, the owner is entitled to be put in as good a pecuniary position as he would have been if his property had not been taken.⁴³ This principle is predominant in most western countries, though there are slight variations. It assumes that a "dispossessed owner would go out into the market and purchase with his compensation money a property roughly [equal] to that which had been acquired, any incidental loss or expense being met from the proceeds of the disturbance claims."⁴⁴

⁴¹ NDJOVU, *supra* note 38, p. 21.

⁴² VIITANEN, K. 2002. Just Compensation in Expropriation. *FIG XXII International Congress*. Washington, D.C., USA: International Federation of Surveyor, p. 3.

⁴³ KRATOVIK, R. & FRANK J. HARRISON, J. 1954. Eminent Domain: Policy and Concept. *Cal. L. Rev.*, 42, 596-652, p. 615.

⁴⁴ NDJOVU, *Supra* note 34, p. 20.

In the United States, court decisions show that the compensation to be paid to the owner is not measured by the value of the land to the property taker.⁴⁵ In France, as in the USA, compensation does not reflect what the taker has gained, but rather, what the owner has lost. Moreover, its purpose is to compensate for the taking and not to pay the cost of equivalent reinstatement directly.⁴⁶ In France, in addition to the market value of the deprived property, loss of rent, trading loss, moving expenses, dismissal benefits, severance damages and the like are also coverable, although the taker gets nothing from this.

In England, in addition to the full compensation of the land acquired, the expropriating organ is also obliged to pay “compensation for disturbance of interest and compensation for severance and injurious affection.”⁴⁷ Severance occurs when the physical taking of the part of a parcel of land depreciates the value of the remaining land. Injurious affection applies to the depreciation in the value of the remaining land caused by the construction of and use of the works for which the part was taken. Hence, to put the owner of the expropriated property in the same economic position, during the course of valuation, these laws consider the loss of the property owner. Whether the expropriating organ gets much or little benefit from the taking does not matter.

⁴⁵ MCCORMICK, C. T. 1932. The Measure of Compensation in Eminent Domain. *Minn. L. Rev.*, 17, no. 5, p. 465.

⁴⁶ PICARD, E. 1990. Expropriation in France. In: ERASMUS, G. M. (ed.) *Compensation for Expropriation: A Comparative Study*. Oxford: St. Edmund Hall University of Oxford, p. 57.

⁴⁷ MOORE, V. Ibid. Compulsory Purchase in the United Kingdom. In: ERASMUS, G. M. (ed.). *National Committee of Comparative Law*. Vol. I, p. 6.

The second theory is known as the “taker’s gain” theory, which holds that “the government should pay only for what it gets.”⁴⁸ This argument stems from the fear that allowing compensation for things like disturbance of a business on the land or similar remote damages may drain the purse of the government or other beneficiaries. Although it may make the owner whole, if paid, it is said that compensation for consequential damages, such as the future loss of profits, expenses of moving fixtures and personal property, and the loss of goodwill that inheres in the location, should not be paid.⁴⁹ This is because the government or other expropriating organ takes only the land, having no use for any business operated thereon, and this theory holds that it should pay only for what it gets, which is, of course, the market value of the land.

A case in point is the Chinese compensation principle enshrined in Article 47 of the 1986 (as amended in 2004) Chinese Land Administration Law (LAL).⁵⁰ Paragraph 1 of Article 47 clearly states, “Land expropriated shall be compensated for on the basis of its original purpose of use.” Indeed, the details of the compensation for expropriation of arable land show that the farmer receives no market value for the loss of land. Rather a lump sum of money calculated at 6-10 years annual production is provided besides other minor payments.

⁴⁸ KRATOVIL and HARRISON, *Supra* note 43, p. 615.

⁴⁹ *Ibid.*

⁵⁰ The People's Republic of China Land Administration Law. Available at: http://www.npc.gov.cn/englishnpc/Law/2007-12/12/content_1383939.htm.

The right to and extent of compensation is not mentioned in the Chinese Constitution.⁵¹ The basic rationale for using this principle in China is that land is the collective property of the people, and individual persons are provided with “use right” for a fixed period of time. So when the state expropriates land, what it is taking is not private property, but use right. In other words, it is not expropriating but “resuming.”⁵² Therefore, “the compensation in the expropriation of land is not for ownership but for land use rights, and paying that compensation is based on the national policy.”⁵³

Both arguments try to determine the modalities that should be employed and the elements that should be included in assessments of compensation. Today, with the emphasis on property around the world, the indemnity principle prevails.

3.3 Level of Compensation

Most laws (constitutions or other minor legislations) which allow expropriation of private property usually add an adjective to the requirement of the payment of compensation. Depending on the legislation of each

⁵¹ BIN, Z. X. 2002. Compensation System in the People's Republic of China. In: KOTAKA, T. & CALLIES, D. L. (eds.) *Taking Land: Compulsory Purchase and Regulation in Asian-Pacific Countries*. Honolulu: University of Hawai'i Press, p. 93.

⁵² Land expropriation refers to the case in which the government does not have ownership of the land. For example, the land occupant has the freehold interest in the land, and the government needs to acquire ownership of the land through a compulsory acquisition process. This kind of ‘land acquisition’ is also known as a ‘compulsory purchase’. Compulsory ‘land resumption’ refers to the case in which the government, not the land occupants, has the ownership of the land. For example, the occupants only have a leasehold interest in the land. Through the compulsory acquisition process, the government acquires the user rights and gets back the land it originally owns. This kind of compulsory land acquisition is known as ‘land resumption’. (CHAN, N. 2003. Land Acquisition Compensation in China – Problems & Answers. *International Real Estate Review*, 6., p. 138.)

⁵³ *Id.*, p. 95.

country, it may be termed as compensation, fair compensation, just compensation, reasonable compensation, adequate compensation or any other, like ‘commensurate compensation’ in Ethiopia.

In most Western countries⁵⁴ and, as shown in Kitay, in most developing countries,⁵⁵ the fundamental principle that guides valuations under expropriation laws is the payment of *fair market price* or *market value*. In other words, *market value* is generally taken as a test for the existence of just compensation.

Market value, as defined in *Appraisal of Real Estate*, is:

*The most probable price, as of a specified date, in cash, or in terms equivalent to cash, or in other precisely revealed terms, for which the specified property rights should sell after reasonable exposure in a competitive market under all conditions requisite to a fair sale, with the buyer and seller each acting prudently, knowledgeably, and for self-interest, and assuming that neither is under undue duress.*⁵⁶

The reason why market value is favored by courts or legislators is that because it is believed that the amount of compensation is believed to cover the damage sustained by the owners. The amount of compensation will enable owners to go to the market and fetch similar property for the same price. The former owner should neither suffer a detriment nor reap a windfall profit.

⁵⁴ The term “just compensation” in the USA Constitution is understood by courts as “fair market value” (PAUL, E. F. 1987. *Property Rights and Eminent Domain*, New Brunswick and London, Transaction Publishers., p. 81); the same conclusion is held in Europe as observed from the decisions of European Court of Human Right (ALLEN, T. 2007. Compensation for Property Under the European Convention of Human Rights. *Michigan Journal of International Law*, 28, 287-335. p. 288).

⁵⁵ KITAY, M. G. 1985. *Land Acquisition in Developing Countries: Policies and Procedures of the Public Sector*, Boston, Oelgeschlager, Gunn & Hain, Publishers, Inc., p.50.

⁵⁶ APPRAISAL-INSTITUTE 2001. *The Appraisal of Real Estate*, Chicago, Appraisal Institute., p. 22.

3.4 Fairness and Objectivity of Market Value

Researchers question whether market value is really a fair and objective measure to determine compensation for expropriation. Although market value is taken as the most probable price that reflects the loss, it nevertheless is not an ideal one as it does not give full compensation to those who lose the property. The central difficulty of the market value formula for compensation is that it denies any compensation for real but subjective values.⁵⁷ Kalbro calls these subjective values “individual values” or “reservation prices.”⁵⁸

A reservation price is defined as, “the lowest price at which a property owner would sell the property without the threat of expropriation.”⁵⁹ Reservation prices are, in short, the prices an owner would place on the non-monetary values of the property, such as sentimental attachment, family history and similar personal assessments. The purpose of the expropriation may be another factor that alters the reservation value. It is argued that if people believe that the purpose is for social and public benefit, they tend to agree to lower compensation amounts. But if the land required is for private operators, such as the Telecom Company, owners demand higher compensation.⁶⁰

In general, since these sentiments have no monetary value, they are not considered during valuation. It is important to note that the market value for a

⁵⁷ EPSTEIN, *supra* note 24, p. 183.

⁵⁸ KALBRO, T. 2003. Private Compulsory Purchase and the Public Interest. In: KALBRO, T. (ed.) *Urban Land Management: Papers on Property Development and Compulsory Purchase*. Stockholm: KTH, p. 59.

⁵⁹ NORELL, L. 2008. Is the Market Value a Fair and Objective Measure for Determining Compensation for Compulsory Purchase. *Land Reform*. Rome: FAO. p. 21.

⁶⁰ KALBRO, *supra* note 58, p.60.

given property can only be *assessed* or estimated, not calculated or exactly determined. Had the owner been allowed to fix the price, s/he would have added the subjective or personal price to the market value. For this reason, it is said that market value does not provide full compensation.⁶¹

To tackle these problems, Epstein proposed fixing the amount of compensation somewhere between the market value and the reservation price of the owner.⁶² But since this approach still creates ambiguity about the amount, the same writer suggested another solution. He proposed a bonus increase over the market value.⁶³ This proposal has been adopted by some countries that have included it in their legislation. The mechanism increases the compensation amount by a percentage over the market value assessed by the valuator. For example, for many years now, a 10 percent bonus has been allowed in England to compensate those who lose their property to compulsory purchase.⁶⁴ In addition to the fair market value of the property, home owners get 10 percent of the value of the home subject to a minimum of £4,000 and a maximum of £40,000; for businesses, the amount is 7.5 percent of fair market value up to a maximum of £75,000.⁶⁵ Recent legislation in Sweden also allows for a 25 percent increase in the market value.⁶⁶ The

⁶¹ NORELL, *supra* note 59, p. 21; KALBRO, *supra* note 58, pp. 59-60.

⁶² EPSTEIN, *supra* note 24, p. 183.

⁶³ *Ibid.*

⁶⁴ *Id.*, p. 184; COMMENTS 1958. Eminent Domain Valuations in an Age of Redevelopment: Incidental Losses. *Yale Law Journal*, 67, p. 66.

⁶⁵ ALLEN, 2008, *supra* note 19, p. 84; see also the British *Land Compensation Act* of 1973, ss 29-30, 33.

⁶⁶ An Amendment to the Swedish Expropriation Act, SFS 2010:832, July 2010.

percentage increase over the market price enables owners to acquire the lost property and regain part of the reserved price.

Kalbro and Epstein propose a slightly different but discriminatory approach concerning the increase above market value. This approach proposes that instead of increasing the reserved price across the board, it is possible to impose the increase only in cases of private use. If the expropriation is made in the interest of the public, the owner will be satisfied by the compensation of market value, but if it is made for private economic gain, then an increase can be conferred, in the form of profit sharing.⁶⁷

3.5 Valuation Methods

Valuation is the process of estimating the compensation amount for the property taken. In a typical western country, the purpose of valuation is to determine the market value of the expropriated property. There are three common methods of appraisal. These are the sales comparison approach, the income capitalization approach, and the cost approach.

3.5.1 Sales Comparison Approach

The sales comparison approach is a technique in which the value of the real property is determined by comparing property recently sold in the “market” to the land being appraised. This approach is the most common method of land valuation. It relies on market information to value the property.⁶⁸ The underlying concept assumes that a recent sale from a willing seller to a willing buyer of a property (the comparable property) best reflects

⁶⁷ KALBRO, *supra* note 58, p. 60; EPSTEIN, *supra* note 24, p. 184.

⁶⁸ *Id.*

the value of similar land (the subject property) in the vicinity. This method models the behavior of the market by comparing the subject property under valuation with similar property or properties that have recently been sold, or for which purchase offers have been made. It assumes that a rational and prudent buyer will not pay more for the comparable property, while a seller in the same situation will not accept less for the same property. The sale price finally reached reflects the balance of supply and demand for properties in a given market.⁶⁹ Therefore, if the subject property under valuation were offered for sale in the same market at around the same time, the transaction would be completed at approximately the same price.

3.5.2 Income Capitalization Approach

The income (or capitalization of income) approach is an alternative to the comparative sales approach, typically used in situations where markets are relatively inactive. It is most applicable to agricultural land and investment properties. In this approach, an appraiser analyzes a property's capacity to generate future benefits and capitalizes the income into an indication of present value. In other words, the value of the land derived from this approach is the estimated present value of future benefits, including streams of income during the lifetime of the property and proceeds from the sale of the property.

This valuation approach derives land or building value by dividing annual net income from the property by an estimated capitalization rate. Under this approach, valuation of a property is accomplished through capitalization.

⁶⁹ WYATT, p. 2005. *Property Valuation in an Economic Context*. Oxford: Wiley-Blackwell, p. 128.

Capitalization is the division of a present income by an appropriate capitalization rate to derive the value of the income stream.⁷⁰

3.5.3 Cost Approach

The cost approach is a valuation technique in which the appraiser adds property value to the depreciated value of improvements so as to determine the value of the subject property. In this approach, the value of a property is derived by adding the estimated value of the land to the current cost of constructing a replacement for the improvements and then subtracting the amount of depreciation.⁷¹ The appraisal is based on what it would cost to replace the existing facilities.⁷²

The replacement cost approach for structures in a typical developed country setting of active markets is based on the theory that the market value of an improved parcel can be estimated as the sum of the land value and the depreciated value of the improvements. In other words, this approach is based on the assumption that cost equals value. The reliability of the cost method depends on the validity of this assumption, and there are many circumstances where such an assumption is not justified.

⁷⁰ UNECE 1996. *Land Administration Guidelines*. Geneva, United Nations Economic Commission for Europe, p. 38.

⁷¹ APPRAISAL-INSTITUTE 2001. *The Appraisal of Real Estate*, Chicago, Appraisal Institute, p. 63.

⁷² SAYCE, S., SMITH, J., COOPER, R. & ROWLAND, P. V. 2006. *Real Estate Appraisal: From Value to Worth*, Oxford: Blackwell Publishing, p. 16.

4. Compensation in the United Kingdom

4.1 Compensation Principle

The essence of compensation in England is well expressed in what an Australian Court once said:

*Compensation prima facie means recompense for loss and when an owner is to receive compensation for being deprived of real property... his pecuniary loss must be ascertained by determining the value to him of the property taken from him. As... the pecuniary value of the object is contained in the asset, the compensation cannot be less than the money value into which the owner might have converted his property had the law not deprived him of it.*⁷³

As explained above, the indemnity principle requires equivalence in the damage caused to the expropriated person. English law follows this principle as well. The statutory principle concerning the compensation level was first included in the 1845 Land Consolidation Act, and rewritten in the Compulsory Purchase Act of 1965, which currently applies. Section seven of the Act reads as follows:

In assessing the compensation to be paid by the acquiring authority ... regard shall be had ... to the value of the land to be purchased by the acquiring authority.

The meaning and implication of this principle was refined by the courts. In its 1880 decision, the court in *Livingstone v. Rawyards Coal Company* declares:

In setting a sum of money to be given for reparation of damages, you should as nearly as possible get at that sum of

⁷³ *Nelungaloo Properties Ltd v. The Commonwealth* (1948), as quoted in Denyer-Green, *supra* note 10, p. 197.

*money which will put the party who has been injured in the same position as he would have been in if he had not sustained the wrong for which he is now gaining his compensation or reparation.*⁷⁴

In *Horn v. Sunderland Corporation* (1941), the court again affirmed that “the principle of equivalence ... is at the root of statutory compensation which lays it down that the owner shall be paid neither less nor more than his loss.”⁷⁵

More elaborately, an 1868 decision based on the 1845 Act was delivered in *Penny v. Penny*, which culminates the indemnity principle as follows:

*It is not the interest which has been acquired by the (acquiring authority) that has to be estimated, but the value of the interest taken from the person with whom the (acquiring authority) deals.*⁷⁶

4.2 Compensation Level

The forgoing discussion reveals that the case law and the statutes have urged the use of a method of measurement that accounts for more than market value, or the value of the land to the owner, to determine the compensation amount in the event of compulsory purchase. The 1961 Land Compensation Act set out market value as the measurement for compensation. Section 5 of this Act specifically stresses that no additional allowance will be paid because of the compulsory act, and that “[t]he value of land shall ... be taken to be the amount which the land if sold in the open market by a willing seller might be expected to realize.” Thus the willing seller and willing buyer standard was introduced to determine property’s market price.

⁷⁴ Id., p. 195.

⁷⁵ Id., p. 196.

⁷⁶ Denyer-Green, *supra* note 10, p. 198.

Further, valuers are expected to consider “the hope value” or “highest and best use” of the land during their valuation. The idea is that if the highest and best use of the land is, for example, urban housing, then the valuation must be based on the value of urban housing development, even if the land is currently undeveloped. This modality of valuation pays the owner the potential value of his land.

In England, this principle was adopted as early as 1867, when the court decided that, “when the land has prospective value, say for building purposes, this could be taken into consideration, for otherwise the expropriated owner would not be compensated for his full loss—the value of land to him.”⁷⁷ The court approved this, finding that if the land had an adventitious value beyond its mere agricultural or existing use value, and this value was marketable in the sense that a higher price could be obtained for it, then the valuator could take this into account.

4.3 Compensable Interests

4.3.1 Land

Under English law the taking of the land or an interest in the land is compensable. Land is understood under section 205(1)(ix) of the English Property Act of 1925 as including the ground, fixtures on the ground, minerals and intangible rights:

... land of any tenure, and mines and minerals... buildings or parts of buildings and other corporeal hereditaments; also a manor, an advowson, and a rent and other incorporeal

⁷⁷ Id., p. 199.

*hereditaments, and an easement, right, privilege, or benefit in, over, or derived from land.*⁷⁸

The above interests, which constitute “land,” are compensable as stated in the 1965 Compulsory Purchase Act. Section seven of the Act states:

In assessing the compensation to be paid by the acquiring authority under this Act regard shall be had not only to the compensation value of the land to be purchased by the acquiring authority, but also to the damage, if any, to be sustained by the owner of the land by reason of the severing of the land purchased from the other land of the owner, or otherwise injuriously affecting that other land by the exercise of the powers conferred by this or the special Act.

The owner of land or interest thereon who lost such interest by compulsory purchase is entitled to the value of the land taken. Details of the techniques of valuation of all assets and interests are beyond the scope of this study. But it suffices to note that it is the responsibility of the real property valuator to use the best method applied in the profession to determine the market value of the expropriated property. Courts do not usually specify a particular valuation method to be used for this highly technical determination.

4.3.2 Severance and Injurious Affection

The second clause of section seven of the Compulsory Purchase Act, cited above, mentions injurious affection related to partial compensation of land. The idea is that during valuation, assessors should consider not only the land taken, “*but also the damage ... to be sustained by the owner of the land*

⁷⁸ GOO, S. 2002. *A Source Book on Land Law*. London: Cavendish, p. 27.

by reason of the severing of the land purchased from the other land of the owner, or otherwise injuriously affecting that other land... ”⁷⁹

Severance occurs where the land acquired from the claimant contributes to the value of the retained land, so that when severed from it, the retained land loses value. Injurious affection is the depreciation in value of retained land as a result of the compulsory acquisition and the proposed use of all the land acquired by the acquiring authority. Severance can be said to be one cause of injurious affection.⁸⁰ In both cases, what is important is that the land taken and retained must have been interrelated and the severance (taking) of part of the land must cause harm to the retained portion. The harm could be a total loss of value or a depreciation or reduction in market value.

Severance may injuriously affect retained land because the loss of the part acquired depreciates the value of the retained, or because the claimant’s land is severed into two or more parts, such as a farm intercepted by a motorway, with the severed parts reduced in value because of the increased cost of working.⁸¹

One aspect of injurious affection is that the use or execution of the land taken for the intended purpose causes depreciation in the value of the retained land. Thus, if the land taken is used for road or railway construction, the undesirable effects of noise, dust and access blockage that causes the reduction in the value of the retained property are compensable.

⁷⁹ English Compulsory Purchase Act (1965). Sec. 7.

⁸⁰ Denyer-Green, *supra* note 10, p. 288.

⁸¹ *Id.*, p. 292.

There are two methods for determining the loss to an expropriated owner in cases of severance. The first is to value the land that is taken and add to this the decrease in value of the retained land. The second is the “before and after” method, in which the expropriated owner’s entire interest is valued before severance and then the value of the land he retains is assessed afterwards and deducted from the original value.

4.3.3 Disturbance and Other Matters

Disturbance compensation is associated with the costs the owner incurs as a result of his moving and re-establishing himself in another place. Such costs include loss of good will, loss of profit, trade loss, relocation and resettlement expenses, legal costs and personal time expenses.⁸² The source of this compensation modality under UK law is Rule 6 of section 5 of the Land Compensation Act of 1961, which provides:

*The provision of rule (2) shall not affect the assessment of compensation for disturbance or any other matter not directly based on the value of the land.*⁸³

The justification for the inclusion of this compensation package is that it makes the compensation equivalent to the loss sustained. In other words, the expropriated person would not have incurred extra costs for the above type of disturbances had he not been forced to do so by the compulsory purchase procedure.

⁸² See *Id.*, pp. 340-353.

⁸³ English Land Compensation Act (1961). Available at: http://www.legislation.gov.uk/ukpga/1961/33/pdfs/ukpga_19610033_en.pdf.

The test for determining the eligibility of claims for compensation for disturbance and other matters are summarized in the case of *Director of Building and Lands v. Shun Fung Ironworks Ltd.* (1999):

- a. Causation: the loss must be caused by the compulsory acquisition,
- b. Remoteness: the loss must not be too remote,
- c. Duty to mitigate: the claimant must act reasonably in seeking to mitigate his loss.⁸⁴

4.3.4 Additional Compensation

As already mentioned, the value to the owner has been replaced by the principle of market value. But there seem to be reservations about the fairness of the market value. Therefore the law devises various mechanisms to give additional compensation to the owner of the lost property. A case in point is the housing loss payment recognized by the Land Compensation Act of 1973. A reading of section 29-33 reveals that an additional percentage of compensation may be provided to those who are displaced from their homes by compulsory purchase procedure.

The mechanism increases the compensation by a percentage over the market value assessed by the valuator. In addition to the fair market value for the property, home owners get 10 percent of the value of the home, subject to

⁸⁴ Denyer-Green, *supra* note 10, p. 353.

a minimum of £4,000 and a maximum of £40,000; for businesses, the amount is 7.5 percent, up to a maximum of £75,000.⁸⁵

5. Compensation in Ethiopia

5.1 Compensation Principle

The compensation principle in Ethiopia is not clear. But it is evident that it does not fit with the indemnity principle, which provides an amount of compensation to the owner of expropriated property that matches or at least approximates his loss. The wide range of compensation forms provided in the English law, as discussed above, are good evidence that the state is concerned about the wellbeing of its citizens.

The Ethiopian Civil Code section on expropriation provides something that looks like an indemnity principle. Article 1474 (1) of the Civil Code says that the amount of compensation or the value of the land that may be given to replace the expropriated property shall be “equal to the amount of the actual damage caused by expropriation.” Yet this does not cover potential damages such as the future, highest and best use of land values. The Civil Code is concerned only with actual and real damages caused when the land was expropriated.

The current FDRE Constitution under sub-article 8 of Article 40 provides for advance payment of a “commensurate” amount of compensation for the loss of private property. But the Constitution does not recognize land as private property. What is considered to be private property in the

⁸⁵ ALLEN 2008, *supra* note 19, p. 84; see also the British English Land Compensation Act (1973). ss 29-30, 33.

Constitution is any other property planted or erected on the land by the skill, labor or capital of the person (sub-article 1). Therefore, the objects of compensation under the present legal regime are buildings, plants and other similar things, save the ground or land itself. This means that the compensation valuation does not consider, among other things, the value of location, and this significantly reduces the amount of compensation payable to the owner. Rather, in the opinion of the author, the principle followed today in Ethiopia is the “taker’s gain” principle which stresses that the compensation paid must consider the original purpose of use of the land, rather than its future potential. This is especially true with regard to the expropriation of peri-urban land.

5.2 Compensable Interests in Ethiopia

A general reading of the Expropriation Proclamation and the Compensation Regulation reveals that the following interests are compensable:

- A property situated on the land
- Permanent improvements to the land
- Loss of land
- Relocation of property
- Lost income, in case of temporary loss of land

A brief explanation is provided as follows.

5.2.1 Private properties (Properties and Improvements on and to the Land)

As mentioned above, the FDRE Constitution recognizes all property situated on the land as private property. And according to Article 7(1) of the Expropriation Proclamation, “A landholder whose holding has been expropriated shall be entitled to payment of compensation for his property situated on the land and for permanent improvements he made to such land.” While *property situated on the land* refers to buildings, structures or plants of any kind that have value, *improvement to the land* refers to any work on the land that increases its value, productivity or fertility.⁸⁶

In urban areas, *properties situated on the land* include buildings (residential, commercial and industrial), fences, utility lines, religious buildings, burial structures, trees, plants, and other structures. In rural areas, residential houses, farmhouses, storage structures, livestock sheds and shelters, fences, trees, crops and grass are considered to be properties situated on the land. This can be inferred from the Federal Compensation Regulation 135/2007.

When one looks into *improvements to the land*, based on the above definition, facilities (water and sewerage, roads, etc.) and area beautification may be considered in the case of urban areas. In rural areas, land terracing, clearance and leveling, irrigation canals and ducts, and water wells and reservoirs are examples of improvements to the land.

⁸⁶ These definitions are given based on the type and nature of properties mentioned in the Expropriation Proclamation (455/2005) and Federal Compensation Regulation (135/2007).

5.2.2 Displacement Compensation

The other property interest subject to compensation in Ethiopia is the loss of the land itself. This is especially visible in cases involving the loss of rural land. Under Article 8, the Expropriation Proclamation provides that “displacement compensation” should be paid in the event of complete loss of farmland via expropriation. This means that in the absence of replacement land in the locality, the holder of the land shall receive *displacement compensation*. The question here is the nature of displacement compensation. Is it compensation in its proper sense? Or is it meant to be a kind of rehabilitation support? Determining its nature helps us to judge the fairness of the compensation provided for the complete loss of a landholding.

One may wrongly conceive of *displacement compensation* as compensation similar to that which is paid for the loss of private property. But this author argues that displacement compensation differs from this conception for the reasons discussed below.

As already explained, the Ethiopian Constitution recognizes any property on the land as private property, but not the land itself. Owners of property on the land are guaranteed *commensurate* compensation for the loss of their private property in the event of expropriation.⁸⁷ The Constitution does not say anything about the loss of land. In other words, the government is not supposed to pay commensurate compensation for loss of land. “Compensation” is defined in the Expropriation Proclamation as “payment to

⁸⁷ Constitution of the Federal Democratic Republic of Ethiopia, Proclamation No. 1/1995. *Negarit Gazeta*. Year 1, No.1. (Hereinafter cited as FDRE Constitution.) Article 40(8).

be made in cash or in kind or in both to a person for his property situated on his expropriated landholding” (Art. 2.1). Further, Article 7(1) of the same proclamation adds *improvement to the land* (besides the property on the land) as interests subject to commensurate compensation.

So the true subject of commensurate compensation is private property (property situated on the land and improvement to the land) but not the land itself. The modality of compensation for complete loss of rural land is “replacement of land” or “displacement compensation,” a monetary compensation equivalent to ten years’ income. From the terminology, it is easy to infer that what is given to the peasant for loss of land is not compensation for lost of private property (as land cannot be owned privately), but compensation to assist a displaced person to rehabilitate against the loss of the perpetual use rights of land required for a different type of lifestyle. Although the assessment of ten years’ value of produce has no constitutional basis, it is believed that this amount of money is enough to enable a farmer to start a new way of life.

This argument is strengthened by looking at the Chinese Land Administration Law (LAL) of 1987, which is considered to be a source of the Ethiopian expropriation law. Article 47 of the Chinese LAL provides for three types of compensations in the event of expropriation of cultivated land: *compensation for land, resettlement subsidies, and compensation for attachments and young crops on the requisitioned land.*⁸⁸

⁸⁸ The People's Republic of China Land Administration Law. Art. 47.

The Ethiopian expropriation proclamation adapts the last two types of compensation, i.e., resettlement subsidies and compensation for plants, while dropping the first type of compensation for the loss of the land itself.

5.2.3 Relocation of Properties

The Compensation Regulation allows the payment of relocation compensation for the costs associated with removing, transferring, transporting and installing property. For this, there are three categories: utilities,⁸⁹ relocated properties⁹⁰ and graves.⁹¹ Where demolition occurs, relocation of a house entails the relocation of the salvaged remains of the building and furniture. In some cases, the house can be reinstalled and continue its service as before.

5.3 Compensation Level in Ethiopia

In Ethiopia, the amount of compensation is determined not by employing the types of valuation techniques which are found to be appropriate by the valuator. As a matter of principle, the law sanctions the cost replacement approach as the only technique to be employed in the valuation of buildings, the most important type of assets. Article 7(2) of the Expropriation Proclamation says:

*The amount of compensation for property situated on the expropriated land shall be determined on the basis of replacement cost of the property.*⁹²

⁸⁹ Federal Compensation Regulation, Art. 3.2.b.

⁹⁰ Id., Art. 10.

⁹¹ Id., Art. 12.

⁹² Expropriation Proclamation, Article 7.

According to the present constitutional arrangement, ownership of land is vested in the people and the state.⁹³ All rural farmers and pastoralists are guaranteed a plot of land free of charge.⁹⁴ This right (holding right) endures for a lifetime and beyond, as it can be used and leased, but also may be donated to and inherited by family members. Farmers and pastoralists cannot be evicted arbitrarily from their holdings without compensation when the need arises. The constitution guarantees an advance commensurate amount of compensation for private property on the land in the event of expropriation.⁹⁵ As already mentioned, this does not include compensation for the loss of the land itself.

On this basis, the Expropriation Proclamation provides compensation, valued based on the replacement cost for structures in urban and rural areas. For instance, if an urban property is expropriated, the compensation shall be calculated by taking into consideration the replacement cost of a similar building. Valuers consider the current price of construction materials and labor. Then they reduce this amount to account for depreciation. But they do not consider the value of land or location during the estimation. For this reason, the compensation estimated is usually lower than the market value of the property. If owners were allowed to sell the property on their own, they could collect not only the value of the property on the land, but also the value of the land as well, which would give them a hundred times more value.

Unlike the UK, Ethiopia does not deem severance and injurious damages compensable. If part of a building is demolished and renders the

⁹³ FDRE Constitution, Article 40(3).

⁹⁴ *Id.*, Article 40 (4 and 5).

⁹⁵ *Id.*, Article 40 (8).

remaining part useless for the purpose for which it was intended, or if the owner wishes to surrender the rest of the land, then compensation shall be paid for the whole property (Art. 3.3). If, however, the owner prefers to keep the remaining part, compensation will be paid only for the demolished portion (Art. 3.4). No compensation shall be paid for the part of land taken; the law only applies to buildings and other property. In other words, there is no “severance” or “injurious affection” compensation paid for the depreciation in value of retained land caused as a result of loss of a part of the land.

Similarly, there is no compensation as such for depreciation of property or lost income as a result of government project works, such as road constructions. Even if road construction is prolonged for as long as three to four years, business closures and lost income are not compensable.

In case of agricultural land expropriation, one year’s compensation is provided for the loss of plants on the land. Besides this, ten years’ compensation is paid as displacement compensation, which is calculated using the average income of the past five years. If replacement land is available, the ten years’ compensation is not necessary. The law provides no compensation for loss of land and no consideration for its future or potential use.

6. Observations and Conclusion

The UK and Ethiopia have achieved different levels of economic and social development. Indeed, their legal systems and ideologies are also different. But there is one fundamental premise upon which both agree that land belongs to the crown or the state. Of course, this may be largely

symbolic for the English and more formal for Ethiopia. In England, even if it is the crown, in principle, that owns all land and people are given some form of land use rights (such as freehold), holders of the land have the exclusive right to benefit from it. But in Ethiopia, even if the people are said to be joint owners of the land, they are denied adequate compensation for their properties in the event of expropriation.

The basic difference lies in the fact that Ethiopian legislation does not give value to the land. Land cannot be sold, and hence no value is assessed during expropriation or mortgage procedures. In contrast, the English compulsory purchase acts require, compensation for all damages caused to the expropriated. Based on international practice and consensus, market value is taken as the measure of fair compensation. Various laws provide for a variety of types of compensation packages. These go farther than market value, as UK law provides an additional percentage of the market value to the expropriated.

In contrast, the compensation principle in Ethiopia does not, in fact, give full compensation to the expropriated. Although the term “replacement cost” may suggest otherwise, compensation in Ethiopia does not equal what has been taken. As a matter of fact, people are often impoverished by expropriation, as the process either diminishes their livelihood or completely destroys it. Only the state benefits when land is expropriated and transferred to others at profit.

By way of recommendation, within the existing framework of state and public ownership of land, the author proposes that Ethiopia borrow and make use of the law and practice of the UK. One possibility is that Ethiopia starts

giving value to urban land during valuation for expropriation and narrows the gap between the market value of the property and its expropriation compensation amount. It may be difficult to give the whole land value increment/profit to the expropriated individual, but it is possible to share the profit between the government and the holder of the land.

Furthermore, many non-compensable damages are caused during expropriation. Severance or injurious affection is only the most common. People often lose part of their land for road construction, but they are not compensated for the land taking. Others are relocated from their original places to the periphery, and they are not compensated for the inconvenience. Rather they are exposed to more hardship and transport expense. This too can and should be compensated by the Ethiopian government, in the interest of guaranteeing that citizens are not irreparably harmed in the interest of the common good.