ADDIS ABABA UNIVERSITY
COLLEGE OF LAW AND GOVERNANCE STUDIES
LL.M PROGRAMME IN BUSINESS LAW

SALIENT FEATURES OF THE NEW ETHIOPIAN URBAN LAND LEASE HOLDING PROCLAMATION NO.721/2011 AND ITS IMPLICATIONS ON THE ETHIOPIAN ECONOMY

BY
ARAYA ASGEDOM TAREKE

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DECLARATION

I, the undersigned, declare that the thesis is my original work and has not been presented for a degree in any other university and that all sources of materials used in the thesis have been duly acknowledged.

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Acronyms

CBB-Construction and Business Bank

DARO-Document Authentication and Registration Office

EPRDF-Ethiopian Peoples' Revolutionary Democratic Front

FDRE- Federal Democratic Republic of Ethiopia

MoUDC- Ministry of Urban Development and Construction

Abstract

This paper attempts to analyze the salient features of the new Ethiopian urban land lease holding Proclamation No.721/2011 and its implications on the Ethiopian economy. Today the new lease holding proclamation has become a burning agendum of discussion throughout the country. This proclamation prohibits the allocation of urban land other than through lease holding and designs a general direction through which all urban land holdings will in the future be converted to the lease system. Moreover, it highly restricts transfer of use right on urban land, provides unreasonably short time for commencement and completion of constructions, stipulates strict measures for failing to commence and complete construction within the time and restricts the right to appeal of aggrieved parties.

In order to identify the implications of the proclamation on the Ethiopian Economy, the writer has consulted various literatures and collected information through interviews and focus group discussions with different concerned bodies. Based on this it has been founded that the changes and restrictions introduced by the proclamation have a negative bearing on the transaction of immovables i.e., land and buildings, security of tenure of urban residents, the construction industry, banking services, urban housing service, the market and investment. This in turn affects money circulation, job opportunity and the income of both individuals and the government which has a negative influence on the country's economy.

The paper also attempts to show that there is no provision under the FDRE constitution which provides that all urban residents will be allocated urban land through the lease system. It is also indicated that the lease system designed by the proclamation which in principle allows land allocation based on tender does not take in to account the capacity of most urban residents and thus such residents as they are also joint owners of the land should be allowed a plot of land based on the permit system at least for residential purposes.

Moreover, it is stated that the government should not impose any restriction on transfer of properties attached with the land as long as individuals pay the required transfer tax and related charges. It is argued that the period of payment of lease, commencement and completion of construction should take in to consideration the prevailing realities on the ground. It is also recommended that the government should pay compensation at market price for the properties attached with the land and the permanent improvements on the land to the lessee when the contract of lease can't be renewed because of the fact that the appropriate body refused to renew the lease contract when the land is needed for public interest. It is also stated that aggrieved parties should be entitled to take their appeal on all issues to the regular courts regarding urban land clearance. It has also been indicated that rather than trying to amend the proclamation through a regulation the government should amend the proclamation itself as a regulation which is enacted to implement the proclamation cannot legally amend the same.

CHAPTER ONE
INTRODUCTION

The administration of urban land through lease holding was first introduced in 1993 by the transitional government of Ethiopia and before the enactment of the FDRE constitution. Hence the idea of urban land lease holding doesn't have a constitutional base.

Moreover, under the FDRE constitution there is no provision which provides that urban residents shall use land on lease holding basis. It is rather provided that the right to ownership of rural and urban land, as well as of all natural resources, is exclusively vested in the State and in the peoples of Ethiopia.

Of course it is provided under article 40(6) of the constitution that the "government shall ensure the right of private investors to the use of land on the basis of payment arrangements established by law." However, even if this provision is applicable to both urban and rural land, taking in to account the meaning of the term 'investor' this provision does not cover all urban residents as most of them are not investors.

Currently the government has enacted lease proclamations on the use of all urban lands. The first lease law i.e. proclamation no. 80/1993 which attempted to avoid the allotment of urban land for urban residents for free has been amended two times. The first amendment is made by Proclamation No. 272/2002 and the second one is by the current Proclamation No. 721/2011.

However, the current lease proclamation has attracted the attention of the public because it has some basic changes from the former two lease proclamations. It provides for the administration of all urban land through the lease system and imposes various restrictions on transfer of properties attached to the land.

Consequently many people complain that the new lease holding proclamation narrows one of the fundamental and important rights of citizens, i.e. the property right of individuals. The

restrictions imposed by the law on transfer of properties attached with the land are cited as one manifestation of such interference with individual's property rights.

This paper mainly deals with the new lease holding proclamation No.721/2011. The paper is classified into four chapters. The first chapter deals with the introduction of the paper while the second chapter is about the salient features of the new proclamation. Under the second chapter, many issues like conversion of old possessions to leasehold, regularization of informal possessions, modes of land acquisition, elements of lease contract, amendment of lease contract, expiry and renewal of lease contract, termination of lease contract, transfer of leasehold right, mortgage of leasehold right, contribution of lease right in the form of capital, commencement and completion of construction, clearing urban land, penalties for violation of the provisions of the proclamation, absence of transitory provisions for many issues and possible solutions are discussed.

In an attempt to analyze the salient features of the proclamation the writer has tried to consult the three lease proclamations, the model regulation prepared for the implementation of the new proclamation, various documents such as the short explanation attached as a preface with the draft Urban Lands Lease Holding Proclamation submitted by the MoUDC to the House of Peoples Representatives for discussion, the minute of the 4th FDRE House of Peoples Representatives, 2nd year, 1st regular meeting held on 30 September 2004 E.C. regarding the oral discussion made for the adoption of the Urban Land Lease holding proclamation No. 721/2011 and the minute of the discussion held between the House of Peoples Representatives Urban Development and Construction Affairs Standing Committee and officials of the Ministry of Urban Development and Construction on the new Urban Lands Lease holding Proclamation on 6 December 2004 E.C.

The third chapter analyses the implications of the new Ethiopian urban land lease holding proclamation on the Ethiopian Economy. This chapter covers information obtained through interviews and focus group discussions. Hence, in trying to assess the implications of the proclamation on the Ethiopian Economy, the writer has consolidated information collected from concerned bodies such as opposition parties, old possessors, lease holders, non land holders, brokers, Documents Authentication and Registration Office, employees of banks, the

construction industry, the government, the private media and legal professionals. Finally, the forth chapter touches on conclusions and recommendations.

1.1. Background

Even if most of the urban land was concentrated under the ownership of few individuals, private ownership of urban land existed in Ethiopia until the Derg came to power in 1974 and passed proclamation No. 47/1975 that nationalized all urban land and extra houses. The proclamation stated that it is necessary to bring under government ownership and control urban lands and extra urban houses to bridge the wide gap of the standard of living of urban dwellers**.** Based on the ideology, which envisaged to "socialize the overall economy". The Derg regime nationalized urban land for the benefit of the Ethiopian people in the belief that public control and allocation of land will be both more efficient and more equitable than leaving it to market forces or to traditional authorities.[1]

Thus a fundamental change regarding land and housing took place in the country in 1975. A critical step that took place at this time was the separation of the right to use land from the ownership of the land, which allowed the state to continue to own the land while leaving the use right to land holders. Proclamation No. 47/1975, brought land under state ownership, land owners lost their land without compensation and land was not subject to sale, mortgage, donation, lease and so on. Of course individuals and organizations were entitled to use rights on land. Based on this urban residents were allowed to keep one residential house and another business house, if necessary. Those who had no house at that time were allowed to get land not more than 500 square meters to construct one, and those who had no ability to do so were given government houses on rental basis.

Like the Derg, the EPRDF led government which assumed power in 1991; maintained the public ownership of land. The current political order believes that land is a free gift of nature as such; it should be under the control of the guardian of the people (the state) for common benefit, but not as private property. The FDRE constitution which was ratified in 1995 has also given constitutional guaranty that land is the property of the state and the peoples of Ethiopia and thus

[1] See the preamble of the Government Ownership of Urban Land and Extra Houses, Proclamation No. 47/1975. *Negarit Gazeta.* Year 34, No. 41.

cannot be subject to sale or other means of exchange. Thus, currently in Ethiopia, the right to ownership of rural and urban land, as well as all natural resources, is exclusively vested in the state and in the peoples of Ethiopia. Land is a common property of the nations, nationalities and peoples of Ethiopia and is not subject to sale or other means of exchange.[2]

However, the present government designed a new land tenure system for urban Ethiopia, i.e. the lease system. The administration of urban land by lease holding started for the first time during the transitional government of Ethiopia when proclamation number 80/1993 was enacted. A critical step in this legal reform was thus the change from the permit system to lease hold system. Of course, the lease system was introduced before the promulgation of the FDRE constitution. Consequently, one cannot consider the constitution as a basis of the introduction of the lease system in Ethiopia; the basis of this law rather seems to be the policy change from command economy to liberal economic system.[3] Moreover, the constitution does not give any clue about the establishment of the lease system as a mode of allocation of urban lands. This in turn has become a source of debate among legal professionals.

According to this lease proclamation, all urban land is owned by the government[4] and transfer will only be carried out through the lease system. Article 3 of the proclamation which provides the scope of application of the same states that the proclamation shall not be applicable to urban lands previously utilized for building dwelling houses, provided however that where a dwelling house is transferred to another person in any manner other than inheritance, the person to whom the said house is transferred shall hold the land in accordance with the lease hold system. Moreover, article 15 of the same required all land holders utilized for non-dwelling house to apply to the appropriate town administration to convert the same in to lease holding and obtain lease holding title document. However, the conversion of old possessions to lease hold provided under articles 3 and 15 of this proclamation was not put in to practice.

[2] See article 40(3) of the Constitution of the Federal Democratic Republic of Ethiopia, Proclamation No. 1/1995. Federal *Negarit Gazeta.* Year 1, No.1.
[3] Molla Mengistu, "The Ethiopian Urban Landholding System: An Assessment of the Governing Legal Regime", in Muradu Abdo (ed.), Land Law and Policy in Ethiopia since 1991: Continuities and changes, (2009), Ethiopian Business Law Series, Faculty of Law, Vol. III, p. 157.
[4] See the first paragraph of the preamble of the Urban Lands Lease Holding Proclamation, Proclamation No. 80/1993. Negarit Gazeta of the Transitional Government of Ethiopia. Year 53, No. 40.

Then the first lease proclamation was replaced by the Re-enactment of Urban Lands Lease Holding Proclamation No.272/2002. It was stated under article 3(2) of this law that "this Proclamation shall be applicable to an urban land held by the permit system, or by lease-hold system or by other means prior thereto, as well as to an urban land permitted hereafter." But the application of this proclamation on land allotted before the establishment of the lease system was not made practical.

Once again the second lease proclamation is repealed today by the Urban Lands Lease Holding Proclamation No.721/2011. With the exception of the five years grace period that may be given to some towns based on the decision of the regional cabinets, this proclamation obliges all urban centres in Ethiopia to administer urban land only through the lease system and provides for the conversion of old possessions to lease hold in case such possessions are transferred to third parties with the exception of inheritance.[5] Moreover, unlike the repealed lease proclamation which allowed four means of urban land acquisition: auction, negotiation, assignment and lot,[6] the new one recognizes tender and allotment as the only two basic means of leasehold right transfer from government to citizens.[7]

As a result, the new proclamation happened to be very controversial and has attracted the attention of the public as it introduces vital changes from the former two. This proclamation is designed among other things to gradually convert urban land holding acquired through the permit system and imposed many restrictions on transfer of properties attached with the land. As a result, it is worrying many Ethiopians. Many people from various professional sectors opposed its adoption. It is said that there are gaps between this law and other laws of the country and that the law does not enable the people to have secured access to land.

Indeed, many people are disappointed especially by the conversion of old possession to lease hold which is said to be carried out after a study is conducted by the Ministry of Urban

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[5] See Articles 3, 5 and 6(3) of the Urban Lands Lease Holding Proclamation, Proclamation No. 721/2011**,** Federal Negarit Gazeta, Year 18, No. 4.

[6] See article 4 of the Re-enactment of Urban Lands Lease Holding Proclamation, Proclamation No.272/2002. Federal *Negarit Gazeta.* Year 8, No. 19. See also the Urban Land Lease-holding Regulation of Addis Ababa City Government, Regulation No.29/2010. Addis Negari Gazeta. Year 2, No. 29.

[7] Cited above at note 5, article 7(2).

Development and Construction and presented to the Council of Ministers for approval and the restrictions imposed on transfer of old possessions.[8]

The government alleges that the proclamation is enacted in response to the problem of rent seeking and corrupt practices emanating from the gaps created by the previous lease proclamation. For this purpose unlike the previous proclamation, this new one has incorporated very serious penalties for the violation of its provisions and the regulations and directives which will be issued for its implementation.[9]

However, many people find it strangely ironic to see the government in a rush to legislate such an intensely sensitive issue for hundreds of thousands of residents with historical landholding rights, without even meeting the minimum standards of lawmaking.[10] It is said that this revised urban land lease holding proclamation did not see the legal drafting procedures such as being tabled for debate among experts and scrutiny by members of the public. It is also added that it was not even reviewed by drafters at the Ministry of Justice, a federal agency whose responsibilities include checking whether any law to be decreed is in conformity with existing laws and the supreme law of the land, the Constitution. Staffed with six drafters, it is expected to respond with feedback within 18 days of the submission of a bill by its authors.[11]

To the shock of many, including those in the system, the process is said to be devoid of Parliamentary debate, without any hearings offered to the public. The MoUDC, insisted on an immediate vote on the bill, without letting the standing committee in Parliament take the case up for further public scrutiny.[12] The bill was made into law with a single opposition vote from Girma Seifu, an opposition party MP. “I do not understand why they choose to make it so fast and surprising,” said Girma, who claims not to have had time to read all the proclamations in the

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[8] Id., article 6.
[9] Id., article 35.
[10] Eden Sahle, Land Lease Law Lands Hard in Landholders’ Laps, (available at: http://addisfortune.com/Vol_12_No_613_Archive/agenda.htm), (2012), last visited on 14 April 2012.

[11] Ibid.
[12] Ibid.

short period of time allotted, told Fortune and said "Such kinds of laws have to be discussed by the public and the responsible standing committee in the parliament." [13]

Legal experts speculate that the lease proclamation has been deliberately kept away from the public in an attempt to avoid speculative lease right transfers at higher prices, without the state taking its cut even if officials at the Ministry reject such assertions.[14]

According to legal experts, inhabitants in urban area will be required to pay lease based on market rates for the land they possessed for many years and on which they constructed houses prior to the coming in to force of this proclamation, after the study which will be submitted by the MoUDC is submitted and approved by the Council of Ministers as the new law recognizes lease holding system as the only way for one to get land in the urban areas.[15] As a result it is said that this law reduces the chance to own private property and render many homeless if they cannot pay for the lease of the land they have their houses or business establishments on.

Government officials in charge of clearing the mess in the land regime of the country are on the retreat, at least after admitting flawed procedures in the legislative process of the revised law on urban land lease. They left a rather baffled public into more confusion, unable to answer questions directed at them during town hall meetings held across the cities.[16]

1. 2. Statement of the Problem

The enactment of the new urban land lease holding proclamation has become a burning issue of the day as it is worrying many Ethiopians, especially on the Ethiopian media. Many people are expressing their discontent and sense of lack of tenure security on their holdings.

Thus the researcher intends to evaluate and analyze the controversial issues of the law which among others include; conversion of old possessions to leasehold, modes of land acquisition, expiry and renewal of lease contract, transfer of leasehold right, mortgage of leasehold right, commencement and completion of construction, whether the law violates the economic rights of

[13] Ibid.
[14] Ibid.
[15] Ibid.
[16] Ibid.

the people in Ethiopia and possible implications of the law on the county's economy and lastly propose possible solutions.

Generally, the following issues on the legal regime and the institutions responsible for implementing the proclamation have been raised and resolved as much as possible. In light of the above mentioned points, this study has attempted to answer the following questions:

- ✓ Who is the owner of urban land in Ethiopia? The government? The state? Or both?
- ✓ What are the rationales and pillars of the new proclamation?
- ✓ What is the implication of the changes made by the proclamation on land holders? Are the changes justified?
- ✓ To what extent does the lease proclamation balance individual interest with public interest?
- ✓ What problems can be faced during the implementation of the proclamation?
- ✓ How does the law solve the problem of tenure insecurity within the urban dwellers?
- ✓ Whether the law protects the property rights of urban residents?
- ✓ Whether the power of adjudicating cases arising out of this law given to an administrative court is justified?
- ✓ Who is more negatively affected by the proclamation?
- ✓ Does the new proclamation avert the problem of rent seeking in land transaction? How?
- ✓ What would be the possible effect of conversion of old possession to lease hold system?
- ✓ Why is compensation not due at the expiry of the lease contract for properties on the land when the lease contract is not renewed? Is this fair?
- ✓ What is the fate of donation of a plot of land or a house with a plot of land to relatives when the donors are alive?
- ✓ What might be the possible result of the study which will be conducted by the MoUDC regarding the conversion of old possession to lease hold?
- ✓ Is the grace period provided under the proclamation for construction projects sufficient?
- ✓ Is the property right of Ethiopian farmers and urban dwellers equally treated?
- ✓ What would be the implication of the law on the country's economy?
- ✓ What gaps are there between this law and other laws of the country?

- ✓ What is to be transferred in the form of inheritance after 99 years from the conclusion of the lease contract?
- ✓ Would this proclamation end land speculation?
- ✓ What are the bottle necks that affect the implementation of this law?
- ✓ What problems may happen following the regularization of informal possessions?
- ✓ Whether the system of compensation for expropriation of urban land incorporated under the proclamation is just.

1. 3. The Scope of the Study

The study mainly focuses on the critical analysis and evaluation of the new urban land lease holding Proclamation and its implications. However, the study has also dealt with the former urban land lease holding proclamations; the proclamation to provide for the lease holding of urban lands No. 80/1993 and the Re-Enactment of Urban Lands Lease Holding Proclamation No. 272/2002 and the Draft Model Regulation prepared by the MoUDC for the implementation of the new lease holding proclamation for comparative analysis though not in detail.

As far as the geographical limit of the study is concerned, the relevant information has been collected from Federal government institutions, private and public institutions in Addis Ababa.

1. 4. Objectives of the Study

Proclamation No.721/2011, which provides for the lease holding of urban lands, was enacted on 28 October 2011. There is no research work done so far on the legal regime. The major objective of this thesis is, hence, to study and analyze the salient features of the law and its implications on the Ethiopian Economy in general. The paper is not simply a theoretical analysis. To this end, another objective is also devised. It tries to assess the practical implication of the law based on empirical data collected from concerned bodies. Lastly, possible recommendations would be forwarded on the findings of the study as a whole.

Thus, generally the objectives are:

- ✓ To find out why the land lease proclamation is opposed by many urban residents;
- ✓ To evaluate the law in line with its effect on economic development;

- ✓ To evaluate the bottlenecks that affect the implementation of the law, and to forward recommendations that would be useful for concerned parties.

1. 5. Significance of the Study

As this study is the first of its kind in dealing with the new urban land lease holding proclamation, it may be utilized as a preliminary research for the research to be conducted by the MoUDC about the conversion of old possessions to lease hold and contribute something so that various measures will be taken for the revision of the law.

The study may also help the decision makers in developing a win-win strategy in urban development sector policy in terms of achieving economic growth and improved urban development.

The land lease proclamation has been subjected to a lot of critics from inhabitants of cities and towns. Thus, the results of the study may contribute to the debate that exists on the land lease law issue.

Moreover, the study can be considered as an addition to the limited literature available on urban land lease holding in Ethiopia. Given the appropriate dissemination mechanism, it is hoped that the results of this study will have an impact on the academic community, governmental and nongovernmental organizations, policy makers and the public at large.

1. 6. Research Method

This research method will make use of both primary and secondary sources. Primary sources to be studied include the New Urban land lease holding proclamation, the former two urban land lease proclamations; i.e. the proclamation to provide for the lease holding of urban lands No. 80/1993 and the Re-Enactment of Urban Lands Lease Holding Proclamation No. 272/2002 and the draft model regulation prepared by the MoUDC in 2012 for comparison and some other relevant laws. Secondary sources include qualitative interviews, focus group discussions, books, journals, unpublished materials, reports, news papers and bulletins and internet sources. To show

the challenges and prospects of the law, regard would be had on concerned government and private organs.

In order to arrive at reliable findings, the researcher has applied the field and desk surveying method and then collected various types of data related to the study under consideration. Review of available literature and documents, collection and analysis of both primary and secondary data has been carried out. Interviews and discussions with relevant officials of the government, private investors, financial institutions, residents and policy makers in person have also been held. Relevant documents, journals, reports, books, newspapers, etc. have been used as a source of information.

1. 7. Limitation of the Study

As the ideas introduced by the new urban land lease holding proclamation are crafted last year, there are no cases for practical analysis, and generally enough literature. Due to this, absence of case analysis and sufficient literature is the limitation of this paper.

The other limitation is that the number of samples that would be taken is small as compared to the size of the country and number of the population. Furthermore, the absence and fear of respondents to provide genuine and accurate information for questions posed is the other limitation of this paper.

Chapter two

Salient features of the new Ethiopian urban lands lease holding proclamation

This chapter mainly deals with the salient features of the new Urban Lands Lease Holding Proclamation No.721/2011. Under this chapter, after highlighting some introductory remarks, the writer has dealt with some of the controversial issues of the proclamation which among others include; Conversion of old possessions to leasehold, regularization of informal possessions, modes of land acquisition, elements of lease contract, amendment of lease contract, expiry and renewal of lease contract, termination of lease contract, transfer of leasehold right, mortgage of leasehold right, contribution of lease right in the form of capital**,** commencement and completion of construction, clearing urban land, penalties for violation of the provisions of the proclamation, absence of transitory provisions for many issues and possible solutions. In an attempt to see whether some of the problems of the proclamation are solved, the writer has also tried to investigate the provisions of the draft model regulation which is expected to be adopted by the regions.

Moreover, under this chapter, the writer has tried to consult various documents such as the short explanation attached as a preface with the draft Urban Lands Lease Holding Proclamation submitted by the MoUDC to the House of Peoples Representatives for discussion, the minute of the 4th FDRE House of Peoples Representatives, 2nd year, 1st regular meeting held on 30 September 2004 E.C., regarding the oral discussion made for the ratification of the Urban Land Lease holding proclamation No. 721/2011 and the minute of the discussion held between the House of Peoples Representatives Urban Development and Construction Affairs Standing Committee and officials of the Ministry of Urban Development and Construction about the Urban Lands Lease holding Proclamation No.721/2011 on 6 December 2004 E.C.

2.1. Introductory remarks

2.1.1. Defining lease

As it is conventional to start with the definition of the term under consideration prior to discussing its merits I will try to define the term lease from various sources.

The new urban lands lease holding proclamation defines 'Lease' as a system of land tenure by which the right of use of urban land is acquired under a contract of a definite period.[17] The draft model regulation on the other hand defines 'lease' as a system of land tenure by which the right of use and transfer of urban land is acquired under a contract of a definite period.[18] **Land tenure** on the other hand describes all arrangements by which farmers and or others hold or control land and the condition of its use and occupancy for limited or unlimited period of time.[19] According to Oxford dictionary (1998), tenure is defined as the condition or form of right or title, under which real property is held. Thus under the proclamation lease is defined as a system from which the right to use of urban land for a limited duration is derived by way of a contract. The contracting parties are of course the lessee and the lessor i.e. the state represented by the government and the lessee. The draft model regulation on the other hand defines the term under consideration in a wider way than the proclamation. As per Black's law dictionary, 'lease' means to grant the possession and use of (land, buildings, rooms, movable property, etc.), to another in return for rent or other consideration.[20] In this case in addition to the fact that the time limit is not indicated, the agreement includes letting of movable properties also.

Long man dictionary of contemporary English also defines 'Lease' as a written agreement, made according to the law, by which the use of a building or piece of land is given by its owner to somebody for a certain time in return for rent for length of time such an agreement is to last.[21] In

[17] Cited above at note 5, article 2(1).
[18] See article 2(2) of 'የከተማ ቦታን በሊዝ ለማስተዳደር እንዲያስችል የተዘጋጀ ረቂቅ ሞዴል ደንብ ቁጥር…/2004′ annexed at the end of this paper, (translation by the author).

[19] Cited above at note 3, p. 147.
[20] Bryana A. Garner (ed.), _Black's law dictionary_,(2009, 9th ed.), West, A Thomson Reuters Business, U.S., p.972.
[21] Longman's dictionary of contemporary English (1986), Longman group Ltd. UK. , p.623.

this case the agreement which relates to the use of land and buildings in consideration for rent should be written and it is made for a limited time according to the law of the land.

Thus, generally, in our context, lease is a contract for consideration between an owner and a tenant granting the exclusive right to use of land for a fixed period.

2.1.2. The history of land lease in Ethiopia

Even if it is not in its current sense the idea of leasing land existed starting from ancient times. It was part of a variety of land holding types prior to 1974. This was incorporated in to written laws during the reign of Emperor Haile Selassie when private ownership of land was allowed and land lords were entitled by the civil code to lease their land to their tenants.[22] But this lease system was abolished by the Derg regime when both rural and urban land was nationalized and any sale or exchange of land was prohibited by law.[23] At this time, large tracts of urban land were allocated for free to individuals, private and public sector enterprises.

Then after the down fall of the Derg regime, the government led by *EPRDF* that took power in 1991, even if did not change the public ownership of land in general, has made important changes on policies of urban land. Lease became the over-riding urban land holding system through proclamation No.80/1993. This proclamation enabled the government to transfer urban land administration from the permit system to leasehold system. This lease holding proclamation was replaced by urban lands lease holding proclamation No. 272/2002. Of course, these former urban land lease holding proclamations were not practically applicable to all urban centers throughout the country and it is the new proclamation No.721/2011 which has expressly provided that every urban center in Ethiopia will be administered by the lease proclamation even if there is a transitional period of five years depending on the decision of the concerned regional cabinets for some towns found in the various regions.[24] Of course the application of the proclamation to all urban centers in Ethiopia has been opposed by political parties such as the Ethiopian Democratic Unity Front based on the idea that the different regions should have been

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[22] *See articles* 2896 *ffs, of the* Civil Code of the Empire of Ethiopia, Proclamation No.165/1960. Negaret Gazeta. Year 19, No.2.

[23] See Government Ownership of Urban Land and Extra Houses, Proclamation No. 47/1975 supra at note 1 and Public Ownership of Rural Lands, Proclamation No. 31/1975 *Negarit Gazeta.* Year 34, No. 26 for rural lands.

[24] Cited above at note 5, article 4(4).

allowed to come up with their own laws depending on their respective circumstances.[25] Is this correct? This is discussed in chapter three under the sub-title "the opposition".

2.1.3. Objectives of the new urban lands lease holding proclamation

Even if the new lease holding proclamation does not have a specific provision dealing with this, the objectives of the same can be collected from paragraphs 2 and 3 of its preamble. These include:

- Providing with an appropriate urban land administration which is efficient and responsive to the continuous and increasing urban land resources demand created due to the sustainable rapid economic growth registered across all economic sectors and regions in the country, and
- Ensuring the prevalence of good governance which is a foundational institutional requisite for the development of an efficient, effective, equitable and well functioning land and landed property market, the sustenance of a robust free market economy and for building transparent and accountable land administration system that ensures the rights and obligations of the lessor and the lessee.

Moreover, the recently enacted lease holding regulation of the Addis Ababa City Administration under the first paragraph of its preamble clearly states the reason why the new lease holding proclamation is enacted. It provides that the proclamation is designed to correct the gaps created by the previous proclamations which are identified through an assessment study conducted on the implementation of the same.[26] Accordingly, these gaps are created due to the fact that:

- ✓ Use right and transfer of use right through lease were not clearly demarcated,
- ✓ Land permitted by lease was widely transferred to third parties without undertaking any construction on it or after undertaking construction below the permitted level was the main system for rent seeking,
- ✓ The different land permitting systems have been found to have opened a wide door for corruption,

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[25] See the statement issued on 12 November 2004 E.C. by the same political party after the adoption of the new urban lands lease holding proclamation, available at the party's head office.

[26] See በአዲስ አበባ ከተማ አስተዳደር የከተማ መሬት ሊዝ ደንብ ቁጥር 49/2004 ዓ.ም፤፤ (Unpublished), (translation by the author).

- ✓ Urban land is administered both through lease and permit system has created a big difference in land related market,
- ✓ The previous proclamation did not incorporate clear provisions imposing penalties for the violation of its provisions and the regulations and directives enacted for its implementation had its own negative consequences on the implementation of the same.

The above listed reasons were also stated in the preface of the draft of the new lease holding proclamation which was submitted from the MoUDC to the House of Peoples Representatives for discussion and ratification.[27]

2.2. FUNDAMENTAL PRINCIPLES OF LEASE

Under this section the general principles of lease such as why lease is made the cardinal land holding system of the country, how the offer of lease tender and land delivery are administered, what principles are followed during lease tender and land delivery and why such principles are adhered to, are dealt with.[28].

2.2.1. Prohibition of Land Possession and Permission other than Lease Holding

The new lease holding proclamation proclaims that Land Possession and Permission other than Lease Holding is prohibited.[29] The prohibition is strict that no person is even allowed to enclose and use any plot of land adjacent to his lawful possession without the permission of the appropriate body. Of course exceptionally transfer of old possessions in the form of inheritance out of lease is allowed.[30] Moreover, regional cabinets are allowed to specify urban centers to which the Proclamation remains inapplicable for a certain period; provided, however, that such transitional period, with in which the Proclamation remains inapplicable in any urban center, may not be more than five years starting from the date of the coming into force of the same.[31] Within the given five years grace period residents of such urban centers will obtain land based on

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[27] See የከተማ ቦታን በሊዝ ስለመያዝ እንደገና ለመደንገግ የወጣው አዋጅ መግለጫ፣ ከከተማ ልማትና ኮንስትራክሽን ሚኒስቴር ለሕዝብ ተወካዮች ም/ቤት በረቂቁ ላይ ተወያይቶ እንዲያ]DqW የተላከ፤፤, (unpublished, available at the House of Peoples' Representatives Library), (translation by the author).
[28] Cited above at note 5, article 4.
[29] Id., article 5.
[30] Id., articles 5(1) & 6(3).
[31] Id., article 5(4).

the permit system and their possession will be considered as old possession.[32] Thus such urban centers can within the transitional period, permit urban land holding through tender and the bid bench mark is said to be the annual land use rent of the locality.[33] Accordingly, residents of such urban centers will be permitted to use urban land after winning a competitive tendering and will be forced to pay annual ground rent. Of course the fact that all urban centers will be administered by the lease system after five years is criticized by many individuals based on the fact that most people found in the urban centers do not have the required capacity to participate in tendering. In fact, the five years grace period is said to be given for preparation and capacity building.[34]

But are the institutions provided under article 12(1) which are found in the towns for which the proclamation is inapplicable for five years duty bound to participate in public tendering to obtain land? These institutions include office premises of budgetary government entities, social service institutions run by government or charitable organizations, public residential housing construction programs and government approved self help housing constructions, places of worship of religious organizations, manufacturing industries, use of embassies and international organizations as per agreements entered into with the government, projects having special national significance and considered by the president of the region or the mayor of the city administration and referred to the cabinet.

Under article 12 of the proclamation such institutions are entitled to obtain urban land by allotment upon decisions of the cabinet of the concerned region or the city administration. Moreover, the definition provided under article 2(10) of the same proclamation to "allotment" as a modality applied for providing urban lands by lease to institutions that could not be accommodated by way of tender, tells us that the above mentioned institutions do not participate in tender. On the other hand, it is provided under article 5(5) that those urban centers granted with the transitional period, may permit urban land holding through tender. If such institutions are to be permitted urban land through tendering then the proclamation has created a difference between towns which currently implement the lease proclamation and those which do not. At the

[32]See የከተማ ልማትና የኮንስትራክሽን ጉዳዮች ቋሚ ኮሚቴ የከተማ ቦታን በሊዝ ስለመያዝ እንደገና በወጣው አዋጅ ላይ ከከተማ ልማትና ኮንስትራክሽን ሚኒስቴር የሥራ ሃላፊዎች ጋር ያካሄደው ውይይት አጭር ቃለጉባኤ፣ (ታህሳስ 6 ቀን 2004 ዓ.ም፡፡ (Unpublished, available at the House of Peoples' Representatives Library), p.6. (Translation by the author).
[33] Cited above at note 5, article 5(5).
[34] Cited above at note 32.

same time a difference is created between the above mentioned institutions which are found even in the same region but in urban centers which are provided with the grace period and those which are not.

But how should such institutions which are entitled by the law to obtain land through allotment in urban centers in which the value of land is high be obliged to participate in competitive tendering in urban centers where the value of land is relatively low and in which the proclamation is made inapplicable for five years? Of course one may say that the difference will continue only for five years. But this might create difficulty in administration and is not reasonable. Thus it should be revisited.

Moreover, article 5(3) of the draft model regulation provides that a title certificate will be issued to winners according to the old rules, but the obligation to develop the land and the measures following non compliance of the same will be like what is followed in lease towns. This is an addition made by the regulation. That means even if the land permitted to urban residents in the above mentioned towns is qualified as old possession, residents will after obtaining the land be obliged to develop the land as per the plan of the urban center. In addition to this, such land holders will be obliged to commence and complete construction within a limited period. If they fail to do so they will be forced to remove their property on the land. Moreover, penalty fee and annual ground rent for the given period will be paid and the land will be reclaimed by the appropriate body. Thus even if the concerned regional cabinets decide that the new lease holding proclamation does not apply in such urban centers for a specified period, some of the ills of the lease system will be applicable to such urban centers.

2.2.2. Conversion of Old Possessions to Lease Holding

The new lease holding proclamation, after providing under article 5 that “it is prohibited to administer land other than the lease holding system”, states that “the modality of converting old possessions into lease hold shall be determined by the Council of Ministers on the basis of a

detailed study to be submitted by the Ministry; provided however that the process of such study may not preclude a revision of the existing rental rate applicable to old possessions".[35]

The term 'Old possession' is also defined under article 2(18) of the new lease holding proclamation as "a plot of land legally acquired before the urban center entered into the leasehold system or a land provided as compensation in kind to persons evicted from old possession". Article 2(7) of the draft model regulation on the other hand defines 'old possession' as "a plot of land legally acquired before the urban center entered into the leasehold system or a land provided as compensation in kind to persons evicted from old possession or a **land which didn't have title dead but currently recognized.** " The last one is an addition made by the regulation. Thus, all in all, old possessions are possessions which were acquired during the Derg era and before as well as those acquired then after through a means other than lease hold.

The idea of converting old possessions in to lease holding was opposed by many people stating that old possessions should not be differentiated from inheritance.[36] Of course, the intention of the government to convert old possessions in to lease hold is not new. The repealed proclamation no. 272/2002 after stating under its preamble that lease will be the cardinal and exclusive urban land-holding system, provided under article 3(2) dealing with its scope of application that "this Proclamation shall be applicable to an urban land held by the permit system, or by lease-hold system or by other means prior thereto, as well as to an urban land permitted hereafter." Moreover, the idea of converting all land for trade and industry in to lease hold was incorporated under the first urban land lease holding proclamation no.80/1993.[37] In fact, these provisions were not implemented. However, the current proclamation as indicated above has clearly declared that there is a proposal on the part of the government to convert all old possessions in to lease hold. But as to the modality of converting such possessions in to lease hold the ministry of urban development and construction will conduct a detailed study and submit it to the council of

[35] Id., article 6(1).

[36] See the opinion of honorable Ato Girma Seifu in 'የኢትዮጵያ ፌዴራላዊ ዴሞክራሲያዊ ሪፐብሊክ 4ኛው የሕዝብ ተወካዮች ም/ቤት 2ኛ ዓመት የሥራ ዘመን 1ኛ መደበኛ ስብሰባ ቃል በቃል ቃለ- ጉባኤ፣ አዲስ አበባ' (30 September 2004 E.C., Unpublished, available at the House of Peoples' Representatives Library), p.26, (translation by the author).

[37] Cited above at note 4, article 15(1).

ministers. Thus it is based on this study that the council of ministers will determine such modality of conversion. Of course, the time when such conversion will be effective is unknown.

But one question worthy of raising in connection to this is that; why didn't the government undertake a study before the enactment of this proclamation? Many people and institutions blame the government not only for this but also for failing to follow the customary ways through which a law is ratified by the parliament in this regard. The Ethiopian Federal Democratic Unity Front is one institution which does not agree with the way this proclamation is adopted without public consultation and investigation by the standing committee of the parliament.[38]

Even the chair man of the House of Peoples Representatives Urban Development and Construction affairs standing committee Honorable Ato Atsbha Aregawi mentioned that even if the proclamation contains important provisions the processes followed in the enactment of the same were not correct as neither the public nor members of the parliament have been consulted during the preparation of the proclamation.[39] He added that the parliament did not discuss the proclamation but it adopted the proclamation for it was ordered to do so and hence the process was undemocratic.[40] He also mentioned that in an attempt to avert rent seeking practices this proclamation may negatively affect the urban poor and the middle income who are afflicted by the housing problem. He finally emphasized that as the housing problem in urban areas is a burning issue even for the government mechanisms by which the law can benefit the poor and the medium income urban residents should be designed in the regulations or in any other way.[41] Of course the officials in the MoUDC are also convinced that sufficient public consultations and discussions were not made because the government hurried to adopt this law to stop the rampant corrupt and rent seeking practices related with land allocation and land market.[42] But how can a parliament be obliged to adopt a law that it believes is unjust? Who has the highest power in this country?

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[38] See the statement cited above at note 25.
[39] Cited above at note 32, p. 20.
[40] Ibid.
[41] Ibid.
[42] Ibid.

Moreover, after the realization of the criticism on the part of the public as to the gaps and problems of this lease proclamation, the draft model regulation under its article 6 is designed as follows: "without prejudice to sub-articles 3, 4 and 6 of article 6 of the proclamation, old possessions will remain intact until it will be decided after conducting public consultation and a detailed study as provided under article 6(1) of the proclamation." But, the idea of conducting ***public consultation*** is considered by the government after the lease proclamation faced a wide spread public opposition and the same term is not incorporated under the proclamation itself. Moreover, under article 6 of the proclamation, the intention of the government to convert old possessions is clearly manifested and the study which is said to be conducted by the ministry under the same article is only as to the **modality of conversion.** Thus, the government is trying to amend the proclamation even if this act of amending a proclamation by a regulation by itself is not legally accepted and is opposed by many individuals and political parties.[43]

On top of that, the above mentioned regulation under its article 8 has incorporated a list of cases where an old possession cannot be converted to leasehold. Some of those lists are not totally provided under the proclamation. It provides that; without prejudice to sub-article 1 of article 6 of the proclamation and article 6 of this regulation old possessions will not be converted to leasehold when:

1. An old possession obtained through inheritance is allowed to be partitioned among the successors,
2. Husband and wife legally partition their old possession following divorce,
3. An old possession stated under no. 1 and 2 above is transferred to one of the persons who are legally entitled to take part in the partition after paying the value of the possession which is due to the others,
4. A substitute land is given to old possessors whose possession is expropriated for public interest purpose and when possessions which did not have title dead acquire the same as per the directives that will be issued by the concerned region or city administration,

[43]See መድረክ፣ ቁጣና ማስፈራራት፣አዋጅ በደንብና መመሪያ ሊያሻሻል አይችልም (የጠቅላይ ሚኒሲቴር መለስ ዜናዊን የስድስት ወራት የፖርላማ ሪፖርትና የሊዝ አዋጅ ገለጣን አስመልክቶ ከኢትዮጵያ ፌዴራላዊ ዴሞክራሲያዊ አንድነት መድረክ የተሰጠ መግለጫ፣ (የካቲት 15 ቀን 2004 ዓ.ም) አዲስ አበባ፡፡ Available at the head office of the party.

5. When a possession legally obtained or recognized but did not have title dead, is granted with the required title certificate as per the decision made following a directive issued by the concerned region or city administration.

The fact that those lists which are not provided under the proclamation (for instance, the cases of partition during divorce and a possession which didn't have title dead), are incorporated under the regulation is also said to be a clear amendment of the proclamation by a regulation and it is proposed that it is better if the government amends the proclamation itself.[44]

As to the total conversion of old possessions to lease holding some people say that, taking in to account the interest of the government to have a clear and uniform system of land administration it seems that old possessions will be converted in the near future. Concerning this Ato Tamru Tsge wrote "the inevitability of the conversion of old possessions after conducting public consultation and reaching at an agreement with the society is indicated at a discussion held between the Ministry of Urban Development and Construction and government owned media and public relation professionals about the model regulation on 23 February 2004 E.C. After indicating the necessity and possibility of the revision of the rental rate applicable to old possessions the minister advised that it is better if old possessors convert their lease hold now before the bench mark lease price increases. The minister said that old possessors may currently pay birr 200, 250, 300 or 350 per square meter depending on the level of the land if they want to convert their possessions to lease holding, but this may increase by four or more folds after 15 or twenty years. In answering a question; what if the response of the society in the public consultation is against conversion? He said that he doesn't think so. Then he repeatedly advised that now is the time to convert ones old possession to lease hold."[45]

From this we can conclude that even if the government declares that a detailed study and public consultation will be conducted to determine the conversion of old possessions to lease hold, it

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[44] መካሻ አበራ፣ የኢትዮጵያ መሰረታዊ የሊዝ ህግ ሃሳቦችና የሚያስከትላቸው ችግሮች ፣ (ሚያዚያ 2004 ዓ.ም)፣ ፋር ኢስት ትሬዲንግ ኃላ.የተ.የግ.ማህበር፣ gጽ 54፤ ፤(Translation by the author).

[45] ታምሩ ጽጌ ፣ "ነባር ይዞታ ወደፊት በሊዝ መካተቱ እንደማይቀር ተጠቆመ፤፤"¶±RtR፣ የካቲት 28 ቀን 2004 የረቡዕ እትም ቅፅ 17 ቁጥር 25 gጽ 1 XÂ 42፡፡ (Translation by the author).

has taken a stand in advance that the conversion will be inevitable. Then what is the importance of conducting the study and public consultation? Is it merely symbolic? What might be the response of the society in the public consultations to be held? What will happen to those old possessors who have nothing to pay for lease?

It is of course clearly provided by the proclamation that the result of the study to be conducted by the MoUDC does not preclude the revision of rental rate which is currently applicable to old possessions. Thus, increasing the rental rate used to be paid for old possessions before the coming in to force of proclamation no.721/2011 is taken as an alternative rather than taking converting them in to lease hold as the only alternative. Then if the decision is in favor of continuing old possessions as they are, the action to be taken will be increasing the rent payment. Then the question that should be raised here is how much may the increase be per square meter from what was paid before? Many people express their fear that this is discretionary and may easily be abused by government officials.[46]

The reason why most people are afraid of the conversion of old possessions to lease holding is because of the additional obligations which are imposed by the leasehold system. These include; payment of "lease benchmark price" (minimum lease price), which shall be set by every urban centre, multiplied by the area of the land size, the down payment which will not be less than 10 percent of the total lease price and the remaining payment which will be paid over a long period of time that shall be decided in the contract, the time limit of lease holding right depending on the purpose for which the land is taken and in case lease payment is not effected for consecutive three years, the fact that the property on the leased land will be taken over and sold for effecting the lease payment. This may especially be difficult for old possessors who do not have the required capacity to pay. But the time when the council of ministers will decide for such conversion is for the time being unknown.

Starting the time when the new lease holding proclamation entered in to force various sections of the society forwarded their own views regarding old possessions. For instance while old possessors argue that this proclamation imposes an additional burden on their use right and restricts the benefits they used to derive before, lease holders in the same fashion argue that the

[46] See the opinion of honorable Ato Million Assefa, cited above at note 36, p. 39.

proclamation affects their interest by subjecting them to heavy expenses even for obtaining residential plots which was formerly permitted through freehold.

Regarding this issue Sisay Habtamu argues that although land is a state property and every citizen has equal use and benefit rights of urban land, the land lease policy is partial and seems discriminatory in that while the previous landholders pay a negligible land rent, lease holders pay the market value of the land , but they equally benefit from infrastructure and public services provided by the municipality with the use of revenue collected from land lease payers and recommends the government to be uniform in its urban land lease policy regarding the use and benefit rights of privately used urban land, whether it is pre-occupied or not.[47] Moreover, he states that the existing differential treatment between new allotees and previous land holders has created inefficient land utilization and a bad atmosphere for competition and investment. This is also what Honorable Ato Mekuria Haile said during the discussion for the ratification of the lease proclamation.[48] From this I understood that he is in support of the application of the lease system for all holdings throughout the country as it is intended under the new proclamation. On the other hand there are individuals who agree with the conversion of old possession but propose that there should not be lease payments during the conversion as many of the old possessors acquired possession having bought such land, they should not be subjected to double payments.[49] An instance stated in this case is the case of properties which are transferred to private individuals by the privatization agency. Such individuals have taken over such properties after effecting full payment for the government, but the fear now is that the government again wants to collect money from such individuals in the form of lease. In this case the government is said to be demanding double payment from the same individuals.[50]

Concerning the size of land that an old possessor can have, the new lease holding proclamation also provides that “where parceling of plots of urban land in accordance with the **approved**

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[47] Sisay Habtamu Tekle, Urban Land Policy vis-à-vis Tenure Security and the Environment: A Case Study of Addis Ababa, Ethiopia; (available at http://www.fig.net/pub/fig2012/papers/ts03e/TS03E_tekle_5841.pdf), last visited on 25 October 2012.

[48] Cited above at note 36, p.50.

[49] ገበየሁ በላይ፣ "የከተማ ቦታ ሥሪት ችግሮችና የሊዝ አዋጁ ጉድለቶች"፣ ¶±RtR፣ ኅዳር 13 ቀን 2004 የረቡዕ እትም ቅፅ 17 ቁጥር 11 gጽ 27 ፡፡ (Translation by the author).

[50] ውድነህ ዘነበ፣ “የሊዝ አዋጁ ከንግዱ ማኅበረሰብ ከፍተኛ ተቃውሞ ገጠመው፡፡" ¶±RtR፣ ታኅሣሥ 8 ቀን 2004 የእሑድ እትም ቅፅ 17 ቁጥር 13 gጽ 58፡፡ Translation by the author).

national standard and the urban plan in the course of converting old possessions into lease hold, results in the **reduction** or **increase** of the size of a plot: a) compensation shall be paid in accordance with the appropriate law for any property to be removed from the land so reduced; or b) the payment to be made for the additional land obtained shall be treated in conformity with the relevant lease principles."[51]

Thus even if nothing is provided by the proclamation as to what the ***approved national standard and the urban plan*** say regarding the highest size that an old possession will have when it is converted to lease hold, the reduction from or increase on old possessions depending on the national standard and the urban plan in this case will be effected after payment of commensurate compensation for decreasing or effecting lease payments for increasing.[52] Many people are also anxious not only about the conversion of old possessions to lease hold but also about the decreasing of the size of their possessions during such event. Some people say that this increase or decrease is fair not only for old possessors but also for lease holders depending on the master plan of the city and the public interest, because even a lease hold is taken over for the purpose of public interest.[53] The idea is that in so far as this measure is taken for the interest of the public it is fair.

The writer of the paper also supports this idea as far as the term public interest is clearly provided by law and it is not susceptible to abuse by the relevant officials. However in the absence of this individuals' holdings might be taken away unfairly.

Moreover, the new proclamation provides that "where a property attached on an old possession is transferred to a third party through any modality other than inheritance, the person to whom the property is transferred becomes the possessor through lease holding."[54] Similarly Article 3(2) of proclamation no. 80/1993 required land utilized for dwelling house to be converted to lease holding during transfer except in case of inheritance and Article 15 of the same proclamation requires all land holdings utilized for non-dwelling house to be converted to lease holding. But both of the above provisions of the first proclamation failed to be implemented. One reason

[51] Cited above at note 5, article 6 (2).
[52] Id., article 6(2).
[53] Id., articles 25(1b) & 26(3)
[54] Id., article 6(3).

mentioned for the inapplicability of these provisions is the inability of the land holder to pay lease price and the other reason is the change in the objective of the government in favor of urban land redevelopment.[55]

Now again the new lease holding proclamation declares that lease payment would be made in the event of transfer of property attached to an old possession to a third party via a modality other than inheritance. Thus the fact that an old possession remains as old possession until the above mentioned decision is passed by the council of ministers holds true if no transfer except inheritance has taken place with regard to such property. However, in case of transfer, all the value of the land will be due to the government and this is opposed by many old possessors. In contrast to this, while lease holders who transfer lease hold right on which construction is below half completed are entitled to 5% of the value of the transfer lease price, there is no restriction for transfer of lease hold rights on which construction is half or above completed.[56] So shouldn't old possessors be entitled to the value of the land during transfer?

Government officials had been repeatedly saying in the different discussions with the public that the proclamation does not affect old possessors as their possessions remain intact On the other hand many old possessors say that what remains unaffected if they can't transfer their possessions as before? In this case it is only if the transfer is in the form of inheritance and following the appropriate law of succession that the possession will not be converted to lease holding. But how do we say that this does not affect old possessors?

Of course the reason why this system is devised is obvious. Before the coming in to force of this proclamation, when old possessions were sold, the government got almost nothing. But now, it wants to get lease payments when an old possession is transferred through all means other than inheritance. Thus this Proclamation has found a system by which the government derives the required benefit from the value of the land. But many people are disappointed by this provision. For instance, if we take the case of sellers, formerly, when a possession on land is sold, the whole payment except for the annual rental rate was effected to the seller. But now since a buyer

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[55] Mesganaw Kifelew, "The Current Urban Land Tenure System of Ethiopia" in Muradu Abdo (ed.), Land Law and Policy in Ethiopia since 1991: Continuities and changes, Ethiopian Business Law Series, (2009), Faculty of Law, Vol. III, p. 171.

[56] See article 25 of proclamation No.721/2011, cited above at note 5.

knows that s/he will pay lease payments the negotiation with the seller will take in to account the payments that will be effected to the government. Thus such people argue that it decreases the benefits formerly received by a seller.

The fear of sellers is also on account of the fact that if they add the value of land with the value of their possession to derive the benefits that old possessors used to get before, the buyer will pay lease to the government and the price of the possessions to the seller. This increases the value of old possessions, as a result, buyers may not be willing to buy. Thus they say that the price will go down, as a result of which sellers of old possessions will be negatively affected.

Buyers on the other hand complain that even if the government alleges that lease payments will be made to the government when an old possession is sold, nothing can prevent the seller from adding the value of the land with the price of the property attached to the land during the negotiations for sale. As a result the buyer will be subjected to lease payments to the government and the value of the land plus the price of the properties attached to the land to the seller. Thus they argue that this law increases the burdens of the buyers.

Economists on the other hand suggest that the price of everything is dependent on supply and demand. If we see the current market for urban buildings in our country demand is higher than supply. Thus taking in to account the general problem of urban housing and shortage of urban land it is inevitable that the price of buildings will increase and the sellers will get what they used to get. Thus it is the interest of buyers which will be highly affected.[57] But we will see what is practically happening to the transaction of old possessions in chapter three.

Seriously affected by this provision of the new lease holding proclamation are also buyers who entered in to contract of sale of old possessions before the coming in to force of this law and payments are already made but the process for transfer of title was not started. The writer came across many individuals who faced this problem and are now in doubt what to do about such

[57] Interview with Ato Kahsay Teklezgi, Lecturer in Economics, School of Business and Economics, Dilla University, on 12 September 2012.

contracts because the proclamation does not have a transitory provision in this regard. Before the coming in to being of this proclamation, it was customary that payments were made and the buyer takes over the property on land before the transfer of title. Moreover, it was obvious even for the government that those who bought land generally pay even above the lease price of the land. Thus, even if the government did not get the required benefit from the sale of such land, when these possessions are converted to leasehold those buyers are being subjected to double payment.

This is aggravated by the fact that there are no transitory provisions that can solve this problem under the new proclamation. Thus it would have been better if the proclamation has incorporated transitory provisions allowing this kind of sell to be conducted according to the previous laws. However, taking in to account this problem article 7(7) of the Addis Ababa City Administration Regulation No. 49/2012, prepared for the implementation of the new lease holding proclamation provides that old possessions transferred before the coming in to force of the new lease proclamation will not be converted to lease holding so far as the contract for the same is deposited with the Documents Authentication and Registration office, or the court or the administration. It is stated that transfer of such possessions can be effected according to the former laws within one year starting from the coming in to force of this regulation. This gives better protection for individuals and banks even if we do not know what the other regions will do. So this regulation in this regard is intended to amend the proclamation. Is it valid?

Moreover, in addition to the fact that this provision of the proclamation reduces the opportunity of old possessors to obtain a good amount of bank loan as location value will not be taken in to account, it also negatively affects banks which extended loans having collateralized old possessions before the coming in to force of this proclamation but have not yet secured payments. The issue is that if banks have given loans by using an old possession as a collateral and if defaults occur after the coming in to force of the new proclamation, the transfer is to be effected according to this new proclamation i.e. through lease, then banks will face problems in getting back their money through the sale of this property, because the buyer will be expected to pay lease. Many people argue that the proclamation should have included a transitory provision allowing such contracts to be governed by the former laws. Of course, it is said from the part of

the government officials that the problem in relation to former loans should not be taken as a treat as it will be paid due attention by regulations and directives.[58] Following this the above mentioned article 7(7) of the Addis Ababa City Administration Regulation No. 49/2012 has entitled banks to sale such previous collaterals as per the former rules for one year as mentioned above. But what about for loans which will be due after one year? Of course it is not also known whether this opportunity will be given by the other regions as this is not provided by the proclamation itself.

Moreover, it is said that the law may also create a problem on future recovery process of defaulted payments on collaterals. Because as buyers are expected to pay the price of the construction, lease and VAT in some cases the number of bidders during the sale of such collaterals will possibly decrease. As a result banks may face difficulties in selling old possessions, hence in effect making them real estate owners which in turn negatively affects their liquid assets.[59]

Of course, the model regulation seems to have tried to minimize the problem and encourage buyers of old possessions by relieving them from down payments, granting a period of grace of two years for starting lease payment, making the transfer lease price based on bench mark lease price of the area and extending the period of payment throughout the lease period.[60] But why is the transitory provision provided by the proclamation in the case of collateralizing lease hold right does not apply in the case of old possessions?

Unlike in the case of old possessions, under article 46(5) of the model regulation banks which extended loans having collateralized lease holding rights before the coming in to force of the new lease holding proclamation are entitled for one year after the adoption of the draft model regulation by the regions to recover any loan on collaterals according to the former laws. That means the buyers in this regard are not expected to pay lease transfer payments and no penalties

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[58] ደሣለኝ መንግሥቴ፣ "የሊዝ አዋጁ የሕዝብን ጥቅም አያስከብርም የሚለው ማነው?" ¶±RtR፣ ጥር 2 ቀን 2004 የረቡዕ እትም ቅፅ 17 ቁጥር 17 gጽ 25፡፡ (Translation by the author).

[59] ጌታሁን ወርቁ፡ "የባንክ ብድር በአዲሱ የሊዝ አዋጅ እይታ" ¶±RtR፣ ታኅሣሥ 22 ቀን 2004 የእሑድ እትም ¶±RtR ቅፅ 17 ቁጥር 14 hgጽ 60--61፡፡ (Translation by the author).

[60] See article 7 of the model regulation, cited above at note 18.

will be paid by the sellers for transfer of below half completed constructions. In my view even if I do not agree with the amendment of the proclamation by a regulation, this one year transitional period should have also applied in the case of collaterals in the case of old possessions. That means such banks should have also been entitled to sell old possessions used as collaterals before the coming in to being of the same law at least for the period provided above according to the former rules i.e. out of the lease system.

How does the new proclamation treat informal possessions? The new lease holding proclamation has also come up with the following provision concerning informal possessions: "In order to regularize possessions held without the authorization of the appropriate body, the possessions which are found to be acceptable in accordance with urban plans and parceling standard following the regularizations to be issued by regions and city administrations shall be administered by lease holding and this regularization shall only be effective within four years of the coming into force of this Proclamation".[61] Informal possessors are those people who occupied land without the permission of the government. These houses are also called in Amharic as "yechereka betoch".[62] This proclamation has ensured that the possessions which are found to be acceptable in accordance with urban plans and parceling standard shall be administered by lease holding.

Why do people undertake informal settlement? Squatter settlements which are common throughout the cities of Third World countries are established due to various factors.[63] First, the large influx of people from rural to urban areas. Second, the financial limitation of the national and municipal governments to provide planned urban houses to the majority of urban people. Third, the high cost of even the legal low-cost housing for the urban poor. Fourth, the marginalization of urban land requests of the poor through unaffordable land lease policies.

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[61] Cited above at note 5, article 6(4 and 5).

[62] The term" yechereka betoch" also known as illegal settlements or commonly "moon shine houses" because people squat on the land during the dark hours of the night. These houses are constructed by squatters without the authorization of the concerned body at night within a short time.

[63] Asmamaw Legass Bahir, Challenges and consequences of displacement and squatting: the case of Kore area in Addis Ababa, Ethiopia (2010), Journal of Sustainable Development in Africa (Volume 12, No.3), (available at: http://www.jsdafrica.com/Jsda/V12No3_Summer2010_A/PDF/Challenges%20and%20Consequences%0of%20Displacement%20and%20Squatting,%20the%20Case%20of%20Kore%20Area%20in%20Addis%2Ababa%20%28Bahir%29.pdf), last visited on 12 September 2012.

Fifth, high population growth is the other major reason. Squatter settlements are, thus, often the only affordable option used by the majority inhabitants of many cities of developing countries. Daniel Weldegebriel also attributes the causes of such squatting activities to population growth, inefficient land provision, the high cost of urban living standard, and illegal land grabbing by urban speculators.[64] Minwuyelet on the other hand mentions factors such as high building standards of the legal houses, delayed responses and procedural problems of the legal land provision, and high housing rents in the city centre as the causes of squatting in Addis Ababa.[65] In addition, less government control of open spaces, the limited capacity of the code enforcement service to control illegal house construction, lack of a comprehensive legal response towards the problem of squatting, and the practice of land sale by land speculators as a means of making profit are other factors that have contributed to the emergence and proliferation of squatter settlements.[66]

Then what dictated the government to Regularize informal possessions? People state different reasons which might have dictated the government to regularize these possessions according to their own expectations. Some say that currently there is a huge land possessed illegally throughout the country and this land is now carrying a significant amount of the country's resource. Thus it is wise to regularize informal possessions so far as they conform to the master plan of the city. While some others say that this illegal occupation happened because of the fact that the government failed to discharge its obligation to supply land for residential purposes to its citizens. As a result, people who are victims of the housing problem were forced by the situation to illegally occupy land and construct shelters there. Thus it is convinced by this problem that the government decided in favor of regularization. Of course, it is not only citizens who have no shelter that under took illegal land occupations. Many rich people including real estate developers and government officials have been found taking part in such activities. This is even

[64] Daniel Weldegebriel AMBAYE, Informal Settlement in Ethiopia, the Case of two Kebeles in Bahir Dar City, Ethiopia, (2012), (available at: http://www.fig.net/pub/fig2011/papers/ts06d/ts06d_ambaye_5096.pdf), last visited on 12 September 2012. See also ዳንኤል ወልደ ገብርኤል፣ "የውል ነፃነትና የኪራይ ጣርያ እንዴት ይጣጣሙ?" ¶±RtR፣ ታኅሣሥ 22 ቀን 2004 የእሑድ እትም ቅፅ 17 ቁጥር 14 ከgጽ 38-39።
[65] Minwuyelet Melesse, City Expansion, Squatter Settlements and Policy Implications in Addis Ababa: The Case of Kolfe Keranio Sub-City Working papers on population and land use change in central Ethiopia, (2005), (available at: http://www.svt.ntnu.no/geo/Doklager/Acta/Serie_A_9_Melesse.pdf), last visited on 6 September 2012.
[66] Ibid.

assured by the government.[67] Still others say that as people who occupied land illegally are many in number, demolishing their possessions strengthens opposition against the government. That is why the government opted for legalizing such possessions. Daniel Weldegebriel on the other hand states that earlier, demolition of informally built houses was a common measure taken, but these days for economic and human right reasons regularization of these settlement is a preferred one.[68] In the writer's view the government might have decided in favor of regularization for one or all of the above mentioned reasons.

Of course, it is said that decision of regularizing illegal possessions rewards people who do not obey the law and discourages those who respected it and as such it is unfair. Of course, taking in to account the number of illegal possessors, demolishing such illegal possessions will obviously expose people who are there for various social problems and the decision of the government might have considered this problem. But the government should have made a serious follow up from the very beginning.

Those who bitterly criticize the regularization process say that the government should have taken other alternative measures to discourage illegal possessors and ensure the rule of law. The proposed measures include; taking the possessions which conform to the master plan of the city as per the provisions of the civil code and selling them through an open tendering[69] or penalizing those possessors whose possession goes with the master plan of the city all the price of the properties erected on the land and let the possessors live there.[70]

The writer of this paper does not agree with the first measure as taking the possessions which conform to the master plan of the city as per the provisions of the civil code and selling them through an open tendering makes thousands of urban residents homeless thereby causing various social problems. That might be why the government opted for regularization. But as one should not benefit from his/her illegal acts those possessors should at least pay the bench mark lease

[67]See የኢትዮጵያ ዴሞክሲያዊ ግንባር (ኢህአዴግ)፣ "የመሬት ፖሊሲያችንና yt šŠl W የሊዝ አዋጅ" ፣ <u>አዲስ ራዕይ</u>፣ ጥር - የካቲት 2004 ዓ.ም፣ 2¾ >mT፣ ቅጽ 3 ቁጥር 8፣ ሜጋ አሳታሚ ድርጅት hgጽ 21-23፡፡

[68] See Daniel, cited above at note 64.
[69] See article 1178 of the Civil Code, cited above at note 22.
[70] See Mekasha, cited above at note 44, p.62.

price of the land which is equal to the plot size which will be approved by the regular national standard. Moreover, as to the size of the land which will be taken away based on the national standard according to article 6 of the proclamation, even if there are properties attached on such land, they should not be entitled to any compensation, because they have from the very beginning undertook such construction illegally. Of course it is clearly provided under article 23(3) of the model regulation that no compensation shall be paid when property located on an illegally occupied land is decided to be removed for various reasons and no substitute land will be provided for such land.

Still others criticize the regularization process for making discrimination between illegal possessors. It is said that the decision rewards illegal possessors whose possession goes with the master plan of the city and penalizes those whose possession does not much with the same. The latter ones are expected to leave the land with no compensation and only by a notice of seven working days.[71]This is however opposed based on the idea that it may open a door for unnecessary relationship and corrupt practices between illegal possessors and government officials to adjust the master plan of the city in line with the interest of illegal possessors.[72]

Moreover, it is said that if the government persists in regularizing illegal possessions, those illegal possessors whose possession does not conform to the master plan of the city and thus their possession is to be cleared should be paid commensurate compensation and be given a substitute plot of land like the legal possessors.[73] However it is clearly provided under article 23(3) of the model regulation that no compensation and substitute land will be provided when persons who acquired possession of land illegally are decided to be displaced for various reasons.

The writer of this paper does not support the idea that those illegal possessors whose possession is not found to be in conformity with the master plan of the urban centers should be paid with commensurate compensation. Of course, I can say that the government should provide such squatters whose possession is to be demolished because of the fact that it is not found to be inconformity with the master plan of the urban centers with access to substitute housing or facilitated purchase of condominium housing unit based on humanity and social justice because

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[71]Cited above at note 5, article 26(4).
[72] See Mekasha, cited above at note 44, p. 63.
[73] Ibid.

the fact that such people may not have any shelter after such possession is demolished should be taken in to consideration. In addition to this, their settlement should not be demolished within a short period of time until they get such alternative shelters. Moreover, considering the inevitability of squatting for the future, the government should primarily work a lot for a change in attitude towards squatting, squatters and squatter settlements. One such approach that has been receiving considerable attention from various government and public authorities has been the "enabling" approach, where instead of taking a confrontationist attitude, governments have strived to create an enabling environment, under which people, using and generating their own resources, could find unique local solutions for their housing and shelter problems.[74]

Regarding the time within which the regularization will be effected the proclamation provides that “the regularization process to be undertaken by regions and city administration in accordance with sub-article (4) of Article 6 shall only be effective within **four years** of the coming into force of this Proclamation”.[75] This provision of the proclamation which provides a **four years** period for regularizing illegal possessions is also criticized by many people by alleging that further illegal possessions will be conducted even after the coming in to force of this new proclamation for the coming four years. Because this provision does not make it clear that illegal occupations carried out after the coming in to force of the proclamation will never be regularized. As a result, it is said that this encourages further illegal possessions.

Thus, unless serious mechanism of control and follow up is designed this provision will bring about extensive illegal land occupation. Of course it is disclosed through the media that the process of land grabbing has been aggravated after the coming in to force of this proclamation, especially this year. In fact the government is taking measures by demolishing illegally constructed houses. However, the fear is that as there is no modern and effective way of urban land administration and well disciplined public officials to make an effective follow-up, people may conspire for occupying bare land to construct houses illegally and bring false testimonies

[74] Hari Srinivas. Defining Squatter Settlements, (available at: http://www.gdrc.org/uem/define-squatter.html), last visited on 12 September 2012.

[75] Cited above at note 5, article 6(5).

that the possessions are held before the enactment of the proclamation. As a result, this provision may dictate government officials who implement the proclamation to corrupt practices.

Moreover, since this proclamation negatively affects the interest of squatters whose possessions are not found to be acceptable in accordance with urban plans and parceling standard, such people will continue to exert their maximum effort within the grace period provided for regularization to make their possession legal even by paying a big amount of money as bribe and by trying to influence the adjustment or preparation of the plan of the city in favor of them. This dictates government officials whose task is related with this to be engaged in unnecessary and corrupt practices.

Of course, the proclamation under article 35(1) (a) and (b) makes those acts crimes and prescribes serious penalties. But this is not enough, because evidences may not be found to penalize such acts. Thus there should be a system for identifying the legal possessions from the illegal ones. Unless such system is created the system of good governance that the law strives to ensure will be at stake.

2.2.3. Leasehold Permit of Urban Land

Urban land lease holding is to be granted if the request is in conformity with the land use pattern of the urban center and after carrying out a competitive public tendering. The proclamation provides that an urban land shall be permitted to be held by leasehold: 1/ if its use is in conformity with the urban plan guidelines or, if the urban center does not have such guidelines, as per the regulations issued by the region or the city administration; and 2/ through the modality of tender or allotment.[76]

The new proclamation recognizes lease holding system as the only way for one to get land in the urban area. The first criteria for one to obtain land in urban area is that the use of the land should be in conformity with the urban plan guidelines or, if the urban center does not have such guidelines, as per the regulations issued by the region or the city administration. As to the modes of land acquisition, previously, as mentioned by the federal and state lease laws, there were four

[76] Id., article 7.

means of urban land acquisition: auction, negotiation, assignment and lot.[77] Now, since most of them failed to collect proper fees due to personal connections or corruption, the law recognizes tender and allotment as the only two basic means of leasehold right transfer from government to citizens.[78] Thus in principle, land needed for any purpose will be transferred by tender and bidders will use the minimum lease price of the area as a base to offer their price.

However, exceptionally, urban land may be given by allotment to selected areas of paramount importance to society such as government offices, religious institutions, public residential housing programs, diplomatic missions depending on the decisions of the cabinet of the concerned region or the city administration.[79] Moreover, a person who is displaced from his house as a result of urban renewal shall get a substitute land by allotment.

2.2.4. Tender

2.2.4.1. Urban Land Prepared for Tender

As per the new proclamation, urban land lease holding is granted through public bid. It is provided under article 8 of the same that the '*appropriate body*' which is also called 'the *concerned body*' under article 2(4) of the draft model regulation shall ascertain that:

1/ Prior to advertizing urban lands prepared for tender, the lands: a) Are free from legal claims of any party; b) Are prepared in conformity with the urban plan; c) Have access to basic infrastructure; d) Are parceled, delineated, and assigned with unique parcel identification numbers; e) Have site plans and fulfill other necessary preconditions; and

2/ The tender process is implemented in a manner that secures the appropriate price of the land following the rules of transparency and accountability.

The preconditions are intended to enable the lease holders to start construction directly after obtaining land.[80] It was stated by honorable Ato Girma Seifu during the parliamentary discussion for the adoption of this proclamation that as it is common to see people who obtain land facing

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[77] See article 4 of the Re-enactment of Urban Lands Lease Holding Proclamation, cited above at note 6.
[78] Cited above at note 5, article 7(2).
[79] Id., article 12(1).
[80] Cited above at note 27, page 4.

many ups and downs because of the absence of such preconditions such as water, electric power etc., there should be a mechanism by which those employees of the government who allow land without fulfilling such preconditions be responsible and penalized.[81] But what if the appropriate body fails to fulfill such pre-conditions? What will be the remedy available to the lease holder who obtained land without the fulfillment of such pre conditions? One may say that the appropriate body will be responsible as provided under article 35 of the proclamation, but as to the remedies available to the lessee nothing is mentioned under the proclamation. Of course one can say that the lessee should have assured the fulfillment of such pre-conditions in advance.

It was stated before that most towns of Ethiopia suffer from land market distortions caused by poor land development and management policies including poor planning, slow provision of infrastructure and services, poor land information systems and slow land transaction procedures. But if the land registration system develops in such a way that it clarifies lease rights, it minimizes disputes and enables the government to use the land in its maximum economic use.[82] Formerly, while the municipalities encourage and push investors to undertake development, they neglect the crucial role of infrastructure that should proceed in parallel with the construction work. But in contrast to the former lease holding proclamations, the above listed preconditions are new and it is believed that they will help a lot in urban land administration. For instance, if all lands prepared for tender have access to basic infrastructure the former problem which was impeding construction will be solved. Thus if this provision is put in to practice, it is a very good improvement on the part of the government. However experience tells us that conducting these activities takes a long time for the government as they need huge investment. As a result delays in the supply of land may happen until such preconditions are fulfilled or if the government continues to permit land as used before without adjusting such preconditions, this provision may remain being impractical.

Moreover, some questions that are worthy of raising at this juncture are; why aren't these preconditions provided in the case of land to be permitted by allotment as per article 12? Does it

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[81] Cited above at note 36, p.27.

[82] Belachew Yirsaw, Urban Land Lease Policy of Ethiopia, Case study on Addis Ababa and Lease towns of the Amhara National Regional state, (available at: http://www.fig.net/pub/fig2010/papers/ts09a%5Cts09a_alemu_4006.pdf), last visited on 3 June 2012.

mean that the government does not have the obligation to fulfill such preconditions in such cases? Doesn't the absence of such preconditions expose those who take land by allotment to delays in commencement and completion of construction thereby to the subsequent serious consequences?

Some people say that the municipality usually focuses on land for tender and land is usually permitted by allotment in the peripheral parts of the cities where there are no sufficient infrastructural facilities. The fact that the above preconditions are not provided under the proclamation in the case of land to be permitted by allotment may aggravate the problem. This in turn exposes such people to the harsh consequences of failure to commence and complete construction provided under articles 22 and 23 of the proclamation which finally will have a negative bearing on the right to shelter of such individuals.[83]

2.2.4.2. Information Relating to Urban Lands Prepared for Tender

The information relating to urban land prepared for tender shall contain the land grade, the lease benchmark price and other detailed relevant data. Where the urban land prepared for tender requires a special development program and implementation action plan and such development program and action plan shall be included in the information.[84]

2.2.4.3. Publicity of Urban Land Tender Plans

As per article 10 of the new proclamation the appropriate bodies shall: a) based on the demand for urban land and development priorities, publicize their annual plans indicating the quantity of urban land to be presented for tender; and b) make the information relating to urban lands prepared for tender easily accessible to the public. The appropriate bodies shall also be responsible for ensuring the timely supply of urban land in accordance with the plans publicized as mentioned above.

[83] See ጌታሁን ወርቁ፣ "ym- l Ã mBTÂ yl !Z xê° l§ g}¬" ¶±RtR፣ ታኅሣሥ 15 ቀን 2004 የእሑድ እትም ቅፅ 17 ቁጥር 14 ክgጽ 48-49፡፡ (Translation by the author).
[84] Cited above at note 5, article 9(1 and 2).

2.2.4.4. Tender Process

The proclamation under article 11 provides that the appropriate body shall advertize lease tender and forthwith put bid documents on sale. The sale of bid documents shall be in a manner accessible to anyone willing to bid; provided, however, that no single bidder may be allowed to buy more than one bid document for the same plot. The amount of bid bond shall be determined by regulations of regions and city administrations; provided, however, that it may not be less than five percent of the land lease benchmark price.

A bid shall be cancelled if less than three bidders participate in the first round of tender. However, land may be assigned, through tender process, even to a ***sole bidder*** where his project is designed for higher education institutions, hospitals, health research institutions, four stars and above hotels and mega real estate developments and where his capability to implement the development project is verified by the relevant body.[85] This is what is provided as a 'special tender' under article 10(3) of the draft model regulation. The main reason stated for allowing this is that the government wants to give special emphasis for those who are willing to invest a large amount of money.[86] But in the case of a sole bidder my suspicion is that it might easily be abused by the relevant body and may expose officials to unnecessary negotiations and corrupt practices with the sole bidder, unless there are clear procedures and checking mechanisms regarding this bidding. Of course it is provided under article 10(3) of the draft model regulation that the details of this tender will be provided by a directive. Therefore, the directive may avoid the above mentioned doubts.

The proclamation also states that the highest bidder shall be declared a winner on the basis of his ***bid price*** and the ***amount of advance paymen***t he offers. However, there are people who argue that priority should not be given for those who can make large percent of down payment out of the total lease payment or for those who can make the total amount of the lease price at the signing of the lease contract.[87] This is due to the fact that even though such payment arrangement will increase government revenue at the moment, encouraging large percent or full payment of

[85] Cited above at note 5, article 11(8)
[86] Cited above at note 27, page 5.
[87] Zelalem Yirga: Land Lease: A source of municipal revenue; (available at: http://www.thereporterethiopia.com/Politics-and-Law/land-lease-a-sources-of-municipal-revenue.html), last visited on 8 August 2012.

the lease price at the beginning contradicts with the objective of the retention of land in public ownership; an ownership which is meant to have the increase in land value accrue to the community.[88] Once the large down payment or full payment is done, it has to be clear that small or no other payment is expected from the lessee until the contract expires. It is said that one-time payments may create a very uneven revenue stream for the government and is not sustainable in long-run, because land for lease is limited and after most of it is allocated for long term leases, this source of revenue will dry up. Thus, although for initial investment, a huge amount of money is required, the main objective of public land lease system is not to produce an immediate financial return for the municipality but to capture increasing land values through a periodic rise in ground rents.[89] Therefore, such people propose that a winner should be determined on the basis of the amount of bid price s/he offers and not based on the amount of the down payment he offers.

When I asked an interviewee at the Addis Ababa City Administration Municipality as to why large amount of down payment is encouraged by adding the criticisms forwarded against it, he responded that it is business. It means the discount is made taking in to account the value and importance of the money collected in this way.

Regarding the calculation of the offer, according to article 15(1) of the draft model regulation and the information I gathered from the Addis Ababa City Administration Municipality, currently, 80% is given to bid price and the remaining 20% for the amount of down payment to determine a winner in public tendering.To this end, Article 15(2) of the draft model regulation provides that if all the bidders score the same result out of 100% on the amount of lease price they offered and the obligations they assumed and if there is only one female bidder among them, she will get the priority. Moreover, the cumulative reading of articles 15(3) and 17(3) of the model regulation tell us that a bidder of a specific land who scored the highest result out of 100% in all the criteria will be declared a winner. However, if the first winner fails to sign the contract of lease by effecting the down payment and fulfilling the necessary preconditions within 10 working days starting from the disclosure of the result of the tender through the appropriate

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[88] Ibid.
[89] Ibid.

way, the 2nd winner has the right to take the land by making the payments s/he offered during the tender. But, the tender will be canceled if the 2nd bidder is not willing to take over the land as mentioned above. Why isn't the 3rd winner entitled to take over the land in case the 2nd winner fails to do so? Of course this may be made based on the relative advantage that the government wants to get out of the tender. But it would have been fair to entitle the 3rd bidder to take over the land, especially if what s/he offered is very much nearer to the 2nd winner.

Generally the government is currently trying to drive a good amount of revenue which subsidizes the small amount of money received in the form of tax for facilitating development works by encouraging people to make more down payments. Of course, it is not only the down payment that is taken in to account during the tender process, but also the winner should be the one who offered a good amount of bid price as mentioned before. Thus the government is making the best out of the two cumulative requirements. Of course one may say that this system discourages bidders to offer a good bid price and encourages them only to make large amount of down payment out of the proposed lease price. This in turn is determined by the demand for urban land and the ability to pay of the bidders.

Another criticism forwarded against this tender process is based on the idea that the lease procedures should also grant land for at least the 2nd and 3rd highest bidder. However, in my understanding, there is no problem of doing with the existing tender. Because the 2nd and 3rd bidder competes for specific land in which they failed to win. Thus so far as there are continuing tenders they can participate and win. Of course this is all about competition and having the objective to give land market value, how could the government grant land for the 2nd and 3rd bidder in which there is no competition for it?

2.2.5. Allotment of Urban Land

The new proclamation provides that allotment of urban lands upon decisions of the cabinet of the concerned region or the city administration shall be permitted for institutions such as office premises of budgetary government entities; social service institutions run by government or charitable organizations; public residential housing construction programs and government approved self help housing constructions; places of worship of religious organizations;

manufacturing industries; use of embassies and international organizations as per agreements entered into with the government; projects having special national significance and considered by the president of the region or the mayor of the city administration and referred to the cabinet.[90] However, honorable Ato Girma Seifu stated that the municipalities do not give good attention to the allotment of enough land for institutions such as elementary and high schools and health centers as a result such institutions cannot properly conduct their functions and proposed that there should be a time restriction within which the application to obtain land made by such institutions should be given response to minimize delays.[91] He added that political organizations should also be entitled to obtain land for their office through allotment.

The proclamation also provides that the budgetary government entity or the religious institution provided with urban land by allotment in this regard shall not pay lease but an amount equivalent to the compensation paid in the course of clearing the land.[92] The remaining ones will pay lease but will not be expected to take part in public tendering. But whether the lease price to be paid in this case is based on the tender price of the area or the bench mark lease price is not expressly stated under the proclamation. Officials from the MoUDC state that the payment will be decided by the regulations to be issued by the regions and city administrations.[93] Of course, those institutions were even formerly granted urban land for free.[94]

But one important issue that should be raised in connection with this is the case of *projects having special national significance*. How are such projects selected and what protection mechanisms are there for government officials not to abuse their power? The proclamation does not answer this. Ato Gebeyehu Belay stated that these types of projects are not different from what is provided in the case of public interest, but it seems that this is made to give the cabinet special power which in turn opens a door for non transparent and corrupt practices.[95] Thus it is likely that this can be abused. This may put the principle of accountability and transparency which is taken as fundamental under article 4(2) of the same proclamation in danger. Of course,

[90] Cited above at note 5, article 12(1).
[91] Cited above at note 36, p.27.
[92] Id., article 20(7) and cited above at note 16, page 8.
[93] Cited above at note 32, p.8.
[94] See article 8(2) of proclamation No.272/2002, cited above at note 6.
[95]See Gebeyehu, cited above at note 49.

as to the details of such projects article 21(2) of the model regulation provides that it will be provided by a directive which will be issued for the implementation of the same. Thus, the doubts should at least be adequately clarified under the directives.

On the other hand the draft model regulation under article 2(13) provides that special tendering will be used to permit urban land for projects having special national significance. This is a clear amendment of what is provided under article 12(1g) of the proclamation, because it is already provided under the proclamation that such projects will be entertained by allotment, not by tendering.[96] Thus what is provided under the regulation in this regard should be corrected.

Concerning persons displaced due to urban renewal, article 12 (2) of the proclamation provides that such persons will be entitled to allotment of a substitute plot of land. But is this substitute land to be granted as lease holding or permit holding? Even if this is not clearly provided under the proclamation, it was indicated in the preface as a short explanation of the draft of the same proclamation submitted from the MoUDC to the House of Peoples Representatives that such substitute plot of land is to be allotted not based on lease holding but as old possession to minimize the burden that might be imposed on such displaced persons.[97] The reason stated by officials in the MoUDC for failure to clearly state under the proclamation whether a person displaced from his old possession due to urban renewal will pay lease and the status of the holding is that it is customary that such displaced persons are permitted a substitute land based on the permit system.[98]

Moreover, the aforementioned provision, i.e. article 12 (2) seems to be referring to **any person**. However, some additions are made under the draft model regulation. It is clearly provided under article 23(1-3) of the draft model regulation that it is only **lawful** old possessors and lease holders who are displaced due to urban renewal program who will be entitled to a **proportionate** substitute plot of land. It is also provided under sub-article 3 of article 23 of the same regulation that when a possessor who obtained such status illegally is displaced for any reason, no compensation will be paid for the property on the land and no substitute land will be provided.

[96] See article 2(10) of the new lease holding proclamation, cited above at note 5.
[97] Cited above at note 27, page 5.
[98] Cited above at note 32, p. 9.

Moreover, it is also mentioned under article 23(7) of the model regulation that farmers who are displaced due to urban development will in addition to the compensation to the property on the land which will be determined based on the relevant law, be provided with a substitute proportionate land as an old possession within the urban center based on the directive issued by the region or city administration.

Thus under the model regulation in addition to the totally new additions such as the case of illegal possessors and farmers mentioned above, some terms of the provision of the proclamation are changed or some other terms are added. For instance, the phrase 'any person' is changed by 'lawful possessor' and the term 'proportionate' is added before the term 'substitute'. But is it proper to make new changes on a proclamation through a regulation issued to implement the same? I do not think so and the better way is to amend the proclamation itself.

The new lease proclamation also provides that a lawful tenant of government or kebele owned residential house in a region or Dire Dawa is entitled to allotment of residential plot of land at bench mark lease price if displaced due to urban renewal program and could not be provided with access to substitute housing; provided, however that he shall deposit money, as determined by the appropriate body, in a blocked bank account to show his financial position, while a lawful tenant of government or kebele owned residential house in Addis Ababa is entitled for facilitated purchase of condominium housing unit if displaced due to urban renewal program.[99] The main reason stated for this is that in addition to the fact that enabling those citizens to get residential house is part of the development program, it is believed that this will promote the support of urban residents in the urban redevelopment program.[100]

However, the alternative of providing residential plot of land at bench mark lease price that was given to a lawful tenant of government or kebele owned residential house in a region or Dire Dawa if displaced in case of urban renewal is omitted under article 23(4 and 5) of the draft model regulation. Under the above mentioned provisions of the regulation it is only a lawful tenant of government or kebele owned residential house in a town where there is no condominium housing program that will be entitled to get a residential plot of land at bench mark lease price. Thus, some changes are made to article 12(3) of the proclamation by the above

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[99] Cited above at note 5, article 12(2-4).
[100] Cited above at note 27, page 5.

mentioned provisions of the draft model regulation. But it is not clear why the government is not willing to properly make such changes on the proclamation itself.

The proclamation under 12(5) also provides that "a lawful tenant of government or kebele owned business house shall be accommodated as per the decision of the concerned region or city administration if displaced due to urban renewal program." This was opposed by Honorable Ato Girma Seifu during the discussion for the adoption of the same based on the ground that such people should be given the priority to develop the land and this should be clearly provided by the proclamation otherwise city administrations and regions may deny such tax payers the opportunity to get land through allotment.[101] In response to this, under article 23(6) of the draft model regulation it is provided that such tenants of the government can if they have the need to construct a building in cooperation with each other according to the plan of the city be provided with the land required for such construction based on the necessary investigation and subsequent decision of the concerned region or city administration at a bench mark lease price the size of which will be:

- 25 square meters for each in 1st level cities,
- 75 square meters for each in 2nd level cities,
- 150 square meters for each in 3rd level cities.

However, it is provided under the same provision that if the total size indicated in the plan is more than what is allowed for each member as provided above, the remaining land can be allotted to the members based on the highest bid price of the area.

In this case, while the proclamation leaves the decision as to how such tenants of the government will be entertained to the concerned region or city administration, the regulation on the other hand, clearly provides the way how such tenants will be entertained as well as the size of the land they will be provided. Of course the regulation in this regard has made a good favor to such tenants of the government. But this change should have been made on the proclamation itself so that its effect will be strong.

[101] Cited above at note 36, p.28.

It is customary that if a person is displaced from his/her possession due to urban renewal program, such person will be provided with a substitute plot of land in addition to compensation for the properties attached to the land.[102] However, in the case of a lawful tenants of government or kebele owned residential house, as the land as well as the house is not owned by the tenants, the only option that the law gives is providing such persons with access to substitute housing such as a facilitated purchase of condominium housing for those who are found in towns where condominium housing program is undergoing and allotment of residential plot of land at bench mark lease price for those who live in towns where condominium housing program is not undergoing, provided however that the latter shall deposit money, as determined by the appropriate body, in a blocked bank account to show their financial position.

But the first issue that I want to raise in relation to this is: what is the fate of such lawful tenants of the government or kebele owned residential house, in case they couldn't be provided with access to substitute housing immediately at the time of eviction and do not have the capacity to deposit money in a blocked bank account as determined by the appropriate body? Isn't a lawful tenant of government or kebele owned residential house entitled to displacement compensation as provided by proclamation no.455/2005?

Article 8(4b) of proclamation no.455/2005 provides that "an urban land holder whose land holding has been expropriated **shall be paid a displacement compensation equivalent to the estimated annual rent of the demolished dwelling house** or be allowed to reside, free of charge, for one year in a comparable dwelling house owned by the urban administration".

Doesn't this provision concern lawful tenant of government or kebele owned residential house? Especially, in case they couldn't be provided with access to substitute housing immediately and do not have the capacity to deposit money in a blocked bank account as determined by the appropriate body as mentioned before?

Some people say that such tenants were from the very beginning mere tenants of the government, like tenants of a private landlord. They have for that matter benefited a lot from that house while

[102] Cited above at note 5, article 26(1-3) and 25(1/b).

they were living there for a much lower rent in contrast to that of the private houses. Thus, let alone in cases where the land is wanted for public interest like in the case of urban renewal, the government has even the right to evict them at any time. At this time they deserve no displacement compensation as no expropriation has taken place. Even it is said that this new lease holding proclamation has incorporated a very good and progressive provision which give such tenants an opportunity to a substitute government house or facilitated purchase of condominium.[103] But in the writer's view even if not legally, for the purpose of social justice, displacement compensation should also apply to such people. Take for instance the case of tenants of the government who have no any capacity to afford for the rent of private houses, should they be subjected to street life in the absence of an alternative government house?

2.2.6. Request for Urban Land Allotment

The new proclamation also declares that a request for urban land lease holding through allotment shall be accompanied by:[104] a/ support letter from the supervising authority of the requesting institution or from pertinent sectoral bodies; b/ detailed study of the project to be implemented at the requested site; and c/ evidence showing the budget allocated for implementing the project.

2.2.7. Urban Land Lease Price

It is provided under the new proclamation that every plot of urban land shall have a benchmark lease price and the valuation method shall be determined on the basis of the objective conditions of each urban center in accordance with regulations issued by the respective regions and city administrations. Moreover, a price map shall be prepared based on the bench mark prices of different locations computed as mentioned above and the benchmark lease price shall be updated at least every two years to reflect current conditions.[105]

However, there are people who say that there should be a mechanism that reserves municipality's right to benefit from increase in land values and claim substantial proportion of

[103] Interview with Ato Muradu Abdo, Lecturer at law, Addis Ababa University, on 20 November 2012.
[104] Cited above at note 5, article 13.
[105] Id., article 14(1-3).

future increments in the capital value of land at the end of the contract.[106] As a matter of fact, the recently enacted proclamation no. 721/2011 tried to address problems related to change in land market value. For instance, as mentioned above, this proclamation clearly stated that the benchmark lease price shall be updated at least every two years to reflect market conditions. Thus, the government has planned to update the benchmark lease price every two years to reflect market conditions.

2.2.8. Grace Period

The new lease holding proclamation under article 15 provides that any person who is permitted urban land lease holding may be allowed grace period depending on the type of the intended development or service the details of which shall be determined by regulations to be issued by the regions and city administrations. The grace period shall commence from the date of the conclusion of the lease contract and may not last beyond the date of completion of construction. It is also provided that any lessee should commence construction within the period specified in the lease contract. However, the period of commencement of construction may be extended depending on the complexity of the construction and in accordance with regulations to be issued by the concerned region or city administration.[107] Of course this is clearly provided under article 34(3 and 4) of the draft model regulation that an extension of 6 months for small, 9 months for medium and 12 months for large scale construction projects can be given only once by the body in charge of granting construction permit.

The time limit for completion of construction is also given as a) up to 24 months for small construction projects; b) up to 36 months for medium construction projects; c) up to 48 months for large construction projects.[108] The period of completion of construction may also be extended depending on the complexity of the construction and in accordance with regulations to be issued by regions or city administrations; provided, however, that the total completion period may not

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[106] Zelalem yrga, Pros, cons of the litigious land lease proclamation, (available at: http://www.thereporterethiopia.com/Opinion/pros-cons-of-the-litigious-land-lease-proclamation.html), (2011), last visited on 8 August 2012.

[107] Cited above at note 5, article 22(1 and 2).
[108] Id., article 23(2).

exceed: a) two years and six months for small construction projects; b) four years for medium construction projects; c) five years for large construction projects.[109]

As we can understand from the above discussion the period of grace for commencement of construction is 6 months for small, 9 months for medium and 12 months for large scale construction projects respectively and the maximum period of grace for completion of construction is six months for small construction projects and one year for medium and large construction projects. But shouldn't a period of grace be dependent on the situation? What if a lessee confronts force majeure? Thus, the fact that a maximum period of grace is provided both for commencement and completion of construction by the proclamation and the model regulation does not take in to account at least the case of force majeure and is therefore in my view unfair.

2.3. ADMINISTRATION OF URBAN LAND LEASEHOLDINGS

2.3.1. The contract of lease

The relationship between the lessor and the lessee begins after the winner in bidding is identified or one takes the land through lot, and when the two parties sign the contract of lease. Unlike the lease proclamation, the draft model regulation under article 25 provides that "without prejudice to the provisions of the proclamation and this regulation, a contract of lease will be governed by the rules of the Civil Code governing administrative contracts." Thus, a contract of lease is categorized under administrative contracts and hence the provisions of the civil code starting from article 3131 and following will also be applicable to a contract of lease depending on the circumstances. Of course, in the writer's view this should have been provided under the lease proclamation itself.

The lease contract includes the construction start-up time, completion time, payment schedule, grace period, rights and obligations of the parties as well as other appropriate details.[110] But why is the period of lease not indicated under the lease contract? But as it says 'other appropriate

[109] Id., article 23(4).
[110] Id., article 16(2).

details' it might be included here. Of course, the fact that the lease period will be included in the lease certificate is stated under the proclamation.[111]

It is stated above that the period for the beginning and completion of construction is included in the lease contract and the definition for beginning and completion of construction under the proclamation is not as we usually know.[112] But how do we exactly know the time for the beginning and completion of construction during the signing of the contract of lease without having a clear design and plan? It is obvious that when the land is made ready for tender the bidder will not come having prepared the design and plan of the building s/he intends to build. Construction begins after the preparation and ratification of the plan of the building when a construction permit is given by the appropriate body. It is also stated under article 23(2) of the proclamation that the time taken for completion of construction depends on the complexity of the construction. Thus how do we put the time for the beginning of the construction without knowing the type of construction that will be made? Is the type of construction that will be undertaken on the land prepared for tender determined in advance? After all who determines the type and design of the construction that will be undertaken on a certain land?

Of course as to the time of commencement of construction, even if it is not provided under the lease proclamation, article 34(1) of the draft model regulation provides that a lessee should commence construction **starting from the date when he took the construction permit** within the period of commencement of construction provided for the intended project. Moreover, it is stated under Article 34(5) of the same that the lease holder should submit the required design and obtain construction permit within 3 months for small, 6 months for medium and 9 months for large scale construction projects. But shouldn't this be provided under the proclamation itself?

Moreover, regarding delays that might happen in handing over of the land to the lessee, it is stated under article 26(3) of the draft model regulation that "if delays occur in taking over of the land because of reasons that are attributable to the concerned government office, the contract will be renewed and the period of grace, time for commencement and completion of construction as well as the payment period will be decided again." Thus what remains is the delay that might

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[111] Id., article 17(2.f).

[112] See article 2(14) of proclamation No.721/2011, cited above at note 5 for the meaning of commencement of construction.

occur until the design and plan of the required building is prepared. Of course some of the solutions provided to this problem by the model regulation are discussed under the part dealing with commencement of construction.

What rights does this contract provide? Once if a person buys the lease right s/he has the right to construct a building of different nature (residential, commercial, industrial) as per the agreement and the master plan. Hence the right of use and enjoyment is one right conferred on the leaseholder. Another right is that the lease right can be mortgaged to the extent of the lease down payment; it can be inherited, provided that the beneficiary's rights are limited by the period of the lease term. Finally, the lease right can be sold or exchanged to any person.[113] A detailed discussion of these rights is made under the section **'transferring and pledging of leasehold right'.**

Is there any difference between the rights of a leaseholder and a freeholder? Concerning this point, Farvacque and Mc Auslan give interesting explanation: "Essentially, the crux of the legal difference between freehold and leasehold is that the freeholder (private owner) is bound by the laws of the land and nothing else. Whereas the leaseholder is bound, in addition, by the terms of the lease laid down by the landlord. The leaseholder is then less free and restricted in his or her use of land than is the freeholder."[114]

Of course even private ownership does not give an absolute right; it is subject to different limitations, such as town plan, public interest, environment, etc. The clear difference between the private ownership of land and the leasehold right is the time element, in that the latter is limited by time as it is discussed under the section dealing with period of lease. The limitation in time may create a sort of insecurity on the lessee and as a result inhibits the lessee from making further long lasting investments. On the other hand it is said that in the case of these lease agreements permitted for a long time, such as 99 or 70 years, people may not be inhibited from making additional investments.

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[113] See article 24 of the new lease holding proclamation no.721/2011, cited above at note 5.
[114] See Daniel W/Gebriel and Melkamu Belachew (2008), Land Law Teaching Material, Prepared under the Sponsorship of the Justice and Legal System Research Institute, p.92.

2.3.2. Lease Holding Certificate

Once a person gets land by auction or allotment s/he is entitled to get leasehold title deed or leasehold certificate that proves the lessee's rights to the land and such certificate includes particulars like full name of the lessee including grand father's name, size and location of the plot, the type of service, land grade and plot number, the total lease amount and down payment, the amount of the annual lease payment and the time of the final lease payment to be effected and the lease period.[115]

2.3.3. Period of Lease

Land lease enjoyment right is limited in time and the duration of the lease varies depending on the level of urban development and sector of development activity or the type of service. That is how lease is different from private ownership. Currently in Ethiopia unlike rural land, most urban land is granted to urban dwellers and investors on the basis of time restriction and use rights are provided for a specific period obtained from the landowner who shall be the state through ground rent payment. Hence, the duration of the lease period might be a critical issue.

Article 18 of the new lease holding proclamation provides different lease periods ranging from 5 years for short-term economic and social activities[116] to 99 years for residential housing based on different types of ground leases. Moreover, unlike this proclamation, the model regulation under article 47 provides that the period of lease for development activities or services which are not clearly provided by the lease proclamation will be decided by the regional or city administration cabinet.

The new lease holding proclamation[117] has made the following amendments related to the period of lease from the previous lease proclamation no. 272/2002:

- For industry in Addis Ababa which was previously 60 years is now made 70 years;

[115] Cited above at note 5, article 17.
[116]The list of types of short-term economic and social activities is provided under article 24(1) of the draft model regulation, cited above at note 18. It is also provided under sub-2 of the same article of the same regulation that the appropriate body can reclaim such land when it is needed for development activity without paying any compensation.
[117] Cited above at note 5, article 18.

- For trade and others in Addis Ababa which was previously 50 years is now increased to 60 years.

Now the next logical question is what will happen after the expiry of the period of the lease agreement? Should the lease contract be renewed or terminated? What will happen to the improvements made to the land? These and other issues are dealt with under the following section.

2.3.4. **Renewal of Period of Lease**

The renewal of contract should also be taken in to account, in connection with the lease duration. Under article 19 of the new lease proclamation the period of lease may be renewed upon its expiry on the basis of the prevailing bench mark lease price and other requirements; provided, however, that the lessee may not be entitled to compensation where the lease period could not be renewed. It must be noted that if the contract is to be renewed, the terms of agreement especially the rent and manner of payment as well as other conditions shall be based on the prevailing conditions. In other words, the renewed lease agreement may not contain similar particulars as that of the expired one. The period of lease is to be renewed only if the lessee applies in writing to the appropriate body within the earliest 10 to the latest 2 years before the expiry of the period of lease. If the lessee fails to apply within the aforementioned time limit then the contract will not be renewed.

After an application is made the appropriate body is expected to notify the applicant, in writing, its decision within one year from the date of submission of the application, and where it fails to communicate its decision within such period, it shall be deemed as though it has agreed to the renewal request. In such case, the contract shall be renewed on the basis of the prevailing benchmark lease price and for the period pertinent to the type of the service. Here the fact that the application for renewal is made ten years before the expiry of the lease contract is good. But the writer believes that it is fair to allow the lessee to make a first application at the beginning of the ten years before the expiry of the lease contract and a second application two or three years before the expiry of the same as ten years is too long and a decision made at the beginning of the ten years can be reversed at the end for various reasons.

It is also provided under article 19(4) of the same proclamation that the officer or employee who has failed to respond will be held accountable for the adverse consequences of the renewal, if any. The reason stated for this liability on the officer or employee is the failure to respond in this case may create a condition in which the land can't be used for better development activity[118], because failure to respond amounts to an agreement to renew the lease contract. As a result the officer might be subjected to the severe punishments stipulated under article 35(1/a.3) of the proclamation in addition to the civil liability for the loss of the benefits that would have been derived by the government.[119]

In the previous lease proclamations, the principle was that the lessee is legally entitled to renew his contract at the end of the lease period, if there is no public demand for the land[120], but under the new one such ground is not indicated. It is also stated that where the lease period is not renewed the lessee shall hand over the land to the appropriate body by removing, within one year, the property situated on the land. However, if the lease holder fails to remove such property within the required period, the appropriate body is empowered to "take over the land together with the property thereon without any payment, for this purpose the appropriate body is given with the power to order the police where it finds it necessary for the enforcement of the takeover.[121]The possible problem or criticism that may be raised against such provision is that it may create tenure insecurity and hysteria when the expiry date approaches. Actually, some people may say; who knows that the current land administration system will work after 50 or 99 years? Having said this let's now pose some important questions related with renewal of lease contract.

Why isn't renewal stated as a principle and the grounds for nonrenewal are not clearly provided under the proclamation? Why isn't the lessee compensated if the lease contract is not renewed? What if the property has a good value and can be sold rather than demolishing? Is it fair to leave the lease holder uncompensated? Some of these questions were raised in the discussion between the House of Peoples Representatives Urban Development and Construction affairs standing

[118] Cited above at note 27, page 8.
[119] Ibid.
[120] See articles 7(3) and 7(1) of proclamations No. 80/1993 and No.272/2002, cited above at notes 4 and 6 respectively.
[121] See article 25(5 and 6) of proclamation no. 721/2011, cited above at note 5.

committee and officials of the Ministry of Urban Development and Construction and the response of the officials of the MoUDC indicates that the contract will be renewed unless there is change in plan or the land is needed by the government for a better development activity, but no compensation will be paid in case of non renewal.[122]

Some people say that failing to pay compensation for the properties on the land is contrary to the constitutional right to property of individuals, because the constitution provides that commensurate compensation will be paid for the properties on the land when the land is needed for public purposes.[123] Then how is the problem of lack of security on contract renewal solved? What if the appropriate body refuses renewal unreasonably? Who is going to handle this complaint of the aggrieved party? It is really unfair to leave the leaseholder uncompensated for the properties on the land taking in to account the market value of such property. Moreover, unlike in the case of termination of lease hold on account of public interest provided under article 25(1/b), the proclamation does not clearly indicate the reasons why the appropriate body may refuse to renew the lease contract. This might give the appropriate body a wide discretion to refuse renewal for unjustified reasons. Unlike this proclamation, the repealed lease holding proclamation No.272/2002 clearly provided that the lease contract may not be renewed only if the land is wanted for public interest.[124]

Many people state the fact that no reason is stated under the proclamation for refusing renewal of lease contract and no compensation is paid to the lease holder during non renewal increases individuals' sense of tenure insecurity on their holdings because they are not sure whether their buildings will be transferred to their children and grand children.[125] So why should people make big investments and purchase real estate? It is added that this encourages corrupt and rent seeking behaviour of government officials and brings about government capitalism. It is also mentioned that this discourages investment.

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[122] Cited above at note 32, p. 13.
[123] See Gebeyehu, cited above at note 49.
[124] Cited above at note 32, article 7.
[125] See ብስራት ተክሉ፣ "የሊዝ አዋጁ ትግበራ ሳሩን አይቶ ገደሉን ያላየው እንዳይሆን፡፡"¶±RtR፣ ታኅሣሥ 22 ቀን 2004 የእሑድ እትም ቅፅ 17 ቁጥር 14 ከgጽ 50-51፡፡ (Translation by the author).

Moreover, the new proclamation does not provide mechanisms by which complaints in this regard can be handled. Thus the proclamation should be amended in a way it can give answers to the above mentioned problems.

However, unlike the lease proclamation, the model regulation under article 48(2) provides cases where a contract of lease may not be renewed. Those are whenever:

- There is a change in structural plan,
- The land is needed for public interest and,
- It is impossible to change the former development activity to the development level that the land requires.

These grounds of refusal were also provided in the short explanation attached as a preface with the draft for the new lease holding proclamation submitted by the MoUDC to the House of peoples' representatives.[126] However, in addition to the fact that those ideas are not incorporated under the proclamation itself, almost all of the above listed grounds are not clear and hence they are susceptible to abuse. For instance, when do we say that there is a change in structural plan? What if the lessee can undertake the development activity according to such change? When do we say that there is public interest? When do we say that it is impossible to change the former development activity to the development level that the land requires? No clear explanation is given by the law regarding these issues at hand and such grounds are rather designed in a way that they can be abused by public authorities.

People may build residential houses; commercial, industrial and so on buildings on the ground, and it would be unjust and unfair if the government is going to take back the land together with the property on it just to sale it to another person. This would create insecurity upon lease holders which would again discourage them from making additional investments on the land they leased. The consequence of lack of security on contract renewal is that when the lease contract is approaching to expire, landholders will stop investing in the maintenance and improvement of the land and the structure on it so that the price of the land falls down. It is also categorically against the interest of the state for demolishing and reconstructing of structures is expensive one.

[126] Cited above at note 27, page 5.

Secondly, people will not build durable buildings for fear of losing them or they would not like to lease the land rather they prefer other mechanisms to get land.[127]

Thus one solution to this problem would be allowing or prioritizing lease holders to take the initiative to develop the land individually or in joint venture according to the new land use by providing access to credit and allowing them to collateralize the land rather than confiscating it saying that it is done for public purpose.

2.3.5. **Period of Payment**

As per article 20 of the proclamation a person permitted urban land lease holding may be given a period of lease payment taking into account the payback period of the investment. However, the amount of down payment, to be determined in accordance with the prevailing factors of the region or the city administration, may not be less than 10% of the total lease amount of the urban land. Then the remaining balance of the lease amount shall be paid on the basis of equal annual installments during the payment term. [128] But unlike under this proclamation, the requirement of advance payment under the repealed proclamation, applied only to urban land leased based on auction or negotiation.[129] Moreover this new proclamation under the aforementioned provision provides that interest shall be paid on the remaining balance as per the prevailing interest rate on loans offered by the Commercial Bank of Ethiopia and for this purpose the appropriate body shall have the responsibility to follow up the current loan interest rate and to update the applicable interest rate accordingly. In addition to this, it is provided that failure to pay the annual payment in time as originally scheduled shall result in penalty fee equivalent to the rate of penalty fee imposed by the Commercial Bank of Ethiopia on defaulting debtors.

It is said that the foremost advantage of public leasehold for lessees is the initial investment capital needed for land development is smaller if private individuals lease rather than buy land. This is especially advantageous for most domestic investors as they are not capable enough to

[127]See Daniel, cited above at note 64.
[128] It is provided under article 30(3) of the draft model regulation supra at note 18, that after effecting the required down payment, a lessee will be granted with a payment period of 60 years for residential purpose, 5 years for urban agriculture and 40 years for others depending on the type of development activity or service.

[129] See article 10(1/a,b,c) of proclamation No.272/2002, cited above at note 6.

pay the whole land value at the beginning of the lease period. It is also stated that the main objective of public land lease system is not to produce an immediate financial return for the municipality but to capture increasing land values through a periodic rise in ground rents. Hence one of the advantages of retaining land in public ownership is to have the increase in land values accrue to the community at large calculation of the ground rent and therefore has a critical bearing on the success or failure of this endeavour.[130] However, the practice tells us that the first-time lease payment is decided entirely by the amount of down payment and grace period when parties sign the contract between them and then annual payment is calculated. Then the lessee can pay at once at the beginning[131], or periodically with bank compounded interest on the unpaid portion as mentioned above. It is clear that once the full payment is made, no other payment is expected from the lessee until the contract expires.

There are people who say that the amount of down payment is becoming a distress among the people. It is suggested that the proposed minimum down payment which has currently increased from (5%-10%)[132], will discourage investors to come to the lease market and then inhibits to achieve the goal of the lease policy; increasing government revenue from leased land. The government officials on the other hand argue that recently there is a high demand of infrastructure resulting from increasing demands of public goods. It is due to this that the state primarily considers high payment at the beginning of lease contract as good solution to address budget constraint.

The other flaw with the public concern is the principle of compound interest rate for the unpaid portion. It is said that the unpaid part of the total lease value is de facto interpreted as a loan from the government, subject to the interest. Such people propose that interest should not be paid on the unpaid part of the lease.

The proclamation also provides that where a lessee with the exception of a budgetary government entity or a religious institution granted urban land holding by allotment, has failed to

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[130] See Zelalem, cited above at note 106.

[131] Article 30(2) of the model regulation, cited above at note 18, provides that paying the whole lease payment at once is also possible.

[132] See article 10(1/b) of proclamation No. 272/2002 and article 20(2) of proclamation No.721/2011 cited above at notes 6 and 5 respectively.

make payments within the specified time limit and accumulated arrears for three years, the appropriate body shall have the power to seize and sale the property of the lessee to collect the arrears.[133] The budgetary government entity or the religious institution provided with urban land by allotment in this regard shall pay an amount equivalent to the compensation paid in the course of clearing the land.[134]

But isn't the time given in this regard short? What if the failure to pay is due to force majeure? This does not seem to be considered under the proclamation. But it would have been better if an additional time extension is granted for such cases if there is a probability that the lessee will pay after a reasonable time extension. Moreover, the proclamation in this regard does not make it clear as to which property of the lessee is to be sold, how much of such property is to be sold, how such property is to be sold, how the interest of third parties on the property to be sold is treated, whether the appropriate body gives notice and where the grievances of the lessee relating to the sale of the property in this regard can be submitted.

But, some of these problems seem to be solved under the draft model regulation. For instance, even if it is not provided under the proclamation, the model regulation provides that the appropriate body is duty bound to serve the lessee a written advance notice of 30 days to this effect before claiming an income derived as a result of the unpaid lease or the properties to be sold for the payment of the same.[135] Article 31(4) of the same regulation also states that the property to be sold in this regard is only the property which is attached with the lease hold and the sale will be conducted through tender. On top of this it is made clear under article 31(5) of the same regulation that as far as the sale does not affect the administration of the property concerned, the appropriate body can sale only a property which is enough for claiming the unpaid part of the lease.

The fact that the appropriate body can claim this unpaid lease even from other persons who are holding the above stated property of the lessee so far as such property is under the ownership of the lessee at the time when the order to this effect is issued is also clearly mentioned under article 31(3 and 6) of the same regulation. For this purpose, it is provided under article 31(10) of the

[133] Cited above at note 5, article 20(6). See also article 31(2) of the draft model regulation cited above at note 18, which provides that a written warning notice will be provided to the lessee every year following failure to pay.
[134] Id., article 20(7).
[135] See article 31(9) of the draft model regulation, cited above at note 18.

regulation that any person holding the property of the lessee on which there is unpaid lease or having any obligation to words the lessee has an obligation to hand over the property or discharge his/her obligation when demanded by the institution in charge of collecting lease payments. Otherwise such person will personally be responsible for the unpaid lease and the expenses incurred in this case.

But what does the expression 'any person having any obligation to the lessee…' refer to? It seems that the payment can be claimed from any debtor of the lessee i.e. be the debt is related to the property on the lease hold or another. If this is the case, even if it is mentioned above that the property to be sold for the satisfaction of the unpaid lease is only the property which is attached with the lease hold, the payment can be claimed from other sources of income of the lessee become clear. Moreover, the fact that the appropriate body can seize an income derived as a result of the unpaid lease is also stated under sub-article 9 of article 31 of the same regulation. What does this income include? This income may for instance be the money collected from the rent of the property attached with the lease hold. Of course normally a creditor can sell any property of the debtor except those properties stated under article 404 of the civil procedure code to secure payments. But it is not clearly provided in this case. Thus it is better to amend this law to avoid unnecessary consequences.

Of course such persons holding the property of the lessee cannot be obliged to surrender the property if such property is the subject of prior court injunction order, court execution order, or is collateralized as per the relevant law.[136] In this way unlike the proclamation, the model regulation tried to keep the interest of third parties such as banks. But out of these listed conditions the interest of third parties is not protected.

Finally the model regulation under article 31(12 and 13) provides that the lessee whose property is seized for the satisfaction of the unpaid lease can submit his/her complaints in writing as to the execution to the committee of the mayor of the city which after investigating the issue will render decision within a month. But what if the lessee is not satisfied by the decision of the aforementioned committee? This is not clearly provided by the regulation. Of course one may say that s/he can go to the regular court.

[136] Id., article 31(10 &11).

However, generally in this regard many doubts created by the legislature are clarified by the executive. But it is better to make those changes under the proclamation itself and thus the proclamation should be amended in a way it can clarify all the doubts created by its provisions as mentioned above.

2.3.6. Utilization of Urban Land Lease holding

As provided under article 21 of the lease proclamation in principle a lessee of urban land is expected to use the land for the prescribed purpose within the period of time stated in the lease contract. For example, the lease holder cannot construct G+5 while he is allowed to construct G+0 or G+4 building or he cannot utilize a building for a dwelling house while he is allowed to use it for business.[137] Failure to use the land for the prescribed purpose is one ground of termination of the lease contract except for the reasons where the lessee ascertains that the land has not been used for the intended purpose as a result of force majeure as provided under the civil code, where the appropriate body may authorize time extension to compensate time lost due to the force majeure situation.[138] But, exceptionally, both the former and the current lease proclamations entitle the lease holder to convert the use of the land up on the authorization of the appropriate body which may be granted after an application to this effect is made by the lessee[139] and when the appropriate body ascertains that it is in conformity with the land use plan of the urban center. However, the new lease holding proclamation does not clarify doubts as to whether the lease contract is to be amended when the lessee is allowed to convert the use of the land and the period of lease applicable to the renewed use of land.

The model regulation has on the other hand dealt with the issue of utilization of urban land under articles 38-40. Under those articles cases where change of utilization of land may be allowed, cases where change of utilization of land cannot be made and cases where change of utilization of land can be allowed in special circumstances are provided. Those issues are not totally dealt under the proclamation.

Of course both the proclamation and the regulation provide that the appropriate body **may authorize** the proposed land use where it ascertains that it is in conformity with the land use plan

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[137] See Mesganaw, cited above at note 55.
[138] Cited above at note 5, articles 25(1a) & 25(2).
[139] See articles 21(2) of proclamation No. 721/2011 and 12(2) of proclamation No.272/2002.

of the urban center.[140] But should this be the right of the lessee or the power of the appropriate body? The expression '**may authorize**' seems that the appropriate body may or may not allow. However, in the opinion of the writer, the appropriate body **should** allow so far as the proposed change in the use of the land does not contradict with the land use plan of the urban center. Thus it is appropriate to put it in a mandatory way. Otherwise, it narrows the rights of the lessee and opens the door for corruption.

Moreover, article 38(3) of the model regulation provides that when a change in the use of the land is allowed, the contract of lease will be signed according to the former contract. However, if the lease period indicated in the former contract is longer than the new one the lease period will be changed to the period provided for the new use of the land. But what will happen if the period of lease provided for the new use of land is longer than the former one is not clearly provided not only under the proclamation but also under the regulation.

In the writer's view if the use of the land is changed the period of lease should be changed unless the latter use has a similar period of lease with the former one. Thus as the renewed use of land has its own period of lease that period of lease should be applicable for the new contract. Otherwise if the contract is to be signed according to the former one even if the period provided for the new use of the land is longer than that of the former it is unfair and hence should be corrected. Unlike this it was provided under article 12(3) of Proclamation No. 272/2002 that if the use of the land is changed, then the Period of lease, performance of payment and other conditions shall be varied upon the conversion of the land use.

Regarding payment of lease it is provided under article 38(6) of the model regulation that if the lease price payable for the new use of the land is less than the former one, the lessee will be allowed to a change in the use of the land after paying a penalty fee of 3% out of the former lease price. But why does the government want to make deductions in the form of penalties based on different opportunities? Isn't it the right of the lessee to change the use of the land? Is it because of the fact that changes in the use of the land hurt the government that it imposes penalties? After all do these penalties take in to account the capacity of most of lease holders? What is the basis

[140] See articles 21(3) of proclamation No. 721/2011 and 38(1) of the model regulation, cited above at note 5 and 18 respectively.

of calculation for this penalty? But the writer does not think that those penalties are fair and hence should be corrected.

Concerning changes without authorization, it is provided under article 38(5) of the model regulation that if the use of the land is found to be changed out of what is provided under the provisions of this regulation, after a penalty of 3% based on the highest lease price of the area is paid, if it is found to be in conformity with the plan, the change will be allowed and the lease price will be adjusted with the changed use of the land and paid within the remaining payment period. But what if the change does not conform to the plan? Does it mean that the penalty remains effective even if no change is allowed? It is not clearly provided. Thus this should be clarified under the regulations.

On top of that, it is stated under article 38(4) of the same regulation that if any change in the use of land is made before the coming in to being of this regulation without the authorization of the appropriate body it will be adjusted according to this law after paying 0.5% of the list of costs of construction only if it is found to be acceptable according to the plan. But what if the change is not found to be acceptable according to the plan? Does it mean that the penalty remains effective even if no change is allowed? This is not also clearly provided. Thus this should be clarified under the regulations.

However, the time limit within which the application to change the use of land should be submitted is not stated both under the proclamation and the model regulation. In addition to this nothing is mentioned about the time that will be wasted when the application for the change of use of the land was processed and its consequences on the beginning and completion of construction. Thus it is better to amend the proclamation in a way it gives proper solutions to those problems.

2.3.7. Commencement of Construction

Under article 22(1) of the lease proclamation a lessee is duty bound to commence construction within the period specified in the lease contract. The meaning of commencement of construction is also provided under the proclamation and that may not be as we customarily know it. Accordingly "construction start-up" means *the construction of at least the foundation and erection of reinforcement bars to cast columns of the permitted construction or building on the*

place.[141] "Completion of foundation" on the other hand refers to the construction phase based on the plan whereby the building site is dug, reinforcement concrete is filled in and its floor is completed and erection of its first wall is started.[142] Thus according to the new lease holding proclamation it is when the above mentioned conditions are fulfilled that we say that construction has commenced. So a slight deviation from what is provided above amounts to failure to commence construction. Then what if a misunderstanding arises between the appropriate body and the lessee as to whether construction is started? Who is competent to determine this? The proclamation does not give clear answers to these questions. Of course one may say that the parties will go to the regular courts. But the proclamation should have put ways by which such differences can be solved administratively before they go to courts of law.

As to the time of commencement of construction, even if it is not provided under the lease proclamation, article 34(1) of the draft model regulation provides that a lessee should commence construction **starting from the date when he took the construction permit** within the period of commencement of construction provided for the intended project.[143] Thus according to this regulation the time when the lease holder should begin construction is clearly provided. What is the rationale behind putting a time limit for the commencement of construction? The possible rationale behind this rule is to avoid unjustified delays in the construction activities to save unnecessary economic wastages in relation to land.

But what if the lessee is late in taking the construction permit? Does it mean that even if the lessee is late in taking the construction permit for whatever reason s/he will not be granted with an additional time for commencement of construction? The lease proclamation provides that the period of commencement of construction may be extended depending on the complexity of the construction and in accordance with regulations to be issued by the concerned region or city administration.[144] In the same fashion, the draft model regulation under article 34(3 and 4) provides that an extension of 6 months for small, 9 months for medium and 12 months for large

[141] Cited above at note 5, article 2(14).
[142]Id., article 2(15).
[143] The maximum time limit for the commencement of any construction type is also provide as: up to 6 months for small, up to 9 months for medium and up to 18 months for large scale construction projects is provided under article 34(2) of the draft model regulation.
[144] Cited above at note 5, article 22(2).

scale construction projects respectively can be given only once by the body in charge of granting construction permit, however, the fact that an extension of time for commencing construction is granted cannot in any way serve as a reason for requesting or permitting an extension of the time for completion of construction.

Moreover, it is stated that if construction permit is not given within 3 months for small, 6 months for medium and 9 months for large scale construction projects respectively, necessary measures will be taken as per the proclamation after investigation of the problem. However, if the lease holder did not submit the required design within the aforementioned time limit, the time for commencement of construction will be counted starting from the time when the lease contract is signed.[145] This is a kind of penalty imposed on the lease holder for failing to submit the necessary design for the intended project within the given time limit.

On the other hand when and how an extension period is granted is stated under article 36 of the model regulation. The appropriate body will first serve the lessee a warning notice at least two months before the expiry of the period of commencement. Then the lessee should submit a written application stating the reasons for failure to start construction and his/her capacity and readiness to start the construction to the appropriate body which permitted the land before or within one month after the expiry of the period of commencement of construction. If the request is found to be valid the extension period provided above will be granted. But applications requesting time extension submitted after the time mentioned before will not be accepted unless the lessee proves that s/he was prevented by force majeure. That means unless the lessee proves that s/he was prevented from submitting the application within the time limit mentioned above, the application will not be accepted.

But, when a lessee who is granted an additional period fails to commence construction within the additional time or when the request for additional period is rejected or no additional time is requested at all, the appropriate body may cancel the contract and reclaim the land. Consequently, the lessee will be liable to pay a penalty fee amounting to seven percent of the total lease price in addition to a lease amount that covers the period from the date he took possession of the land.[146] This provision is a new innovation of the new proclamation; it did not

[145] See article 34(5) of the draft model regulation, cited above at note 18.
[146] Cited above at note 5, article 22(3)

exist under the repealed proclamation No. 272/2002. But one question of important concern in relation to this is; how are **former** conditions to be entertained? Are lease holders who are permitted urban land lease holding as per Proclamation No.272/2002, but have not yet commenced construction to pay the seven percent penalty fee in addition to the lease payment? This is not clearly provided under the new lease holding proclamation.

However, this issue seems to be dealt with under article 32 of the draft model regulation, which after providing a period of grace extending from 2 to 4 years to various types of construction projects provides that, any person permitted urban land through lease before the coming in to force of the same, but did not take over the land for reasons attributable to the office which hands over the land or did don't last more than 2 years starting from the time of taking of the land to the coming in to force of this regulation or has pending complaints requesting the reduction of down payment or the extension of time of payment can benefit from the period of grace provided under this article depending on the circumstances.[147]

Thus, lease holders who obtained land as per the repealed urban land lease holding proclamation and who fulfill the above mentioned criteria can benefit from the aforementioned period of grace. But what if they fail to commence construction within this time limit? Are they going to be victims of the serious measures incorporated under the new lease holding proclamation? This is not clearly provided under the regulation. Thus the action may depend on the decision of the appropriate body.

The current lease holding proclamation differs from the former in that it contains more harsh measures against those who do not follow the obligations in the lease contract. If a lessee fails to start construction within the specified time, the land will be reclaimed by the appropriate body and in addition to paying the lease amount that covers the period from the date he took possession of the land, a penalty fee amounting to seven percent of the total lease price will be imposed on the lessee. In the case of a lawful tenant of government or kebele owned residential house in a region or Dire Dawa, who is granted land by allotment as a result of displacement due to urban renewal program as per article 12(3) of the new proclamation, the penalty fee is

[147] Cited above at note 18, article 32(4).

equivalent to three percent of the deposit in his blocked bank account in addition to taking back of the land.

In the case of office premises of budgetary government entities, social service institutions run by government or charitable organizations, public residential housing construction programs and government approved self help housing constructions, places of worship of religious organizations, use of embassies and international organizations, who are permitted urban land by allotment upon decisions of the cabinet of the concerned region or the city administration as per article 12(1) of the proclamation, the action in response to failure to commence construction within the specified period is termination of the lease contract and taking back of the land. So there is no penalty fee in this regard. Is it fair?

But the proclamation does not provide what will happen when a lessee of a certain land for manufacturing industries and projects having special national significance and considered by the president of the region or the mayor of the city administration and referred to the cabinet as per article 12(1e and g) fails to commence construction within the specified period. Does it mean that there is no time limit for commencement of construction for such projects? Can such projects suspend construction for indefinite period? There is no answer for such questions under the proclamation. But in the opinion of the writer even if the grace period might differ from the other projects, there should be a reasonable time limit for commencement of construction if not a penalty fee and the land should not remain idle for indefinite period as a result of such failure.

2.3.8. Completion of Construction

A lessee must also complete construction within the period specified in the lease contract. As with commencement, the proclamation has defined what is meant by completion of construction. It provides that '*completion of construction*' means the full completion of a building and make it ready for use by installing basic utilities in accordance with the issued construction permit on a land permitted by lease.[148]

[148] Cited above at note 5, article 2(17).

The proclamation provides 24, 36 and 48 months to complete construction for small, medium and large scale construction projects respectively the classification of which is said to be determined by regulations to be issued by regions and city administrations.[149] Under article 23(4) of the proclamation it is stated that this period may be extended, from 6 months for small to 12 months for medium and large scale construction projects depending on the complexity of the construction and in accordance with regulations to be issued by regions or city administrations. Moreover, it is provided under article 35(3) of the model regulation that all the aforementioned extension periods are to be provided together with warning notice. However, projects requiring extensive and coordinated development activities undertaken on more than 100,000 square meters of land can be administered according to a special and tangible program designed by the concerned regional or city administration.[150] However, this special case is not provided under the proclamation.

Generally the draft model regulation provides two types of extension periods i.e. extension with penalty and without penalty. Those who are entitled to extension without penalty are lease holders who were prevented from completing construction due to force majeure. But even this is provided as if it is the discretion of the appropriate body both under the proclamation and the model regulation. Both under articles 37(3) of the model regulation and 25(2) of the proclamation it is provided that the appropriate body **may authorize time extension** to compensate time lost due to the force majeure situation. However, in the opinion of the writer so far as completion is prevented by force majeure, the appropriate body should be duty bound to grant time extension. Thus the term "**may authorize"** both under the above stated provisions of the proclamation and the regulation should be amended as "**shall authorize**".

An extension with penalty is also provided under article 37(2) of the model regulation. This provision provides that if the lease holder who failed to complete construction within the completion period couldn't within ten working days after the written notice served to him within one month after the expiry of the completion period fails to submit convincing reason, s/he can be provided an additional period subject to a 3% penalty fee which will be calculated out of the

[149] See articles 23(2 and 3) of the new lease holding proclamation, cited above at note 5 and 33 of the draft model regulation, cited above at note 18, as to the classification of such projects.
[150] See article 35(4) of the model regulation, cited above at note 18.

total lease price starting from the expiry of the completion period for each month payable at once. The penalty in this regard is very serious and may be difficult to afford.

However, the total completion period may not exceed; two years and six months for small construction projects, four years for medium construction projects, and five years for large construction projects.[151]

Moreover, unlike the proclamation, the model regulation under the title 'special provisions' incorporates a provision dealing with lease holders who obtained land before the coming in to being of the lease proclamation and provides that a program can be arranged through an agreement with city administrations regarding lease holdings taken before but on which construction is not completed.[152] Thus such lease holders can complete such constructions through an arrangement and agreement with the concerned city administrations. That means the city administrations can grant their own grace periods for the completion of such constructions. But even if this is a very good provision the idea is not totally incorporated under the proclamation. Thus it is better to amend the proclamation itself to incorporate such changes.

What is the consequence of failing to complete construction within the above mentioned time limit? Where the lessee fails to complete construction within the above mentioned extension period, the contract shall be terminated and the land will be reclaimed by the appropriate body and then the lessee will be informed through a written notice by the appropriate body to remove any construction activity at his own cost from the land within six months or else the appropriate body may; a) upon ascertaining the conformity of the incomplete construction with the plan, transfer it, through open tender, to a person who can complete and use the building and recover the costs of the sale from the proceeds of the sale and return the balance, if any, to the owner[153]; or b) clear the land at its own cost and recover such cost from the lease down payment or, in the case of a person permitted urban landholding in accordance with sub-article (3) of Article 12 of this Proclamation, from the deposit in his blocked bank account.[154]

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[151] Cited above at note 5, article 23(4).
[152] See article 53 of the model regulation, cited above at note 18.
[153] Cited above at note 5, article 23(8).
[154] Id., article 23(5-7).

On the other hand, it is provided under article 37(4) of the model regulation that if the lessee fails to complete construction within the additional time mentioned above and if the construction undertaken on the lease hold is less than 30% of the total construction permitted on the same, the appropriate body can without any precondition terminate the lease contract and reclaim the land. However, if the construction undertaken on the lease hold is more than 30% of the total construction permitted on the lease hold, article 23(7) of the lease hold proclamation shall apply.

Thus according to this provision of the model regulation, article 23(7) of the lease proclamation does not apply in case of failure to complete construction where only less than 30% of the construction has been undertaken. That means the land together with the construction on it will be taken away by the appropriate body without any payment due to the lease holder. This is a big loss to the lease holder. Moreover, this is not provided under the proclamation. It is an addition made by the model regulation. As a result it amounts to amending what is provided under the above mentioned provision of the proclamation as the proclamation does not provide this category in terms of percentage. Thus in the opinion of the writer it should not be given any effect as a proclamation cannot be amended by a regulation.

As mentioned above, in the case of failure to complete construction the appropriate body can demolish the construction. But the lessee might have used this construction as collateral to secure debt. Thus what is the fate of the creditors who secured not only the value of the land but also the value of construction? There might also be an incomplete payment for contractors, workers and creditors. Thus at least the regulations that will be issued by the regions for the implementation of the proclamation should take in to account these all problems, for instance, selling the lease hold and the construction through an open tendering and paying all payments in their order. Otherwise it negatively affects not only the lease holder but also other interested parties.

The rationale behind the rules regarding completion of construction is to avoid unjustified delays in the construction activities in a bid to save unnecessary economic wastages. But when we look into the reality, it is not the majority of the citizens who put land idle without construction activities; it is rather the big "investors". If the majority of the low income people delay in

completing the constructions, it is only because of lack of money. That is why it may be said that this measure is unrealistic taking into consideration the ability of the majority of the society and the law could have been designed in such a way to address the "big fishes.[155]

Concerning the time limit for commencement and completion of construction and the possible related problems, Ato Getahun has reflected his personal opinion in the Reporter news paper.[156] Under this he stated that the time provided for commencement and completion of construction under the proclamation does not take in to consideration the capacity of most part of the society. He added that the proclamation has classified the period of grace to be provided for each type of construction projects based on their complexity but it does not take in to account whether basic infrastructural facilities are fulfilled for the same land. This is aggravated by the fact that while the obligation of the government to fulfill infrastructural facilities for land to be obtained based on tender is clearly provided under the proclamation this obligation is not clearly mentioned in the case of land to be permitted based on allotment. Moreover, it is customary that the municipality focuses on the fulfillment of infrastructural facilities and even allocation of land for tender. Based on this and taking in to account the capacity of people who may be permitted land by allotment such as self help associations, delays in commencement and completion are likely to happen. Thus taking in to consideration the consequences of failure to commence and complete construction provided by the proclamation, the law negatively affects the right to shelter which is a fundamental human right. Therefore it can be said that the government has planned to take what is provided by one hand through the other.[157]Thus the time for commencement and completion of construction should take in to consideration the prevailing realities.

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[155] Daniel Weldegebriel: The New Land Lease Proclamation: Changes, Implications: (available at: http://www.thereporterethiopia.com/Politics-and-Law/the-new-land-lease-proclamation-changes-implications.html), last visited on 23 May 2012.
[156] See Getahun, cited above at note 83.
[157] Ibid.

2.3.9. Transferring and Mortgaging of Leasehold Right

A lessee may transfer his leasehold right or use it as collateral or capital contribution to the extent of the lease amount already paid within the relevant use of the land and period of lease.[158] It is stated that the restrictions imposed by the new proclamation on using one's lease right to secure bank loans and as capital contribution are designed to protect the interests of the lessor and third parties who grant loans using lease right as collateral and those to whom such right is contributed in the form of capital in case the lessee fails to discharge his/her obligations.[159] Honourable Ato Girma Seifu bitterly opposed all restrictions imposed by this law on transfer of lease rights on the ground that transferring ones lease right is a constitutional right and it is also unrealistic for the government to control every transfer.[160] Of course a serious restriction was also provided under article 10 (1) of Proclamation No. 80/1993 that any person who acquired the right to hold urban land on lease may transfer or pledge such right or contribute it in the form of a share to the extent of the rent paid. Under article 10(3-4) of the same proclamation it was indicated that the lessee may not, on transfer of his right of lease, collect income which is higher than the rent he paid; nor may he mortgage such right at a value which is higher than the rent. Where a lessee collects, on transfer of his right of lease, income which is higher than the rent he paid, he has the duty to pay the difference to the town administration. Of course this was not made practical.

Unlike this the only restriction to such rights under proclamation no. 272/2002 was applicable to contribution of lease right in the form of capital.[161]But the government has been complaining that speculators purchase and transfer land without adding value to it. Among others, real estate companies have been accused of transferring lease right on bare land without building the necessary construction over it. It is to be recalled that in 2010 the Addis Ababa City Administration had reclaimed more than one million square meters of land from real estate developers on the ground that they had been transferring land without adding value thereto.[162]

Now, however, the proclamation provides that "if a lessee, with the exception of inheritance, wishes to transfer his leasehold right prior to commencement or half-completion of construction,

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[158] Cited above at note 5, article 24(1).
[159] See Desalegn, cited above at note 58.
[160] Cited above at note 36, p.29.
[161] See article 13(1) of proclamation No.272/2002, cited above at note 6.
[162] See Getahun, cited above at note 83.

s/he shall be required to follow transparent procedures of sale to be supervised by the appropriate body and in this kind of transfer of leasehold right; a) the effected lease payment including interest thereon, calculated at bank deposit rate; b) value of the already executed construction; and c) 5% of the transfer lease value; shall be retained by the lessee, and the remaining balance shall be paid to the appropriate body".[163] But 15% of the transfer lease value was proposed to be due to the lessee under article 23 of the draft of the same proclamation for transfer of lease right in the case of below half completed constructions.[164] All in all, the lessee in this case is not entitled to sale his lease right as he wants and for anybody he likes.

However, the Proclamation in this regard does not incorporate clear answers to questions such as; how is the value of the construction to be calculated? Who estimates it? What guarantees are available so that the interest of the leaseholder will not be negatively affected? How complaints in this regard are handled? But it is better if the proclamation is amended in a way it makes such confusions clear.

Now let's see if the draft model regulation incorporates the solutions to the above mentioned problems.

The draft model regulation under articles 42 and 43 provides that any lease holder can transfer his/her lease right on a bare land before the expiry of the period for the commencement of construction based on the seasonal transfer lease price which shall be fixed by the appropriate body. Concerning lease right on which construction is below half completed the model regulation provides that any lease holder can transfer his/her leasehold right before half completion of construction provided that the time given for completion of construction has not expired and the request for transfer is submitted to the appropriate body. In this case the lease transfer price and the value of construction is to be separately identified. But who determines the value of the construction is not clearly provided even under the regulation. However, the transfer will be effected if the lease holder in advance agrees with the transfer lease price proposed by the

[163] Cited above at note 5, article 24(2 and 3).
[164] Cited above at note 27, page 11.

appropriate body and only after the person to whom the transfer is to be made paid the transfer lease price to the appropriate body.[165]

From the above discussion we can understand that, qualifications which are not provided under the proclamation such as '*before the time limit for commencement of construction expires*' in the case of transfer of lease right on bare land and '*before the time limit for completion of construction expires*' for below half completed constructions are incorporated under the model regulation. This is made to protect transfer of lease right by lease holders who couldn't catch up with the above mentioned time limits the result of which is reclaiming of the land by the appropriate body and imposition of penalties which have very negative outcome on the lease holders.

Regarding the transfer price the regulation provides that the appropriate body is entitled to decide any transfer of lease right on which construction is not commenced or below half completed based on lease sale/transfer price.[166] In this case it is also stated that the lease transfer price will be the sum of the current highest tender price of the area and the lease price of the land at the time when it was transferred to the lease holder divided by two. Then if the average result found in this way is equal to or less than the transfer price proposed by the transferee the appropriate body shall accept it. The aforementioned average result will also serve as the transfer price when the transferee proposed no transfer price. However if the average result is less than the former transfer lease price of the land to the lease holder the appropriate body may take the better out of the current highest tender price of the area or the lease price of the land at the time when it was transferred to the lease holder. However if the transfer price proposed by the transferee is less than the average result by 5% the appropriate body shall make the land ready for tender using the average as a minimum price.[167]

The regulation also provides that both in the case of transfer before commencement of construction and below half completed construction the lease holder can submit complaints in writing regarding the sale to the appropriate body and the appropriate body can protect the rights of the lessee according to article 24 of the proclamation by conducting the sale through tender

[165] See articles 41(6) and 42(1-5) of the model regulation, cited above at note 18.
[166] Id., article 44.
[167] Ibid.

within 15 working days.[168] In this case it is stated that in the case of below half completed construction the minimum tender price will be the sum of lease transfer price and cost of construction which will be evaluated through transparent ways by the appropriate body and the cost of evaluation will be deducted from the sale price.[169]

In the case of bare land if the lease holder does not agree with the transfer lease price and the idea of selling the land through tender the appropriate body will pay the lessee the effected lease payment including interest thereon, calculated at bank deposit rate as provided under article 24(3/a) of the proclamation and reclaim the land.[170]

Therefore, a lessee, who wishes to transfer his/her leasehold rights before commencement of construction or half-completed constructions, will get first, the effected lease payment including interest thereon, calculated at bank deposit rate; second, value of the already executed construction; and thirdly, 5 percent of the transfer lease value. Is this fair? Many people say that the fact that the lessee is only entitled to 5% of the transfer lease price violates the property right of the lessee and is unfair as the increase in the value of the land is mainly attributable to the lease holders who undertook construction there.[171] On the other hand it is said that such restrictions are imposed taking in to account the fact that the land should be used for the intended purpose and to avert rent seeking practices that arise in relation to this.[172] But why do people sale such constructions? Is it only for rent seeking purposes?

This restriction is one basic feature that distinguishes the new proclamation from the previous one. The main reason stated by the government for this restriction is that any increase in the value of lease hold should be due to the owners of the land via the government. The government states that the value of land mainly increases as a result of the increase in demand for land created by the general economic development and the fulfilment of basic infrastructural facilities in the area but not due to the fact that construction is carried out on the land. Of course the 5% payment which will be due to the lease holder during transfer is said to be based on the fact that

[168] See articles 41(3) and 42(7) of the model regulation, cited above at note 18.
[169] Id., article 42(8 and 9).
[170] Id., article 41(4).
[171] See Gebeyehu, cited above at note 49.
[172] See Desalegn, cited above at note 58.

the value of the land might have to some extent increased due to the fact that some valuable construction activities are undertaken by the lease holder.[173] There are also private individuals who oppose the 5% left for the lease holders during transfer saying that this creates a room for land speculation and recommend that the new urban land lease holding proclamation should remove the statement provided under Article 24, sub Article 3/c, i.e., the right of the leaseholder to "5 % of the transfer lease value" by transferring the land to a third party.[174] However, unlike this new proclamation, under article 15 sub article 4 of regulation No.3/1994 of the Addis Ababa city administration, the lessee was only expected to pay to the government 10% of the profit in addition to capital gains tax during transfer of lease right.

Of course, a similar restriction on transfer of lease right was also provided under proclamation No.80/1993 which provided that the lessee may not, on transfer of his right of lease, collect income, which is higher than the rent of land he paid; nor may he mortgage such right at a value, which is higher than the rent.[175] However, since this hinders private investment expansion, it was not included in the amended lease proclamation No. 272/2002. According to this proclamation, the lessee can transfer his lease right for the period the lease is valid and he can collect income from transfer of lease right without maximum limit and the limit of '*to the extent of the lease down payment*' was only applicable for capital contribution.[176]

But under the current lease holding proclamation, transferring only leasehold right on a bare land or leasehold right with less than half completed construction gives almost no benefit at all to sellers. This proclamation blocked the chance of getting a good amount of money that lease holders used to get by transferring their rights before the enactment of this proclamation. This is true for below half completed constructions. Thus it decreased the benefits of leaseholders. Of course the proclamation encourages half or above completion of construction. Unlike this, before the coming in to force of this new lease holding proclamation, even if it was not stated in the contract, it was obvious that when selling or mortgaging possessions on land the value of the land was taken in to account. Thus this proclamation narrows the benefits used to be obtained by

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[173]See Addis Raey, cited above at note 67.

[174]See Sisay, cited above at note 47.
[175] Cited above at note 4, article 10(3 and 4).
[176] See article 13(1) of proclamation No. 272/2002, cited above at note 6.

lease holders. However it is still mentioned that although this measure of encouraging people to develop land would increase the amount of developed land in cites, it is difficult to stop speculation because people will still speculate with developed land.

Besides, the proclamation prohibits people who repeatedly transfer leasehold right without completion of construction, in anticipation of speculative market benefit, from participation in future bid.[177] But for how many bids is such person going to be prohibited and where, is not provided by the proclamation. Unlike this the model regulation provides the details of such prohibition.[178] It states that if a lessee in anticipation of the seasonal increase in the value of land according to article 24(7) of the proclamation, before commencement of construction or as per article 2(21) of this regulation before above half completion of construction transfers lease rights within 3 years for 3 times s/he shall be prohibited from participating in any lease tender for 2 years and if violating this prohibition the lessee is found participating in lease tender within the prohibited time s/he will be cancelled from the tender and surrender the money deposited for tender participation and be prohibited from participating in lease tender for an additional 1 year.

Finally the proclamation provides that the transfer of the leasehold right in any circumstance shall unconditionally transfer all contractual obligations assumed by the lessee to the third party to whom the leasehold right is transferred.[179]

Of course, if the construction is half or totally completed, there is no limitation as to the value of the sale price. This means the lessee can do it as he likes. According to Ato Daniel Weldegebriel, the flow of this provision is that it will not stop the connivance that might be made between buyers and sellers. It means, it would not be possible to avoid an internal agreement that might be carried out between the two. Secondly, even if it is possible to control the situation, people will shift radically from selling incomplete constructions to completed ones. In this way, speculators will shift to this new way of trading properties. Thirdly, constitutionally speaking this is against the property rights of property holders. It means, once the government gets its money from the lease price, why should it insist in sharing the profit from the appreciation of

[177] Cited above at note 5, article 24(7).
[178] See article 43 of the model regulation, cited above at note 18.
[179] Cited above at note 5, article 24(8).

land value? Of course, the justification is to encourage people to put a building on the land before they sale it, and to add value to their holdings. But, this should not be done by violating the constitutional right to property which among others gives the right to collect the increment in property value.[180] Having said this let me pose the following questions.

Is donation of a lease right possible? What procedures are applicable when donation of lease right on bare land or below half completed construction is made? Nothing is provided under the proclamation and even under the model regulation as to the specific procedures to be followed in the case of donation. But it is better if this is provided under the proclamation or the regulations.

Is subleasing of leasehold right possible under the current law? Can one sub-lease his use right on a bare land i.e. before commencement of construction? What procedures are applicable in this regard? Nothing is clearly provided under the proclamation regarding this issue. Of course, traditionally, we know that renting out of a building or bare land within the premises of a building is possible. But to the writer, as the lessee has the obligations to commence and complete construction within the time limit provided under the lease contract, it seems that subleasing bare land without undertaking any construction on it throughout the period of lease is totally impossible.

Is mortgaging of leasehold right possible under the proclamation? Yes leasehold right is subject to mortgage. Of course the proclamation limits the value of the collateral not to exceed the balance of the lease down payment after considering possible deductions to be made pursuant to sub article (3) of Article 22 of the same when the use of the leasehold right as a collateral is prior to commencement of construction.[181]

Under the proclamation there is no any restriction for collateralizing leasehold on which construction is commenced or completed. But it seems that the government has intended to amend this under article 46(2) of the draft model regulation, because this provision of the regulation provides that where a lessee uses his leasehold right as collateral at any stage of the

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[180] Daniel Welegabriel: Land rights; equity and liberty; (available at: http://www.fig.net/pub/fig2012/papers/ts02d/TS02D_ambaye_5521.pdf), last visited on 23 October 2012.
[181] Cited above at note 5, article 24(4).

construction, the collateral value may not exceed the balance of the lease down payment plus subsequent lease payments if any, and the value of the construction for which the creditor will be responsible, after considering possible deductions to be made pursuant to sub-article (3) of Article 22 of the Proclamation. Thus even if construction is commenced the restrictions imposed by the proclamation on mortgaging a lease hold right on a bare land also apply to lease hold right on which construction has taken place. So which prevails; the proclamation or the regulation?

In this regard it seems that the government is trying to amend the proclamation by a regulation which is constitutionally prohibited. Thus either what is provided under the proclamation should be amended or what is provided by the regulation should not be effective. Of course, let alone another restriction is imposed by the regulation, many people are expressing their discontent about the restriction imposed by the proclamation on mortgaging a lease right on a bare land.

Of course banks are entitled to consider the value of the construction on a lease hold in their loan. But as per the above mentioned provision of the draft regulation, the deductions i.e. the penalty fee amounting to seven percent of the total lease price in addition to a lease amount that covers the period from the date the lessee took possession of the land will be applicable irrespective of the fact that construction is commenced or not. Moreover, the market based location value, which used to be given by banks during loan agreement [up to 4,000 birr per square meter in Piazza and Mercato][182], will no more exist, because, the value of the land is due to the government.

Generally the new lease holding proclamation almost blocks the chance of using bare land as collateral. This is not different from prohibiting using land as a collateral, because from the pre payment which will not be less than 10% effected, 7% will be deducted in the form of penalty fee and the lease price for the period from taking the land to collateralizing it will be deducted and the bank will also consider interests to be paid on the loan. Then finally the loan to be obtained will be less than 3% from the advance payment of 10%.

[182] See Gebeyehu, cited above at note 95.

Based on this it is stated that the fact that banks need a collateral whose value is greater than the amount of loan they grant together with the fact that location value will not be considered, the fact that the idea of priority of creditors is not followed under article 24(5) because the government gets the priority over the creditors make whether banks can get what they granted in the form of loan having collateralized lease hold doubtful.[183] As a result banks may not be willing to give loans for lease holders.

Moreover, the deductions included under the above mentioned regulation discourage lease holders and the construction industry. As a result, the writer of this paper does not agree with the deductions imposed by the proclamation as well as the draft model regulation on a lessee who uses his leasehold right as collateral prior to commencement of construction and after as mentioned above. Why should the lessee be liable to pay a penalty fee amounting to seven percent of the total lease price in addition to a lease amount that covers the period from the date he took possession of the land? Of course, paying the lease amount that covers the period from the date he took possession of the land is fair. But the penalty fee provided in this regard discourages construction and is unfair, because the government should have also considered the reason why people take bank loans.

It was said by many people that the better way to secure better loan taking in to account the strict provisions of the new proclamation is to commence construction. But a restriction is provided under the aforementioned regulation on mortgaging of lease hold rights on which construction is commenced. Unlike this, the previous lease proclamations allowed using as collateral for the whole value of the land even more than what is paid as a lease price. This was used to facilitate construction. Before this, people were taking bank loans to pay it through rent or sale of the construction after the completion of the same. This broadened the chance of getting loan and facilitated construction. Thus the government should revisit both the proclamation and the regulation in this regard.

It is also provided under article 25(4) of the proclamation that if a lessee who has used his leasehold right as collateral prior to commencement of construction is in default and a claim,

[183] See Getahun, cited above at note 59.

supported by a court execution order, on the collateral is presented, the appropriate body shall, upon terminating the lease contract, take back the land and settle the claim to the extent of the balance of the lease down payment after retaining the penalty fee amounting to seven percent of the total lease price in addition to a lease amount that covers the period from the date he took possession of the land, and return the surplus, if any, to the lessee.

On the other hand under article 46(6) of the draft model regulation it is provided that if a lease hold which is the subject of mortgage especially when construction is below half completed is to be sold as a result of debtor's default in paying its loan before paying the relevant lease payments, the concerned body will have priority to claim the remaining lease payments from the sale of the same and the rights and obligations will be dealt as provided under the proclamation. Moreover, it is provided under article 46(7) of the same regulation that the concerned body will not effect the transfer of title if it is found that the required lease payment has not been made. This is also applicable to half or above completed constructions.

Thus even if the way how the construction on such lease hold will be sold is not clearly provided under the regulation, the sale of below half completed constructions provided under article 24(2 and 3) of the new lease proclamation will apply as this provision is applicable to all transfer of lease rights on which construction is not totally commenced or below half completed.

Moreover, it is provided under article 46(4) of the draft model regulation that anybody that grants loans collateralizing lease hold right should inform the appropriate body in writing as to the value of the construction collateralized and the amount of money borrowed by the lease holder. But the time when the creditor should inform the appropriate body regarding the above mentioned details is not specified. Of course a lease holder whom the writer interviewed at the Addis Ababa City Administration Municipality stated that unless the municipality agrees in writing to this effect collateralizing a lease hold at any stage of construction is not possible. Therefore, as per the draft model regulation, banks are obliged to inform in advance as to the above mentioned details and secure an authorization from the same before collateralizing a lease hold even if construction is under going. This is not of course provided under the proclamation.

Many people including legal advisors at banks complain that the new lease holding proclamation endangered the interest of banks by avoiding the former ways a bank used to recover its loans. [184] According to the new lease holding proclamation the law which gives banks the right to sell any property to which they extended loans without securing court execution order in case of default seems to be inapplicable, because it is provided under article 24(5) of the same that a court execution order is a precondition to claim payments. Moreover, it is provided under article 24(2 and 3) of the same proclamation that any transfer of lease hold right prior to half completion of construction is to be conducted under the control of the appropriate body and through the lease system. This was not the case before the coming in to force of this new lease proclamation. As a result it is said that banks may face problems in recovering loans granted before the coming in to force of the new proclamation because all these restrictions were not provided by the repealed lease proclamation. These former loans included the location value and the whole value of the construction and the whole lease payments. But as per the new proclamation the buyers will be expected to pay lease in the event of transfer. Consequently recovering these loans based on the current restrictive law becomes difficult.

Of course, a good favor seems to have been made for institutions such as banks which granted loans having collateralized lease hold rights before the coming in to force of the new lease holding proclamation under article 46(5) of the draft model regulation. This provision provides that lease holding rights collateralized before the coming in to force of this regulation will be entertained by the former rules only for one year starting from the ratification of the same.

Thus, banks can for one year after the adoption of the draft model regulation by the regions recover any loan on collaterals entered in to before the coming in to force of the new lease holding proclamation according to the former laws i.e. based on proclamation no. 97/1998 which entitles them to recover loans without the need of securing any court execution order. That means the buyers are not expected to pay lease transfer payments and no penalties will be paid for transfer of below half completed constructions. In this way the government is trying to solve

[184] See articles 3 and 9 of the Property Mortgaged or Pledged with Banks Proclamation, Proclamation No.97/1998, Federal Negarit Gazeta, Year 4, No. 16. Under this proclamation, unlike under the new lease holding proclamation, a creditor bank need not secure a court execution order to sell the property of the debtor which is the subject of mortgage or pledge.

the problems created by the new lease holding proclamation through the regulation. This might have been granted taking in to account the opposition that the government faced from those powerful banks after the adoption of the new lease holding proclamation.

Therefore, some basic changes are made by the draft model regulation on what is provided under the proclamation in this regard. If this regulation is adopted by the regions as it is, we can say that the proclamation has been amended by a regulation which is not in fact the custom in law making.

Is a bank expected to secure court execution order to sell a lease hold in which construction is half or totally completed? Who prepares the tender for the sale of the collateral for which the debtor failed to pay bank loans in this case? Concerning this we find no such restriction both under the proclamation and the draft model regulation. Thus, in the case of a collateral for above half completed construction a bank which collateralized the lease right and the value of the construction, can sell the lease hold based on foreclosure rules, deduct its money and return the remaining to the leaseholder. In this case even if the market lease price of the land is higher than when it was transferred to the former, since the sell is conducted by a bank the lessee benefits from the seasonal increase in the value of the land. What the government will claim during transfer of title as mentioned under article 46(7) of the model regulation is the lease payments which are not yet made.

Unlike under the new proclamation and the model regulation, the repealed Proclamation No.272/2002 did not incorporate the term '*to the extent of the lease down payment*' to use the land as collateral. Neither did it incorporate the deductions made as a penalty for collateralizing bare land.[185] Thus if after the coming in to force of the new lease holding proclamation a leaseholder who mortgaged his leasehold right according to proclamation No. 272/2002 fails to pay his/her loan how is the issue to be handled? How is the court execution to be implemented? Is the sale to be conducted according to the previous system? Nothing is provided under the new proclamation. Of course as mentioned in the discussions made above, banks are entitled by the model regulation to recover a loan collateralizing a lease hold entered in to before the coming in

[185] See article 13(1) of proclamation No. 272/2002, cited above at note 6.

to force of the same for one year after the ratification of the regulation as they used to do before the coming in to force of the new lease holding proclamation. But as to loans the maturity of which is due after one year from the adoption and ratification of the model regulation by the regions the applicable rule will be what is provided under the new proclamation and the regulation. Thus the problem of banks in this regard is not totally solved.

Finally, the new lease proclamation provides that in the absence of an otherwise agreement, a building constructed on leasehold and its accessories shall be subject to the collateral or transfer where the right to the use of land is made as collateral or transferred. Similarly, the right to the use of land shall be subject to the collateral or the transfer where a building on leasehold and its accessories are used as collateral or transferred.[186]

Is contribution of lease hold right in the form of capital possible? The new lease proclamation also provides that "without prejudice to the period of lease determined pursuant to sub-article (1) of Article 18 of this Proclamation and the obligation to use the land for the prescribed purpose in accordance with sub-article (1) of Article 21 of this Proclamation, a lessee may transfer his leasehold right or **use it as collateral or capital contribution to the extent of the lease amount already paid**".[187] According to this provision, one can use his lease hold right as capital contribution so far as the use of the land is for the purpose prescribed under the lease contract and only for the lease period stated under the same. However, using lease hold right as capital contribution both under article 13(1) of the repealed urban lands lease holding proclamation No.272/2002 and this new one is limited to the extent of the lease amount already paid. But is this limitation applicable to a lease hold on which construction is already started or completed? Can't a lessee contribute his building in the form of capital? Why not? In the writer's view the restriction seems and it should be applicable to a lease holding right on a bare land only. If it exceeds this limit it goes against the property right of individuals.

Generally the position of the writer in this regard is that, the lessee should have a full right to transfer lease rights at their full market value at any time. A lessee usually should be able to sell,

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[186] Cited above at note 5, article 24(6).
[187] Id., article 24(1).

sublease, bequeath, rent out or give the property at will, at any time, to anyone. A lessee should also use his/her leasehold rights as collateral to secure a mortgage loan. If the lessee is free to transfer his/her land use rights, it is possible to use the land in its maximum economic use. There should be unrestricted transfer of land use rights. Therefore a lessee should be able to sell mortgage or transfer land rights with no restriction.

2.3.10. Termination of Leasehold and Payment of Compensation

What are the grounds for termination of leasehold? A contract of lease is made for a definite period. Like other contracts a lease contract can be terminated for various reasons. The new lease holding proclamation provides that the leasehold of urban land shall be terminated where:

A) The lessee has failed to use the land for the prescribed purpose within the period of time stated in the lease contract.

B) It is decided to use the land for other purpose due to public interest; or

C) The lease period is not renewed either because of the failure of the leaseholder to request for renewal within the required time or the appropriate body did not approve the application for renewal.[188] Now let's see each case one by one.

A) Failure to use the land for the prescribed purpose

Article 21 of the new lease proclamation provides that "A lessee of urban land shall use the land for the prescribed purpose within the period of time stated in the lease contract." If the lessee does nothing on the land, or if the construction is not started or completed within the time limit prescribed in the lease contract, even if construction is commenced and completed, the lessee used the land for a purpose other than that stated under the lease contract then we say that the lessee has breached his contract of lease and this act gives rise to termination of the lease contract.[189] The acontrario-reading of article 26(3) of the same indicates that if the lessee breaches his contract of lease the appropriate body will clear the land leasehold, prior to the expiry of the lease period. That is why there is no any compensation to be paid in this case.[190]

[188] Id., article 25(1).
[189] Id., article 26(3).
[190] Id., articles 25(3) and 19(1).

Moreover, there are deduction of costs incurred and penalty fee from the lease payment the remaining of which is to be returned to the leaseholder.

We have already discussed what commencement and completion of construction means, the time limit and grace periods granted for each and the consequences which follow against the lessee in case of failure to commence and complete construction under their respective parts.

Of course, where it is ascertained that the land has not been used for the intended purpose as a result of force majeure as provided for ***under the civil code***, the appropriate body ***may authorize*** time extension ***to compensate time lost*** due to the force majeure situation.[191]Thus the only ground for the lessee to save his contract of lease from termination in this regard is by ascertaining the fact that the land has not been used for the intended purpose as a result of force majeure. Otherwise no time extension will be granted and the contract of lease will be terminated. But Even if force majeure occurred, from the wording of article 25(2), it seems that the appropriate body has the discretion to allow or not an additional period. However, as far as force majeure exists, the appropriate body should be duty bound to authorize time extension. The term "***may authorize***" under article 25(2) of the new lease holding proclamation opens for government officials to abuse their power. Thus it is better to amend it as ***'…shall authorize…',*** otherwise, it is expected that it will be a source of disagreement between the appropriate body and lease holders.

The other problem that can happen in relation to this issue is that while the expression "…the appropriate body **may authorize** time extension **to compensate time lost** due to the force majeure situation" under article 25(2) of the proclamation seems to have allowed the appropriate body to authorize to allow time extension to the extent of the time lost due to force majeure, it is on the other hand provided under article 32 of the draft model regulation that the total period of grace which will commence from the date of the conclusion of the lease contract and may not last beyond the date of completion of construction shall extend from 2 years to 4 years depending on the type of the intended development or service. It seems that the above provision of the proclamation is amended by this provision of the draft model regulation even if it is not

[191]Id., article 25(2).

legally possible. Of course the new lease holding proclamation has also already provided the time limit for completion of construction and the total completion period together with the maximum possible extension period under article 23(2 and 4) of the same and it is clearly provided that the maximum extension period shall not exceed 6 months for small projects and one year for medium and large construction projects respectively. In the same fashion the grace period for commencement of construction is provided under article 34(3 and 4) of the draft model regulation. Under these provisions the maximum extension period for commencement of construction is 6 months for small, 9 months for medium and 12 months for large scale construction projects.

As mentioned above, both the lease proclamation and the model regulation have provided the maximum extension periods for commencement and completion of construction. But the time that should be granted to compensate time lost which in effect caused the failure to commence or complete construction due to force majeure is what is lost due to the same. What is provided under article 25(2) of the new lease holding proclamation is of course correct taking in to account the purpose of force majeure, because what should be compensated is what is lost due to force majeure. Thus, both the proclamation and the regulation should be amended in a way that both do not provide a maximum time extension for delays due to force majeure, because, the length of time to be extended to compensate time lost in this regard should be determined by the duration for which the force majeure lasted.

As to the meaning of force majeure the lease holding proclamation cross refers to the civil code provisions dealing with the same. Thus the meaning of force majeure can be collected from Articles 1792 and following of the civil code.

Art. 1792. - *Force majeure.*

(1) Force majeure results from an occurrence which the debtor could normally not foresee and which prevents him absolutely from performing his obligations.

(2) Force majeure shall not exist where the occurrence could normally have been foreseen by the debtor or where it renders more onerous the performance by the debtor of his obligations.

A list of acts which may or may not constitute cases of force majeure depending on the circumstances are also provided by way of explanation under articles 1793 and 1794 of the civil code and generally for force majeure to exist two things should be fulfilled; the act should be totally unexpected, for instance, flood, lighting and the act should have absolutely impeded one from performing his obligations.

Of course what matters here is whether force majeure should be treated under the civil code and the lease proclamation in the same way. Force majeure under the civil code is considered to determine compensation. If the debtor fails to pay his obligations as a result of force majeure the creditor will never be compensated. While in the case of the lease proclamation Force majeure, is used to determine whether a lease contact should be terminated.

Some people say that for the purpose of construction what is not force majeure under the civil code might be enough to impede construction activity. For instance, if the workers of the contractor of the lessee hit a strike, this by itself delays the time of completion of construction because, employing another contractor after this event or correcting the problem of the workers by itself consumes time and should be considered as force majeure for the purpose of the lease proclamation.[192] Of course, if a lessee totally stopped construction, termination might be tenable, but if he persists on constructing termination is not fair to ignore the various problems that might impede construction by the mere fact that such cases do not constitute force majeure under the civil code.

It is expected that the effect of this provision will be grave on self help associations who are most of the time government employees which are permitted land by allotment and who do not have the required capital to complete construction not only within 24 months but also with in ten years. But imposing penalty for delay should have been fair and it is customary in construction. By the way there were provisions dealing with force majeure even in the previous lease regulations but, they were not fully implemented as it is difficult to implement them.[193]

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[192] See Mekasha, cited above at note 44, p.101.
[193] Ibid.

According to the new lease holding proclamation, if a lessee fails to bring evidences ascertaining that construction was delayed due to force majeure as provided under the civil code, then the lessee will be subjected to double loss. The *first* is his lease hold together with the constructions there will be reclaimed with additional penalties, *second*, the contractor who was undertaking the construction will demand payments for the expenses of the reclaimed construction. If this provision of the proclamation remains intact, either it will not be implemented because it does not take the realities of the construction industry or if the government is committed to implement it, it negatively affects the interests of leaseholders, lets many constructions remain unfinished and thereby kills the vision of developing urban land. Moreover, this provision might be a source of unlawful enrichment for government officials by warning leaseholders. Thus the provision should be amended in a way that it will incorporate accustomed and acceptable problems of construction.[194]

Moreover, the proclamation does not provide mechanisms as to how contradictions concerning whether force majeure has happened, the extent of the time lost because of such force majeure are to be solved and who solves them. Such differences will necessarily arise between the appropriate body and the lessee. Thus the means by which such problems can be solved should have been provided by the proclamation. Of course since the proclamation does not provide for the adjudicatory body regarding these issues it is inevitable that the case will go to ordinary courts. Then what will be the fate of the land until the court decides the contradiction between the above mentioned parties? Does it remain under the possession of the leaseholder or will it be taken back? If it is taken, can it be returned when the courts decide in favor of the leaseholder? Does the government pay compensation to the leaseholder if the land is not returned in this case? Since the law does not put the mechanisms as to how the above mentioned contradictions will be solved, it might become a source of unnecessary contradictions and litigations.

B) Public interest

This ground of termination of lease contract is fully accountable to the state, and as a result the lease-hold possessor shall be "paid commensurate compensation" for the loss of the property on the land and for the permanent improvements made on the land.

[194] Ibid.

Of course, land belongs to the state and the peoples of Ethiopia, thus taking land for public interest purpose is common and acceptable not only today but also during the imperial regime. The idea was incorporated under the civil code of the empire of Ethiopia.[195] Thus what matters is; what constitutes public interest? Who is competent to decide this? What are the rights of the leaseholder when a land is taken for public interest purpose?

The lease proclamation has provided the meaning of **public interest** under article 2(7) as the use of land defined as such by the decision of the appropriate body in conformity with urban 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. Proclamation no.455/2005 on the other hand replaced the term 'public interest' by 'public purpose' and it defines **'public purpose'** as "the use of land defined as such by the decision of the appropriate body in conformity with urban structure plan or development plan in order to ensure the interest of the peoples to acquire direct or indirect benefits from the use of the land and to consolidate sustainable socio-economic development".[196] The draft model regulation also takes this latter definition by altering the definition provided under the lease proclamation to some extent.[197]

When we see the definitions given to the two terms in the above mentioned proclamations, it is almost the same except for the term *'development plan'* under the latter which may be inserted to indicate activities to be undertaken on rural land. Thus as we can understand from the above definitions public interest is the land use as per the plan of the city that is meant for public purpose.

Under proclamation no.455/2005 it is provided that "...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

[195] See articles 1460 ffs., of the civil code, cited above at note 22.
[196] See article 2 (5) of the Expropriation of Land Holdings for Public Purpose and Payment of Compensation Proclamation, Proclamation No.455/2005.Federal Negarit Gazeta. Year 11, No.43.
[197]See article 2(10) of the draft model regulation, cited above at note 18,

the government".[198] Of course, failure on the part of the lessee to honor his/her obligations provided under the lease contract constitutes breach of contract which is a ground of termination of the lease contract and even entails penalties under articles 21 and 25(1a) and (3) of the lease proclamation. Failure to use the land in conformity with the land use plan of the urban center can be cited as an example. Thus in this case, for the purpose of expropriation of lease holding only government work seems to be considered as public interest.

It is also provided under article 26(3) of the new lease proclamation that, "no land leasehold may be cleared, prior to the expiry of the lease period, unless the lessee has breached the contract of lease, the use of the land is not compatible with the urban plan or the land is required for development activity to be undertaken by government." But what does the expression "…**the use of the land is not compatible with the urban plan**…" refer to? Does it refer to failure on the part of the lessee to use the land in conformity with the land use plan of the urban center which is provided under article 25(1a) as a ground of termination of lease contract or a change in the plan of the urban center subsequent to the allocation of the land to the lessee? If it refers to a failure on the part of the lessee, it constitutes a breach of the contract of lease and should not have been written independently as breach of the lease contract itself is already provided under the same provision.

On the other hand if the expression "**unless the use of the land is not compatible with the urban plan**", under article 26(3) of the new lease proclamation as mentioned above which is not in fact included under the provision of proclamation no.455/2005 dealing with the same matter refers to a change on the part of the government, one may ask a question; how can a leasehold which was obtained as per the plan of the urban center be taken back on account of the fact that the land does not conform to the same plan? Because it is clearly provided that an urban land shall be permitted to be held by leasehold if its use is in conformity with the urban plan guidelines or, if the urban center does not have such guidelines, as per the regulations issued by the region or the city administration.[199] Moreover, under the title "**Urban Lands Prepared for Tender"** it is provided that prior to advertizing, the appropriate body shall ascertain among other

[198] See article 3(2) of the expropriation proclamation, cited above at note 196.
[199] See article 7(1) of the new lease holding proclamation, cited above at note 5.

things that urban lands prepared for tender, are prepared in conformity with the urban plan.[200] On top of that, when the plan of the city is prepared the developmental projects that will be undertaken by the government will reasonably be included. Had this been for old possessions, it would have been okay, because old possessors are usually evicted when their possessions are not constructed according to the plan of the city.

Therefore, the writer is of the opinion that this may happen when the urban center did not have urban plan guidelines when the land was obtained merely as per the regulations issued by the region or the city administration as mentioned above or if such plan existed from the beginning, when such plan is revised. If this is true, article 26(3) of the proclamation should be amended in a way it includes the term "as per the revised plan of the urban center" at its end.

Where the leasehold of urban land is terminated based on the decision that the land is to be used for other purposes due to public interest, the lessee shall be paid commensurate compensation in accordance with the relevant law.[201] Then which is the relevant law? The relevant law regarding compensation is the "expropriation of landholdings for public purposes and payment of compensation Proclamation No.455/2005". Of course the idea of expropriation is also incorporated under articles 1460-1488 of the Ethiopian Civil Code. Article 1460 of this code provides that "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." Expropriation therefore, is a procedure whereby the state takes away private owned land and landed property for public interest without the consent of the owner and against payment of fair amount of compensation. It is one means of land acquisition for the state. Article 3 of Proclamation No. 455/2005 grants governmental bodies at all levels the power to expropriate land including land under lease holdings for business purposes. Thus the subject of expropriation is not only privately owned land and building but also leased land.[202]

[200] Id., article 8(1/b).
[201] Id., article 25(4).
[202] Id., article 25 (1b).

As mentioned above the lease proclamation provides the possibilities where a lease holding can be expropriated under articles 25 (1) (b) and 26(3). Expropriation of leasehold land is effected before the expiry of the lease agreement as can be inferred from Articles 25 (1) (b) and 26(3). Some people also say that expropriation is effected during the expiry of the lease agreement as provided under article 19(1) of the same proclamation. According to article 19 of the lease proclamation, the state may refuse renewal and take back the land when the land is needed for public purpose. Moreover, it is provided that in such cases compensation will not be paid. However the writer believes that the taking back of the land after the expiry of the leasehold contract doesn't amount to expropriation. It is rather termination of the contract of lease as a result of the expiry of the lease agreement because, like any contractual agreement the expiry of the lease contract may be a reason for termination of the lease hold right.

Regarding expropriation and compensation the FDRE constitution provides that "Without prejudice to the right to private property the government may expropriate private property for public purposes subject to payment in advance of compensation ..."[203]. Thus the State may "expropriate rural or urban landholdings for public purpose where it believes that it should be used for a better development project to be carried out by public entities, private investors . . . or other organs, or where such expropriation has been decided by the appropriate higher regional or federal government organ for the same purpose"[204].

But how do we determine public interest? Who determines it? These questions are not clearly answered by the lease proclamation. However, expropriation should not be carried out merely by the interest of government authorities. Then what are the criteria that enable us to determine whether expropriation is made for public interest? Such criteria are neither clearly provided by the FDRE constitution nor by Proclamation No.455/2005. Of course public interest can be determined taking in to account among other things; the significance of the benefit derived from expropriation and the number of the people that will benefit from the expropriation of the land.

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[203] See article 40(8) of the FDRE constitution cited above at note 2.
[204] See article 3(1) of the expropriation proclamation, cited above at note 196.

Regarding compensation, proclamation No.455/2005 provides that when an urban land lease holding is expropriated prior to its expiry date, the lease holder shall be entitled to: 1) compensation for the property situated on the land which will be determined on the basis of replacement cost of the property and which may not in any way be less than the current cost of constructing a single room low cost house in accordance with the standard set by the concerned region 2) compensation for permanent improvements he made to such land (which shall be equal to the value of capital and labour expended on the land), 3) the cost of removal, transportation and erection as compensation for a property that could be relocated and continue its service as before, 4) be paid a displacement compensation equivalent to the estimated annual rent of the dwelling house or be allowed to reside free of charge for one year in a comparable dwelling house owned by the urban administration,[205] 5) be provided with a similar plot to use it for the remaining lease period. The lease holder shall also be allowed to use the new plot of land for a longer period if its rent is less than the former land. Or if the holding did not want to take the land; he can take the remaining rent payment.[206]

In this case however, the writer believes that if the leaseholder whose land is expropriated does not want to take the substitute land; he should be entitled to payment of the remaining lease payment with interest starting from the time of payment as per the prevailing interest rate on loans offered by the Commercial Bank of Ethiopia.[207]Justice requires that what should have been paid to the government from the lessee when the remaining balance of the lease amount is paid on the basis of equal annual installments during the payment term should apply to the government when it pays back the already paid lease payment in this case. This may be significant especially for those who made full upfront lease payment for the leasehold. Moreover, location, distance and other factors that determine demand for land should be taken in to consideration in giving the substitute plot of land.

As to the valuation of property situated on land to be expropriated the above mentioned proclamation provides that it shall be carried out by certified private or public institutions or individual consultants on the basis of valuation formula adopted at the national level.[208]

[205] Id., article 7.
[206]Id article 8 (4 and 6).
[207] See article 20(4) of the new lease holding proclamation cited above at note 5.
[208] See article 9(1) of the expropriation proclamation, cited above at note 196.

However, it is said that the valuation method adopted in the expropriation proclamation represents a basic flaw in implementing the constitutional principle of payment of "commensurate" amount.[209] In urban areas, location has no value and owners are being compensated only the "replacement cost" of buildings; government reaps the location value that was developed and grew at the expense of the land holder/dweller. Unlike this, in rural areas, the compensation provided for the loss of agricultural land is an equivalent of the value of ten years production. It is calculated by taking the average value of produce of the past five years and then multiplying it by ten. The usual criticism on the practice is that compensation in the case of urban land is not adequate; does not reflect the market value at all; and does not follow the constitutional guarantee provided to land rights.[210]

The proclamation also says nothing regarding the date which is taken in to consideration to calculate compensation. Unlike under this proclamation, it is provided under the civil code that "the amount of damage shall be that which is assessed by the committee on the day when it makes its decision".[211] Thus based on this experience, it would have been better if the new lease holding proclamation takes in to account the day when the appropriate body has served the leaseholder with a clearing order as a basis for calculating the amount of compensation to avoid confusions.

When land rights are expropriated, the Government may sell the rights to the new investors for prices which are unrelated to and by far exceeding the compensation paid to displaced landholders. The theory behind this is that the land and its value belong to the State whereas the sale prices can also be set at a level which effectively subsidizes the new investment if the investment produces jobs or other social benefits. In any event, the sales represent a revenue source for the government. One of the most important features of the expropriation process from investors' viewpoint is that it is managed entirely by the government without need for direct investor involvement. The decision of the government, which does not involve face- to- face negotiations between the investor and the evicted person, especially in relation to compensation is opposed by many people. The reason is that compensation must reflect justice to both the

[209] See Daniel, cited above at note 180.
[210] Ibid.
[211] See article 1474(2) of the Ethiopian Civil Code Cited above at note 22.

acquiring authority and the claimant and thus expropriation should take in to account the benefit of both private persons and the public at large.

In the writer's view finding alternative ways for compensation of evacuated people through neutral body facilitated negotiations between the investor and the former possessor can serve as a solution to the problem regarding the amount and kind of compensation, because, through negotiations between the investor and the leaseholder, better agreements can be reached. For instance, the investor might agree with the evicted person to share some benefits from the investment to be undertaken on the land and this might be advantageous for the evicted person. Of course one may ask what if the negotiation fails. Then the currently working way of compensation by the government can be applied.

Finally the lease proclamation provides that where the leasehold of urban land is terminated pursuant to sub-article (1)(b) of Article 25 as discussed above, the taking over of the land shall take place in accordance with the provisions of Article 31 of the same. All the procedures that the appropriate body follows in clearing urban land are discussed under the section **2.4.6** of this paper which deals with '**takeover of land'**.

C) Non renewal of contract of lease

The proclamation under article 25(1/c) provides that "the leasehold of urban land shall be terminated where the lease period is not renewed in accordance with sub-article (1) of Article 19 of this Proclamation". This ground of termination partially happens on account of the failure of the lease-holder himself, because, failure to request the renewal of the lease agreement within the required time is impugned on the lease-holder. On the other hand, if the renewal is not made on account of the fact that the appropriate body refused to do so, it is accountable to the government.

Moreover, it is provided that when the lease contract is not renewed according to article 19 of the lease proclamation the lease holder is not entitled to compensation for the property attached on the land. The appropriate body may take over the land together with the property thereon without any payment where the lessee has failed to remove the property within the period of time set

forth in sub article (5) of this Article, and may order the police where it finds it necessary for the enforcement of the takeover.[212] However, unlike this, the first lease Proclamation No.80/1993 under article 11(1c) and (3) provided that the lessee shall receive appropriate compensation for property on the land when the lease contract is not renewed for any reason.

It is obvious that one cannot carry away a building and put it somewhere else, especially taking in to account the available financial and technological capacity in our country. Thus the writer believes that in such cases the lessee should be paid the market value of the properties attached to the land in case the contract of lease is not renewed.

Moreover, the questions that should be raised here are why is not the contract of lease renewed? Can the municipality take back the land upon the expiry of the lease agreement unless the land is needed for public interest based works? Who checks the fairness of this act? Is there any complaint handling? The proclamation does not provide any answer to the above questions. However in the opinion of the writer, the appropriate body should not take back the land if it is not required for public interest and the lease holder is willing to renew the lease contract.

2.4. CLEARING URBAN LAND

2.4.1 Power to Clear Urban Land

The appropriate body shall have the power, where it is in the public interest, to clear and take over urban land upon payment of commensurate compensation, in advance, for the properties to be removed from the land.[213] Then what does public interest constitute in this regard? The law is not clear on the type and significance of the alleged public service and the economic benefits offered to the society from the expropriated land. According to the findings of Belachew Y. (2010) urban land expropriation in Ethiopia is mostly carried out according to the interest of land

[212] See articles 25(6) and 19(1) of the new lease holding proclamation and article 50(4) of the model regulation, cited above at note 5 and 18 respectively.
[213] See articles 26(1) of proclamation no.721/2011 and 7(1-5) of proclamation no.455/2005, cited above at notes 5 and 196 respectively.

administration authorities. If the land administrators believe that expropriation of privately occupied land is important and can potentially attract developers, they are keen to bulldoze the settlements in the area without considering the amount of people affected by displacement and the benefit of the new development for the community. It is frequently mentioned that the practice in Addis Ababa shows that after expropriation, private landholding is transferred to the so-called investors, who didn't address the problems of the majority of inhabitants.[214] This shows that as the term public interest is not clearly provided by the law it is susceptible to be abused by public officials.

Article 3(1) of Proclamation No.455/2005 provides that "a woreda or 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 should be used for a better development project to be carried out by public entities, private investors, cooperative societies or other organs, where such expropriation has been decided by the appropriate higher regional or federal government organ for the same purpose." Thus unlike the case of lease holdings where such holdings are expropriated when the project intended for public interest purpose is to be undertaken by the government, there are many grounds for expropriation of land holdings other than lease holding as indicated under article 3(1) of proclamation no.455/2005.

Of course, a person whose land is taken over due to this action shall be provided with a substitute plot of land within the urban centre the size of which shall be determined by the region or the city administration.[215] But one question worthy of raising right here is; what if the possessor himself wants to undertake the new development activity which is meant for the purpose of public interest? In the case of urban renewal even if it is not provided by the proclamation, people say that priority is given to the persons displaced from the area who have the capacity and willingness to develop the land individually or in cooperation among each other.[216] But in this regard the proclamation does not seem to have allowed this. The reason why such land holders

[214] See Belachew, cited above at note 82.
[215] See articles 26(2) of proc no.721/2011, cited above at note 5 and 8(4) of proc no.455/2005, cited above at note 196.
[216] See Desalegn, cited above at note 58.

are not given with this priority seems that the government wants to get the lease payments from the new investors. However, if it is not the government itself that undertakes the development activity, then it seems to be fair that the possessor should be given with this opportunity.

Unlike in the current urban land lease holding proclamation, this idea of giving priority to the former owners of the land to be expropriated seems to have been incorporated under the Civil Code. This Code provides that "where it has been declared that a project serves the public interest, the competent authorities shall determine which immovables require to be expropriated to enable the carrying out of the project. The owners, bare owners and usufructuaries shall be personally notified of the contemplated expropriation. **They shall be required to express within a reasonable time fixed by the authorities their views on the necessity of such expropriation**."[217] The fact that such persons are required to express their view on the necessity of the expropriation seems to know whether they themselves can undertake the proposed project. Therefore, it is better if the lease proclamation is amended in a way that it gives priority for the former possessors or this idea is incorporated under the regulations to be enacted for the implementation of the same.

Coming to the issue of compensation, unlike article 25(4) of the new lease holding proclamation which refers to the relevant law for the purpose of compensation that will be due to a person whose lease contract is terminated on account of the fact that the appropriate body has decided to use the land for other purpose due to public interest, article 26(1) does not refer to the relevant law for the same purpose. It simply says that commensurate compensation will be paid in advance of clearing and taking over the property. More over it says "… for the property to be removed from the land…", but it doesn't say 'to the permanent improvements made on the land'. The expression 'commensurate compensation' is also said to be unclear and is usually abused by public authorities.[218] It is also said that the proportion of the size of the substitute land should be expressly provided by the law, because this is also usually abused.[219] But for the time being, since what is meant by commensurate compensation is not clear under the lease proclamation, it

[217] See article 1466 of the civil code, cited above at note 22.
[218] Cited above at note 36, p.29.
[219] Ibid.

is inevitable that the compensation will be determined by proclamation No.455/2005.

As we can understand from the reading of the relevant provisions of Proclamation No. 455/2005, in the case of expropriation, the evicted landholder shall be entitled to[220]:

- Compensation for the property situated on the land which will be determined on the basis of replacement cost of the property and may not in any way be less than the current cost of constructing a single room low cost house in accordance with the standard set by the concerned region,
- Compensation for permanent improvements made to such land which shall be equal to the value of capital and labour expended on the land,
- The cost of removal, transportation and erection as compensation for a property that could be relocated and continue its service as before,
- Be provided with a plot of urban land the size of which shall be determined by the urban administration, to be used for the construction of a dwelling house,
- Be paid a displacement compensation equivalent to the estimated annual rent of the dwelling house or be allowed to reside free of charge for one year in a comparable dwelling house owned by the urban administration.

As to the valuation of property situated on land to be expropriated the above mentioned law provides that it shall be carried out by certified private or public institutions or individual consultants on the basis of valuation formula adopted at the national level.[221]

However, unlike legal holders who are given adequate clearing order and compensation with a substitute land, illegal settlers (squatters) are to be evicted from the land they hold without any payment of compensation and only by merely serving a written notice of seven working days. The appropriate body in this case has the power, without the need to issue a clearance order and payment of compensation, to clear an illegally occupied urban land by merely serving a written notice of seven working days to the occupant in person or by affixing it to the property situated

[220] See articles 7(1-5) and 8(4) of proclamation No. 455/2005, cited above at note 196.
[221] Id., article 9(1).

on the land.[222] Of course it is also provided that any person served with a notice in this case may submit his grievance to the appropriate body, together with evidences substantiating his cause, within seven working days after receipt of the notice.[223] That means such persons might submit their claim that they are legal holders and prove the same. As a result, after the submission of the grievance, if it is ensured that the settlement is legal, the clearing order will be lifted.

But in contrast to legal possessors the time given for illegal possessors to clear their properties from the land as well as the time given to them to submit their grievance is too short. What might be the reason? This time is short to collect evidence and documents. When the government makes the time given to such settlers too short, it seems that it is sure that they are illegal. However, rather than giving this insufficient period which really amounts to ignoring their rights to be heard the government should give the time given to the legal ones. If it does so it rescues the rights of individuals from dangers.

Moreover, it is understandable that the reason why such people settled in that way might be because of the acute housing problems prevalent in urban centers. That is why the government has decided to regularize possessions held without the authorization of the appropriate body, but which are found to be acceptable in accordance with urban plans and parceling standard to be administered by lease holding.[224] Moreover, the reason why these individuals are subjected to this kind of treatment as illegal might be attributable to the government body's carelessness in handling of the required documents the availability of which should have assured their legality. Thus at least such settlers should be given enough time to submit their grievances and properly clear their property on the land like the legal ones. By doing so the government should save the loss of the property of citizens.

2.4.2. Clearing Order

The proclamation provides that where urban landholding is decided to be cleared the possessor of the land shall be served with a written clearing order stating the time the land has to be

[222] See article 26 (4) of proclamation no. 721/2011, cited above at note 5.
[223] Id., article 28(2).
[224] Id., article 6(4).

vacated, the amount of compensation to be paid and the size and locality of the substitute plot of land to be availed.[225] In this case the period of notification to be given which will be determined by regulations to be issued by the regions and the city Administrations may not, in any way be less than 90 days.[226] Where the plot of land to be cleared has a government house on it, the clearing order shall be served to the body administering the house.[227] The clearing order or notice in this regard will be served to the lease holder in the following ways; by writing to his/her address, if s/he cannot be found at his address at the lease hold to be vacated, on a notice board of a concerned body and by posting at places at which public gathering takes place and then a notice posted in this way will be considered as if it is served to the lease holder.[228]

2.4.3. Grievances Relating to Clearing Order or Notice

A person served with a clearing order or *any other person alleging infringement of his right* or benefit as a result of the order may submit his grievance to the appropriate body, together with evidence substantiating his cause, within 15 working days after receipt of the order.[229]Any person with an illegal settlement who is served with a notice may submit his grievance to the appropriate body, together with evidence substantiating his cause, within seven working days after receipt of the notice.[230]Then after, the appropriate body shall properly examine the grievance submitted to it and notify its decision to the applicant in writing. Where the complaint is found to be unacceptable, the decision shall state the reasons thereof.[231] Now let me pose the following questions.

What does the phrase 'any other person alleging infringement of his right' refer to? What mechanisms are adjusted by the law to inform such persons about the clearing order? What might be the grievances of the compliant? Why is the time given for illegal settlers shorter than the legal ones? Why didn't the law indicate the time limit within which appropriate body should give its decision? The proclamation does not provide clear answers to the above questions but one can guess according to his own expectations.

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[225] Id., Article 27(1).
[226] Id., article 27(2).
[227] Id., article27(3).
[228] See article 52(2) of the model regulation, cited above at note 18.
[229] Cited above at note 5, article 28(1).
[230] Id., article 28(2).
[231] Id., article 28(3)

As to the person alleging infringement of his right, there might be interested persons whose rights are directly or indirectly affected by the clearing of the land. For instance, the land might have been used as collateral or parties might have unsettled interest in relation to the construction. These parties might have their own complaints as to the amount of compensation to be paid and as to who should be paid. But during the clearing order the proclamation does not seem to have adjusted ways to inform the above mentioned parties. The fact that the proclamation is designed in this way negatively affects the interest of third parties who have vested interest on the property to be cleared.

Unlike under this proclamation, it was provided under the Civil Code that "an expropriation order shall be served on the owner concerned and on any person whose rights on the expropriated immovable have been entered in the register of immovables. It shall also be served on any person whom the owner designates to the competent authorities as having a right on the immovable."[232] Moreover, it provides that "any interested party may, within one month from having been served with the expropriation order, inform the competent authorities that he objects to the compensation being fixed below a specified amount or paid in fraud of his rights."[233] Thus amending the proclamation as it is provided under the civil code in a way that it keeps the rights of third parties makes the proclamation fair and better in protecting the rights of individuals.

As to the complaints of the aggrieved persons, even if the proclamation does not clearly indicate this fact, the complaints of the legal holder might be concerning the size and location of the substitute land and the amount of compensation, the fact that the eviction is not for public interest purpose, the construction is according to the plan of the city seem to be possible as there is no limit provided under the new proclamation.

The fact that complaints other than those concerning compensation can be submitted was clearly provided under proclamation no. 272/2002. It states "a person upon whom clearance order is issued or any other person alleging infringement of his right or benefit, or any person upon

[232] See article 1468 of the civil code cited above at note 22.
[233] Id., article 1471.

whom warning notice is served, may take to the appropriate body his claims in respect of compensation and any other grievance of a justiciable nature with substantiation of evidence and reasons.*"*[234] But under the Civil Code and the Expropriation of Landholdings for Public Purposes and Payment of Compensation Proclamation no. 455/2005, the complaint was limited to the amount of compensation.[235] From this we can conclude that the new proclamation gives legal holders broader rights even more than what was provided under the Civil Code and expropriation of landholdings for public purposes and payment of compensation proclamation.

As to the time given for the submission of the grievance of persons who are qualified as illegal settlers, the same time as what is provided under the new one was also given even under proclamation no.272/2002.[236] As we can understand from the word 'illegal', the government did not from the very beginning presume such settlers as innocent. As a result the time given to them is too short. However, this is wrong and they should be given equal time with the other holders until their illegality is proved beyond reasonable doubt. Moreover, like the time limit given for the submission of grievances of the complaints, the time limit within which the appropriate body should decide should have been provided by the proclamation.

Then what if the complaint of the aggrieved party is found to be unacceptable and still the aggrieved party is not satisfied by the decision of the appropriate body? This issue is dealt with under the next sub section.

2.4.4. Appellate Tribunal

The lease proclamation under its article 30 promises that an urban land clearing and compensation cases appellate tribunal shall be established by regions and city administrations[237] and this tribunal shall:

1. Consist of not less than five members drawn from different relevant bodies,

[234] Cited above at note 6, article 17(1).
[235] See article 1470 of the civil code and article 11 of proclamation no.455/2005, cited above at notes 22 and 196 respectively.
[236] Cited above at note 6, article 16(2).
[237] See article 30(1-9) of the new proclamation no.721/2011, cited above at note 5.

2. Have the power, upon examining appeals submitted to it, to confirm, vary or reverse a decision rendered by the appropriate body in accordance with sub-article (3) of Article 28 of this Proclamation and to enforce its decision,
3. Be accountable to the council of the region or the city administration, as the case may be,
4. Be free of any influence except the law,
5. May where it finds it necessary, order the relevant bodies to provide expert opinion or to produce evidence pertinent to a case before it,
6. May order and use police force where it finds it necessary to execute its decisions and orders,
7. May not be governed by the provisions of the ordinary Civil Procedure Code while conducting its functions. It shall, however, be governed by expedient procedures to be issued by the region or city administration and,
8. Have members whose term of office shall be determined by the region or city administration.

The Ethiopian Federal Democratic Unity Front opposed the fact that complaints and appeals regarding urban land are submitted to the executive branch on the ground that it violates citizens' right to adjudicate their case by an impartial judiciary and it takes away the power of the regular courts which is given by the constitution.[238] The party stated that this act of the government violates citizens' right of access to justice. A similar concern was raised in the discussion between the House of Peoples Representatives Urban Development and Construction Affairs standing committee and officials of the MoUDC and the response of the officials of the MoUDC was that this does not violate any constitutional provision.[239] Moreover, during the parliamentary discussion for the ratification of the proclamation honourable Ato Girma Seifu stated that if the government gives judicial power to the administrative body in every proclamation, what are the courts going to do? He added that it is unfair to take away the power of the regular courts on the ground that they may not render speedy decisions and hence the government should help in improving the capacity of courts and entitle individuals to freely take their case before the same.

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[238] See የማነ ናግሽ፣ "<<የከተማ ሊዝ አዋጅ ለኢሕአዴግ ካድሬዎች ሙስና አመቺ ሁኔታ የሚፈጥር ነው>> መድረክ፡፡" ¶±RtR፣ ኅዳር 17 ቀን 2004 የእሑድ እትም ቅፅ 17 ቁጥር 11 gጽ 7፡፡ (Translation by the author).
[239] Cited above at note 32, p.18.

In fact this system of establishing an appellate tribunal was also incorporated under proclamation No. 272/2002, which provided for the establishment of Urban Land Clearance Appeals Commission under its article 19. In a similar fashion to what was provided under the repealed proclamation, article 30(8) of Proclamation No.721/2011 provides that "the Tribunal may not be governed by the provisions of the ordinary Civil Procedure Code while conducting its functions. It shall, however, be governed by expedient procedures to be issued by the region or city administration." On the other hand the FDRE constitution states that "special or ad hoc courts which take judicial powers away from the regular courts or institutions legally empowered to exercise judicial functions and which do not follow legally prescribed procedures shall not be established."[240]

Thus the question that should be raised here is; who prepares the procedures by which the tribunal will be governed? Is it the executive body or the legislative one? The Ethiopian Democratic Unity Front opposes the fact that the tribunal may not be governed by the regular civil procedure and says that this enables the administrative body to enact its own procedures as it wants.[241]

The proclamation says "…to be issued by the region or city administration…" but this provision of the proclamation is not clear. However, as this tribunal is accountable to the council of the region or the city administration, the procedures by which it is governed should be issued by the same body. Unless the procedures are issued by the council of the region or the city administration, the fact that the tribunal will be free of any influence except the law, will be doubtful. Moreover, as the constitution declares that procedures that serve judicial functions should be legally prescribed, the procedures should be enacted by the legislature as it is usually done in the case of other laws and publicized in Negarit Gazeta so that such procedures will be easily accessible for everyone and help people to know better about their procedural rights.

The other question that should be posed in connection with this is; how is the tribunal established? Under Proclamation No.272/2002 it was provided that the Appellate tribunal will be established by regulations but the new proclamation says nothing regarding this. However, as an adjudicatory body it should be established by regulations or law. As the procedures should be

[240] See article 78(4) of the FDRE constitution, cited above at note 2.
[241] See the statement containing the stand of the party regarding the new lease holding proclamation cited above at note 25.

legally prescribed, the tribunal itself should be established by law as it is provided under article 19(9) of Proclamation No.272/2002. Officials of the MoUDC on the other hand stated that this will be clearly provided under the regulations that will be issued by the regions and city administrations.[242]

Still another question is; who nominates the members of the tribunal? Is it the executive body or the legislative one? The proclamation states only the number of the member of the tribunal, but it does not clearly indicate who nominates them. The fact that the members of the tribunal are accountable to the council of the region or the city administration should be expressed by nomination and demotion of its members. However, if they are to be nominated by the executive wing of the government, the provision of the proclamation which says that the tribunal will be responsible to the council of the region or the city administration becomes meaningless. Thus the proclamation should be amended in a way that it makes these things clear.

2.4.5. Appeals Against Decisions of the Appropriate Body

Under article 29 of the new proclamation an applicant who is aggrieved by the decision of the appropriate body rendered as mentioned before is entitled to appeal to the Appellate Tribunal mentioned above within 30 days from receipt of the decision. The Tribunal is duty bound to examine the appeal, render its decision within 30 working days from submission of the appeal and notify its decision in writing to the parties. This Tribunal has the power, upon examining appeals submitted to it, to confirm, vary or reverse a decision rendered by the appropriate body as mentioned above and to enforce its decision." Moreover, the law provides that decisions of the Tribunal, except relating to compensation, on issues of law and facts including claims for substitute land shall be final.[243] But why is appeal on issues other than compensation prohibited?

Thus other issues with the exception of compensation will never go beyond this. But is it just that this tribunal gives decisions which are final and from which appeal to the regular courts of law is not possible? It is here that the grievance of the persons who are said to be illegal settlers will get final decision, because such persons are not entitled by the law to get any compensation for

[242] Cited above at note 32, p.18.

[243] See article 29(3) of proclamation no.721/2011, cited above at note 5.

any of their properties on the land and the permanent improvements they made to the land. Is it fair? Taking in to account the issue of independence of such tribunal it seems that it would be better if the proclamation allowed appeal to regular courts on all issues. This is because I have doubts as to the impartiality of the tribunal, especially, if members of the tribunal are nominated by the executive. The Ethiopian Federal Democratic Unity Front has also mentioned this issue in the statement of criticism which was issued immediately after the adoption of the new lease holding proclamation. It reads as follows "the party opposes the fact that complaints and appeals regarding urban land clearance are submitted to the executive body. The government should have worked to words improving the capacity and impartiality of the regular courts than doing this. This act of the government violates the right of citizens' access to justice."[244]

Let me also pose another question as to the decision of the tribunal. Is it just that the tribunal's decisions on issues of law are final? The FDRE constitution under article 79(1) provides that judicial powers, both at Federal and State levels, are vested in the courts. It also however, states under article 37(1) that everyone has the right to bring a justiceable matter to, and to obtain a decision or judgment by, a court of law or ***any other competent body with judicial power***. Based on this it is customary and constitutional to establish such kind of tribunals, for instance, the tax appeal tribunal.

Thus, the establishment of this tribunal does not contradict with the constitution. Especially taking in to account the fact that the issue involves technical matters, it requires expertise out of the legal profession, to render accelerated decisions about the matter. But even if such courts are established for special matters, it is only the court which is competent to decide on errors of law. If the decisions of such bodies involve errors of law, then the court should render a final decision about the interpretation of the law. Some people strongly criticize the fact that the proclamation allows appeal on matters of compensation but not on matters of law is not just and constitutional.[245] Even if I am not sure about its unconstitutionality, I believe that questions on errors of law should not be decided by other professionals but by legal professionals charged with this responsibility, for instance the Cassation Division.

[244] See Daniel, cited above at note 155.
[245] See Mekasha, cited above at note 44, p.135.

Under article 80(3) of the FDRE constitution a decision of any court in Ethiopia today can be reviewed by the Cassation Division of the Federal Supreme Court if it manifests a *prima facie* case for basic error of law and if it is a final decision and is filed within the time limit.[246] In a similar fashion the State Supreme Court has power of causation over any final court decision on State matters which contains a basic error of law.[247] Then what does the expression "… any final court decision…" under article 80(3) of the FDRE constitution refers to? Doesn't it include any final decision of an administrative tribunal or court? In the writer's view this includes any final decision of an administrative tribunal too. Otherwise the rights of individuals whose cases are finally decided by administrative tribunals or courts will be at stake.

Then the other basic question in relation to this is; does article 29(3) of the new lease holding proclamation prohibit individuals from taking their case to the cassation division in case they believe that there is error of law? The writer doesn't think so. It only prohibits further appeal on issues except relating to compensation. Otherwise it contradicts with the above mentioned provision of the constitution. Thus the question in this regard should be as to the fairness of the prohibition of further appeal on issues other than relating to compensation.

To evaluate the fairness of the prohibition of appeal in this regard, it is better to know **who the appropriate body is**. Article 2(6) of the new urban land lease holding proclamation defines the term "appropriate body" as a body of a region or a city administration vested with the power to administer and develop urban land. On the other hand, this body is named as 'Concerned body' under article 2(4) of the model regulation and defined as a body given the power to administer and develop urban land by law. But where is this body going to be mentioned? Who determines the appropriate body? It is neither given by the proclamation nor by the model regulation. This is confusing. It is susceptible to abuse. As a result, aggrieved parties may easily be confused as to who is the appropriate body as it is not given by the aforementioned laws.

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[246] Muradu Abdo, Review of decisions of state courts over State matters by the federal Supreme Court (June 2008), MIZAN LAW REVIEW Vol. 1 No.1, (available at: http://www.ajol.info/index.php/mlr/article/viewFile/55614/44089), last visited on 12 September 2012.

[247] See article 80(3/b) of the FDRE constitution, cited above at note 2.

However, as we can understand from the powers given by the proclamation to it, this body is possibly an administrative one. Therefore, it is this administrative body who issues the clearance order for an urban land that is empowered to give decisions on the grievances of persons who are served with its clearance order. Is this fair? Or do we have a separate appropriate body other than the one that issues the clearance order who entertains complaints of aggrieved parties? This is not clearly provided by the proclamation. Therefore, it is from the decision of this appropriate body that an appeal for a final decision except on issues other than compensation will be taken to the appellate tribunal provided under article 30 of the proclamation. On top of this the writer has doubts as to the impartiality of both the appropriate body who renders the first decision and the appellate tribunal who passes final decision as mentioned above. Based on this an appeal should be allowed to a regular court of law on all issues.

Under 29(4) of the new lease holding proclamation a person dissatisfied with the decision of the Tribunal on the issue of compensation may appeal, within 30 days from receipt of the decision, to the **relevant municipal appellate court or, in the absence of municipal appellate court, to the regular high court**. But under article 18(4 and 5) of Proclamation No.272/2002 it was provided that "a person dissatisfied in the decision of the Commission may appeal only on issues of compensation within 30 days from the receipt of the decision, before the **relevant High Court having jurisdiction over the place where the property in issue is situate or where such place is in Addis Ababa before the Municipal Appellate Court and the decision at this appellate level shall be final**"

Thus, under Proclamation No.272/2002, while the jurisdiction of municipal appellate court was limited to Addis Ababa, the high court had the jurisdiction out of Addis Ababa. But under the new lease holding proclamation it is only in the absence of the relevant municipal appellate court that appeals concerning compensation can be submitted to the regular high court. Is it fair? Generally under the lease proclamation issues arising from urban land clearance are not required to be taken to the regular courts. But in the writer's view, the appeal in this regard should have been submitted only to the regular high court, because I have doubts as to the impartiality of the members of both the appellate tribunal and the municipal appellate court.

Moreover, it is provided that for such person's appeal concerning compensation to be admitted both by municipal appellate court and the regular high court the person should first hand over the land subject to the clearance order to the appropriate body and attach evidence to this effect.[248] Otherwise the appeal will never be entertained. Is it fair? How should one surrender his land before a final decision is rendered concerning the controversy about it? How is the amount of compensation to be determined if the land is taken over and the properties attached with it is demolished? However, the writer believes that land holders should not be obliged to surrender the land until after the case is no longer appealable. It is only after the requirement of the constitution that an advance commensurate compensation is paid that the land should be taken over.

On top of that, as provided under article 29(4) of the proclamation the period for appeal as to the amount of compensation should be submitted within 30 days from receipt of the decision. But as a pre condition to appeal such person is expected to hand over the land subject to the clearance order to the appropriate body and attach evidence to this effect. However, the appropriate body may not take over the land within the required time.[249] On account of this delay, the right to appeal of the landholder may expire even for reasons which are beyond his/her control. Thus if article 29(5) of the proclamation which imposes an obligation of handing over of the land as a pre condition for appeal cannot be amended, the 30 days provided for appealing to the appellate court as mentioned above should run starting from the time when the appropriate body takes over the land rather than from the time of receipt of the decision of the Tribunal.

Moreover, it is provided that the appellate court should decide on an appeal submitted to it as mentioned above within 30 working days from the submission of the appeal and the decision of the court shall be final.[250] The appellate court in this regard is given only 30 working days to make its final decision. But is this time enough? Unlike this no time limit was provided under article 18 of the repealed Proclamation No.272/2002 for the decision of the High Court or Municipal Appellate Court. Thus, especially if the members of the appellate court do this task on

[248] See article 29(5) of proclamation no. 721/2011, cited above at note 5.
[249] Id., article 29(4 &5).
[250] Id., article 29(6).

part-time basis this time limit might bring about hurried decisions. Of course there should be time limit but it would have been better if this time is reasonably extended.

Then what if the decision of the appropriate body is not reversed by the Appellate Tribunal? The answer to this question is found under the following part.

2.4.6. Takeover of Land

The proclamation provides that the appropriate body shall take over urban land from any person who has been served with a clearing order within 90 days from the date of payment of compensation, or if the person refuses to take the payment, from the date of depositing the compensation in a blocked bank account in the name of the appropriate body; provided, however, that the appropriate body shall pay the deposited amount whenever the entitled person intends to take the payment.[251] The appropriate body shall take over a land in respect of which a clearing order or notice has been served in the following three situations: a) Where the person served with the clearing order or notice has not lodged a grievance against the action, b) Where the grievance is dismissed in accordance with this law and no further appeal is made against the decision; or c) Where the appeal submitted in accordance with this law is dismissed.[252]

It has been mentioned in the above discussions that no appeal to the appellate court is allowed by this new lease holding proclamation except in the case of compensation. Thus appeals against taking over of land end at the level of appellate tribunal. Where there is no crop, perennial crop or other property on a land in respect of which a clearing order has been served, the holder shall hand over the land to the appropriate body within 30 days from the date of receipt of the order.[253] Thus it is only when there is crop, perennial crop or other property on a land in respect of which a clearing order has been served that the appropriate body is expected to wait 90 days, otherwise this law provides that 30 days are enough. The appropriate body can also order police force when it finds it necessary to use force to take over the land.[254]

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[251] Id., article 31(1).
[252] Id., article 31(2).
[253] Id., article 31(3).
[254] Id., article 31(4).

Moreover, it is provided that the appropriate body may not be held responsible for any property situated on illegally held plot of urban land in the course of clearing the land.[255] The new lease holding proclamation in all cases negatively affects the rights of people who are said to be illegal settlers. From the very beginning those people are given only seven working days to submit their grievance and finally this law makes the appropriate body free of any responsibility for the loss of any property found on the land cleared. But this at least goes against fairness. As we are witnessing currently in many cities, many individuals are left with no shelter after their house is demolished without being given enough time to search for alternative shelter and transport their properties to the same. This is really against humanity. Thus at least such individuals should be given reasonable time to be heard, search for alternative shelters and clear their properties properly.

2.5. Criminal responsibilities entailed as a result of violations of the provisions of the new lease holding proclamation

After putting the phrase "*Unless the offence is punishable with more severe penalty under the Criminal Code*," the new lease holding proclamation prescribes very harsh penalties in terms of fine and imprisonment for the violation of any of its provisions under article 35. It is clearly provided in this regard that when any of the crimes stated under article 35 of this proclamation are committed, unless the criminal code imposes more severe penalty for the commission of such crimes, the penalty incorporated under article 35 of the new lease holding proclamation will apply. On the other hand, if the penalty for violations of any of the provisions of article 35 of this new lease holding proclamation is less severe under the same proclamation than under the criminal code, then the penalty stipulated under the criminal code will apply. In doing so, the legislature wants to apply both the criminal code and the new lease holding proclamation depending on the severity of the penalty under each law.

The expression "…***Unless the offence is punishable with more severe penalty under the Criminal Code***…" in this regard shows that the legislature did not duly consult the provisions of the criminal code before incorporating the penalties provided under the new lease holding

[255] Id., article 31(5).

proclamation. But why is it not possible to consult the relevant provisions of the criminal code before enacting the new law providing for penalties? However, consulting the relevant provisions of the criminal code in this regard would have ensured compatibility.

Article 35 of the lease proclamation provides that unless the offence is punishable with more severe penalty under the Criminal Code the penalties provided under the same will apply. **Does this contradict with the constitution? Or is it constitutional to prescribe heavier penalties while there are less rigorous penalties in action?** Some people say that this goes against the constitution. They try to relate this with the principle of 'Non-retroactivity of Criminal Law' under the constitution[256], especially with sub article 2 of article 22, which provides that "notwithstanding the provisions of sub-Article 1 of this Article, a law promulgated subsequent to the commission of the offence shall apply if it is advantageous to the accused or convicted person." **Is this correct?**

What is provided by the lease proclamation is that when there are different penalties prescribed under the lease proclamation and the criminal code for the same offence, and then the heavier one will apply. In the writer's view, this would have gone against the constitution if a penalty which is heavier than what is provided under the criminal code stipulated by the lease proclamation is imposed for crimes committed before the enactment of the same proclamation or if it tried to penalize people who have committed any act before the coming in to force of the new lease holding proclamation and which did constitute a crime under the criminal code.

Of course, the new lease holding proclamation has come up with serious penalties for crimes which would have been penalized with less severe penalties under the criminal code and this is possible for the legislature so far as the penalties apply for crimes committed after the coming in to force of the same law. This is said to be made to discourage corruption and speculation in relation to urban land. However, the basic question that should be asked in connection with this is; **does change in the law change the minds of individuals?** Besides how fair would that be? What policy or economic objectives are served by these heavy handed moves? What is the purpose of having a separate law on crime if the legislature incorporates penal sanctions on every

[256] See Mekasha, cited above at note 44, p.147.

law? Is such practice of penalty shopping an attribute of a humane let alone democracy? Some people say that this will not solve the problem. For instance, honorable Ato Girma Seifu (MP) said that "increasing punishments will not eradicate corruption; it just leads people to ask for more bribes commensurate with the possible punishments.[257]

The other problem with this proclamation is that using penalties incorporated under the two laws side by side creates confusion among public prosecutors and judges and opens for unnecessary arguments.[258] For instance, the crime stated under article 35(1(a/1)) of the new lease holding proclamation is similar with what is provided under article 407 of the criminal code which is entitled as 'abuse of power'. But the penalties incorporated for the commission of this crime under the two laws are difficult to apply independently. While the penalty in terms of imprisonment provided under article 407(3) is rigorous imprisonment from 10-25 years, it is 7-15 years rigorous imprisonment under the new lease holding proclamation. When we see the penalty imposed in terms of fine under the two; while it does not exceed 100, 000 birr under the criminal code, it is from Birr 40,000 up to Birr 200,000, under the lease holding proclamation.

Thus, while the penalty in terms of imprisonment is more severe under the criminal code, the fine under the lease proclamation is more than that provided under the criminal code. **So which penalty is going to be applied if this crime is committed currently? Is the public prosecutor going to institute a charge with a penalty of imprisonment from the criminal code and a fine from the lease holding proclamation?** This is confusing and difficult for implementation. Some people also say that if the penalties for different individuals on the same crime differ because of the fact that the penalties incorporated under the criminal code and the lease hold proclamation are confusing and the public prosecutor makes use of any of the penalties as he wishes, this may go against the right to equality before the law.[259]

Still the other problems are there with the lease holding proclamation. Among these is the one found under article 35(1)(a) (2) and (3)). In both cases, the penalties are rigorous imprisonment

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[257] Hiruy Tsegaye, *Ethiopia: New law puts private possessions under lease*: (2011), (available at: http://addisfortune.com/Vol_12_No_598_Archive/New%20Law%20Puts%20Private%20Possessions%20under%20Lease.htm), last visited on 23 September 2012.
[258]See Mekasha, cited above at note 44, p.148.
[259] Ibid.

from 5 to 12 years and a fine from Birr 30,000 up to Birr150, 000. But they are written under different sub articles. Thus, the legislature should have avoided repetition of similar penalties by including what is provided under 35(1)(a/3), under 35(1)(a/2).

The other problem with article 35(1(a/3) is that it has generally made all acts of omission under the proclamation crimes punishable by rigorous imprisonment and fine. That means there are no faults which can be passed simply by administrative correction under the proclamation. Thus making all omissions under the proclamation crimes punishable by imprisonment or fine is humanly unfair. Those omissions can happen due to lack of capacity, lack of the required facilities, or due to reasons which are beyond ones reach, etc. Thus trying to penalize all omissions including those minor ones through rigorous imprisonment and fine is at least unfair. For instance, is the fact that the appellate court did not render decision on an appeal submitted to it within 30 working days from its submission qualified as a crime and thus punishable with rigorous imprisonment from 5 to 12 years and with a fine from Birr 30,000 up to Birr 150, 000 ? What if the reason why they did so is because of force majeure?

According to this provision members of the appellate court will be penalized at least with rigorous imprisonment of 5 years and with a fine of Birr 30,000 for failing to give decision within 30 working days as mentioned above whatever the reason for their failure may be. A number of omissions may possibly materialize as a result of which honest people may be subjected to rigorous penalties.

Regarding this provision similar concerns were raised in the discussion between the House of Peoples Representatives Urban Development and Construction affairs standing committee and officials of the Ministry of Urban Development and Construction and the response of the officials of the MoUDC indicates that this will be corrected in the regulations to be issued by the regions and city administrations.[260] This means an amendment of this provision of the proclamation will be made by the regulations to be issued by the regions and city administrations which is unconstitutional. But isn't it possible to amend the proclamation itself?

[260] Cited above at note 32, p. 18.

Even if I have no enough space to write down all the provisions of the new lease holding proclamation which suffer from various defects, Article 35(1)(a (1-3) of the same reads as follows:

35. Penalty

1/ unless the offence is punishable with more severe penalty under the Criminal Code:

a) Any officer or employee who is in charge of implementing this Proclamation and regulations and directives issued hereunder with intent to obtain for himself or to procure for another person undue advantage:

(1) Grants an urban land in contravention of the provisions of this Proclamation is punishable with rigorous imprisonment from 7 to 15 years and with a fine from Birr 40,000 up to Birr 200,000;

(2) Fails to disclose any information pertinent to a tender, restricts the sale of bid documents, distorts the process or reverses the outcome of a tender is punishable with rigorous imprisonment from 5 to 12 years and with a fine from Birr 30,000 up to Birr150,000;

(3) Acts in violation of the provisions of this Proclamation or ***fails to take action required under this Proclamation*** *is punishable with rigorous imprisonment from 5 to 12 years and with a fine from Birr 30,000 up to Birr 150,000;*

To the writer, People may commit many possible omissions at least as human beings, but imposing this type of penalties irrespective of their intention and the weight of the contravention is unjust, because there should also be acts which can simply be passed by administrative correction.

It is also provided under article 35(1/b) that "whosoever in violation of the provisions of this Proclamation or regulations or **directives** issued hereunder fences an urban land, undertakes construction on it or encloses it with his adjacent land is punishable with a rigorous imprisonment from 7 to 15 years and with a fine from Birr 40,000 up to Birr 200,000." But what about the fate of the land fenced or on which construction is undertaken or enclosed with the adjacent land? Is it going to be reclaimed or remains under the possession of the above mentioned individual? If it is to be reclaimed such fact should be included under the above mentioned provision.

But how can a violation of a directive which possibly be known only by government employees working within a certain office entails penalty on any one all over the country? Crimes should be clearly prescribed by law and published in the form of negarit gazeta so that everyone will be informed. But making a violation of a directive a crime entailing rigorous punishment is said to be wrong drafting of law.[261]

Moreover, under article 35(1/c) it is provided that "any bidder of urban land lease tender who presents a falsified documentary evidence or **conceals any evidence** which he should have disclosed or connives at an act of fake competition is punishable with a rigorous imprisonment from 5 to 12 years and with a fine from Birr 30,000 up to Birr 150,000." But why does this ***concealing of any evidence*** entail a criminal penalty? If one fails to submit all the required evidences for bidding, it is simply enough to cancel him/her out of the tender. Of course if he submitted false documents, is constitutes a crime otherwise why should people be obliged to disclose their private information? Thus this provision should be revisited.

Generally, the drafters of the above mentioned lease holding proclamation should have first deeply consulted the provisions of the criminal code and identified which crimes and what punishments are incorporated under the criminal code and which are not and come up with the provisions of the lease proclamation for the intended purpose. Even now, it is better to duly amend the provisions of new lease holding proclamation in line with the criminal code rather than creating confusions and violating the rights of individuals.

2.6. Transitory Provisions

The proclamation also provides for transitory provisions. Accordingly, it is stated that "regions and city administrations shall render decisions, within three months after the coming into force of this Proclamation, on pending land holding requests in accordance with the former laws."[262] Therefore, the proclamation provides three months after the coming in to force of the same so that regions and city administrations can decide on land holding requests which were pending

[261]See Mekasha, cited above at note 44, p. 152.
[262] See article 37(1) of proclamation no.721/2011, cited above at note 5.

before its enactment. This decision is to be made according to the former laws. Thus for such requests the new lease holding proclamation will never be applicable so far as they are decided within three months after the new proclamation entered in to force.

The second transitory provision of the proclamation states that "all lease holding contracts which have been concluded with the appropriate body and all activities performed accordingly before the coming into force of this Proclamation shall be valid and remain intact."[263] Thus the validity of all contracts of lease concluded according to the former lease holding proclamation and all acts performed following such contracts before the coming in to force of the new lease holding proclamation remain intact. What does this mean? What is provided is as to the validity of such acts. But how about the implementation? What will be the price applicable during transfer? The market price or according to the new lease system? For instance, how is transfer of a lease hold collateralized according to the former lease proclamation to be effected in case the debtor defaults payment? If transfer is to be conducted according to the former law, for how long does this former law apply?

But under article 46(5) of the model regulation banks which extended loans having collateralized lease holding rights before the coming in to force of the new lease holding proclamation are entitled for **one year** after the adoption of the regulation to recover any loan on collaterals according to the former laws. That means within the stated time limit the buyers in this regard are not expected to pay lease transfer payments and no penalties will be paid by the sellers for transfer of below half completed constructions. According to the regulation, banks can for one year after the adoption of the same recover any loan on collaterals entered in to before the coming in to force of the new lease holding proclamation according to the former laws i.e. based on proclamation no. 97/1998 which entitles them to recover loans without the need of securing any court execution order and with no need of lease transfer payments.

However, both the proclamation and the model regulation say nothing about all activities performed in relation to old possessions entered in to before the coming in to force of the proclamation. The absence of transitory provisions in this regard affects many individuals and

[263] Id., article 37(2).

institutions. For instance, it makes the recovery of former loans granted to old possessors without restriction according to the former laws difficult and this affects banks. Thus the transitional period given in the case of lease holding as mentioned above should have also applied in the case of old possessions collateralized before the enactment of this new lease holding proclamation. That means such banks should have also been entitled to sell old possessions used as collaterals before the coming in to force of the same law at least for the period provided above according to the former rules i.e. out of the lease system. Moreover, there are no transitory provisions both under the proclamation and the model regulation that entertain contract of sale of old possessions concluded before the coming in to force of this law but the process for transfer of title was not started.

But unlike the proclamation and the model regulation, the Addis Ababa City administration regulation no. 49/2012 under article 7(7) provides a one year opportunity for all lawful contracts regarding old possessions entered in to before the coming in to force of the lease proclamation to be regulated according to the former laws. For instance, according to this regulation, contracts of sale of old possessions concluded before the coming in to force of the new lease proclamation but the process for transfer of title was not started if signed and deposited before the relevant government institution are to be entertained based on the previous law. Thus this regulation has solved some problems in this regard even if we do not know what the other regions will do as it is not guaranteed by the proclamation itself. However, to avoid possible differences, it would have been better if the proclamation has incorporated transitory provisions allowing such contracts regarding old possessions to be entertained according to the previous laws.

Moreover, both the proclamation and the model regulation do not incorporate clear provisions as to whether the new advantages brought by the new lease holding proclamation can benefit lease holders who obtained land as per the previous lease holding proclamation. For example, regarding period of lease, the new lease holding proclamation adds a 10 years period for industries and trade more than what was provided under the former proclamation. Then, are the former leaseholders going to be beneficiaries of this 10 years period? This is not made clear both under the new lease holding proclamation and the model regulation. But the new lease holding proclamation should have expressly allowed this advantage for the former lease holders. Of

course one may say that such former lease holders should pay an additional lease price for the 10 years added. Actually, those who want to make use of the 10 years extension period should pay the lease price of the land for the additional period.

Therefore, as the new lease holding proclamation does not have clear provisions in this regard, amending it in order to make it free of different interpretations is necessary. In doing so, amending it in favor of the contracting parties before its coming in to force is better and customary in law making. For instance, enabling the above mentioned contracting parties to benefit if the new proclamation better benefits them and letting them gain all the benefits of the previous proclamation is advisable.

Chapter three

The implications of the proclamation on the Ethiopian Economy

Land is a critical natural resource and factor of production, thus the way by which land is controlled and used affects patterns and processes of economic and social development. For this reason, the new urban land lease holding proclamation can have its own political, social and economic implications, but under this chapter we will only deal with its implications on the Ethiopian economy. The implications on the economy can be positive or negative. They can also be visible in the long run or within a short period of time. Most parts of this chapter are the results of qualitative interviews and focus group discussions conducted in Addis Ababa with purposively selected bodies that are directly or indirectly concerned with the issue at hand.

Thus, opinions collected from old possessors, lease holders, people who are not yet land holders, brokers who are engaged in facilitating the sale of houses, members of political organizations, people working at document authentication and registration office, banks, the municipality and legal professionals are used to assess the implications of the new urban land lease holding proclamation. It should be remembered that most people who participated in the focus group discussions and interviews opted to remain anonymous. In the following subsections we will see what the above mentioned people will say about the issue at hand.

3.1. The opposition

On Sunday 3 November 2004 E.C., the Ethiopian Democratic Party issued a statement opposing the adoption of the new urban land lease holding proclamation on the ground that it violates individuals' property rights.[264] It was stated that the proclamation restricts citizens' right to produce, expand and improve immovable properties on the land and transfer the same from generation to generation. Under the title "the problems in the use and administration of land cannot be solved through the attitude and way of doing which created it", the party mentioned that the new lease proclamation does not take in to account the main reasons for the confusions

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[264] See በጋዜጣው ሪፖርተር፣ "ኢዴፓ አዲሱ የሊዝ አዋጅ የዜጎችን ባለመብትነት ይጋፋል አለ፡፡" ¶±RtR፣ ኅዳር 3 ቀን 2004 የእሑድ እትም ቅፅ 17 ቁጥር 9 ցጽ 5፡፡ (Translation by the author).

in land administration. The party believes that the complex problems surrounding land administration emanate from unnecessary connections between officials in the system and some individuals who controlled land transfer and the government should have solved this problem rather than eroding the property rights of honest citizens. Finally it was stated that this law by putting land under the sole control of the government contradicts with the principles of free market and healthy property development.

Similarly, immediately after the adoption of the same proclamation the Ethiopian Federal Democratic Unity Front which insists that urban residents should at least own urban land for residential purposes issued a statement opposing the enactment of the same.[265] This party stated that this law makes all urban land under the lease system thereby making urban residents tenants of the government. It is added that this law by putting land under the sole control of the government and imposing various restrictions on land transfer negatively affects the property rights of urban residents and makes them economically weak.

The fact that the new urban land lease holding proclamation is made applicable to all regions is also opposed by this political party based on the idea that taking in to account the federal nature of the central government the proclamation should have entitled the regions to decide by themselves depending on their own respective conditions.

Of course, in response to this, Desalegin Mengiste, a public prosecutor and chair man of the drafters of the new lease holding proclamation has mentioned that under articles 51(5) and 55 (2/a) of the FDRE constitution the power to enact laws regarding land and natural resources is exclusively given to the federal government.[266] He added that the lease proclamation has given the regions the power to prepare their own regulations and directives based on their own special socio-economic conditions. But what he cited as an example is the possible difference in the size of the land that can be allocated in the different regions for the same purpose.

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[265] See Yemane, cited above at note 238.

[266] See ደሣለኝ መንግሥቴ፣ "በሊዝ አዋጁ ላይ የሚነሳው ተቃውሞ ምክንያታዊና በእውቀት ላይ የተመሠረተ ይሁን፡፡" ¶±RtR፣ ታኅሣሥ 1ቀን 2004 የእሑድ እትም ቅፅ 17 ቁጥር 13 gጽ 39፡፡ (Translation by the author).

As per article 52(2d) of the FDRE constitution, regional states have the power to administer land and other natural resources in accordance with Federal laws. Thus, in the writer's view this lease holding proclamation should have at least incorporated a provision allowing regions to permit urban land for residential purposes without violating the principle of the constitution which provides that land is owned by the state and the peoples of Ethiopia and depending on their own prevailing conditions. In so doing, as there is no shortage of urban land in most of the regions, such regions could at least allocate urban residents plots of land for residential purposes by the permit system or at least at a bench mark lease price and minimized the problems created by the auction system which allows the monopolization of urban land by few rich investors. However, as per the new urban land lease holding proclamation, with the exception of the five years grace period provided under article 5(4), even the small towns with in the country are expected to apply the proclamation.

A writer by the name Deneke Tsegaye in the Reporter Newspaper raised issues such as; why does the lease proclamation become an issue of discussion everywhere and by every one? Does it consider the capacity to pay of the majority of citizens? He stated that the law is against individuals' right to basic need of shelter and the free market economy.[267] That is why everyone is expressing his/her discontent against the law. All in all the law mainly focuses in collecting a good amount of money but does not take in to account the capacity of most of the Ethiopian people and is unfair.

The ideas incorporated in the statement of opposition issued by the Ethiopian Federal Democratic Party as mentioned above are indirectly reflected in the following paragraphs.

On 30 November 2012, the writer interviewed Ato Gebru Asrat a former president of the Tigray Regional State who is currently a member of an opposition party.[268] He said that the law by subjecting all urban land to lease hold, which does not take in to account the capacity of most of the Ethiopian people, violates not only the constitution but also the international agreements which form part of the FDRE constitution as per article 9(4) of the same. He cited article 2 of the

[267] See ደነቀ ፀጋዬ አባይሬ፣ "የሊዝ አዋጁ አሁንም ሊታሰብበት ይገባል፡፡" ¶±RtR፣ ታኅሣሥ 8 ቀን 2004 የእሑድ እትም ቅፅ 17 ቁጥር 13 ցጽ 46፡፡ (Translation by the author).
[268] Interview with Ato Gebru Asrat, Msc. in economics and Vice chair man and in charge of foreign affairs of Ethiopian Federal Democratic Unity Front on 30 October 2012.

ICESCR and article 25 of ICCPR which respectively state that “in no case may a people be deprived of its own means of subsistence” and “nothing in the present covenant shall be interpreted as impairing the inherent rights of all people to enjoy and utilize fully and freely their natural wealth and resources.” He said that land is a natural resource and the people have the right to use the land as a means of subsistence, but contrary to these provisions this right is subjected to mandatory lease payment under the current law without taking in to consideration the economic capacity of more than 80% of the Ethiopian urban residents.

Moreover, he stated that the procedure of ratification of the proclamation also violates article 8 of the FDRE constitution which states that “the sovereignty of the Nations, Nationalities and Peoples of Ethiopia shall be expressed through their representatives elected in accordance with this Constitution and through their direct democratic participation.” However, according to him, in this case the people were not consulted directly and neither its representatives were provided with enough time to discuss on the issue. He said, the law was not investigated by the standing committee of the parliament charged with the same responsibility and thus it was crafted behind closed doors and this violates article 12(1) of the FDRE constitution which provides that the conduct of the affairs of the government shall be transparent.

He added that the proclamation also violates the right to private property of individuals under article 40 of the constitution as it treats the land and the buildings separately which is in fact unfair as a house cannot be built on the space.[269] He says the issue of urban land lease holding is not incorporated under the constitution and as the constitution entitles peasants and pastoralists to use rural land for free what we can infer from this is that urban residents, as joint owners of land, can also use urban land for free at least for residential purposes. He said that as the government has many other alternative sources of income it should not necessarily depend on land lease for all purposes.

He also remembers that this law was opposed by almost all urban people including members of the ruling party. For him unlike the imperial regime where the majority of the societies were tenants of land lords the current law makes the people tenants of the government and he says that

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[269] ibid

this is designed by the government to make the urban population economically and politically dependent on it, because if one is economically weak, s/he will also be politically weak. He believes that the Derg regime which allowed for an urban resident to own 500 square meters of land for residential purpose and if necessary another single business house better protected the rights of urban residents on land than the current regime.

He says land transaction especially that of old possession has almost been stopped. Many diasporas who formerly took land by lease are also surprised by the new changes about their holdings and are in doubt because they couldn't transfer their possessions as they formerly planned and they do not know what kind of law will come next to this. He also added that many people who formed housing cooperative associations having deposited their money for many years are made to dissolve on account of the fact that land cannot be obtained other than lease holding. As a result neither they obtain the land nor could they use their money for economic purposes because their money was deposited in a closed bank account for the last eight or nine years.

Some of Ato Gebru's ideas are also reflected in Ato Daniel's writings in which he stated that "the FDRE Constitution as well as other Federal and Regional Land Proclamations ensure free access to agricultural land. The amount of land to be provided to peasant farmers, as far as possible, is made equal. This way, the policy objective is to ensure equality of citizens in using the land. The ***weakness of this policy objective*** is that first, it does not address the urban land; article 40 of the FDRE Constitution that deals with property talks only about rural land."[270] Concerning urban land, the Constitution said nothing about the acquisition and transfer of land by urban dwellers. Nevertheless, some interpret article 40(6) that deals with right of investors to get land, as one that includes urban dwellers as well. Article 40(6) of the constitution envisages that private investors may get land on the basis of payment arrangement. In other words, unlike peasants and pastoralists, investors must pay a reasonable fee for the land they get from the state. However, an investor is a person who uses land for business activities and his main objective is to reap profit. So, it is obvious that urban dwellers cannot be categorized as investors.

[270] See Daniel, cited above at note 180. By the way, I do not have any idea about the political position of Ato Dniel and thus it is only to supplement what Ato Gebru says with the scholarly writings of the afore mentioned lecturer of Bahir Dar University that I cited his material.

Moreover, the lease system was introduced in Ethiopia for the first time as a sole means of urban landholding when Urban Lands Lease Holding Proclamation No. 80/1993 was adopted. Since the lease system was enacted before the adoption of the constitution, and since the constitution does not say anything about urban land, it can be argued that this proclamation and the subsequent lease proclamations for that matter lack constitutional base.[271]

According to article 40 (3) of the FDRE Constitution the right to ownership of rural and urban land, as well as of all natural resources, is exclusively vested in the State and in the peoples of Ethiopia. Land is a common property of the Nations, Nationalities and Peoples of Ethiopia and shall not be subject to sale or to other means of exchange.[272]

Hence, this arrangement creates a joint ownership of land between the people and the state. The people have wider rights than simple use or lease rights. Comparing the urban land holding rights with their rural counterpart one may appreciate how the constitutional right of "equal right of the people to the land" have been adequately reflected in the rural land laws.[273]

The current Rural Land laws provide peasants and pastoralists lifetime rights for free. Such rights include the rights of use, lease/rent, donation, inheritance and so on except sale and mortgage. Further, it gives reasonable compensation for the expropriation of rural land and property thereon. Farmers have rights similar to private ownership except sale.

However, in urban areas, especially under the current lease law, residents are denied of any right which reflects their ownership right. The current law allows urban land to be held only on lease basis for defined period and upon payment of lease price. Residents are forced to pay lease price for a plot of land whether that is for residence or business. They become, in effect, tenants while the government takes the ownership right with all its benefits.[274] Even if the government believes that land should be under the ownership of the people and the state for the purpose of social justice and tenure security, this proclamation by making the allocation of urban land only

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[271] Ibid.
[272] See Daniel, cited above at note 155.
[273] Ibid.
[274] Id.

through auction violates the principles of fair allocation of land and the peoples' joint ownership of the same.[275] In this regard unlike what is provided under article 40(3) of the FDRE constitution, the government has exceeded its power of agency for administration of land provided for it under article 89(5) of the constitution.[276] But the constitution grants urban people ownership right and hence justice demands that residents must, at least, get residential plot for free like what used to happen in the past. Of course, those who want to have more plots whether for business or pleasure must pay lease price. In this way it is possible to ensure their constitutional right to land.[277]

3.2. Old possessors

Interviewees who are old possessors complain that the government is intending to take their 'rist' and restricted them from freely transferring their possessions for a fair amount of money contrary to the long lasting custom of the Ethiopian people. Due to this they stopped selling and mortgaging their house. It was also added that due to this, even the government has lost a huge amount of money that could have been obtained from the transfer of such possessions. It was stated that the reason why people construct houses is to use them up to the end of their life and transfer the same to their children and grand children. It was also mentioned that the motive of old possessors to improve their old possession has been weakened as a result of the restrictions imposed by the law on the same. Many old possessors are also afraid that their land on which they are subsisting by further renting may be taken under the cover of public interest or urban renewal.

Many old possessors told the writer that before the coming in to force of this proclamation, even if they have no capacity to build big buildings on their land, they could either wait until they acquire the capacity to erect big buildings or they could sell it for a good amount of money which can solve their basic economic problems. But now they complain that they can't get the value of the land which they kept for generations from the time when such land had no significant value up to now when the land is very much valuable. Many old possessors stated that

[275] See ዳንኤል ወልደ ገብርኤል፣ "የሊዝ አዋጁ ሕገ መንግሥታዊነት ግብረ መልስ"፣ ¶±RtR፣ ኅዳር 24 ቀን 2004 የእሑድ እትም ቅፅ 17 ቁጥር 12 gጽ 35 ፡፡ (Translation by the author).
[276] Ibid.
[277] Ibid.

they reserved these possessions up to now while many others have sold and spent the income derived from the sale of similar possessions on whatever they like.

The interviewees further noted that even the Derg was providing 500 square meters of land for residential purposes and an additional land for business purposes. As per the interviewees, even if it is stated under the FDRE constitution that land is owned by the state and the peoples of Ethiopia, it was sold through an internal agreement between the seller and the buyer and sellers were getting the value of the land through sale up to the coming in to force of this proclamation. This is what is currently taken away by the government. It was also stated that this proclamation narrows the opportunity of urban land holders to get bank loans.

It was stated that generally old possessors bitterly oppose the lease proclamation taking in to account the following four consequences: 1) because of the restriction imposed by the law old possessors couldn't sale their possessions for a good price, because buyers are subjected to two payments when buying old possessions. As a result if they can't sell their possession for a good price, they can't solve their economic problems. 2) Old possessors cannot currently obtain a good amount of loan by mortgaging their old possession because location value will not be taken in to consideration and banks are not sure how much lease will a buyer pay in case the debtor defaults. 3) After the completion of the study by the MoUDC, the council of ministers may approve the study and decide for the conversion of old possession to lease holding. As a result, such possessors might be subjected to payment of lease price which might be beyond their capacity. 4) If the Council of Ministers decide for old possessions to remain as they are, as the increase in the existing rental rate is one possible alternative put under the proclamation, if the rental rate is increased without taking the capacity to pay of an average old possessor, old possessors will be subjected to either the sale of their possession at a discount price or they will be entering in to a huge debt.

An old possessor who wanted to remain anonymous believes that this law is poisonous for development. She said that economic development is unthinkable without fair access to land which is one of the factors of production and it goes without saying that the land policy is a prerequisite for enhancing economic growth in Ethiopia and anywhere and this is what is said by

international forums. She finally said that this proclamation has brought a serious constraint on the economic growth of the country. She also mentioned land along with labour, capital, and management as one of the basic factors of production which must be purchased like other capital goods. She stated that state ownership and control of land in Ethiopia has significantly contributed to the lack of easy access to land, its lack of marketability and unreasonably high cost.

From the discussion with old possessors, I understood that their problem is not only about the lease hold system. Many say that they become tenants of the government. But many years have passed since land fall under the ownership of the state and the people. However it is now that people are internalizing this issue, when they heard about the restrictions imposed by the law during transfer of a right over land holding and the fact that the government is undertaking a study as to the modality of converting old possessions to lease hold. It was stated that the reason why old possessors remained silent up to now is that their right was freely transferable and the rent paid before for the land they possessed was also negligible. But when they heard that this land may be converted to lease hold in the near future, they started to think that the money that will be paid for the government in the form of lease would discourage buyers and the fact that the location value which is currently diverted to the government treasury decreases the income which could have been earned by the land holder during transfer.

Of course some of them have disclosed that they, from the beginning disagree with the land policy of the government even if their voice was not heard. Still many old possessors persist that they will never ever agree with the urban land lease hold policy of this government. Even some of the interviewees said that as there is a widespread public opposition against this law, which was expressed at the different discussions made by the government following the adoption of this proclamation, they hope that the government will amend this law.

However, two interviewees said that if the government persists in converting old possessions to lease holding, it should leave some square meters of land as before for old possessors and convert the remaining as there are people who occupied thousands of square meters of land.

An old possessor by the name Mesfin Teferi Tsegaw on his part expressed that the new lease holding proclamation has killed his idea of selling his old possession found in the central part of Addis Ababa at market price and buying another one at lower price at the out skirts of the city to help his family economically.[278] According to him, the Derg regime nationalized two of his former possessions in Addis Ababa and left him one in which he is currently living with his family. He added that the new law puts his tenure security at stake and violates his constitutional right to freely transfer his possessions attached with the land to his off springs. He believes that during transfer old possessors should also get the value of the land on which their property is found because it is those possessors who made such land valuable after their big and long time effort.[279] He asked, "how can a government that declares itself to be working for development and improvement of the life of the people enact this kind of law? Should this kind of law be enacted without prior public consultation? How can selling or renting out ones possession be qualified as rent seeking?" He added that this law violates the right of citizens to freely produce private property and is eroding the trust that the people have to words the government. Finally he proposes that if the government insists on its stand to have a uniform urban land administration, it is better to make old possessors sign a lease contract for the given period of lease without making any lease payment. In this regard this old possessor seems to be more concerned about the lease payments that might be imposed on old possessors during the conversion of old possessions to lease hold.

3.3. Lease holders

Thanks to people whom I met at the Addis Ababa City Administration municipality, I also made a focus group discussion with four lease holders, one of whom was ordered that his unfinished construction will be sold because of his failure to complete it as per the lease contract.

As I understood from the discussions with such lease holders, they are unhappy by the restrictions imposed on them by the new lease holding proclamation on transfer of their lease

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[278] See መስፍን ተፈሪ ፀጋው፣ "ለጠቅላይ ሚኒስትሩ የተላከው የአዛውንቱ አቤቱታ"፣ ¶±RtR፣ ኅዳር 17 ቀን 2004 የእሑድ እትም ቅፅ 17 ቁጥር 11gጽ 31፡፡(Translation by the author).

[279] See መስፍን ተፈሪ ፀጋው፣ "በፍትሐዊ የመሬት አጠቃቀም ሽፋን ሕገ መንግሥታዊ መብት እንዳይጣስ፡፡" ¶±RtR፣ ታኅሣሥ 15 ቀን 2004 የእሑድ እትም ቅፅ 17 ቁጥር 14 hgጽ 40-41፡፡ (Translation by the author).

holdings and the serious measures that are to be taken in the case of failure to commence and complete constructions us per the lease agreement. They were complaining about the lease payments to be due to the government and the penalties during the sale of below half completed constructions and the deductions in case they mortgage their lease right before the commencement of construction.

They are totally disappointed by the measures following failure to commence and complete construction provided under the proclamation. According to members of the group, the fact that the proclamation provides that if construction is not commenced or completed as per the agreement, the appropriate body will either sale or demolish the building has created a big uncertainty and discourages construction, because such measure of the government bring about a big economic loss for them and they said that the time given under the proclamation for such purpose does not take the capacity of most of the Ethiopian people.

They suggested that if people cannot mortgage their lease rights at any event and with no restriction many people will fail to construct on due time and the consequences for failure to commence and complete construction will necessarily cause significant economic loss on the lease holders and the country. It was stated that the restrictions imposed by the law on obtaining bank loans by securing lease hold right on which construction is not begun causes lack of sufficient money to facilitate construction which at the end brings about the failure to complete construction the result of which is a big loss for the lease holder.

It was also mentioned that the new proclamation seriously restricts the chances of mortgaging lease right to obtain loan as a result of the fact that the location value of the land will not be considered in obtaining bank loans. They were even complaining that currently unless the land administration allows through a written letter to the bank, such lease holders cannot mortgage unfinished constructions. This is not of course incorporated under the lease proclamation, but practically the lease holders are facing such bureaucratic procedures.

The members of the group also stated that this proclamation reduces the chances of transfer of lease holdings and the benefits that could be derived in the event of transfer of one's lease rights,

because as the government claims the increase in the lease price of the land in the case of below half completed constructions buyers are discouraged by this act of the government. They stated that the previous proclamation allowed transfer of lease hold without any restriction before and after the commencement and completion of construction and suggested that if a lease holder can not undertake the required construction as per the plan for various reasons, transferring such lease holding to those who can develop it in a better way does not have an economic problem. But the government wants to obtain lease payments every time the lease hold is transferred which is unfair, they said. Of course the government alleges that if the lease price of the land increases on the event of transfer, it is not the lease holders who should derive such benefits, it is the owners, i.e., the state and the people and it is for this purpose that the new lease proclamation is enacted.

Moreover, the members of the group are unhappy with the fact that in the event of non renewal compensation will never be paid to the lessee whatever the value of the building which exists on the land. It is of course provided that the lessee can take his properties on the land, but one may not carry a building and put it somewhere else. This in turn brings loss on lease holders. Lessees will then neglect the maintenance of leasehold improvements when the lease term is approaching its expiration, they said.

However, I came across a certain lease holder who is not included in the focus group discussion, who argues that the lease payments made to the government during transfer of both old and lease hold do not exceed the payment that was effected for brokers in the event of purchase of houses before the coming in to force of this proclamation. Of course, when I asked him whether he himself has experienced such payments his response was that he did not pay anything as he obtained land through lease before five years.

Finally the members of the focus group stated that these all restrictions on the property rights of individuals will for sure discourage economic growth of the country and politically strengthen oppositions against the government.

3.4. Brokers

I have also conducted a focus group discussion with three brokers who are engaged in facilitating the sale of houses and cars at Piassa, as to what the sale of houses currently look like. Of course one of the brokers did not want to disclose his name. They said, the fact that old possessions are said to be converted to lease hold during sale has created a big problem not only on old possessors and buyers of old possessions but also on brokers who used to derive a good amount of income from the sale of such possessions.[280] It was mentioned that buyers are disappointed by the additional lease payments imposed by the law the amount of which is not known during initial sales negotiations. In the same fashion, sellers are not comfortable with this law because the buyers are offering lower prices than what was paid before the coming in to force of this law taking in to account the fact that they will pay land lease to the government.

The members of the group said that the proclamation has brought all problems which also seriously affected them. As per the members of the group, buyers currently pay: 1) the price of the house to sellers, 2) lease and sells tax to the government and 3) brokers' commission as a result of which buyers' motivation has greatly decreased. It was said that discouraged by this law, buyers are not currently willing to buy old possessions and even lease holdings. Consequently, it was mentioned that many buyers are spending their money out of the intended purpose as they couldn't purchase houses freely as before.

The members of the group also stated that sellers are also greatly affected by this proclamation as they couldn't solve their problems by selling their houses because there are no buyers who offer the intended price. For them if there are no buyers, selling becomes a dream.

They also added that the decrease in the sale of houses is even a loss to the government, because, the income that would have been acquired from the sale (transfer of title) has greatly decreased in the case of lease hold and almost stopped in the case of old possessions. For them, if sale transaction of houses decreases, brokers, the government, sellers as well as buyers will be negatively affected.

[280] Ato Baye Shewamene and Ato Kidane Desta, brokers engaged in facilitating the sale of houses and cars, at Piassa, on 24 November 2012.

Generally *Brokers* who claim themselves to be the bridge between the sellers and the buyers are also affected by this law, because, the decrease in the sale of such properties has brought a decrease in their income. They say that especially the sale of old possessions has decreased by 70-80% in contrast to the sale transaction which existed before the adoption of this proclamation.

3.5. DARO

I also asked people working at the Documents Authentication and Registration Office as to what the transaction relating to the transfer of title on a house in general and that of old possessions in particular looks like currently. The responses are presented as follows.

It was mentioned that before the enactment of the new lease holding proclamation the transaction was high. But immediately after the coming in to force of this law transfer of old possessions almost stopped. "Before I was handling more than ten transfer cases per day for old possession, but now it rarely comes," an interviewee at the Sidist Kilo branch said.[281] Still in contrast to the transaction before, the process of transfer of title for old possessions has decreased by 60-70% at the Sidist Kilo[282] branch and 70-80% at the Megenagna[283] branch of the DARO. It is said that the transaction for old possessions is almost none, except for some who want to buy at any cost and those who are buying are murmuring about the payments to the government. Moreover, the transfer of title for lease holding is said to have decreased by 30-40% at Megenagna branch and 20-30% at the Sidist Kilo branch.[284] Thus the decrease in the transaction is not only on old possessions but also with lease hold. It was also said that even the sale of real estate has decreased. The interviewees say that many people are confused as well as afraid of the additional payments to the government. Most buyers do not know whether the lease payment to be made to the government is based on the bid price or the bench mark lease price. Of course, officials at the Addis Ababa municipality state that the lease price paid in the case of transfer of old possessions is the bench mark lease price of the area. Is it easy? The same interviewee disclosed that the

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[281] Interview with Ato Bahru Chendo, special document authenticator at DARO Sidist kilo branch or Branch 4, on 26 November 2012.

[282] Ibid.

[283] Interview with Ato Selomon Mered, special document authenticator at DARO Megenagna branch or branch 3, on 26 November 2012.

[284] Ibid.

bench mark lease price at Bolle is currently 940 Ethiopian Birr per square meter and of course this is better than the bid price.[285]

The interviewees at the above mentioned two branches of the DARO think that the government has also lost a significant amount of income that would have been derived out of the transfer payments.

3.6. Employees of banks

The role of banks in the economy is very decisive in terms of facilitating and providing loans. Banks play a big role in providing loans for investment. The existence and reliability of collaterals is basic in this regard. For this reason, the writer of this paper has conducted an interview with workers both at government and private banks about the possible implications of the new lease holding proclamation on banking services. Here are the results of the interview.

It was mentioned that the new lease holding proclamation has imposed a big restriction on real property transaction. The interviewee mentioned many cases where the interest of banks can be affected by the lease proclamation.[286] Regarding old possessions, she stated that banks have previously extended loans considering both the value of the construction and location of collaterals, but under the new proclamation the fact that location value is not considered in the sale of old possessions affects banks' interest in the sale of previously collateralized old possessions. She also added, the fact that transfer of old possessions other than through inheritance is made through the lease system decreases the motive and number of buyers of collaterals. She stated that as buyers will be expected to pay the value of the construction, lease price and value added tax in case where the possession is used for business purposes; this impedes the bank's sale of collaterals. Moreover, she indicated that even if banks are entitled to transfer the title of collaterals to their own names in case where buyers are not available, the fact that the new lease proclamation obliges banks to pay lease to transfer such collaterals subjects the banks to additional expenses.

[285] Interview with Ato Seife Gizaw, legal and information officer at the Addis Ababa city administration municipality, on 27 November 2012.

[286] Interview with W/ro Tewedaj Jemal, legal advisor at CBB, on 23 November 2012.

Concerning lease holdings, she explained the fact that banks cannot by themselves sale collaterals of lease rights on bare land and below half completed constructions and are expected to secure court execution order to recover their loans extended before the commencement of construction in case the debtor defaults affects banks' process of speedy recovery of loans. She mentioned that unlike this, proclamation no.97/1998 allowed banks to sale any collateral without the need of a court execution order. In this case as the appropriate body is entitled to first deduct the remaining lease payments priority is given to the appropriate body, this takes away the priority right of banks over their collaterals and makes the full recovery of loans insecure, she said. She also stated that even in the case of sale of lease holdings on which construction is above half completed banks will be expected to pay the unpaid lease payments before transfer of title on the collaterals. The fact that lease holdings can be sold by the appropriate body when there are accumulated arrears for three years indicates that collaterals can be sold by the appropriate body before the due date of the debt and without the knowledge of banks, she added. It was also stated that the law in this regard does not state the methods by which banks as creditors will be informed about the sale of such construction and how their interest is to be kept. That means banks should either check which debtors have paid their yearly lease payments and which have not or they may loss the payments. Thus it imposes an additional duty to follow up such lease payments on banks.

She finally said that the restrictions imposed on collateralizing of leasehold right and old possessions also indirectly affect the revenue of the banks. Thus if the banks, on account of the restrictions imposed by this proclamation, reduce the amount of loan extended to customers, their revenue from loans decreases.[287]

It was also stated that the proclamation has created a big obstacle on the credit system. As a result, the association of banks is undertaking its own study about the implications of this proclamation on banking service. But the result is not yet disclosed. Moreover, the association of banks is negotiating with the MoUDC to design ways by which this proclamation does not hamper banking services.[288]

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[287] Ibid.
[288] Interview with Ato Tsegaye Gedeon, legal advisor at CBB , on 23 November 2012.

On the other hand, an engineer at the CBB, stated that during valuation of a collateral, the bank checks whether lease is paid and if there remains some, the remaining lease payment will be deducted out of the total loan that would have been offered had such lease been paid. According to him, from the very beginning, the bank calculates the location value which he said it is currently insignificant, the value of the construction there, the highest lease price of the land and grants loan.[289] As per this interviewee it is only the land holders who will be offered a small amount of loan that will be negatively affected by this proclamation. He seems to be confident that the bank will from the beginning take in to account all possible payments that will be due to the government. Of course it is guessing and he does not know what the transfer lease price of the land on which the collateral is located will be in case the debtor defaults in paying the debt. Of course, he identified a problem in respect of the land holders i.e., land holders will not be provided with a good amount of loan due to the fact that the buyers will pay lease during transfer of title and the location value is claimed by the government.

An interviewee at Abyssinia bank Sidist Killo branch also said that the bank does not currently consider location vale for old possessions, because they do not know how much will be paid for lease in case the debtor defaults and even for lease holding, due to the changes made by the new lease holding proclamation. According to him it is only a small amount of the location value that will be considered for lease holdings.

Regarding loans for construction, he said that the bank releases loan payments in phases and at the beginning, the debtor is expected to commence construction, i.e., a certain percent of the phase (30% or 40%) of the construction should be accomplished so that a loan can be secured, otherwise the bank does not collateralize a bare land, because land belongs to the state and it cannot be sold or exchanged and even if it may be transferred through lease, the lease payments will go to the government.[290]

[289] Interview with Ato Tilahun Mengste, collateral valuator at CBB, on 23 November 2012.
[290] Interview with Ato Nurhussien Said, Abysinia bank sidist kilo branch manager, on 23 November 2012.

Of course, he said that the lease proclamation has created a big problem on the sale of houses, especially at the time when the new lease proclamation was declared. The society was biased as a result of which sale of houses both lease hold and old possession was almost stopped, he said. According to him, it was not known whether the sale will be conducted at lease bench mark price or auction price. People are still doubtful whether they can get loan after buying a house.

In this case I understood that a problem is created on land holders, because they can't obtain loans by collateralizing a house as before. This hampers construction activities.

Another interviewee from the commercial bank of Ethiopia, says that the bank has almost stopped extending loans having collateralized houses be it lease hold or old possession formerly due to the inflation which is prevalent in the country and of course latter an additional problem is added by the new urban land lease holding proclamation.[291] According to this interviewee, it is almost only for import and export activities which are highly reliable and of special significance that loan is currently allowed.

3.7. Non land holders

Even people who are out of lease holders and old possessors told the writer that they were waiting to obtain land for free at least for residential purposes. Those who have the capacity to buy a house or pay for lease on the other hand, complain that this law exposed them to additional unexpected expenses, because they are expected to pay lease for the land which could have been obtained for free under the permit system.

Many also become hopeless that they will never possess land now on words, because the competition is very stiff and the price offered is unaffordable for them. The problem is said to be aggravated by the bid system, it was disclosed that many low and medium income people do not have any hope of obtaining land having computed with the rich investors and it was stated that urban land will fall on the hands of few rich individuals in the near future. Many of them

[291] Interview with Ato Aklilu Abrha, an accountant at the central credit department of the commercial bank of Ethiopia, Addis Ababa, on 27 November 2012.

complain that this new proclamation does not take in to account the capacity of more than 80% of the urban society.

Finally most interviewees proposed that the proclamation should be amended in a way that it allows the provision of land through the permit system at least for residential purpose. They also added that the government should have strengthened the housing cooperative associations as before.

From the discussions and interviews I conducted with people who are not yet land holders, I understood that everyone, even the extremely poor persons, want land. This may be due to the hope that everyone thinks to be rich in the future or it may be for various purposes such as for residential purposes, for business or for sale.

Generally, from the interviews and focus group discussions, I understood that the lease holding proclamation is not only opposed by old possessors and lease holders but also by people who are not urban land holders. Then this dictates us to ask why do people do so? Is it due to the fact that the law does not benefit most people or is it due to lack of awareness about it?

3.8. The construction industry

I also discussed with a contractor who is currently engaged in construction activity in Addis Ababa as to the implications of this new lease holding proclamation on the construction industry. According to him, the time limit given for the commencement and completion of construction is not enough and as this is accompanied by serious measures in case of non compliance, it will cause a big negative consequence on the construction industry as many unfinished constructions will either be demolished or sold by the appropriate body for unreasonable price. He finally proposes that the provisions of the proclamation dealing with commencement and completion of construction and the measures following them should be revisited taking in to account the capacity of the Ethiopian people and the possible wastage that can be caused by the existing law.[292]

[292] Interview with Ato Gebreselasie Gebremariam, a contractor working in Addis Ababa, on 30 November 2012.

3.9. The government

The government on the other hand states that those who opposed the new urban land lease holding proclamation are the rent seekers and others who are misled by them. This stand of the government was expressed through the media, in the different discussions held between government officials and the people following the adoption of the new lease holding proclamation and in ‘Addis Raey’ magazine.

Desalegin Mengiste, a public prosecutor and chair person of the drafters of the new lease holding proclamation, stated that the government will never hesitate from implementing the lease proclamation because of the confusions created by rent seekers.[293] He also mentioned the fact that there is a system in which some citizens pay lease but some others do not, within a country is unfair. Moreover, he expressed that the new lease holding proclamation does not contradict with the constitution, but it protects the interest of the public.[294] He added that the FDRE constitution does not have a provision which entitles the allocation of urban land to urban residents for free. He tried to justify the importance of the lease system in deriving the required income for urban infrastructure and the right of the government to enact laws governing land and natural resources as provided under article 40(6) and 89(5) of the FDRE constitution. But the question that should be posed regarding this is that if the FDRE constitution prohibits the allocation of urban land to urban residents for free, on what ground were urban residents being allocated urban land through the permit system up to the coming in to force of this new lease holding proclamation? Was it based on the blessing of the government?

Similarly, on 8 February, 2012 in his half year report to the house of Peoples’ Representatives, the then Prime Minister Meles Zenawi was entertaining many questions regarding the new lease holding proclamation.[295] He stated that the proclamation may have many unclear provisions until the regulations and directives for the implementation of the same will be issued.

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[293] See ደሣለኝ መንግሥቴ፣ “ኪራይ ሰብሳቢዎች በሚያናፍሱት ወሬ የሊዝ አዋጁን ከማስፈጸም ወደኋላ አንልም።” ¶±RtR፣ ኅዳር 6 ቀን 2004 የረቡዕ እትም ቅፅ 17 ቁጥር 10 gጽ 27። (Translation by the author).

[294] See ደሣለኝ መንግሥቴ፣ "አዲሱ የሊዝ አዋጅ የሕዝብን ጥቅም ከማስከበር በቀር ሕገ መንግሥቱን አይፃረርም።" ¶±RtR፣ ኅዳር 17 ቀን 2004 የእሑድ እትም ቅፅ 17 ቁጥር 11 gጽ 27።(Translation by the author).

[295] The writer was personally watching ETV and took notes on 8 February, 2012 the 6 months report of Prime Minister Meles Zenawi to the house of Peoples’ Representatives (half year report).

In answering a question as to who is benefitted from and harmed by the new lease holding proclamation he said that the beneficiaries of this law are, generally the general public and the investors, where as the victims of this law are rent seekers and their accomplices who are some government employees. According to him rent seekers have lost one of their biggest sources of income and their dream in this regard became value less. The effort of those rent seekers who were disseminating incorrect information accompanied by lack of awareness on the part of the public was said to be the main cause for the confusion within the society.

Regarding the beneficiaries of this proclamation, he said, the first beneficiaries are the poor who are employed in the different construction activities and entitled to obtain condominium houses because they have no other opportunities for housing. The second beneficiaries are said to be investors who will obtain land having paid their money and create employment opportunities by investing their capital in the cities. In this regard he emphasized on the existence of shortage of urban land and the importance of investors to pay for development activities and create employment opportunities for the poor.

Concerning the questions regarding old possessions he stated that there is no provision in the proclamation which says old possessions will be forcefully taken away or converted to lease holding but what is provided in the proclamation is old possessions will be converted to lease during sale. He also added that the new thing is the income that was obtained by the abusive individuals (rent seekers) is to be due to the government. He also explained that there are baseless rumors which say that land holding which is more than 500 square meters is to be confiscated and said this problem is created by the rent seekers that he was calling them as thieves.

Similarly the stand of the government was expressed in 'Addis Raey'[296] published in February, 2012 and it was generally stated in this magazine that the proclamation is very much decisive for

[296] See Adis Raey, cited above at note 67, page 14-33, (translation by the author).

the successful implementation of the urban land policy[297] and the realization of the country's development direction and its hope of being developed.

After a very deep explanation of the contribution of the urban land policy in expanding the housing development, infrastructure i.e., both economic and social infrastructure, industrialization, social services to benefit urban residents at a speedy and minimum cost, the writers of the above stated magazine stepped to the contribution of the urban land policy and the current lease proclamation to urban residents. It was stated in the same Magazine that the urban land law plays two major roles in ensuring fairness within the cities.

Firstly, as urban centers develop the price of urban land increases. As a result the cost of building houses increases. Thus it is only the rich who will have the capacity to build their houses and the rich can also build big apartments for rent. However, even if some members of the society may have the opportunity to pay for rent, the poor ones who cannot pay for rent will either be subjected to street life or will build houses made of corrugated steel and cartons. But the fact that land is owned by the public has enabled to construct low cost condominium residential houses for low income urban residents to the extent possible. Side by side to this the task of urban renewal is undergoing in a good way. Thus unlike in other countries, in our cities not only the rich ones but also the poor is becoming the owner of residential houses and this is an indication of the fact that there is fair distribution of wealth with in the towns.[298]

Secondly, land is given for investors at fair market lease price for service sectors such as hotels, commercial centers, offices etc., which are not influenced by international competition, in a way that there is no unfair treatment among them. The payment received from such investors will be spent for compensation, subsidizing condominium houses expenses for the supply of land for industries and basic infrastructure. As the revenue from such investors increases the capacity of the government to pay for the supply of land for other development activities increases and this

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[297] See ስራና ከተማ ልማት ሚኒስቴር፣ የከተማ ልማት ፖሊሲ፣ነሐሴ 1998፣ በሚኒሲትሮች ምክር ቤት የጸደቀ፣አዲስ አበባ፣በንግድ ማተሚያ ድርጅት ታተመ፣፣

[298] See Adis Raey, cited above at note 67, p.18.

facilitates urban development and equitable distribution of wealth. In turn, when investors obtain land they benefit not only themselves but also more than 95% percent of the society.[299]

Of course, the existence of problems related with the implementation of the land policy was admitted in the same magazine and it was mentioned that good solutions such as designing cadastre system for modernizing the urban land administration i.e., it is indicated that in Addis Ababa, foreign professionals are employed to conduct this activity and they are doing it and they are expected to finish their task within a short time. Moreover, empowering the government officials who are engaged in urban land administration, removing those government officials engaged in urban land administration but who are found to be rent seekers and implementing the new urban land lease holding proclamation are said to be designed to solve such problems.

Thus the government believes that the new urban land lease holding proclamation brings not a problem but solutions to the former problems on the implementation of the urban land policy and the repealed lease proclamation.

However, why do people oppose if the proclamation brings a solution to existing problems? The government stated that lack of awareness on the part of the society about the general spirit and contents of the proclamation which is created by the failure of the government to create the required awareness continuously and in advance is one reason. Moreover, the government alleges that, using this gap rent seekers whose dream has been made meaningless by the new proclamation have tried to create widespread confusions and make the people stand with them as this is a matter of life and death for them. Finally the government states that as the number of rent seekers is low and when there are no other alternatives, the rent seekers themselves will change their direction to developmental way of thinking.[300]

The same ideas were reflected from people whom I interviewed at the Addis Ababa City administration. One of the interviewees stated that before the coming in to force of this new lease holding proclamation, when a possession either lease hold or old possession was sold, the

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[299]Id., p.20.
[300] Ibid.

government got almost nothing because the value of the land which in fact belongs to the state was reaped by rent seekers, but now, the government wants to get all the payments made to the value of the land when any possession is transferred through all means other than inheritance. Therefore, the interviewee believes that this proclamation has found a system by which the government derives the required benefits from the transfer of urban land and funds for development projects. He also thinks that this is correct because people were deriving undue benefits from the transfer of the land which is in fact owned by the state and the society.[301] Is this fair? In fact it is said that the proclamation shifts rent seeking from individuals to the government because the government has planned to collect money from every transfer of land.[302]

There are of course some other individuals who support the decision of the government to collect the lease payments from the sale of old possessions. Mekasha Abera says that this is fair because the owner should derive the benefits from the land. Even if the government did not receive such advantages before, we should not let this problem continue.[303]

Moreover, a certain writer also states that the fact that urban land is permitted only through the lease system lets land users to realize the cost of urban land and make an efficient use of it.[304] Of course this seems to be mostly applicable to lease holdings taken for business purposes. But what about the fate of the land less ones?

Based on the above discussions all people who were deriving income from the transfer of the value of the land and all brokers who were facilitating the sale of the same are qualified by the government as rent seekers. Thus how many of the Ethiopian peoples are rent seekers? It is difficult to answer this.

Moreover, the government is of the opinion that the poor should not oppose the land policy, because they have no money to construct their own houses. But is one expected to remain poor throughout his age? However, unlike the belief on the part of the government and as I tried to

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[301] Interview with Ato Seife Gizaw, legal and information officer at the Addis Ababa city administration municipality, on 27 Nevember 2012.

[302] See Gebeyehu, cited above at note 49.
[303] See Mekasha, cited above at note 44, p.40.
[304] See Belachew, cited above at note 82.

show under the section of this paper dealing with '*Non land holders*', many poor people are expressing their discontent about the lease proclamation in particular and the land policy in general.

On top of this many people also suggest that the condominium houses that the government is claiming to have benefitted the poor are not accessible to the poor.[305] Thus who is right, the government or the others who criticize this idea? In the above discussions about what was expressed by the government in 'Addis Raey' magazine, it was mentioned by the government that while the rich can build an attractive residential house and apartments for rent, the poor cannot pay even for rent. If this is the case, how do the poor pay for low cost and condominium houses?

Moreover, questions were raised in the discussion between the House of Peoples Representatives Urban Development and Construction affairs standing committee and officials of the Ministry of Urban Development and Construction as to whether the proclamation can have a negative influence on the transaction of immovables, money circulation, employment opportunity and the revenue of the government. The response of the officials of the MoUDC indicates that the proclamation may have its own short run negative influences but such problems will be solved in the long run as the law ensures healthy transaction of properties attached with the land.[306] That means even if the Ministry is convinced that the proclamation has its own negative implications on the country's economy it focuses on the said long run effects.

3.10. Personal opinions of different individuals from the Reporter Newspaper

On 9 January, 2004 E.C., Ato Bisrat Teklu wrote his personal opinion about the possible economic implications of the proclamation. He stated that the law discourages banks from granting loans to old possessors because banks will not be sure about the lease price of the land on which the property is located and the fact that there will be buyers in case of default as such buyers are expected to pay lease in addition to the price of the construction found on the land.[307]

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[305] Cited above at note 264.
[306] Cited above at note 32, p.19.
[307] ብስራት ተክሉ ፣ "የሊዝ አዋጁና ኅብረተሰባዊ የኢኮኖሚ ማነቆዎቹ" ¶±RtR፣ ጥር 9 ቀን 2004 የረቡዕ እትም ቅፅ 17 ቁጥር 17 gጽ 25 XÂ 35፡፡ (Translation by the author).

He added, the fact that the size of the possession may be decreased based on the approved national standard as provided under article 6 of the proclamation will also be another discouraging factor for banks who collateralize old possessions, because the availability of auctioneers for such collateral will also be determined by the size of the land and in effect this decreases the amount of loans that a bank grants to customers which indirectly decreases the income of banks from the same. Consequently the fact that individuals' opportunity of getting bank loan is restricted discourages investment.[308]

Regarding lease hold, he stated that in addition to the short run restrictions on selling and collateralizing of lease hold right on bare land and below half completed constructions, the law has long run negative implications.[309] He explained that whenever the contract of lease comes to an end no one will be able to sale his /her immovable property because buyers will not be willing to buy the same. In the same fashion banks will never give any loan by collateralizing such property. In effect the property loses its value. He said that as the reasons for refusing renewal of lease contract are not provided under the proclamation, people do not know the fate of their investment after the expiry of the lease contract. Consequently, this creates instability in the transaction of immovables. Thus people will not be able to sale their property or obtain loans and solve their problems at a time they want.[310] Of course the price of such immovables may be high if the contract is renewed but as the reasons for refusal of renewal are not expressly provided by the proclamation no one can be sure about renewal of his/her lease contract. Finally he said that this will put investment at stake.

In the same way after saying that the law tries to protect the interest of the government and creditors at the expense of land holders, Ato Gebeyehu Belay on his part explained the fact that no compensation is paid for lease holders for the property on the land during the expiry of the contract is against the property rights of individuals.[311] He added that this is aggravated by the fact that no reasons are stated for refusal of renewal of the contract of lease which is very

[308] Ibid.
[309] Ibid.
[310] Ibid.
[311] ገበየሁ በላይ፣ "የሊዝ አዋጁ እንዴት ነው የሕዝብን ጥቅም የሚያስከብረው?" ¶±RtR፣ ጥር 9 ቀን 2004 የረቡዕ እትም ቅፅ 17 ቁጥር 17 gጽ 25፡፡ (Translation by the author).

suitable for abuse. Moreover, he stated the prohibition that during transfer individuals should not collect the value of the land is unfair. Then he asked, what about the government? Should it collect what is not due to it?

In a similar fashion Damaw Asfaw stated that the transaction of immovables has decreased immediately after the coming in to force of the lease proclamation as a result of which the price of cement has decreased.[312] He mentioned that this law ignores the contribution of old possessors to the improvement of the value of the land and denies possessors the market price of their old possessions. According to him the fact that this law prohibits land holders from getting the benefits from the value of the land encourages illegal/informal sale of immovable properties attached with the land. He mentioned the case of sale of condominium houses through internal agreement between the buyer and the seller which resulted from the prohibition of sale of such houses for 5 years after taking over of the same from the government. Consequently, he stated that this decreases the economic transaction within the cities and the income of city municipalities as a result of which the government loses the income that would have been derived in the form of tax in this regard.

He also added that this law brings a loss on banks which granted loans having collateralized both old possessions and below half completed constructions according to the former lease proclamation taking in to account the location value and the fact that the buyers of such collaterals will not be expected to pay lease during transfer. Finally he proposed that lease payments should not be asked from banks sale of previous collaterals.

3.11. Legal professionals

After stating that the urban land lease holding proclamation from the very begging does not have a constitutional base, for one reason the first lease proclamation was enacted before the coming in to force of the FDRE constitution and for another even if the first urban land lease holding proclamation is said to be replaced by proclamation no.272/2002, the constitution does not

[312] ዳማው አስፋው፣ "የሊዝ አዋጁ ማስፈጸሚያ ደንብ እንዴት መቀረፅ አለበት?"¶±RtR፣ ጥር 20 ቀን 2004 የእሑድ እትም ቅፅ 17 ቁጥር 19 hgጽ 22-23፡፡ (Translation by the author).

specifically deal with urban land lease holding for urban residents, Daniel Weldegebriel, suggests that the land policy of Ethiopia does not equally treat the right to benefit from the land of peasants and pastoralists on the one hand and urban residents on the other. While the latter are obliged to pay lease price to obtain urban land, the former pay nothing to use rural land throughout their life.[313] Thus the property right on land of urban and rural residents is not treated equally under the Ethiopian land laws.

Finally the above mentioned legal professional and many others propose that the government should permit urban residents a plot of land free from lease payments at least for residential purposes.

Concerning the implication of the new urban land lease holding proclamation Ato Daniel explains that the first possible result is an immediate reduction in the transaction of immovables in the country.[314] This is because, buyers are expected to add ground lease price in addition to the usual price of houses/land. Except in exceptional cases, it will not be an emergency for an owner to sell his house and unless he gets the market value for his property, he will not sell it. This is practically witnessed by the brokers who are engaged in facilitating the sale of houses for commission in Addis Ababa and employees who are working at the Document Authentication and Registration Office in the same city whom the writer interviewed.

Ato Daniel also stated that because of this unexpected action of the government, people are already expressing their discontent and lack of tenure security on their holdings. So, in the future people may not rely on land to accumulate wealth. Rather they may shift to purchase of gold and silver as witnessed in other developed countries.

He also added that we may witness a decline in housing construction for certain time and this will definitely affect the interest of construction industries, small scale associations and construction workers.

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[313] See also ዳንኤል ወልደ ገብርኤል፣ "አነጋጋሪው የአዲሱ የሊዝ አዋጅ ይዘትና አንድምታው" ¶±RtR፣ ኅዳር 3 ቀን 2004 የእሑድ እትም ቅፅ 17 ቁጥር 9 gጽ 33 XÂ 45፡፡ (Translation by the author).

[314] Ibid.

Moreover, he predicted that banks will immediately revise their loan policies and manuals so as to address the impact of the proclamation on their values given to the ground. There is no doubt that the amount of loan that has been provided will shrunk down.

Finally he stated that housing shortage will be created in the future. Especially, poor people, who afford neither to save the 40 percent nor to compete in lease auction, will tend to settle informally on government land. There is no guarantee or change in institutional efficiency of the city administrations around the country which are known for generations for their corrupt and inefficient systems.

Of course one can see many other possible implications of this proclamation. For instance, it can be understood from the reading of the provisions of the proclamation that there is no restriction stated as to the size of land that one can take in the form of lease. As a result, those who have a huge amount of money will occupy most strategic part of a city in their name and the name of their family members at this early stage before the lease price of the land in the cities increases then after the government finishes having leased the available urban land, the land market will be monopolized by such few rich investors and people will be forced to pay a lot even more than the market value during sale and rent because no one can force a lease holder to sell or rent his/her lease holding. In this way the law only keeps and addresses the interest of few individuals and finally the fair distribution of wealth that the government strives to achieve will fall at stake. .

The other problem with this proclamation is related to informal settlements. The proclamation under article 6(5) provides that "the regularization process to be undertaken by regions and city administrations in accordance with sub-article (4) of Article 6 shall only be effective within **four years** of the coming into force of this Proclamation". The Ethiopian Federal Democratic Unity Front in its statement issued following the adoption of the new lease holding proclamation stated that "the government at first kept silent when citizens were taking different actions to fight the housing and shelter problems, but after the completion of construction it is demolishing the houses of poor citizens with no compensation by the decisions of its corrupt and rent seeking officials. As there is lack of good governance concerning this, a wide spread public consultation

should be undertaken by neutral professionals in the area."[315] This is of course expressed taking in to account the loss that is caused on the poor settlers.

But my point is that, this provision of the proclamation which provides a **four years** period for regularizing illegal possessions is also criticized by many people by alleging that further illegal possessions will be conducted even after the coming in to force of this new proclamation for the coming four years.[316] Because the proclamation does not make it clear that illegal occupations carried out after the coming in to force of the same will never be regularized. As a result, it is said that this encourages further illegal possessions. Thus unless serious mechanisms of control and follow up are established this provision will bring about extensive illegal land occupation. Of course, it has been disclosed through the media that the process of land grabbing has been aggravated after the coming in to force of this proclamation, especially this year. People are conspiring to occupy bare land to construct houses illegally and bring false testimonies that the possessions are held before the enactment of the proclamation.[317] To this end, this provision may expose people who implement the proclamation to corrupt and rent seeking practices. Obviously corruption is anti-development.

As a result, the existence of this and many other unclear provisions under the proclamation initiates corrupt practices. If there is corruption, the country will lose the income that would have been generated. Consequently, this informal settlement causes three main problems: 1) the resource that would have been used for development works will be used for enriching illegal individuals. This stimulates rent seeking thinking. 2) Erodes the rule of law and causes the expansion of illegal activities. 3) Makes government officials victims of corruption and rent seeking and the principle of good governance that the proclamation wants to ensure remains to be mere slogan and the law becomes a source of rent seeking, corruption and discrimination.

Moreover, since this proclamation negatively affects the interest of illegal possessors whose possessions *are not found to be acceptable in accordance with urban plans and parceling*

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[315] *መድረክ፣* አዲሱ የከተማ ቦታን በሊዝ ስለመያዝ የወጣው አዋጅ የኢትዮጵያን ሕዝብ የዜግነት መብት የሚሸረሽር ስለሆነ በጥብቅ እንቃወማለን! ከኢትዮጵያ ፌዴራላዊ ዴሞክራሲያዊ አንድነት መድረክ የተሰጠ መግለጫ፣ (ህዳር 12 ቀን 2004 ዓ.ም) አዲስ አበባ ցጽ 3፡፡(Translation by the author), available at the head office of the party.

[316] See Mekasha, cited above at note 44, p.64.
[317] Ibid.

standard, such people will continue to exert their maximum effort to make their possession legal even by paying a big amount of money in the form of bribe and by trying to influence the adjustment or preparation of the plan of the city in favor of them by concealing evidences which can criminalize them. This dictates government officials whose task is related with this to be engaged in unnecessary and corrupt practices.[318] Thus, there should be a system for identifying the legal from the illegal ones. Unless such system is created the system of good governance that the law strives to ensure will be at stake.

With regard to informal settlements that are not found to be in conformity with the master plan of the city, such buildings will be demolished with no compensation paid to the possessors. As a result, a significant number of people (mostly the poor) will be exposed to economic crises.

From the above discussions, therefore, the new urban land lease holding proclamation in one way or another has brought its own negative implications on the transaction of immovables i.e., land and buildings, security of tenure of urban residents, the construction industry, banking services, urban housing service, the market and investment.

Thus I can safely conclude that the proclamation is accompanied by its own negative implications on the Ethiopian economy. It is clear that let alone an influence on the whole of the Ethiopian people and the market, a loss on an individual firm affects the country's economy. Thus it seems to be wise to devise mechanisms by which the problems can be avoided or minimized. Therefore, to minimize these negative implications of the proclamation some of which have already started to show preliminary impacts, the proclamation should be amended at least to minimize the problems which affect the country's economy.

To this end the writer of this paper proposes that, as land under the FDRE constitution is owned by the state and the peoples of Ethiopia[319], the urban land laws should at least fairly reflect the fact that urban residents as part of the society are also joint owners of the urban land. This can be made by entitling urban residents to a fairly enough square meters of urban land through the

[318] Ibid.
[319] Article 40(3) of the FDRE Constitution, cited above at note 2.

permit system for residential purposes. Then, for business purposes it is fair if people pay a fair amount of lease price to support development activities.

Concerning the size of the land that should be allowed by the government to urban residents free of lease payments for residential purposes, a fair national standard as provided under article 6(2) can be designed.

Of course, it is clear and is always stated by the government that urban land is limited by its nature, but the government in this regard can devise a mechanism by which people can form associations and construct multiple storey buildings to restrict the horizontal expansion of the urban centers.

Chapter four
Conclusion and recommendations

4.1. Conclusion

As per the new urban lands lease holding proclamation, in principle, the only way through which urban land can be obtained is through lease system and after winning a competitive tendering. It is only exceptionally that land may be allocated through allotment.

The lease system allows use right on urban land only for a definite period of time upon payment of lease price. Thus, the permit system which formerly entitled urban residents to exercise use right for indefinite period does not work in case of urban land acquired after the coming into force of this new lease holding proclamation save the case of old possessions obtained in the form of inheritance. Of course the government has also planned to convert all old possessions to lease holding. Therefore, according to this plan, the permit land holding system will gradually be abolished.

However, the fact that the lease proclamation is made applicable in all urban centers and for all grades of land and that everyone will be allocated urban land for any purpose based on tender is unfair taking in to account the economic capacity of most urban residents and the fact that urban residents as part of the people are theoretically joint owners of land. This drives the poor and the middle income urban residents out of the game. Thus in an attempt to avert rent seeking practices this proclamation negatively affects the urban poor and the middle income who are afflicted by the housing problem. It also brings the monopolization of urban land by few rich investors who can afford to offer much during auction. Based on this, the stand of the government seems that this country can be changed only by the few rich investors and the government itself.

Under the new proclamation except in the case of inheritance, transfer of old possession is made to be through lease system and transfer of lease hold right on which half of the required construction is not completed is to be made under the control of the appropriate body so that any increase in the value of the land will be due to the government. Therefore except in the case of transfer of lease hold after half completion of construction the proclamation almost totally blocks

the chance of benefiting from the market value of land. Thus, in contrast to the previous lease proclamations, the new one hampers the right of access to urban land. The different strategies included in the new proclamation restrict the free transfer of land holding rights both for old possessors and lease holders.

This law became a big threat to old possessors. Old possessors' benefits related with bank loans and transfer value are seriously affected by the proclamation. They are afraid that their possession may in the near feature be converted to lease hold or the rent on the land may unreasonably be increased as the law entitles the executive body to take either of the actions. Old possessors couldn't sale their possessions at their market value as buyers are expected to pay lease for the government in addition to the sale price of the properties attached with the land to the sellers during transfer. Old possessors' chance of getting bank loans is seriously restricted as the location value will not be taken into account and banks don't know the amount of lease payable to the government in case the debtor fails to pay the loan.

The proclamation lacks the necessary transitional provisions for many issues. This has endangered the interest of many individuals by subjecting them to unexpected additional obligations. For instance, the proclamation has subjected many buyers of old possessions who bought such old possessions but did not start the process for transfer of title before the coming in to force of the same to double payments. Because this proclamation obliges them to pay lease for the government after they have already paid the full market value of such possession to the possessors. Thus it has caused financial crises on such individuals.

The restrictions imposed on transfer of old possessions imply that there is less possibility for an individual to derive financial benefits from his land holding. Moreover such restrictions imposed on land holders are contrary to free market economy stated under the preamble of the proclamation, because people cannot benefit from the market value of their possession.

The proclamation has also imposed many restrictions on leasehold rights. For instance, with the exception of inheritance, transfer of leasehold right prior to commencement or half-completion of construction is to be made under the control of the government and 95% of the lease transfer

price in this case will go to the government. Moreover, where a lessee uses his leasehold right as collateral prior to commencement of construction, the collateral value may not exceed the balance of the lease down payment after deductions such as a penalty fee amounting to seven percent of the total lease price and payment of the lease amount that covers the period from the date he took possession of the land. A lessee can only use his lease hold right as capital contribution only to the extent of the lease amount already paid.

But these restrictions discourage people from taking land on lease basis and are unfair in the light of the free market principle. It is also unjust for the government to impose such restrictions so far as the lease holders have once effected their lease payments as per the lease contract. Moreover, it is difficult to implement all these restrictions, because people may effect transfer of lease right on a bare land or below half completed constructions through informal/internal agreements which in turn causes a big loss of revenue which would have been derived had these transfers been made legally for the government. This is prejudicial to the interest of the government and the parties to the internal transaction.

The government states that the proclamation is designed to discourage corruption and rent seeking practices in relation to urban land. However, it still like the former proclamations contains many unclear provisions that can allow government officials to make discriminations among individuals and engage themselves in rent seeking and corrupt practices thereby putting the principle of good governance enshrined under the same proclamation in doubt. For instance, the fact that no clear procedures are provided in the case of sale of unfinished constructions in case the lessee fails to complete constructions to be conducted by the government, the fact that there are no clear criteria in the case of projects having special national significance considered by the president of the region or the mayor of the city administration and referred to the cabinet under article 12(1/g), the case of a sole bidder with no clear criteria under article 11(8), the expression '…the appropriate body may authorize…' under articles 21(3) and 25(2) and the fact that the reasons for failure to renew the lease contract are not clearly stated under article 19, etc. Thus, it is important to emphasize that even the current law will not achieve its purposes unless efficient, transparent and accountable urban land administration system which functions based on clearly provided criteria is designed.

The new proclamation also incorporates the issue of regularization of informal settlement which is a very progressive idea in contrast to the former confrontationist attitude towards squatting. However, the fact that the regularization process will be conducted with in the coming four years from the coming in to force of the proclamation may encourage informal settlement and production of false testimonies to simulate such possessions with those which are to be legalized. The absence of an explicit provision to the effect that informal settlements occupied after the coming in to force of the proclamation will not be regularized may aggravate the problem. Thus unless due control and follow up is made this will bring about the loss of large resource and encourage rent seeking practices.

In addition to the fact that the proclamation does not clearly indicate the reasons why the appropriate body may refuse to renew the lease contract, the absence of compensation in the event of non renewal creates insecurity and discourages lease holders from making maintenance and long lasting investments on their leased hold. It is also unfair and unconstitutional to leave the leaseholder uncompensated for the properties on the land.

The proclamation has classified the period of grace to be provided for each type of construction projects based on their complexity but it does not take in to account whether basic infrastructural facilities are fulfilled for the same land. This is aggravated by the fact that while the obligation of the government to fulfill infrastructural facilities for the land to be obtained based on tender is clearly provided under the proclamation, this obligation is not clearly mentioned in the case of land to be permitted based on allotment. Moreover, it is customary that the municipality focuses on the fulfillment of infrastructural facilities and even allocation of land for tender.

Moreover, the time provided for commencement and completion of construction under the proclamation does not take into consideration the capacity of most urban residents. For instance, the fact that small scale construction projects are given only two years and half to complete construction is unrealistic and discourages the low and middle level income people from engaging themselves in minimizing the housing shortage problems in effect making them non beneficiaries of the urban land. Before the coming in to force of this proclamation it was

customary that a land holder finishes one or two rooms and starts living on his/her possession to develop it progressively, but now this is impossible. Based on this and taking in to account the capacity of people who may be permitted land by allotment such as self help associations delays in commencement and completion are likely to happen. On top of that, the harsh measures following failure to commence and complete construction, including the fact that the requirements for a force majeure to exist are those stated under the civil code, but not based on the special problems of the construction industry create a sense of insecurity on individuals and thereby discourage them from engaging in construction activities. If such provisions are strictly implemented either many urban residents, especially the poor and middle level income people will never take part in construction or they will be subjected to loss as a result of the sale and demolishing action by the government of their unfinished constructions. This in turn has its own negative bearing on their right to shelter. These restrictions kill the motive of individuals to save and construct a shelter. This aggravates the housing problem in the cities because the government alone cannot solve it. Thus because of some rent seeking people both from the government offices and private individuals the benefits of honest and poor citizens have been taken away.

In addition to that, even if the length of time to be extended to compensate time lost due to force majeure should be determined by the duration for which the force majeure lasted, the maximum periods of grace both for commencement and completion of construction is provided under articles 34(3 and 4) of the draft model regulation and 23(4) of the lease proclamation. But this does not take in to account at least the case of force majeure since the time lost because of force majeure is determined by the duration for which the force majeure lasted. Based on this, the time given to compensate delays in construction due to force majeure should be equal to the time lost on account of the same reason and hence should not be provided in advance. On top of that, the fact that the requirement of force majeure for the extension of the time limit is based on the civil code and not based on the common problems of the construction industry will bring its own problems and economic loss on lease holders as well as on the country.

Generally the restrictions imposed by the proclamation on transfer, collateralizing and contributing in the form of capital of use rights on urban land and the serious measures following

failure to commence and complete construction with in the short time given without considering the capacity of most of the urban residents discourage people from making investments on urban land. Consequently this by itself has a negative bearing on the housing problem, job opportunity, the income of urban residents, and the revenue of the government and generally on the county's economy.

On top of that the proclamation does not provide mechanisms as to how disputes concerning the commencement and completion of construction, non renewal of lease contract, as to the existence or otherwise of force majeure, the extent of the time lost because of such force majeure are to be solved and who solves them. Such differences will necessarily arise between the appropriate body and the lessee. Thus since no administrative remedy is provided by the proclamation it is inevitable that these issues will contribute to the increase in the case load of the regular courts.

The proclamation does not put the ways how the interest of third parties such as banks will be protected when the contract of lease is terminated according to article 25 and measures such as sale or demolition are undertaken. This in turn exposes third parties such as banks which extended loans having collateralized both the lease hold right and the construction on it to losses which can finally discourage them from granting loans to lease holders. On the other hand if banks are discouraged from granting loans investment activities will be discouraged.

The fact that the time given for those people who are said to be illegal settlers is too short in contrast to the legal ones in the case of clearing urban land under articles 26(4) and 28(2), most of the time causes the destruction of the property of the poor without being given the right to be heard. Such people are not given adequate time to collect evidence for submitting grievances and appeals or clear their properties.

The proclamation does not clearly incorporate the idea of giving priority to land holders in case of urban renewal, expropriation, and expiry of lease contract if such people can individually or in cooperation with each other undertake the required development project. This discourages the motive of investment on the part of urban residents.

The proclamation does not indicate as to whether the size and location of the substitute land given in the event of expropriation is proportionate to what has been taken. But this issue is a big concern to persons displaced from their land holding. Moreover, the amount of compensation paid in the event of expropriation is solely decided by the government without the involvement of the land holder. As a result many people usually complain that compensation paid in this regard is inadequate taking in to account the market value and the location of the land.

The proclamation is designed in such a way that cases arising from urban land clearance order will not go to the regular courts as much as possible. Under article 26 the appropriate body is given the power to clear urban land where it is in the public interest. On the other hand, under article 28, the same body is given power to hear grievances of land holders who are served with clearing orders after which an appeal is to be lodged to the appellate tribunal which renders final decisions except for issues of compensation. However, the fact that the appropriate body renders decisions on the grievances emanating from its own clearing order and that no appeal is allowed from the decision of the tribunal except on issues of compensation is unfair. Thus it can be said that the complaint handling system under the proclamation restricts the full access to justice of aggrieved parties.

The legislature does not seem to have consulted the provisions of the criminal code before stipulating the penalties under the lease proclamation to ensure compatibility. That is why article 35 begins by saying "unless the offence is punishable with more severe penalty under the Criminal Code…". This in turn brings about differential treatment of individuals who committed similar offences as the judges and public prosecutors are likely to be confused by the incompatibility between the provisions of the criminal code and that of the lease proclamation. Moreover, the government, in incorporating penalties under the various proclamations it enacts seems to be of the opinion that the criminal code is not sufficient to penalize all offences committed within the country.

On top of that, under article 35(1) (a/3) of the proclamation all omissions irrespective of their weight and nature are qualified as crimes punishable by rigorous imprisonment and fine. But penalizing all omissions including those minor ones through imprisonment and fine is at least humanly unfair. People may commit many possible omissions which can be subjected to

administrative correction at least as human beings, but imposing this type of penalties irrespective of their intention and the weight of the contravention is unjust.

Concerning the economic implications of the proclamation, even if the government blames rent seekers for creating confusion within the urban residents and initiating opposition about the same, from the information collected through interviews, focus group discussions and the writings of legal professionals, the writer has understood that the new urban land lease holding proclamation has its own negative implications on the transaction of immovables i.e., land and buildings, security of tenure of urban residents, the construction industry, banking services, urban housing service, the market and investment. This in turn affects money circulation, job opportunity and the income of both individuals and the government and has a negative bearing on the country's economy.

Under the model regulation, we find provisions which incorporate ideas totally or partially different from what is provided in the proclamation. Thus, after facing public opposition based on the fact that the proclamation has a number of gaps and problems, the government seems to be trying to make some amendments to the proclamation through the model regulation which is expected to be adopted by the different regions and city administrations. Therefore, some of the errors made by the law maker are corrected by the executive organ. But this act by itself is legally invalid as a proclamation cannot be amended by a regulation.

4.2 Recommendations

Based on the aforementioned points and findings the writer would like to recommend the following:

- As land under the FDRE constitution is owned by the state and the peoples of Ethiopia the urban land lease holding proclamation should minimize the monopolization of urban land by few rich investors who can afford to offer much during auction. Accordingly urban residents should be entitled to a fairly enough square meters of urban land through the permit system for residential purposes, provided however that; those urban residents who submit a request to be allocated urban land to that effect should show the required

financial capacity to undertake construction as per the plan of the city before obtaining the land by depositing the required money in a blocked bank account as usual. The government in this regard can devise a mechanism by which people can form associations and construct multi-story buildings to restrict horizontal expansion of urban centers.

- Alternatively, if the above proposal does not work; the lease proclamation should be amended in a way that incorporates a provision which entitles the regions to permit urban land for residential purposes depending on their own prevailing conditions.

Moreover,

- Article 3 which deals with the scope of application of the proclamation should be amended so that it shall be applicable to all urban centers with in Ethiopia with regard to urban land for non dwelling purposes. In the same fashion, the prohibition of land possession and permission other than through lease holding provided under article 5 should be applicable to urban land for non dwelling purposes.
- The government should provide those squatters whose possession is to be demolished because of the fact that it is not found to be in conformity with the master plan of the urban centers, with access to substitute kebele housing or facilitated purchase of condominium housing unit based on humanity and social justice. Their settlement should not also be demolished within a short period of time until they get such alternative shelters. Moreover, considering the inevitability of squatting for the future, the government should primarily work a lot for a change in attitude towards squatting, squatters and squatter settlements.
- To protect further squatting, the government should design a modern and efficient mechanism to identify and control all the urban land that is not yet allocated.
- The preconditions provided for urban land made available for tender under article 8(1) should also be applicable to land that will be allocated through allotment and the permit system proposed above.
- Clear and transparent criteria should be designed in the case of a sole bidder under article 11(8) and in the case of projects having special national significance considered by the

president of the region or the mayor of the city administration and referred to the cabinet under article 12(1/g).

- Lease holders who obtained land according to the previous lease proclamation should be entitled to enjoy the 10 years increase in the period of lease for industry and trade and others in Addis Ababa provided under article 18 of the new lease holding proclamation so far as they can pay the lease price for this additional period.
- The fact that the appropriate body can refuse the renewal of a lease contract under article 19 of the proclamation should only be based on public interest and this should be incorporated under the proclamation. Of course what constitutes public interest should be clearly provided by law and it should not be susceptible to abuse by the relevant officials. The government should also pay compensation at market price for the properties attached with the land and the permanent improvements on the land to the lessee when the contract of lease is not to be renewed because of the fact that the appropriate body refused to renew the lease contract when the land is needed for public interest.
- The three years period of payment given under article 20(6) after which the appropriate body is empowered to seize and sale the property of the lessee to collect the arrears should be reasonably extended taking in to account the objective realities in which the lessee is found.
- The expression "…may authorize…" under articles 21(3) and 25(2) should be amended as "…shall authorize…".
- The time given for the commencement and completion of construction should be reasonable taking in to account the capacity of most of the urban residents in the country. Such time should also reasonably be extended taking in to account the infrastructural facilities fulfilled by the government and the capacity of the land holder. Generally the time for commencement and completion of construction should take in to consideration the prevailing realities on the ground. At the end a reasonable warning notice should be given to enable the land holder to finish the construction rather than rushing to confiscate it.
- Under article 22(3 and 4) of the proclamation, there should not be penalty fee where a lessee fails to commence construction within the specified period. Of course there should

be reasonable time limits for commencement and completion of construction, but in case of failure to do so there should not be any penalty. Simply retaking of the land is enough.

- The proclamation should adjust clear and transparent procedures of sale of unfinished properties in case of failure to complete construction as provided under article 23(5-8). In the same fashion there should also be clear procedures for submitting and entertaining complaints arising from such sale. In such cases if there is construction on the land, it should be sold through open tendering after the value of the construction is evaluated by a neutral third party in a relevant profession and returning the value of the construction to the lessee.
- The proclamation should be amended in a way that eliminates any restriction in the transfer of land use rights. It is enough for the government if it collects the transfer taxes and related charges and no more restriction is necessary.
- The proclamation should balance the interest of the lessor and the lessee. Thus it should be designed to equally protect the interest of the two parties.
- What is provided as maximum extension period under articles 23(4) of the proclamation and 32 of the model regulation should not be applicable for delays due to force majeure, because, the length of time to be added to compensate time lost due to force majeure should be determined by the duration for which the force majeure lasted. Moreover, the requirement of force majeure for the extension of the time limit under article 25(2) of the proclamation should be based on the common problems of the construction industry and not merely based on the civil code provisions.
- Under articles 26(4) and 28(2) of the proclamation the fact that people who are said to be illegal settlers are given only seven working days both as a period of notice and for submitting grievances to the appropriate body is insufficient in contrast to the legal ones. Thus, as such people who are qualified as illegal settlers can prove otherwise using their chance of submitting grievances and appeals they should be given equal time with the legal ones that are given a minimum of 90 days for clearing and 15 working days for submitting grievances.
- The proclamation should also incorporate provisions entitling interested parties whose rights on the expropriated immovable have been entered in the register of immovables to be served with the expropriation order like what was given under the civil code. The idea

of priority of creditors should also be incorporated and banks should not be expected to secure court order to sale collaterals.

- In case of expropriation land holders should be awarded with compensation depending on the market value of the expropriated property valuated by neutral professionals. Because the expression 'commensurate compensation' is said to be unclear and is usually abused by public authorities. To avoid confusions in calculating the amount of compensation, the proclamation should take as a basis the day when the appropriate body has served the leaseholder with a clearing order. The size and location of the substitute land provided in this case should also be proportionate to what has been expropriated and this fact should be expressly provided by the law, because this is also usually abused. In doing so, location, distance and other factors that determine demand for land should be taken in to consideration in giving the substitute plot of land for the displaced person.
- If a leaseholder whose land is expropriated does not want to take the substitute land; justice requires that the lease holder should be entitled to payment of the remaining lease payment with interest starting from the time of payment as per the prevailing interest rate on loans offered by the Commercial Bank of Ethiopia under article 20(4) of the proclamation.
- The government should also find alternative ways for compensation of evacuated people through neutral body facilitated negotiations between the investor and the former possessor. This can serve as a solution to the problem regarding the amount and kind of compensation, because, through negotiations between the investor and the leaseholder, better agreements can be reached. Then if the negotiation fails the currently working way of compensation by the government can be applied.
- In the case of clearing urban land under articles 28-29, the tribunal should exercise first instance jurisdiction and one chance of appeal to the regular courts should be given on all issues as a right for grievances of the land holders. Or as the impartiality of both the appropriate body who passes the first decision and the appellate tribunal who renders final decision on all issues other than compensation is doubtful an appeal should be allowed to a regular court of law on all issues.
- As an adjudicatory body the appellate tribunal to be established as provided under article 30 of the proclamation should be established by law and the members of the tribunal

should be nominated by the legislative body of the concerned region and the procedures by which such tribunal will be governed should also be prepared by the same body and published in Negarit Gazeta so that everyone will have easy access.

- An appeal from the decision of the Tribunal under article 29(4) of the proclamation should be on all issues and it should be made to the regular high court.
- During expropriation, unlike what is provided under article 29(5), land holders should not be obliged to surrender the land until after the case is no longer appealable and compensation is paid. Alternatively, if article 29(5) of the proclamation which imposes an obligation of handing over of the land as a pre condition for appeal cannot be amended, the 30 days time provided for appealing to the appellate court as mentioned above should run starting from the time when the appropriate body takes over the land rather than from the time of receipt of the decision of the Tribunal.
- In case of expropriation the proclamation should be amended in a way it incorporates provisions allowing or prioritizing land holders to develop the land individually or in joint venture according to the new land use. For this purpose such land holders should be provided with access to credit by collateralizing the land and other means.
- The provisions of the proclamation dealing with penalties should be revised after consulting the provisions of the criminal code and in a way that they should not create confusion among judges and public prosecutors thereby violating the rights of individuals and impose other administrative remedies on minor omissions instead of rigorous imprisonment or heavy fine.
- Rather than trying to avert corruption by imposing very serious penalties the government should recruit well disciplined and competent professionals who can work honestly, effectively and efficiently in urban land administration.
- Rather than trying to amend the proclamation through a regulation the government should amend the proclamation itself as a regulation which is enacted to implement the proclamation cannot legally amend the same. Thus it is better to amend the proclamation itself by employing competent professionals. For this purpose, all the good amendments made by the draft model regulation should be incorporated in to the proclamation itself.
- The expression 'the appropriate body' stated throughout the proclamation should be specifically and clearly provided by law otherwise it will be confusing.

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መስፍን ተፈሪ ፀጋው፣ "ለጠቅላይ ሚኒስትሩ የተላከው የአዛውንቱ አቤቱታ"፣ ¶±RtR፣ ኅዳር 17 ቀን 2004 የእሑድ እትም ቅፅ 17 ቁጥር 11gጽ 31።

ደሣለኝ መንግሥቴ፣ "አዲሱ የሊዝ አዋጅ የሕዝብን ጥቅም ከማስከበር በቀር ሕገ መንግሥቱን አይፃረርም።" ¶±RtR፣ ኅዳር 17 ቀን 2004 የእሑድ እትም ቅፅ 17 ቁጥር 11 gጽ 27።

ዳንኤል ወልደ ገብርኤል፣ "የሊዝ አዋጁ ሕገ መንግሥታዊነት ግብረ መልስ"፣ ¶±RtR፣ ኅዳር 24 ቀን 2004 የእሑድ እትም ቅፅ 17 ቁጥር 12 gጽ 35 ።

ደሣለኝ መንግሥቴ፣ "በሊዝ አዋጁ ላይ የሚነሳው ተቃውሞ ምክንያታዊና በእውቀት ላይ የተመሠረተ ይሁን።" ¶±RtR፣ ታኅሣሥ 1ቀን 2004 የእሑድ እትም ቅፅ 17 ቁጥር 13 gጽ 39።

ውድነህ ዘነበ፣ "የሊዝ አዋጁ ከንግዱ ማኅበረሰብ ከፍተኛ ተቃውሞ ገጠመው።" ¶±RtR፣ ታኅሣሥ 8 ቀን 2004 የእሑድ እትም ቅፅ 17 ቁጥር 13 gጽ 58።

ደነቀ ፀጋዬ አባይሬ፣ "የሊዝ አዋጁ አሁንም ሊታሰብበት ይገባል።" ¶±RtR፣ ታኅሣሥ 8 ቀን 2004 የእሑድ እትም ቅፅ 17 ቁጥር 13 gጽ 46።

ጌታሁን ወርቁ፣ "ym-lÃ mBTÂ yl!Z xê° l® g}¬" ¶±RtR፣ ታኅሣሥ 15 ቀን 2004 የእሑድ እትም ቅፅ 17 ቁጥር 14 hgጽ 48-49።

መስፍን ተፈሪ ፀጋው፣ "በፍትሐዊ የመሬት አጠቃቀም ሽፋን ሕገ መንግሥታዊ መብት እንዳይጣስ።" ¶±RtR፣ ታኅሣሥ 15 ቀን 2004 የእሑድ እትም ቅፅ 17 ቁጥር 14 hgጽ 40-41።

ጌታሁን ወርቁ፣ "የባንክ ብድር በአዲሱ የሊዝ አዋጅ እይታ" ¶±RtR፣ ታኅሣሥ 22 ቀን 2004 የእሑድ እትም ¶±RtR ቅፅ 17 ቁጥር 14 hgጽ 60--61።

ዳንኤል ወልደ ገብርኤል፣ "የውል ነፃነትና የኪራይ ጣርያ እንዴት ይጣጣሙ?" ¶±RtR፣ ታኅሣሥ 22 ቀን 2004 የእሑድ እትም ቅፅ 17 ቁጥር 14 hgጽ 38-39።

ብስራት ተክሉ፣ "የሊዝ አዋጁ ትግበራ ሳሩን አይቶ ገደሉን ያላየው እንዳይሆን፤፤"¶±RtR፣ ታኅሣሥ 22 ቀን 2004 የእሑድ እትም ቅፅ 17 ቁጥር 14 hgЖ 50-51፤፤

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የኢትዮጵያ ፌዴራላዊ ዴሞክራሲያዊ ሪፐብሊክ 4ኛው የሕዝብ ተወካዮች ም/ቤት 2ኛ ዓመት የሥራ ዘመን 1ኛ መደበኛ ስብሰባ ቃል በቃል ቃለ- ጉባኤ፣ (መስከረም 30 ቀን 2004 ዓ.ም አዲስ አበባ፤፤ Available at the House of Peoples' Representatives Library.

የከተማ ልማትና የኮንስትራክሽን ጉዳዮች ቋሚ ኮሚቴ የከተማ ቦታን በሊዝ ስለመያዝ እንደገና በወጣው አዋጅ ላይ ከከተማ ልማትና ኮንስትራክሽን ሚኒስቴር የሥራ ሃላፊዎች ጋር ያካሄደው ውይይት አጭር ቃለጉባኤ፣ (ታህሳስ 6 ቀን 2004 ዓ.ም፣ ፣) Available at the House of Peoples' Representatives Library.

አዲሱ የከተማ ቦታን በሊዝ ስለመያዝ የወጣው አዋጅ የኢትዮጵያን ሕዝብ የዜግነት መብት የሚሸረሽር ስለሆነ በጥብቅ እንቃወማለን! ከኢትዮጵያ ፌዴራላዊ ዴሞክራሲያዊ አንድነት መድረክ (መድረክ) የተሰጠ መግለጫ፣ (ህዳር 12 ቀን 2004 ዓ.ም አዲስ አበባ፤፤)

ቁጣና ማስፈራራት፣አዋጅ በደንብና መመሪያ ሊያሻሻል አይችልም (የጠቅላይ ሚኒሲቴር መለስ ዜናዊን የስድስት ወራት የፓርላማ ሪፖርትና የሊዝ አዋጅ ገለጣን አስመልክቶ ከኢትዮጵያ ፌዴራላዊ ዴሞክራሲያዊ አንድነት መድረክ (መድረክ) የተሰጠ መግለጫ፣ (የካቲት 15 ቀን 2004 ዓ.ም አዲስ አበባ፤፤)

የዜጎች የንብረት ባለቤትነት መብት ይከበር፤፤ ከኢትዮጵያ ፌዴራላዊ ዴሞክራሲያዊ አንድነት መድረክ (መድረክ) የተሰጠ መግለጫ፣ (ጥር 17 ቀን 2004 ዓ.ም አዲስ አበባ፤፤)

Interviews

Interview with Ato Kahsay Teklezgi, Lecturer in Economics, School of Business and Economics, Dilla University, on 12 September 2012.

Interview with Ato Muradu Abdo, Lecturer in law, at the School of law, Addis Ababa University, on 20 November 2012.

Interview with W/ro Tewedaj Jemal, legal advisor at CBB, on 23 November 2012.

Interview with Ato Tsegaye Gedeon, legal advisor at CBB , on 23 November 2012.

Interview with Ato Tilahun Mengste, collateral valuator at CBB, on 23 November 2012.

Interview with Ato Nurhussien Said, Abysinia bank Sidist Kilo branch manager, on 23 November 2012.

Interview with Ato Baye Shewamene, a broker engaged in facilitating the sale of houses and cars, at Piassa, on 24 November 2012.

Interview with Ato Kidane Desta a broker, engaged in facilitating the sale of houses and cars, at Piassa, on 24 November 2012.

Interview with Ato Bahru Chendo, special document authenticator at DARO Sidist kilo branch or Branch 4, on 26 November 2012.

Interview with Ato Selomon Mared, special document authenticator at DARO Megenagna branch or branch 3, on 26 November 2012.

Interview with Ato Seife Gizaw, legal and information officer at the Addis Ababa city administration municipality, on 27 November 2012.

Interview with Ato Aklilu Abrha, an accountant at the central credit department of the commercial bank of Ethiopia, Addis Ababa, on 27 November 2012.

Interview with Ato Gebru Asrat, Msc in economics and Vice chair man and in charge of foreign affairs of Ethiopian Federal Democratic Unity Front on 30 October 2012.

Interview with Ato Gebreselasie Gebremariam, a contractor working in Addis Ababa, on 30 November 2012.

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Annexes

Interview Questions

Lawyers

- ✓ How do you see the new lease holding proclamation?
- ✓ Does it carry provisions which contradict with any other law?

Economists

- ✓ What do you think are the implications of the new urban land lease holding proclamation on the Ethiopian Economy?
- ✓ How do you see the proclamation in terms of the free market economic principle?

Bankers

- ✓ What are the implications of the new urban land lease holding proclamation on banking services?

Old possessors

- ✓ How do you see the new urban land lease holding proclamation?
- ✓ What are its implications on old possessors?

Lease holders

- ✓ How do you see the new urban land lease holding proclamation?
- ✓ What implications does it have on lease holders?

People who are non land holders

- ✓ How do you see the new urban land lease holding proclamation?
- ✓ Whom do you think does this law benefit more?

Brokers

- ✓ How do you see the new urban land lease holding proclamation?
- ✓ Is there any change in the housing market after the coming in to force of this proclamation?

- ✓ Whom does this law affect more?

DARO Workers

- ✓ What does the transfer of title for houses before and after the coming in to force of the new urban land lease holding proclamation look like?

Contractors

- ✓ How do you see the new urban land lease holding proclamation?
- ✓ How do you see the time limit given for the commencement and completion of construction under the proclamation?
- ✓ Is it fair to apply the provisions of the civil code dealing with force majeure to construction projects?
- ✓ What possible implications does this law have on the construction industry?

The municipality

- ✓ Would you accept lower lease prices for the purpose of full upfront payment?
- ✓ Would you cancel a bid for the reason that the maximum lease price is not as you thought?
- ✓ How is the municipality going to follow up the commencement and completion of constructions? Is there full capacity to do so? If there is no capacity, doesn't this create discrimination between those who are caught due to follow up and those who are not for lack of the same? Can't this open for unnecessary negotiation and corruption?
- ✓ Does the displaced person get the priority if s/he wants to undertake the intended project which is meant for public interest purposes?
- ✓ Has the regularization of informal settlements been started? What actions are taken to protect further informal settlements?

የከተማ ቦታን በሊዝ ለማስተዳደር እንዲያስችል የተዘጋጀ ረቂቅ ሞዴል ደንብ ቁጥር------/2004

የመሬት ባለቤትነት ጉዳይ በሕገመንግስታችን በግልፅ እንደሰፈረው የሕዝብና የመንግስት ሀብት ሲሆን መሸጥ መለወጥ እንደማይቻል ተደንግጓል፡፡ ሆኖም ሀገሪቱ ከምትከተለው የነፃ ገበያ የኢኮኖሚ ፖሊሲ ጋር ለማጣጣም የመሬት አሰጣጥ ሥርዓት የመጠቀም መብትና የመጠቀም መብትን በሊዝ የማስተላለፍ መብት በግልፅ እንዲለይ የሊዝ አዋጅ ለ3ኛ ጊዜ በመሻሻሉ፤

በሃገራችን ያሉ ከተሞች አዋጁን ተከትለው ወደ ሥራ ባለመግባታቸው በተዘበራረቀ ሁኔታ ሲካሄድ የነበረው የሊዝ ሥርዓት ወጥና ተናባቢ ሆኖ እንዲቀጥል ለማድረግ በነባሩ ህግ ላይ የነበሩ ችግሮች ተቀርፈው በአዲስ መልክ የአዋጁ መዘጋጀት በማስፈለጉ፤

አዋጁን በተሟላ መልክ ተግባራዊ ለማድረግ እንዲቻል የከተማው መሬት በሊዝ ሥርአት የሚመራበትን ደንብ ከወቅቱ ተጨባጭ ሁኔታ ጋር በማጣጣም ማዘጋጀት በማስፈለጉ፤

የ.......ክልል መስተዳድር ምክር ቤት በ............ህገ መንግስት አንቀጽ....ና የከተማ ቦታን በሊዝ ስለመያዝ በወጣው አዋጅ ቁጥር 721/2004 ዓ.ም አንቀጽ 32 ንኡስ አንቀጽ 5 በተሰጠው ስልጣን መሰረት አዋጁን በሚገባና በተሟላ መልኩ ለማስፈጸም ይህንን ደንብ አውጥቷል፡፡

ክፍል አንድ

ጠቅላላ

1. አጭር ርዕስ

ይህ ደንብ የ.......... ክልል/ ከተማ ቦታ ሊዝ ደንብ ቁጥር -----/2004 ዓ.ም ተብሎ ሊጠቀስ ይችላል፡፡

2. ትርጓሜ

የቃሉ አገባብ ሌላ ትርጉም የሚያሰጠው ካልሆነ በስተቀር በዚህ ደንብ ውስጥ፣

1) ***"አዋጅ"*** ማለት የከተማ ቦታን በሊዝ ስለመያዝ ለመደንገግ የወጣው አዋጅ ቁጥር 721/2004 ዓ.ም ነው፡፡
2) ***"ሊዝ"*** ማለት የከተማ ቦታ የመጠቀም መብት በጊዜ በተገደበ ውል የሚተላለፍበት ወይም የሚያዝበት የመሬት ስሪት ዓይነት ነው፡፡
3) ***"ከተማ"*** ማለት ማዘጋጃ ቤት ወይም የከተማ አስተዳደር የተቋቋመበት ወይም ሁለት ሺ ወይም ከዚያ በላይ የህዝብ ቁጥር ያለውና ከዚህ ውስጥ 50 በመቶ የሚሆነው የሰው ኃይል ከግብርና ውጭ በሆነ ሥራ ላይ የተሰማራ ሆኖ የሚገኝበት አካባቢ ነው፡፡
4) ***"የሚመለከተው አካል"*** ማለት በከተሞች መሬትን ለማስተዳደር እና ለማልማት በህግ ስልጣን የተሰጠው አካል ነው፡፡
5) ***"የከተማ ቦታ"*** ማለት በከተማ አስተዳደራዊ ወሰን ክልል ውስጥ የሚገኝ መሬት ነው፡፡
6) ***"ክልል"*** ማለት የ______________________ክልል ነው፡
7) ***"ነባር ይዞታ"*** ማለት ከተማው በሊዝ ስርዓት መተዳደር ከመጀመሩ በፊት በሕጋዊ መንገድ የተያዘ ወይም ሊዝ ተግባራዊ ከሆነ በኂላ ለነባር ይዞታ ተነሺ በምትክ የተሰጠ ወይም ውዝፍ ይዞታ ሆኖ አሁን እውቅና የተሰጠው ቦታ ነው፡፡
8) ***"ሰነድ አልባ ይዞታ"*** ማለት በህጋዊ አግባብ የተያዘ ወይም እውቅና የተሰጠው ይዞታ ሆኖ በሚመለከተዉ አካል የሚሰጥ የይዞታ ምስክር ወረቀት የሌለው ይዞታ ነው፡፡
9) ***"ህገወጥ ይዞታ"*** ማለት በሚመለከተው አካል እውቅና ያልተሰጠው እና በህገወጥ መንገድ የተያዘ ቦታ ነው፡፡
10) ***"የሕዝብ ጥቅም"*** ማለት በቀጥታ ወይም በተዘዋዋሪ መንገድ ሕዝቦች በመሬት ላይ ያላቸውን የማህበራዊና ኢኮኖሚያዊ ተጠቃሚነት ለማረጋገጥና የከተማ ልማትን በቀጣይነት ለማጎልበት አግባብ ያለው አካል በከተማው መዋቅራዊ ፕላን ወይም በልማት ዕቅድ መሠረት የህዝብ ጥቅም እንዲውል ብሎ የሚወስነው ቦታ ነው፡፡
11) ***"የከተማ ፕላን"*** ማለት ሥልጣን ባለው አካል የፀደቀና ህጋዊ ተፈፃሚነት ያለው የከተማ መዋቅራዊ ፕላን፣ የአካባቢ ልማት ፕላን ወይም መሠረታዊ ፕላን ሲሆን አባሪ የፅሁፍ ማብራሪያዎችን ይጨምራል፡፡
12) ***"ጨረታ"*** ማለት የከተማ የመሬት ይዞታ በገበያ የውድድር ሥርዓት በሚወጡ የውድድር መስፈርቶች መሠረት ለተጠቃሚው ወይም ለአልሚው መሬት በሊዝ የሚተላለፍበት አግባብ ዘዴ ነው

13) **"ልዩ ጨረታ"** ማለት በአዋጁ ልዩ ሀገራዊ ፋይዳ ያላቸው ፕሮጀክቶች በጨረታ አግባብ የሚሰጥበት የጨረታ ዓይነት ነው፡፡

14) **"የጨረታ አስፈጻሚ ቡድን"** ማለት አግባብ ባለው አካል የጨረታ ሂደቱን እንዲያስፈጽሙ በሲቪል ሰርቪስ ህግ መሰረት የቋሚ ቅጥር ምዝገባ የተሰጣቸው እና ተገቢ ባለሙያዎች ያሉት የመሬት የሊዝ ጨረታ ሁኔታዎችን የማመቻቸት ተግባራትን እንዲያከናውኑ የሚሰየሙ አባላት ያሉት ቡድን ነው፡፡

15) **"ምደባ"** ማለት የከተማ መሬት ከውድድር ውጪ ባላቸው ማህበራዊ፣ ኢኮኖሚያዊና ፖለቲካዊ ፋይዳ እየተመዘኑ በነፃ ወይም በሊዝ አግባብ መሬት ለልማት የሚፈቀድበት ሥልት ነው፡፡

16) **"የሊዝ መነሻ ዋጋ"** ማለት የመሠረተ ልማት ዋጋን፣ የመሬት የዝግጅት ወጪን እና እንዲሁም ሌሎች ተጨባጭነት ያላቸው ታሳቢዎችን መሠረት በማድረግ የሚሠላ የመሬት ሊዝ ዋጋ ወለል ነው፡፡

17) **"የሊዝ መብት ማስተላለፊያ ዋጋ"** ማለት ግንባታ ያልተከናወነበት ወይም ከግማሽ በታች የተገነባ ግንባታ ያረፈበትን የሊዝ መሬት መብት በህጉ መሰረት ሲተላለፍ በሚመለከተው አካል በሚደረግ ጥናት የሚወሰን ዋጋ ነው፡፡

18) **"የችሮታ ጊዜ"** ማለት መሬት በሊዝ የተፈቀደለት ሰው ወይም ነባር ስሪት ከውርስ በስተቀር የተላለፈለት ሶስተኛ አካል ከጠቅላላ የመሬቱ የሊዝ ዋጋ ውስጥ በየአመቱ መከፈል ያለበትን መክፈል ከመጀመሩ በፊት ከአመታዊ ክፍያ ነጻ ሆኖ እንዲቆይ የሚፈቀድለት የእፎይታ ጊዜ ነው፡፡

19) **"ግንባታ መጀመር"** ማለት ቢያንስ በቦታው ላይ ለመስራት ከተፈቀደው ግንባታ ወይም ሕንፃ ቢያንስ የመሠረት ሥራ፣ የኮለን ግንባታ ለማከናወን የሚያስችሉ የኮለን ብረቶች የማቆም ሥራ እና የፍሳሽ መስመር በሌለባቸው አካባቢዎች የፍሳሽ ቆሻሻ ማጠራቀሚያ ጉድጓድ ሥራ ማጠናቀቅ ነው፡፡

20) **"ግንባታን በግማሽ ማጠናቀቅ"** ማለት፡-

ሀ) ቪላ ሲሆን የመሠረቱን፣ የኮለኖችና ለጣሪያ ውቅር የሚያስፈልጉ ቢሞችን ሥራ ማጠናቀቅ፣

ለ) ፎቅ ሲሆን የመሠረቱንና ከጠቅላላው ወለሎች ውስጥ 50 በመቶ የሚሆኑትን የሶሌታ ሥራ ማጠናቀቅ፣ ወይም

ሐ) ሪል ስቴት ሲሆን የሁሉንም ብሎኮች ግንባታ እንደአግባቡ ማለትም የሁሉንም ማስተላለፍ ሲፈልግ የሁሉንም ብሎኮች፤ በተናጠል ማስተላለፍ ሲፈልግ የተናጠሉን ሕንፃ በዚህ ንዑስ አንቀጽ ፊደል ተራ (ሀ) ወይም (ለ) በተመለከተው ደረጃ ማጠናቀቅ ማለት ነው፡፡

21) **"ግንባታ ማጠናቀቅ"** ማለት በሊዝ የተፈቀደ ቦታ ላይ እንዲገነባ የተፈቀደን ግንባታ በተሰጠው የግንባታ ፈቃድ መሰረት ሙሉ በሙሉ መሥራትና ዋና ዋና አገልግሎቶች ተሟልተውለት ለአገልግሎት ዝግጁ ማድረግ ነው፡፡

22) **"ቤት"** ማለት በከተማ ወይም በማስፋፊያ አካባቢ ለመኖሪያ፣ ለንግድ፣ ለማህበራዊ ወይም ለማንኛውም ሌላ አገልግሎት የተሠራ ወይም በመሰራት ላይ ያለ ማንኛውም ህጋዊ ግንባታ ነው፡፡

23) **"ልዩ ሀገራዊ ፋይዳ ያላቸው ፕሮጀክቶች"** ማለት ለኢትዮጵያ ዕድገትና ትራንስፎርሜሽን ከፍተኛ ለውጥ የሚያመጡ የልማት ፕሮጀክቶች፣ ወይም የትብብር መስኮች ለማስፋት በሚደረጉ እንቅስቃሴዎች ሀገሪቱ ከሌሎች ሀገሮች ጋር ለሚኖራት የተሻለ ግንኙነት መሠረት እንዲጥሉ በመንግሥት የታቀዱ እና የተወሰኑ ፕሮጀክቶች ናቸው፤

24) **"የሽግግር ድንጋጌ"** ማለት በአዋጅ 721/2004 አንቀጽ 37 ንኡስ አንቀጽ 1 የተቀመጠው ሁሉንም የቦታ መስተንግዶዎች ያካትታል፡፡

25) **"ሚኒስቴር"** ማለት የከተማ ልማትና የኮንስትራክሽን ሚኒስቴር ነው፤

26) **"ሰው"** ማለት ማንኛውም የተፈጥሮ ሰው ወይም በሕግ የሰውነት መብት የተሰጠው አካል ነው፡፡

27) ማንኛውም በወንድ ፆታ የተገለፀው የሴትንም ይጨምራል፡፡

3. ተፈፃሚነት ወሰን፤

1) ይህ ደንብ፡-

ሀ) በሚወጣበት ጊዜ በማንም ሰው ባልተያዘ የከተማ ቦታ ላይ፣

ለ) በከተማው መዋቅራዊ ኘላን ወይም በአስተዳድሩ የልማት ዕቅድ መሠረት በሚለማ ነባር ይዞታ ላይ፤

ሐ) በሊዝ ለመያዝ በተጠየቀ ማንኛውም ነባር ይዞታ ላይ፤

መ) ተጨማሪ የማስፋፊያ የቦታ ጥያቄ ሲቀርብ እንደጠያቂው በጠቅላላው ይዞታ ላይ ተፈጻሚ ይሆናል፡፡

2) በሌሎች ነባር ይዞታዎች ላይ ደንቡ ተፈጻሚ የሚሆነው በአዋጁ አንቀጽ 6 መሰረት ይሆናል፡፡

ክፍል ሁለት

የከተማ መሬትን በሊዝ ስለማስተዳደር

4. መሬት በሊዝ አግባብ ስለሚሰጥበት ስልት እና የፕላን አግባብ

1) ማንኛውም የከተማ ቦታ በዋነኛነት የሚያዘው በሊዝ ብቻ ነው፡፡
2) የከተማ ቦታ በሊዝ የሚፈቀደው

   ሀ. በዋናነት በጨረታ እና

   ለ. እንደአስፈላጊነቱም በምደባ ይሆናል፡፡
3) በዚህ አንቀፅ መሰረት በሊዝ የሚፈቀደው ቦታ የከተማውን መዋቅራዊ ፕላን እና ዝርዝር የአካባቢ ልማት ፕላን እንዲሁም ሌሎች ተገቢ የሆኑ የመሬት አጠቃቀም ፕላኖችን መሠረት በማድረግ ይሆናል፤ ይህም ለህዝቡ ይፋ መደረግ ይኖርበታል፡፡
4) በዚህ አንቀጽ ንኡስ አንቀጽ 2 መሰረት መፈጸም በማይቻልባቸው ከተሞች ቦታ በሊዝ የሚፈቀደው በመሠረታዊ ፕላን ወይም የክልሉ ካቢኔ እንደተጨባጭ ሁኔታው በሚወስነው አግባብ ይሆናል፡፡

5. ወደ ሊዝ ሥርዓት ስለሚገቡ ከተሞች

1) በአዋጁ አንቀጽ 5 ንዑስ አንቀጽ 4 በተደነገገው መሰረት በክልሉ ውስጥ የሚገኙ ከተሞች በአምስት ዓመት ጊዜ ውስጥ ወደ ሊዝ ስርዓት ተጠናቀው ይገባሉ፡፡
2) በዚህ አንቀጽ ንኡስ አንቀጽ 1 በተቀመጠው የጊዜ ገደብ መቼ እና እነማን ወደ ሊዝ እንደሚገቡ ዝርዝር መርሀ ግብሩ በክልሉ አዋጁን ለማስፈጸም ስልጣን በተሰጠው አካል ተዘጋጅቶ ለመስተዳድር ምክር ቤት እየቀረበ ሲደገፍ በክልሉ ምክር ቤት ይጸድቃል ፡፡
3) በአዋጁ አንቀጽ 5 ንዑስ አንቀጽ 4 መሠረት በተለዩት ከተሞች በዓመታዊ የመሬት የኪራይ ተመን መነሻነት በጨረታ አግባብ ለተላለፈ መሬት የሚዘጋጀው የይዞታ የምስክር ወረቀት በነባር ስሪት መሰረት ይሆናል፡፡ ሆኖም በተላለፈው መሬት ላይ የሚኖረው የልማት ግዴታ እና ልማቱን ባለማከናወን የሚወሰደው እርምጃ በሊዝ ስርዓት በሚተዳደሩት ከተሞች ባለው የአፈጻጸም ሥርዓት መሰረት ይሆናል፡፡

6. ነባር የከተማ ቦታ አስተዳደርን በተመለከተ

በአዋጁ አንቀጽ 6 ንኡስ አንቀጽ 3፣4፣ እና 6 የተመለከቱት እንደተጠበቁ ሆኖ ነባር ይዞታዎች በአዋጁ አንቀጽ 6 ንኡስ አንቀጽ 1 መሰረት ከሕዝቡ ጋር ተወያይቶ እና ዝርዝር ጥናት ተከናውኖ እስከሚወሰን ድረስ ባሉበት ሁኔታ በነባር ይዞታነት የሚቀጥሉ ይሆናል፡፡

7. ነባር የከተማ ቦታን በሊዝ ስሪት ስለማስተዳደር

1) **ወደሶስተኛ ወገን የሚተላለፉ ነባር ይዞታዎች**

በአዋጁ አንቀጽ 6 ንኡስ አንቀጽ 3 መሰረት ከውርስ በስተቀር በማናቸውም መንገድ ወደ ሦስተኛ ወገን የሚተላለፍ ነባር ይዞታ ወደሊዝ ስሪት ሲሸጋገር በሊዝ መነሻ ዋጋ ሆኖ፡-

ሀ) ይዞታ የተላለፈለት ሰው በነባር ይዞታ የምስክር ወረቀቱ ላይ በተመለከተው የይዞታው አገልግሎት መሰረት ውል እንዲዋዋል ይደረጋል፡፡ የውል ዘመኑም በአዋጁ ለአገልግሎቱ በተወሰነው የሊዝ ዘመን መሰረት ይሆናል፡፡

ለ) በይዞታ የምስክር ወረቀቱ ላይ አገልግሎቱ በግልጽ ተለይቶ ባልተመለከተ ጊዜ ይዞታው ግልጋሎት እየሰጠ ለቆየበት አገልግሎት በተቀመጠው የሊዝ ዘመን ይዋዋላል፡፡

ሐ) ይዞታው ግልጋሎት እየሰጠ የነበረው ለድርጅት እና ለመኖሪያ(ጥምር) ከሆነ ውለታ የሚፈጸመው ገዥው በመረጠው አገልግሎት ይሆናል፡፡ ሆኖም ገዥ ይዞታውን በነበረበት አግባብ እንዲቀጥል ፍላጎት ያለው ከሆነ ውል የሚገባው የበለጠ የመሬት ስፋት በያዘው አገልግሎት ይሆናል፡፡

መ) በዚህ አንቀጽ ንኡስ አንቀጽ 1(ሀ)፣ (ለ) እና (ሐ) የተመለከተው ቢኖርም ገዥ ይዞታውን በፕላን ለተፈቀደ ለማንኛውም አገልግሎት የማዋል መብቱ የተጠበቀ ነው፡፡ የውል ዘመኑም በዚሁ መሰረት ይወሰናል፡፡

ሠ) ወደሊዝ የሚገባው በሰነድ በተመለከተው የቦታ ስፋት መሰረት ይሆናል፡፡

ረ) ዓመታዊ ክፍያን በተመለከተ ቀደም ሲል ሲከፈል የነበረው ዓመታዊ የቦታ ኪራይ ቀሪ ሆኖ የቦታው የሊዝ መነሻ ዋጋ ለአገልግሎቱ በተቀመጠው ዓመት ተካፍሎ እና በቦታው ስፋት ተባዝቶ የሚገኘውን የገንዘብ መጠን በሊዝ ዘመኑ ውስጥ በውል በተቀመጠው ዓመት እና አግባብ ክፍሎ ያጠናቅቃል፡፡

ሰ) በአዋጁ አንቀጽ 20 ንኡስ አንቀጽ 2 የተመለከተው የሊዝ ቅድሚያ ክፍያ አይፈጸምበትም፡፡

ሽ) ባለመብት ጥያቄውን በጽሁፍ ሲያቀርብ የሁለት ዓመት የችሮታ ጊዜ በሚመለከተው አካል ሊሰጠው ይችላል፡፡

ቀ) በዚህ ንኡስ አንቀጽ 1(ረ) መሠረት የቦታ ኪራይ ቀሪ ሆኖ የሊዝ ኪራይ የሚከፍል ሰው በመሬቱ ላይ ላለ ንብረት ግብር መክፈሉ አይቋረጥም፡፡

በ) የውል ዘመን መቆጠር የሚጀምረው የሊዝ ውል ከተፈረመበት ቀን ጀምሮ ይሆናል፡፡

ተ) የቤቱ ስፋት ከቦታው ስፋት ምጣኔ የክፍፍል ድርሻ ተሰልቶ በሚሰጥ የንብረት ባለቤትነት ማረጋገጫ ደብተር የተያዘ ንብረት ከውርስ በስተቀር ወደ ሶስተኛ ወገን ሲተላለፍ በጋራ ግቢው የክፍፍል ምጣኔ ድርሻ ላይ የተናጠል ተጠቃሚነቱ እስካልተረጋገጠ ድረስ በኮንዶሚኒየም ሽያጭ አግባብ ይስተናገዳል፡፡

2) ከ19....... እስከ...... ያለፈቃድ የተያዙ ይዞታዎች ህጋዊ ሲደረጉ የአካባቢ ልማት ፕላን እና የሽንሻኖ ፕላንን መሰረት በማድረግ ህጋዊ ተደርገው ወደ ሊዝ ሲሸጋገሩ፤ የሊዝ መነሻ ዋጋን መሠረት በማድረግ፡-

ሀ) መዋቅራዊ ፕላኑ ባስቀመጠው የአገልግሎት ዓይነት መሠረት የሊዝ መነሻ ዋጋውን መነሻ በማድረግ ውል ይዋዋላል፡፡ የውል ዘመኑም ለአገልግሎቱ በተቀመጠው የጊዜ ወሰን መሰረት ይሆናል፡፡

ለ) የውል ዘመኑ መቆጠር የሚጀምረው ውል ከተዋዋለበት ቀን ጀምሮ ይሆናል፡፡

ሐ) በአዋጁ አንቀጽ 20 ንዑስ አንቀጽ 2 የተመለከተው የሊዝ ቅድሚያ ክፍያ ይፈጸምበታል፡፡

መ) የግንባታው አግባብ በፕላን ከሚፈቀደው ስታንዳርድ በታች ከሆነ ባለመብቱ እና ከተሞች በሚስማሙበት መርሀ ግብር መሰረት መዋቅራዊ እና የአካባቢ ልማት ፕላን በሚጠይቁት አግባብ እንዲፈጸም ተግባራዊ ማድረግ ይጠበቅባቸዋል፡፡

3) በነባር እና በሊዝ ስሪት የሚተዳደሩ ይዞታዎች ተቀባይነት ያለው የግንባታ ፈቃድ ሲኖራቸው እና የይዞታዎቹ መቀላቀል የሽንሻኖ ስታንዳርድን የጠበቀ ሆኖ ነባሩ ወደሊዝ ሲሸጋገር ባለመብቱ፣

ሀ) በነባሩ ሊዝ ውል ላይ በተመለከተው አገልግሎት ውል ይዋዋላል፤

ለ) ነባሩ በሊዝ መነሻ ዋጋ የሚታሰብለት ይሆናል፤

ሐ) የሁለቱ ይዞታዎች ክፍያ ድምር አማካይ በማውጣት ዓመታዊ ክፍያውን ይፈጽማል፤

8. ወደሊዝ ስሪት ስለማይገቡ ነባር ይዞታዎች

በአዋጁ አንቀጽ 6 ንኡስ አንቀጽ 1 እና በዚህ ደንብ አንቀጽ 6 የተደነገገው እንደተጠበቀ ሆኖ የሚከተሉት ነባር ይዞታዎች ወደ ሊዝ ስሪት የሚገቡ አይሆንም፡፡

1) በውርስ አግባብ የተገኘ ነባር ይዞታ ባለመብቶች ለመከፋፈል ጥያቂ አቅርበው ሲፈቀድላቸው፤
2) በፍቺ የተለያዩ ነባር ይዞታ ያላቸው ባልና ሚስት በህግ በተወሰነው አግባብ ይዞታቸውን ሲከፋፈሉ፤
3) በፍቺ የተለያዩ ባልና ሚስት ወይም የውርስ ባለመብቶች በይዞታው ላይ የክፍፍል ውሳኔ የተላለፈበት እና ከሁለቱ አንደኛው ወይም ከውርስ ባለመብቶቹ ከፊሎቹ ግምቱን ከፍለው ይዞታውን ያጠቃለሉት እንደሆነ፤
4) ለህዝብ ጥቅም ሲባል ከነባር ይዞታቸው ተነሺ የሆኑ ባለመብቶች በምትክነት በሚያገኙት ቦታ እና
5) ሰነድ አልባ ወይም ውዝፍ ይዞታዎች ክልሉ ወይም የከተማው አስተዳደር በሚያወጣው መመሪያ መሰረት ሰነድ እንዲያገኙ ሲደረግ ነው፡፡

ክፍል ሦስት

የከተማ ቦታን በሊዝ ጨረታ ስለመስጠት

9. ለጨረታ የሚቀርብ መሬት መረጃን ለህዝብ ይፋ ስለማድረግ

በአዋጁ አንቀፅ 8 የተጠቀሰው እንደተጠበቀ ሆኖ መሬት ለጨረታ የሚቀርበው የሚከተሉት ሁኔታዎች ሲሟሉ ነው፡፡

1) ከተሞች የመሬት ልማት ፍላጎትን መሰረት በማድረግ በየዓመቱ ለጨረታ የሚወጣውን የመሬት መጠን እና ጨረታው ትኩረት የሚያደርግባቸውን የልማት መስኮች በመለየትና አመታዊ እቅድ በማውጣት፡-
   ሀ) ለመኖሪያ፤
   ለ) ለንግድ፤
   ሐ) ለትምህርት፣ ለጤና፣ ለባህል፣ ለስፖርት (ለማህበራዊ አገልግሎት)፤
   መ) ለኢንደስትሪ፤

ሠ) ለሌሎችም በሚል በዓመቱ የመጀመሪያ ሩብ ዓመት ዕቅዱ ለህዝብ ይፋ መደረግ አለበት፡፡

2) ከተሞች ጨረታ ለማውጣት እቅዳቸውን ለህዝብ ይፋ ባደረጉት መሰረት የሚመለከተው አካል የመፈጸም ግዴታ እና ተጠያቂነት ይኖርበታል፡፡ ዝርዝሩ በመመሪያ ይወጣል፡፡

3) የጨረታ መነሻ ዋጋ፣ የቀድሞ የአካባቢው የጨረታ ዋጋ፣ የአካባቢዉው የልማት ዕቅድ እና ተዛማጅ መረጃዎች ህዝቡ በግልጽ እና በቀላሉ ሊያገኘው በሚችልበት አግባብ በስራ ላይ እንዲውል ይደረጋል፡፡ ይህንን አለመፈጸምም ተጠያቂነትን የሚያስከትል ይሆናል፡፡ ዝርዝሩ በመመሪያ ይወጣል፡፡

4) የከተሞች የወደፊት ቀጣይ የጨረታ ቦታ ዝግጅት እና ያለፉ ጨረታዎች ዝርዝር መረጃ ለህዝብ ይፋ መደረግ ይኖርበታል፡፡

10. የጨረታ አቀራረብ

1) ጨረታ እንደፕሮጀክቱ ባህሪ መደበኛ ጨረታ ወይም ልዩ ጨረታ በመባል በተናጠል ወይም በጣምራ ሊወጣ ይችላል፡፡

2) በዚህ አንቀጽ ንኡስ አንቀጽ 1 የተመለከተው መደበኛ ጨረታ በመደበኛ መርሀ ግብር የሚወጣ እና በመጀመሪያው ዙር ቢያንስ ሶስት ተጫራቾች ካልቀረቡ የሚሰረዝ ነው፡፡ ዝርዝሩ በመመሪያ ይወጣል፡፡

3) በዚህ አንቀጽ ንኡስ አንቀጽ 1 በልዩ ጨረታ የሚካተቱት በአዋጁ አንቀጽ 11 ንኡስ አንቀጽ 8 መሰረት ተለይተው በጨረታ አግባብ የሚስተናገዱ እና በመጀመሪያው ዙር አንድ ተጫራች ቢቀርብም እንዲስተናገድ የሚደረግበት ነው፡፡ ዝርዝሩ በመመሪያ ይወሰናል፡፡

4) በዚህ ደንብና ይህንን ደንብ ተከትሎ በሚወጣ መመሪያ የማይሸፈኑ ጉዳዮች በመንግስት የግዢ መመሪያ የጨረታ አፈጻጸም በሚደነግገው መሠረት ይመራል፡፡

11. ስለጨረታ ማስታወቂያ

1) የጨረታ ማስታወቂያ በጨረታው ስለሚወጣው መሬት ዝርዝር መረጃን በሚሰጥ መልኩ መዘጋጀት ይኖርበታል፡፡ ዝርዝሩ በመመሪያ የሚወጣ ይሆናል፡፡

2) የጨረታ ማስታወቂያ እያንዳንዱ ከተማ በክልሉ እና በፌደራል የስራ ቋንቋ እንዲሁም ልዩ ጨረታ በሚሆንበት ጊዜ በእንግሊዝኛ ቋንቋ ጭምር የሚዘጋጅ ይሆናል፡፡ ፡

3) የጨረታ ማስታወቂያ ጨረታው ከሚካሄድበት ከአስር የስራ ቀናት በፊት አመቺ በሆኑ የብዙሀን መገናኛ ዘዴዎች የሚተላለፍ ይሆናል፡፡ ዝርዝሩ በመመሪያ ይወጣል፡፡

12. የመሬት ሊዝ ጨረታ ማስታወቂያ ስለማውጣት

በአዋጁ አንቀፅ 9 የተደነገገው እንደተጠበቀ ሆኖ፤ የከተማ ቦታ በጨረታ ለመፍቀድ፡-

1) የጨረታ ማስታወቂያ ቢያንስ በመንግስት የመገናኛ ብዙሃን እንዲሁም በኤፍ.ም ሬዲዮዎች፣ በማስታወቂያ ሰሌዳዎች፣ በከተማው ወይም በክልሉ ድህረ ገጽ እና uK⁋⁂‡ ¾S Ñ“– w²ዘ” በሚመለከተው አካል አማካይነት ለሕዝብ ይፋ መደረግ አለበት፡፡
2) ማንኛውም በጨረታው ለመሳተፍ የፈለገ ተጫራች የጨረታ ማስከበሪያ ዋስትና ማስያዝ አለበት፤ የጨረታ ማስከበሪያ ዋስትናው መጠን፣ የጠቅላላ የቦታው ስፋት በመነሻ ዋጋው ተባዝቶ ከሚገኘው ውጤት 5 በመቶ ያነሰ መሆን የለበትም ፡፡ መጠኑና ሌሎች ተጫራቹ ሊያሟሏቸው የሚገቡት ቅድመ ሁኔታዎችን በሚመለከት በሚወጣው መመሪያ ይወሰናል፡፡
3) በአዋጁ አንቀፅ 13 ከተጠቀሰው ውጪ ለአንድ የቦታ ጨረታ ቦታው ለመጀመርያ ጊዜ የወጣ ከሆነ ቢያንስ ሦስት ተጫራቾች መቅረብ አለባቸው፡፡ በመጀመሪያው ዙር ጨረታ በቂ ተወዳዳሪ ካልቀረበ ጨረታው ተሰርዞ ለሁለተኛ ጊዜ እንዲወጣ ይደረጋል፡፡

13. የጨረታ ሰነድ ይዘት እና አቅርቦት

1) የጨረታ ሰነድ የጨረታውን ዝርዝር መረጃ የጨረታ ዋጋ እና መወዳደሪያ መስፈርት ማቅረቢያ እንዲሁም ለተጫራች ዝርዝር መረጃን በሚሰጥ አግባብ የሚዘጋጅ ሆኖ ይዘቱ በመመሪያ የሚወሰን ይሆናል፡፡
2) የጨረታ ሰነዶችን ይዘት የሚለውጥ ማናቸውም ማሻሻያ ከተደረገ ማሻሻያውን በተጨማሪ የጨረታ ሰነድነት የጨረታውን ሰነድ ለገዙ ሁሉ በማስታወቂያ ሰሌዳ ተገልጾ እንዲወስዱ ይደረጋል፡፡
3) ማንኛውም ተጫራች በወጣው የጊዜ ሰሌዳ መሰረት የጨረታዉን ሰነድ በግዥ ብቻ የሚያገኝ ይሆናል፡፡
4) የጨረታ ሰነድ ዋጋ ለጨረታው ማስፈጸሚያ የሚወጣውን ወጪ የሚተካ መሆን ይኖርበታል፣
5) በጨረታ ሰነድ ግዢ መጠን ላይ በምንም መልኩ የሚጣል ገደብ አይኖርም፡፡ ሆኖም አንድ ተጫራች ለአንድ ቦታ ከአንድ የጨረታ ሰነድ በላይ መግዛት አይችልም፡፡
6) የጨረታ ሰነድ በሳጥን የሚገባ ባልሆነበት የጨረታ ሰነድ የተቀበለ ሰው መተማመኛ ደረሰኝ ለተጫራች ሊሰጥ ይገባል፡፡

14. የጨረታ ማስከበሪያ ዋስትና

1) እያንዳንዱ ተጫራች ከመጫረቱ በፊት የጨረታ ማስከበሪያ ዋስትና የማስያዝ ግዴታ አለበት፡፡ ዝርዝሩ በመመሪያ ይወሰናል፡፡
2) የጨረታ ማስከበሪያ ዋስትና ለተሸናፊ ተጫራቾች በዚህ ደንብ በተወሰነው ጊዜ እና ሁኔታ መሰረት ተመላሽ ይደረጋል፡፡
3) በዚህ አንቀጽ ንኡስ አንቀጽ 2 የተጠቀሰው እንደተጠበቀ ሆኖ አሸናፊ የሆነው ተጫራች የውል ግዴታውን ለመፈጸም የጨረታ ዋስትና ማስከበሪያ በዝግ ሂሳብ ያስያዘው ገንዘብ የሚታሰብለት ይሆናል፡፡ ሆኖም አሸናፊው ተጫራች በዚህ ደንብ በተወሰነው ቀነ ገደብ ውስጥ ቀርቦ ካልተዋዋለ አሸናፊነቱ ይሰረዛል፡፡ ያስያዘውም የጨረታ ማስከበሪያ ዋስትና ለአስተዳደሩ ገቢ ይደረጋል፡፡ ዝርዝሩ በመመሪያ ይወሰናል፡፡
4) በዚህ አንቀጽ ንኡስ አንቀጽ 3 መሰረት በአንድ ዓመት ውስጥ ሶስት ጊዜ አሸናፊነቱ ተገልፆ ቀርቦ ያልተዋዋለ እና ጨረታው የተሰረዘበት ተጫራች ለሁለት ዓመት በከተማው ውስጥ ከሚካሄድ ጨረታ ይታገዳል፡፡

15. ተጫራቾችን የማወዳደርና አሸናፊዎችን የመለየት ሂደት

1) የጨረታ አሸናፊዎችን በመወሰኑ ሂደት የሚከተሉትን የማወዳደሪያ መስፈርቶችን መሰረት በማድረግ ግልፅ በሆነ አግባብ ተገምግሞ ይወሰናል፥
   ሀ) ተጫራቾች ለቦታው ያቀረቡት ከፍተኛ የጨረታ ዋጋ 80%
   ለ) የሊዝ ቅድሚያ ክፍያ መጠን 20% ሆኖ ዝርዝር የማወዳደርያ መስፈርቶች በሚወጣው መመሪያ ይወሰናሉ፡፡
2) በጨረታ ውጤቱ ተጫራቾች ያቀረቡት ዋጋና የገቧቸው ግዴታዎች ተመሳሳይ ሆነው ከመቶ እኩል ነጥብ ካገኙና ከውድድሩ ተካፋዮች ውስጥ ብቸኛ ሴት ተወዳዳሪ ካለች የጨረታው አሸናፊ እንድትሆን ይደረጋል፡፡ ከዚህ ውጭ ከሆነ አጠቃላይ አሸናፊው በእጣ እንዲለይ ይደረጋል፡፡
3) ለተጫረተበት ቦታ በሁሉም መስፈርቶች በሚያገኘው ድምር ውጤት ከፍተኛውን ነጥብ ከመቶ ያገኘ ተጫራች የጨረታው አሸናፊ ይሆናል፤ አንደኛ የወጣው ተጫራች ካልቀረበና ሁለተኛ የወጣው ተጫራች ለጨረታ የሰጠውን ዋጋ ከፍሎ ቦታውን ለመረከብ ከፈለገ መብቱ ይጠበቅለታል፡፡ ሁለተኛ የወጣው ለመረከብ ፍቃደኛ ካልሆነ ጨረታው ይሰረዛል፡፡
4) በጨረታ ሂደት ተሳትፈው አሸናፊነታቸው የተረጋገጠላቸው ተጫራቾች ለማሸነፍ ያበቃቸው መስፈርት፤ ለቦታው የሰጡት ዋጋ፤ የሊዝ ቅድሚያ ክፍያ መጠኑ፤ የክፍያ ማጠናቀቅያ ጊዜው፤ ተጫራቹ በቦታው ሊገነባ ያሰበው የህንፃ ከፍታ መጠንና ያሸነፈበት የቦታ አድራሻ፤ የአሸናፊው ሰው ሙሉ ስም በዝርዝር በማስታወቂያ ሰሌዳ ላይ በግልፅ ለህዝብ ይፋ ይደረጋል፡፡

5) የጨረታ አሸናፊ በዚህ አንቀጽ ንኡስ አንቀጽ 4 መሰረት በሚመለከተው አካል የጨረታ ሂደቱ እና የተጫራቹ ሰነድ ትክክለኛነት እንዲሁም የአሰራር ጥራት ኦዲቱ ተረጋግጦ በማስታወቂያና በጽሁፍ ጥሪ ከቀረበለትና ከተገለጸለት ጀምሮ ባሉት 10 የስራ ቀናት ውስጥ ቀርቦ አግባብ ካለው አካል ጋር የሊዝ ውል መዋዋል አለበት፡፡ የከተማ ቦታ ሊዝ ውል እስኪፈረም ድረስ ባለመብትነት የሚረጋገጥ አይሆንም፡፡
6) የጨረታ አሸናፊ የሆነ ሰው አሸናፊነቱና የሚፈጽማቸው ቀጣይ ተግባራት አግባብ ባለው አካል ከማስጠንቀቂያው ጭምር በጽሑፍ ተገልጾለት በዚህ አንቀጽ ንዑስ አንቀጽ 5 እና በአንቀጽ 17 ንዑስ አንቀጽ 4 በተጠቀሰው ቀነ-ገደብ ውስጥ ቀርቦ ውል ካልተዋዋለ አሸናፊነቱ ይሠረዛል፤ ያስያዘውም የጨረታ ማስከበሪያ ዋስትና ለከተማው ገቢ ይደረጋል፡፡
7) የጨረታውም ውጤት ጨረታው ከተከፈተበት በሚቀጥለው የስራ ቀን ለሕዝቡ በማስታወቂያ ሰሌዳ መለጠፍ ይኖርበታል፡፡

16. ጨረታን ስለመመርመር

1) የመሬት ጨረታ አስፈጻሚ ቡድን ጨረታውን የተሟላ ነው ብሎ ሊቀበል የሚችለው በጨረታ ሰነድ ላይ የተዘረዘሩት ተፈላጊ ነጥቦች ተሟልተው ሲገኙ ብቻ ነው፡፡
2) በጨረታው የቀረበው ሰነድ ከተዘረዘሩት ባህሪዎች፣ የውሉ ቃላትና ሁኔታዎች እንዲሁም ተፈላጊ ነጥቦች ጋር በተወሰነ ደረጃ ልዩነት ቢታይበትና ይሄው ልዩነት መሠረታዊ የሆነ ለውጥ የማያስከትልና የጨረታውን ቁምነገር ሳይለውጥ በቀላሉ ሊታረም የሚችል ጥቃቅን ስህተት ወይም ግድፈት ያዘለ መሆኑ በፈፃሚ አካሉ ሲታመን ጨረታውን እንደተሟላ አድርጎ ሊቀበለው ይችላል፡፡
3) የሚመለከተው አካል ጨረታን በሙሉ ወይም በከፊል የመሰረዝ መብቱ በህግ የተጠበቀ ነው፡፡
4) የሚመለከተው አካል ተጫራችን ተጨባጭ በሆነ ምክንያት ከጨረታው የማገድ ስልጣን ያለው ሲሆን ተጫራቹን ወይም ከጨረታ ሂደት ለማገድ የሚያበቁ መሰረታዊ ጉዳዮች እና ዝርዝር ምክንያቶች በመመሪያ የሚወሰን ይሆናል፡፡

17. የጨረታ ውጤት ስለማጽደቅ

1) የመሬት ሊዝ ጨረታ አስፈጻሚ የስራ ቡድን የጨረታ ውጤቱን በመገምገም አሸናፊውን እንዲሁም ሁለተኛ የወጣውን በመለየት ጨረታው በተከፈተ በሚቀጥለው የሥራ ቀን የጨረታ ውጤቱን ይገልጻል፡፡

2) በዚህ አንቀጽ ንኡስ አንቀጽ 1 የተጠቀሰውን ውጤት እንዲያጸድቅ ስልጣን የተሰጠው አካል ውጤቱ በቀረበለት በሁለት የስራ ቀናት ውስጥ በማጽደቅ አግባብ ባለው ማስታወቂያ እና በከተማው ወይም ክልል ድህረ ገጽ ለሕዝብ ይፋ ያደርጋል፡፡
3) በዚህ አንቀጽ ንኡስ አንቀጽ 2 መሰረት የተገለጸው አሸናፊ ተጫራች ውጤቱ አግባብ ባለው መንገድ ከተገለጸለት ጊዜ ጀምሮ ባሉት 10 የስራ ቀናት ውስጥ ቀርቦ ቅድመ ክፍያ በመፈጸም እና ተገቢውን ቅድመ ሁኔታ በማሟላት ውል እንዲፈርም ይደረጋል፡፡
4) በዚህ አንቀጽ ንኡስ አንቀጽ 3 መሰረት አሸናፊው ተጫራች ግዴታውን አሟልቶ ውል ካልፈረመ በሦስት ተጨማሪ የስራ ቀናት ቀርቦ ቅድመ ሁኔታዉን አሟልቶ ውል እንዲፈርም በጽ/ቤቱ የማስታወቂያ ሰሌዳ ማስጠንቀቂያ እንዲለጠፍለት ይደረጋል፡፡
5) የጨረታው አሸናፊ በዚህ አንቀጽ ንኡስ አንቀጽ 4 መሰረት በተሰጠው ሦስት ተጨማሪ የስራ ቀናት ውስጥ ቀርቦ ቅድመ ክፍያ ያልፈጸመ ከሆነ ቦታውን እንደማይፈልገው ተቆጥሮ በሲፒኦ ያስያዘውን የጨረታ ማስከበርያ ገንዘብ ለከተማው ገቢ ይደረጋል፡፡
6) በዚህ አንቀጽ ንኡስ አንቀጽ 5 መሰረት ውል ላልተፈጸመበት ቦታ የጨረታ አስፈጻሚ ቡድኑ ሁለተኛ ለወጣው ተጫራች በሰጠው ዋጋ መሠረት ተመሳሳይ ጥሪ በማድረግ በዚህ አንቀጽ ንኡስ አንቀጽ 3 እና 4 በተደነገገው የጊዜ ገደብ ውስጥ ተገቢውን ቅድመ ሁኔታ እንዲያሟላ እና ውል እንዲፈጽም ያደርጋል፡፡
7) በዚህ አንቀጽ ንኡስ አንቀጽ 6 መሰረት በተሠጠው የጊዜ ገደብ ውስጥ ሁለተኛ የወጣው ተጫራች ካልቀረበ ጨረታው እንደተሰረዘ ይቆጠራል፡፡

18. የጨረታ ማስከበሪያ ዋጋ ሲፒኦን ተመላሽ ስለማድረግ

1) በቂ ተጫራቾች ባለመቅረባቸው ምክንያት ከጨረታው የተሰረዙ ተጫራቾች ለማስከበርያ ያስያዙት ሲፒኦ ተመላሽ የሚደረግላቸው ይሆናል፡፡
2) የጨረታው አሸናፊዎች ውጤት ከተገለጸ ጊዜ ጀምሮ ቀሪዎቹ ተጫራቾች ለጨረታ ማስከበርያ ያስያዙት ሲፒኦ ከሚቀጥለው የሥራ ቀን ጀምሮ ተመላሽ ይደረግላቸዋል፡፡
3) በጨረታው ውጤት ሁለተኛ የወጣው ተጫራች አሸናፊው ቀርቦ ውል መዋዋሉ እስኪረጋገጥ ድረስ ለመቆየት እና አሸናፊው ካልቀረበ ወይም ውጤቱ ካልጸደቀለት ለጨረታ ባቀረበው ዋጋ ቦታውን ለመቀበል ፍላጎት ካለው እና ይህንንም በማመልከቻ ለጨረታ አስፈጻሚ ቡድን ከገለጸ ያስያዘው ሲፒኦ ሳይመለስ ተመዝግቦ ሊቆይ ይችላል፡፡

19. የሊዝ ጨረታ አስፈጻሚ ስለማደራጀት

1) ከተሞች የሊዝ ጨረታ አስፈጻሚ ሲያደራጁ የቋሚ ቅጥር ሠራተኞችን መመደባቸውን የሚያረጋግጡ ይሆናል።
2) የጨረታ አስፈጻሚ የሙያ ስብጥር፣ ተግባር እና ኃላፊነት በሚወጣው መመሪያ ይወሰናል።

20. የሊዝ ጨረታ አስፈጻሚ ኃላፊነት

1) ለሊዝ ጨረታ የተዘጋጁትን ቦታዎች ከምንም ዓይነት ይዞታ ነፃ መሆናቸውን፣ ሽንሻኖ ያላቸው መሆኑንና መሠረተ ልማት የቀረበላቸው መሆናቸውን በመስክ በማረጋገጥ ርክክብ ያደርጋል፡፡
2) ዝርዝር የጨረታ ጥሪ ሰነድ ያዘጋጃል፡፡
3) የጨረታ ማስታወቂያ ጥሪ ያደርጋል፡፡
4) የጨረታ ሰነድ መሸጫ ዋጋ ግምት ያወጣል፣ ሽያጭ ያከናውናል፡፡
5) የጨረታ ሰነድ ማስገቢያ ሳጥን ያዘጋጃል፣ ያሽጋል፡፡
6) የጨረታዉን ሂደት ይመራል፡፡
7) የጨረታ አሸናፊን በተቀመጠው የግምገማ መስፈርት ይለያል፤ የውሳኔ ሃሳብ አደራጅቶና ውሳኔ እንዲሰጥ ስልጣን ለተሰጠው አካል አቅርቦ ያጸድቃል፡፡ ዝርዝሩ በመመሪያይወሰናል፡፡
8) በእያንዳንዱ የሊዝ ጨረታ የጨረታውን አጠቃላይ ሂደት የሚያሳይ በተለይም የጨረታውን አፈፃፀም ሥርዓት፣ እያንዳንዱ ተጫራች ለመስፈርቱ ያቀረበውን ኃሳብና የገባቸውን ግዴታዎች፣ ያቀረባቸውን ልዩ ልዩ ሰነዶች፣ በተለየ ሁኔታ የቀረበ ማመልከቻ ካለ የጨረታውን አሸናፊ፣ አሸናፊ የሆነበትን ምክንያት እንዲሁም ሌሎች ተጫራቾች ያላሸነፉበትን ምክንያት የያዘ ቃለ ጉባዔ ያዘጋጃል፡፡
9) ለዉዝፍ ዕዳ መክፈያ የተያዘን መሬትና መሬት ነክ ንብረት በዕዳው ልክ ብቻ ሽያጭ ያስፈጽማል፡፡ ለሥራውም የተለያዩ አግባብነት ያላቸው አጋዥ ሙያተኞችን ያስተባብራል ይመራል።

ክፍል አራት

የከተማ ቦታን በሊዝ ምደባ ስለመስጠት

21. መሬት በሊዝ ምደባ የሚሰጥበት አግባብ

1) መሬት በሊዝ ምደባ የሚሰጠው በአዋጁ አንቀጽ 12 መሰረት ለተፈቀደላቸው ፕሮጀክቶች እና ዝርፎች በክልል ወይም በከተማው ካቢኔ በኩል በየዓመቱ ዕቅድ ቀርቦ ከፀደቀ በኂላ ዝርዝር አፈጻጸሙ በየከተሞቹ ይተገበራል፡፡

2) በዚህ አንቀጽ 21 ንዑስ አንቀጽ 1 የተገለጸው እንደተጠበቀ ሆኖ በአዋጁ አንቀጽ 12 ንኡስ አንቀጽ 1 በፊደል ተራ ሰ መሰረት በክልል ፕሬዚዳንት ወይም በከተማ ከንቲባ እየተመሩ በካቢኔ የሚወሰኑ ሌሎች ፕሮጀክቶች ዝርዝር ይህን ደንብ ለማስፈፀም በሚወጣው መመሪያ የሚወሰን ይሆናል፡፡

22. በሊዝ ምደባ ስለሚሰጡ ቦታዎች የጥያቄ አቀራረብና አወሳሰን ስርአት

1) ጥያቄዉ የባለ በጀት መስሪያ ቤት ከሆነ ቀጥሎ በተቀመጡት ቅድመ ሁኔታዎች መሟላት አለባቸው፡፡

   ሀ) የባለበጀት መ/ቤቱ የክልል ወይም የከተማ አስተዳደር የበላይ ኃላፊ ማረጋገጫ፤

   ለ) ቦታው የሚጠየቀው በበጀት ዓመቱ ሊከናወኑ ለታቀዱት ሥራዎች መሆኑ ማረጋገጫ፤

   ሐ) ለፕሮጀክቱ የተፈቀደ በጀት መኖሩ ሲረጋገጥ ነው፡፡

2) ጥያቄው በበጎ አድራጎት ድርጅት የቀረበ ከሆነ በዚህ አንቀጽ ንኡስ አንቀጽ 1 ላይ የተጠቀሰው ቅድመ ሁኔታ እንደተጠበቀ ሆኖ ቀጥሎ የተቀመጡት ቅድመ ሁኔታዎች፡-

   ሀ) የዘመኑ የታደሰ የምዝገባ ፍቃድ፣

   ለ) ስራውን ለመስራት ከክልሉ ወይም ከከተማ አስተዳደሩ የተሰጠው ፍቃድ፣

   ሐ) ለመስራት የታሰበው ፕሮጀክት ተቀባይነት ከክልሉ ወይም ከተማ አስተዳደር

   ማረጋገጫ፤ እና

   መ) ለፕሮጀክቱ የተያዘ በጀት ስለመኖሩ ማረጋገጫ ሊሟሉ ይገባል፡፡

3) ጥያቄው ለእምነት ተቋማት ማምለኪያ ቦታዎች ከሆነ በዚህ ደንብ የክልል ወይም የከተማ አስተዳደሩ በሚያጸድቁት አግባብ ተወስኖ የሚሰጥ ይሆናል፡፡

4) ጥያቄው በመንግስት የከተማ የመኖሪያ ቤት ፖሊሲ መሠረት ለሚቀርብ መሬት ከሆነ በወጣው ፖሊሲና ተከትለው በሚወጡ ዝርዝር መመሪያ መሠረት ይተገበራል፡፡
5) ለማኑንፋክቸሪንግ ኢንዳስትሪ እና ሌሎች በአዋጁ ለተመለከቱ ምደባዎች የፕሮጀክቱ ዝርዝር ጥናት በመሰረታዊነት መሟላት አለበት፡፡
6) በዚህ አንቀጽ ንኡስ አንቀጽ ከ1 እስከ 5 መሰረት ተገቢው ቅድመ ሁኔታ የተጠናቀቀ እና የማጣራት ሂደቱን በአግባቡ የፈጸመ ፕሮጀክት ወይም ዘርፍ በስታንዳርድ መሰረት ተገቢ የሆነ የቦታ ስፋት በምደባ የሚሰጠው ይሆናል፡፡

23. በልማት ምክንያት የሚነሱ ነዋሪዎችን መልሶ ለማስፈር ስለሚሰጥ ቦታ

የከተማ ቦታቸውን በልማት ምክንያት ወይም በከተማ መልሶ ማልማት ምክንያት ለሚለቁ ነዋሪዎች የሚደረገው የካሳ አከፋፈል ስርዓት አግባብ ባለው ሕግ የሚመራ መሆኑ እንደተጠበቀ ሆኖ፡-

1) በአዋጁ አንቀጽ 12 ንዑስ አንቀጽ 2 መሰረት ይዞታውን እንዲለቅ የተደረገ ህጋዊ የነባር ባለይዞታ ተመጣጣኝ ምትክ ቦታ በነባሩ ስሪት ይሰጠዋል፡፡
2) የሊዝ ይዞታ ባለመብት የውል ዘመኑ ከመድረሱ በፊት ቦታውን እንዲለቅ አይደረግም፡፡ ሆኖም ይዞታው ለህዝብ ጥቅም ሲባል የሚፈለግ ሲሆን የሊዝ ይዞታውን እንዲለቅ የተደረገ ህጋዊ ባለመብት ለቀሪው የሊዝ ዘመን ተመሳሳይ ስፋት እና ደረጃ ያለው ምትክ ቦታ በነባሩ ሊዝ አግባብ ይሰጠዋል፡፡ ዝርዝሩ በመመሪያ ይወሰናል፡፡
3) በህገ-ወጥ መንገድ በተያዘ ቦታ ላይ ለሰፈረ ንብረት በተለያየ ምክንያት እንዲነሳ ሲወሰን ምንም ዓይነት ካሣ እና ምትክ ቦታ አይሰጥም፡፡
4) የጋራ ህንጻ በተገነባበት እና የቤት ልማት ፕሮግራም በሂደት ላይ ባለበት ከተማ የመንግስት ወይም የቀበሌ መኖሪያ ቤት ህጋዊ ተከራይ የሆነ ሰው በከተማው መልሶ ማልማት ፕሮግራም ምክንያት ተነሺ በሚሆንበት ጊዜ የጋራ መኖሪያ ቤት በግዥ በቅድሚያ የሚያገኝበት ሁኔታ ይመቻችለታል፡፡ ዝርዝሩ በመመሪያ ይወሰናል፡፡
5) የቤት ልማት ፕሮግራም በሌለበት ከተማ የመንግስት ወይም የቀበሌ መኖሪያ ቤት ህጋዊ ተከራይ የሆነ ሰው በከተማ መልሶ ማልማት ፕሮግራም ምክንያት ተነሺ በሚሆንበት ጊዜ የመኖሪያ ቤት መገንቢያ ቦታ በሊዝ ምደባ የሚሰጠው ይሆናል፡፡ ዝርዝሩ በመመሪያ ይወሰናል፡፡
6) የመንግስት ወይም የቀበሌ የንግድ ቤት ህጋዊ ተከራይ የሆኑ ሰዎች በከተማ መልሶ ማልማት ፕሮግራም ምክንያት ተነሺ በሚሆኑበት ጊዜ ፕላኑ የሚፈቅደውን ግንባታ በጋራ ለማከናወን ፍላጎት ሲኖራቸዉ ለዚሁ ግንባታ የሚሆን ተመጣጣኝ ቦታ በሚመለከተው ክልል ወይም የከተማ አስተዳደር በሚወሰነው መሠረት ማጣራት ተደርጎ በፕላኑ ለህንጻ ግንባታው ከተፈቀደው ቦታ፡-

ሀ) በአንደኛ ደረጃ ከተሞች በነፍስ ወከፍ 25 ካሬ ሜትር፤

ለ) በሁለተኛ ደረጃ ከተሞች በነፍስ ወከፍ 75 ካሬ ሜትር፤

ሐ) በሶስተኛ ደረጃ ከተሞች በነፍስ ወከፍ 150 ካሬ ሜትር በሊዝ መነሻ ዋጋ የሚስተናገዱ ሆኖ በፕላን የተመለከተው ሽንሻኖ ለአባላቱ በነፍስ ወከፍ ከተፈቀደው ጠቅላላ ስፋት በላይ ከሆነ ቀሪው በአካባቢዉ ከፍተኛ የጨረታ ዋጋ በሕጉ መሠረት ከፍለው ይመደብላቸዋል፡፡

7) በከተማ ክልል ውስጥ በልማት ምክንያት ቦታቸውን እንዲለቁ የተደረጉ አርሶ አደሮች አግባብ ባለው ሕግ ተወስኖ ለንብረቱ ከሚከፈለው ካሳ በተጨማሪ በክልል ወይም በከተማ አስተዳደር ካቢኔ በሚወጣው መመሪያ መሠረት ተመጣጣኝ ምትክ ቦታ በነባር ስሪት ይሰጣቸዋል፡፡

24. በአጭር ጊዜ በሊዝ ስለሚሰጡ ቦታዎች

1) በአዋጁ አንቀፅ 18 ንዑስ አንቀፅ 2 ፊደል ተራ ለ በተጠቀሰው መሰረት በአጭር ጊዜ ጥቅም ላይ የማይውሉ የከተማ ቦታዎች ለሚከተሉት አገልግሎቶች ማለትም፡-

   ሀ) ከከተማ ግብርና ሥራ ጋር የተያያዙ /አትክልት፣ አበባ፣ ዶሮ እርባታ ወዘተ....፤

   ለ) ለግንባታ ዕቃዎች ማምረቻ ወይም መሸጫ ወይም ማሳያ፤

   ሐ) ለግንባታ ጊዜ ማሽነሪና ቁሳቁስ ማስቀመጫ፤

   መ) ለግንባታ ድንጋይ ማውጫ እና ለዚሁ ተግባር የሚሆን ማሽነሪ መትከያ፤

   ሠ) ለማስታወቂያ ሰሌዳ መትከያ፤

   ረ) ለጥቃቅንና አነስተኛ ተቋማት ለተለያዩ አገልግሎቶች ማቅረቢያ እና ማምረቻ ሊፈቀድ ይችላል፡፡

2) በአጭር ጊዜ ሊዝ ይዞታ የተሰጠ ቦታ አጠቃቀምና ውል አያያዝ እንደሚከተለው ይሆናል፤

   ሀ) የአጭር ጊዜ ሊዝ ይ[illegible]ታ ውል እስከ 5 ዓመት ጊዜያት ብቻ የተወሰነ ነው፡፡

   ለ) ለአጭር ጊዜ የተሰጠ ቦታ ለልማት ሲፈለግ የንብረት ካሣ ሳይከፈል ይወሰዳል፤ ሆኖም አስፈላጊነቱ እየታየ ለቀሪው የውል ጊዜ ብቻ መጠቀሚያ የሚሆን ምትክ ቦታ ሊሰጥ ይችላል ፡፡

3) በጊዜያዊ ሊዝ የሚሰጥ ቦታ የሊዝ ክፍያ እንደሚከተለው ይሆናል፤

   ሀ) ለአጭር ጊዜ ቦታ በከተማው ከንቲባ ኮሚቴ የተፈቀደላቸው አካላት በከተማ ቦታ የኪራይ ተመን መሰረት ዓመታዊ ክፍያ እንዲከፍሉ ይደረጋል።

   ለ) በከተማ ቦታ ኪራይ ተመን መሰረት ማስከፈል ለማይቻልባቸው ለአጭር ጊዜ ለሚሰጡ ቦታዎች በተለየ ጥናት ወይም በከተማው ከንቲባ ኮሚቴ በሚወሰነው የክፍያ መጠን እንዲከፍሉ ይደረጋል።

ክፍል ስድስት

ስለሊዝ ውል እና የምስክር ወረቀት አሰጣጥ

25. የሊዝ ውል የሚመራባቸው መርሆዎች

የአዋጁ እና የዚህ ደንብ ድንጋጌዎች እንደተጠበቁ ሆነው የሊዝ ውል በፍትህብሔር ህግ አስተዳደር ክፍል መስሪያ ቤቶች ስለሚያደርጓቸው ውሎች በተደነገገው መሰረት ይመራል።

26. የሊዝ ውል ስለመፈረም

1) በአዋጁና በዚህ ደንብ የከተማ ቦታዎች በሊዝ ሲፈቀዱ የውሉ ሰነድ የተጫራቾችን መብትና ግዴታ፣ የውል ሰጪን ተግባርና ኃላፊነት፣ ጠቅላላ የሊዝ ይዞታ አስተዳደር ሁኔታዎችን፣ የግንባታ መጀመሪያና ማጠናቀቂያ የጊዜ ገደብ፣ በተጨማሪ ከቦታው የተለየ ባህሪ ጋር የሚሄዱ ልዩ ሁኔታዎችን የሚያመለክት መሆን አለበት። ዝርዝሩ በመመርያ ይወሰናል።
2) የውሉ ቃሎችና ሁኔታዎች ረቂቅ ከጨረታው ሰነድ ጋር እንደ አንድ ክፍል ሆነው መቅረብ ይኖርባቸዋል።
3) በጨረታ የተሰጡ ቦታዎችን በመስሪያ ቤቱ ችግር ምክንያት በውሉ በተጠቀሰው ቀን መሠረት ማስረከብ ካልተቻለ ውሉ እንደገና ይታደሳል፤ የችሮታ ጊዜ፣የግንባታ መጀመሪያ እና ማጠናቀቂያ ጊዜ እንዲሁም የሊዝ ክፍያ ማጠናቀቂያ ጊዜ እንደገና እንደ አዲስ ይወሰናል።
4) በሊዝ ውሉ ላይ የተገለፁና የውሉ ሰነድ አካል ሆነው የተፈረሙ ጉዳዮች በሊዝ በወሰደው ሰውም ሆነ በሊዝ ውል ሰጪው በኩል እንደ ሕግ ሆነው ያገለግላሉ።
5) የሊዝ ውል በጨረታ ባሸነፈ ወይም በምደባ በተሰጠው ወይም በአዋጁና በዚህ ደንብ ወደ ሊዝ ሥሪት እንዲገባ በተወሰነበት የከተማ ቦታ ሊዝ ባለመብትና በውል ሰጪው መካከል ይህን ደንብ

ለማስፈፀም በሚወጣው መመሪያ በሚቀመጠው የጊዜ ሰሌዳና ዝርዝር የአፈፃፀም ሂደት መሠረት መፈረም አለበት፡፡

6) አስፈላጊውን ክፍያ አጠናቅቆ የሊዝ ውል የተዋዋለ ሰው በግንባታው ዓይነትና ደረጃ ተለይቶ በተቀመጠው የጊዜ ገደብ ውስጥ ግንባታ መጀመርና ማጠናቀቅ አለበት፡፡

27. የሊዝ ይዞታ የምስክር ወረቀት

1) የከተማ ቦታ በሊዝ የተፈቀደለት ሰው የሊዝ ይዞታ ምስክር ወረቀት ይሰጠዋል፡፡
2) የሊዝ ይዞታ የምስክር ወረቀት የሚከተሉትን መግለጫዎች፡-

ሀ) ቦታ በሊዝ የተፈቀደለትን ሰው ሙሉ ስም ከነአያት፤

ለ) የቦታውን ስፋትና አድራሻ፤

ሐ) የቦታውን የአገልግሎት ዓይነት፣ ደረጃና የፕሎት ቁጥር፤

መ) የቦታውን ጠቅላላ የሊዝ ዋጋና በቅድሚያ የተከፈለውን መጠን፤

ሠ) በየዓመቱ የሚፈጸመውን የሊዝ ክፍያ መጠንና ክፍያው የሚጠናቀቅበትን ጊዜ፤

ረ) የሊዝ ይዞታው ፀንቶ የሚቆይበትን ዘመን፡

ሰ) የይዞታ የምስክር ወረቀት ቁጥር አካቶ መያዝ አለበት፡፡

ክፍል አምስት

የከተማ ቦታ ሊዝ ዋጋ እና የክፍያ አፈፃፀም

28. የከተማ ቦታ የሊዝ መነሻ ዋጋ

1) የከተማ ቦታ የሊዝ መነሻ ዋጋ ትመና እንደ ከተሞቹ አወቃቀርና ነባራዊ ሁኔታ መሰረት በማድረግ እና የሚከተሉትን ስልቶች በማገናዘብ ይዘጋጃል፡፡

ሀ) የከተማ ቦታ የሊዝ መነሻ ዋጋ የቅመራ ስልቱ በርካታ መሬትና መሬት ነክ ግብይቶች፣ የጊዜ ልዩነት ማስተካከያን፣ የማሕበራዊና ኢኮኖሚያዊ ሁኔታዎችን፤ ወቅታዊና የወደፊት የእድገት እንድምታ ጥናቶችን በማካሄድና የመሬት አጠቃቀም እና የቦታ ደረጃን ታሳቢ በማድረግ መዘጋጀት አለበት፤

ለ) በዚህ አንቀጽ ንኡስ አንቀጽ 1 (ሀ) የተጠቀሰው እንደተጠበቀ ሆኖ ቦታውን ለማዘጋጀት ለተነሺዎች የተፈጸመ የካሳ ክፍያ፣ የቦታ ዝግጅት፣ የመሰረተ ልማት ዝርጋታ፣ የስራ ማስኬጃ እና ሌሎች ተጨባጭነት ያላቸው ተጓዳኝ ወጪዎችን የሚያገናዝብ ይሆናል፡፡

2) የከተማ ቦታን በዋጋ ቀጠና ስለ መከፋፈል እና አተገባበሩ፡-

ሀ) በዚህ አንቀጽ ንኡስ አንቀጽ 1 መሰረት የተሰላውን የከተማ ቦታዎች ዝርዝር የሊዝ መነሻ ዋጋ መሰረት በማድረግ የዋጋ ቀጠና ካርታ መዘጋጀት አለበት፤

ለ) የሊዝ መነሻ ዋጋ ወቅታዊነቱ ተጠብቆ እንዲካሄድ በየበጀት ዓመቱ ወይም በየሁለት ዓመቱ የሚካሄዱትን የመሬት ሊዝ ጨረታዎች ሁሉንም የቦታ ቀጠና እና የአገልግሎት ዓይነት ታሳቢ በማድረግ መዘጋጀት አለበት፤

ሐ) በዚህ አንቀፅ ንኡስ አንቀጽ 2 (ሀ) የተዘጋጀ የዋጋ ቀጠና ካርታ በወቅቱ አግባብ ባለው አካል በማስጸደቅ በከተማው መሠረታዊ ካርታ እና በጽሑፍ ተዘጋጅቶ በማንኛውም ተደራሽ የመረጃ መረብና ለእይታ በሚመች የማስታወቂያ ሰሌዳ ለሕዝብ ይፋ መደረግ አለበት፡፡

3) በዚህ አንቀፅ በተዘጋጀው መሠረት የተዘጋጀ የመነሻ ዋጋ በጨረታ ለሚቀርቡና በምደባ በሚሰጡ ቦታዎች ላይ ተግባራዊ ይሆናል ፡፡

4) የትኛውም ቦታ ለቦታው ደረጃ ከተቀመጠው የመነሻ ዋጋ በታች በጨረታ ሊተላለፍ አይችልም፡፡

5) ለራስ አገዝ እና አነስተኛ ገቢ ላላቸው የህብረተሰብ ክፍሎች በሚወጣው የሀገራችን የከተማ ቤት ፖሊሲ መሰረት በምደባ ለመኖሪያ አገልግሎት ለሚሰጥ ቦታ፣ ለማኑፋክቸሪንግ፣ ለከተማ ግብርና እና ለቢዚነስ አገልግሎት እንደየአገልግሎቱ የተለየ መነሻ ዋጋ በማጥናት ተግባራዊ ይደረጋል፡፡

6) በዚህ አንቀጽ የተመለከተው እንደተጠበቀ ሆኖ በአሁኑ ወቅት የሊዝ መነሻ ዋጋ ያላቸው ከተሞች የተወሰነ አስፈላጊ የሆኑ ማስተካከያ በማድረግ አዋጁ ከወጣበት ቀን ጀምሮ እስከ ሁለት ዓመት ድረስ ባለው ጊዜ መነሻውን ሳይከልሱ ሊቆዩ ይችላሉ፡፡

29. የመሬት የሊዝ ዋጋ

1) የከተማ መሬት የጨረታ ዋጋ ለእያንዳንዱ ቦታ ወይም የጨረታ ቁጥር አሸናፊ ተጫራች የሰጠው ከፍተኛ ዋጋ ነው፡፡

2) በምደባ የተላለፈ ቦታ የሊዝ ዋጋ በየአገልግሎቱ ዓይነት በተናጠል ተለያይቶ ሊተመን ይችላል፡፡

3) በዚህ አንቀጽ ንኡስ አንቀጽ 2 የተመለከተው እንደተጠበቀ ሆኖ ለዲፕሎማቲክና ለዓለም አቀፍ ተቋማት በመንግስት ስምምነት የሚፈጸም ይሆናል፡፡

4) ለሀይማኖት ተቋማት የአምልኮ ማከናወኛ እና ለባለበጀት የመንግስታዊ ተቋማት የመስሪያ ቦታ የሚመደበው በቦታው ላይ ለነበረው ንብረት እና ቦታው የአርሶ አደር ከሆነም ለዚሁ አግባብ የተከፈለውን ካሳ ክፍያ የሚተካ ክፍያ በአንድ ጊዜ ሲፈጽሙ ነው፡፡ መሬቱ ግን ከሊዝ ክፍያ ነፃ ይሰጣል፡፡ ዝርዝር የክፍያ አወሳሰኑ በመመሪያ ይወሰናል፡፡

30. የሊዝ ክፍያ አፈፃፀም

በሊዝ ቦታ የተፈቀደለት ሰው፡-

1) ከሊዝ ዋጋ የቅድሚያ ክፍያ መጠን በልማት ሥራው ወይም በአገልግሎቱ ዓይነት ተለይቶ የሚወሰን ሆኖ ውል ተቀባይ የሚፈጽመው የሊዝ ቅድሚያ ክፍያ ከጠቅላላው የሊዝ ዋጋ 10 በመቶ ያነሰ አይሆንም፡፡
2) በዚህ አንቀጽ ንዑስ አንቀጽ 1 ላይ የተመለከተው ቢኖርም፣ ጠቅላላ የቦታውን የሊዝ ዋጋ ክፍያ በአንድ ጊዜ የመክፈል መብቱ የተጠበቀ ነው፡፡
3) ቅድሚያ ክፍያ ከፈፀመ በኋላ እንደ ልማት ወይም አገልግሎት ዓይነት የሚለያይ ሆኖ ለመኖሪያ አገልግሎት እስከ 60 ዓመት ለሌሎች አገልግሎቶች እስከ 40 ዓመት እንዲሁም ለከተማ ግብርና እስከ 5 ዓመት የክፍያ ማጠናቀቂያ ጊዜ ይሰጠዋል፤ ዝርዝሩ ክልሎች እና የከተማ አስተዳደሮች በሚያወጡት መመሪያ ላይ ይወጣል፡፡
4) በየዓመቱ የሊዝ ክፍያ መፈጸም ያለበት ሆኖ ከጠቅላላ የቦታው የሊዝ ዋጋ የከፈለው ቅድሚያ ክፍያ ተቀንሶና ቀሪው ክፍያ ለተሰጠው የክፍያ ማጠናቀቂያ ጊዜ ተካፍሎ የሚገኘውን አማካይ ዋጋ ዓመታዊ የሊዝ ክፍያ እስከ ማጠናቀቂያ ጊዜው በየዓመቱ ይከፍላል::
5) በዚህ አንቀጽ ንኡስ አንቀጽ 4 የተመለከተው እንደተጠበቀ ሆኖ ውል ተቀባይ ዓመታዊ ክፍያውን በዓመቱም ውስጥ ከፋፍሎ ለመክፈል ጥያቄ ካቀረበ የሚመለከተው አካል ሊፈቅድለት ይችላል፡፡ ሆኖም የክፍያ አፈጻጸሙ ከሶስት ጊዜ መብለጥ የለበትም፡፡
6) በየዓመቱ በሚከፈለው ቀሪ የሊዝ ክፍያ ላይ የዓመቱ ወለድ በኢትዮጵያ ንግድ ባንክ ማበደሪያ ተመን መሠረት ይከፍላል፡፡ የወለድ ምጣኔውም የባንክ የማበደሪያ ተመን ሲለወጥ አብሮ ይለወጣል፤

31. የሊዝ ውዝፍ ክፍያን ስለመሰብሰብ

1) መሬት በሊዝ አግባብ የተፈቀደለት ሰው ከሚመለከተው አካል ጋር በገባው ውል መሰረት ክፍያውን በወቅቱ መፈጸም አለበት፡፡
2) በአዋጁ አንቀጽ 20 ንኡስ አንቀጽ 6 መሰረት የሊዝ ባለይዞታው የሊዝ ክፍያውን ለመክፈል በሚገባው የጊዜ ገደብ ውስጥ ካልከፈለ በየአመቱ ክፍያውን ባለመክፈሉ የፅሁፍ ማስጠንቀቂያ

በየደረጃው የሚሰጠው ሆኖ የሦስት ዓመት ውዝፍ ካለበት ከአራተኛው ዓመት ጀምሮ አግባብ ያለው አካል ንብረቱን ይዞ በመሸጥ ለውዝፍ ዕዳው መክፊያ የማዋል ስልጣን አለው፡፡

3) የሚመለከተው አካል በውዝፍ ሊዝ ክፍያ አሰባሰብ ረገድ የሊዝ ባለይዞታ የሆነ ገንዘብ ወይም ንብረት በእጁ ከሚገኝ ሰው መሰብሰብን የሚያካትት ይሆናል፡፡
4) በዚህ አንቀጽ ንኡስ አንቀጽ 2 መሠረት የሚሸጠው ንብረት በጨረታ አግባብ ሆኖ በሊዝ በተያዘው መሬት ላይ የሠፈረውን ንብረት ብቻ የሚመለከት ይሆናል፡፡
5) በዚህ አንቀጽ ንኡስ አንቀጽ 8 መሰረት የሚመለከተው አካል ውዝፍ ዕዳውን ለማስመለስ የሚያከናውነው ሽያጭ የንብረት አስተዳደሩን በህግ አግባብ የሚያውክ አለመሆኑ እስከተረጋገጠ ድረስ ያልተከፈለውን የሊዝ ዕዳ ለማስከፈል የሚበቃውን ንብረት ብቻ ይሆናል፡፡
6) የሊዝ ባለይዞታ ሃብት መያዝ የሚቻለው የመያዙ ትዕዛዝ በተሰጠበት ጊዜ በይዞታ ሥር የሚገኝ ንብረት ብቻ ላይ ነው፡፡
7) ውዝፍ የሊዝ ክፍያ የሚሰበሰበው ተቋም የሊዝ ባለይዞታውን ሃብት በሚይዝበት ጊዜ የፖሊስ ሃይል እንዲገኝ ሊጠይቅ ይችላል፡
8) ሃብቱን የያዘው ተቋም ሃብቱን ከያዘበት ቀን አንስቶ ከሚቆጠር ከአሥር የሥራ ቀናት በኂላ በሃራጅ እስከቻለው ድረስ በዕዳው ገደብ ንብረቱን መሸጥ ይችላል፡፡
9) በአዋጁና በዚህ ደንብ መሠረት ባልተከፈለ የሊዝ ክፍያ ምክንያት የሚገኝን ገቢ ወይም ሌላ ንብረት መያዝ የሚቻለው የሊዝ ክፍያ ለመሰብሰብ ኃላፊነት የተሰጠው ተቋም ሃብቱን በመያዝ ውዝፍ የሊዝ ክፍያ እንደሚሰበስብ አስቀድሞ ለሊዝ ባለይዞታው በፅሁፍ ካስታወቀ በኃላ ይሆናል፡፡ በዚህ ዓይነት የሚሰጠው ማስታወቂያ ሃብቱ ከመያዙ ሠላሳ (30) ቀናት በፊት ለሊዝ ክፍያ ባለዕዳው ሊደርሰው ይገባል፡፡
10) በፍርድ ቤት ትዕዛዝ የተከበረ ወይም በአፈፃፀም ላይ ያለ ወይም በሕግ አግባብ በዋስትና የተያዘ ካልሆነ በስተቀር ማናቸውም በውዝፍ የሊዝ ክፍያ ምክንያት የተያዘ ንብረት በእጁ የሚገኝ ወይም ለውዝፍ ሊዝ ባለዕዳው ማናቸውም ግዴታ ያለበት ሰው ውዝፍ የሊዝ ክፍያ የሚሰበስብ ተቋም ሲጠይቀው የያዘውን ሃብት የማስረከብ ወይም ያለበትን ግዴታ የመፈፀም ኃላፊነት አለበት፡፡
11) ማንኛውም ሰው የውዝፍ ሊዝ ክፍያ የሚሰበስብ ተቋም ሲጠይቀው አንድን የተያዘ ንብረት ለማስረከብ ፈቃደኛ ሳይሆን የቀረ እንደሆነ በተያዘው ንብረት መጠን በግል ተጠያቂ ይሆናል፡፡ ሆኖም ተጠያቂነቱ ለንብረቱ መያዝ ምክንያት ከሆነው ውዝፍ የሊዝ ክፍያ መጠን (በውዝፍ ሊዝ ክፍያ ላይ የሚታሰበውን ወጪ ጨምሮ) ሊበልጥ አይችልም፡፡
12) በዚህ አንቀጽ መሰረት ንብረቱ ለውዝፍ ዕዳው መክፈያ የተያዘበት ሰው በአፈጻጸሙ ላይ ቅሬታ ካለው ጉዳዩን ለከተማው ከንቲባ ኮሚቴ በጽሁፍ ማቅረብ ይችላል፡፡

13) በዚህ አንቀጽ ንኡስ አንቀጽ 12 መሰረት አቤቱታው የቀረበለት አካል ጉዳዩን መርምሮ ከአንድ ወር ባልበለጠ ጊዜ ውስጥ ውሳኔ መስጠት አለበት፡፡

32. የችሮታ ጊዜን ስለመወሰን

1) የከተማ ቦታ በሊዝ የተፈቀደለት ሰው እንደ ልማቱ ወይም አገልግሎቱ ዓይነት ከሁለት እስከ አራት ዓመት የሚደርስ ሆኖ፡-

   ሀ) ለአግሮፕሮሰሲንግ ዘርፎች 4 ዓመት ዝርዝሩ በመመሪያ ይወሰናል፤

   ለ) ለግዙፍ ሪል እስቴት 4 ዓመት ዝርዝሩ በመመሪያ ይወሰናል፤

   ሐ) ለትምህርት ዘርፍ በየደረጃዉ እስከ 4 ዓመት ዝርዝሩ በመመሪያ ይወሰናል፤

   መ) ለጤና ዘርፍ እስከ 3 ዓመት ዝርዝሩ በመመሪያ ይወሰናል፤

   ሠ) ለሆቴሎች እስከ 4 ዓመት ዝርዝሩ በመመሪያ ይወሰናል፤

   ረ) ለማኑፋክቸሪንግ ኢንዱስትሪ 4 ዓመት በመመሪያ ይወሰናል፤

2) በዚህ አንቀጽ ከንኡስ አንቀጽ 1 ከሀ እስከ ረ የተገለጹት እንደተጠበቁ ሆኖ የችሮታ ጊዜን ላልተወሰነላቸው ዘርፎች ክልሎችና የከተማ አስተዳደሮች ከተጨባጭ ሁኔታው በመነሳት እስከ አራት ዓመት ጊዜ ድረስ መወሰን ይችላሉ፡፡
3) የችሮታ ጊዜ የተወሰነለት አካል የችሮታ ጊዜ መነሻ የሊዝ ውል ከፈረመበት ቀን ጀምሮ የሚታሰብ ይሆናል፡፡ የሚፈቀደው የችሮታ ጊዜ በማንኛውም ሁኔታ ከግንባታ ማጠናቀቂያ ጊዜ መብለጥ የለበትም፡፡
4) ይህ ደንብ ከመውጣቱ በፊት የከተማ ቦታ በሊዝ ተፈቅዶለት በቦታ አስረካቢው አካል ምክንያት ቦታ ያልተረከበ ወይም ቦታ ከተረከበበት ጊዜ ጀምሮ ደንቡ እስከፀናበት ቀን ድረስ ከ2 ዓመት በላይ ያልሆነው ወይም የቅድሚያ ክፍያ መጠን ይቀነስልኝ ወይም የክፍያ ማጠናቀቂያ ጊዜ ይራዘምልኝ በሚል አቤቱታ አቅርቦ ጉዳዩ በእንጥልጥል ላይ የሚገኝ ማንኛውም ሰው በዚህ አንቀጽ የተመለከተው የችሮታ ጊዜ እንደአግባብነቱ ተጠቃሚ ሊሆን ይችላል፡፡

ክፍል ሰባት

ስለቦታ አጠቃቀም፣የግንባታ መጀመር እና ማጠናቀቅ

የግንባታ ደረጃዎች

33. የግንባታ ደረጃዎች

1) አነስተኛ ደረጃ ያላቸው ግንባታዎች፡-

ሀ) ለነጠላ መኖሪያ ቤቶች እስከ 3 ወለል ድረስ፤

ለ) የሕዝብ መጠቀሚያ ያልሆኑ ሌሎች ግንባታዎች የግንባታ ወለላቸው እስከ 3 ወለል ድረስ የሆኑ ግንባታዎች፤

ሐ) የይዞታ ስፋቱ እስከ 250 ካሬ ሜትር ላይ የሚገነቡ ናቸው፡፡

2) መካከለኛ ደረጃ ያላቸው ግንባታዎች፡-

ሀ) 5 ወለልና ከዚያ በታች ለሆኑ የሕዝብ መጠቀሚያ ህንፃዎች፤

ለ) የይዞታ ስፋቱ ከ251 እስከ 5000 ካ.ሜ ይዞታ ላይ የሚገነባ ግንባታዎች፤

ሐ) የመኖሪያ ቤት 4 እና 5 ወለል የሆኑ ግንባታዎች፤

መ) የመኖሪያ ቤት በአንድ ጊዜ እስከ 80 ነጠላ ቤቶች የያዙ፤

ሠ) የሕዝብ መጠቀሚያ ያልሆኑ ሌሎች ወለላቸው 4 እና 5 ለሆኑ ግንባታዎች፤

ረ) ለትምህርት ተቋማት እስከ 2ኛ ከፍተኛ ደረጃ የሚያጠቃልሉ ግንባታዎች፤

ሰ) ለጤና ማዕከል እስከ ከፍተኛ ልዩ ክሊኒክ የሚያጠቃልሉ ግንባታዎች፤

ሸ) ለቤተ መፃሕፍትና ለሁለገብ አዳራሾች እስከ 500 ሰው የሚይዙ ግንባታዎች፤

ቀ) ለስፖርት ሜዳዎችና ለስፖርት ማዘውተሪያ ማዕከላት እስከ 500 ሰው የሚይዙ ግንባታዎች፤

በ) አጠቃላይ የወጪ ግምታቸው እስከ ብር 5,000,000 (አምስት ሚሊዮን) የሆኑ መካከለኛና አነስተኛ የማምረቻ እና ማከማቻ ተቋማቶችን ያጠቃልላል፡፡

3) ከፍተኛ ደረጃ ያላቸው ግንባታዎች

ሀ) 6 ወለልና ከዚያ በላይ ለሆነ ማንኛውም ግንባታ፤

ለ) ስፋቱ ከ5001 ካ.ሜ በላይ በሆነ ይዞታ ላይ ለሚገነቡ፤

ሐ) በዓለም፣ በአገር እንዲሁም በከተማ አቀፍ ደረጃ ለሚገነቡ የትራንስፖርት የመነሃሪያ ተቋማቶች፤

መ) የዲፐሎማቲክ ተቋማት የሚገነቧቸው ግንባታዎችን ያጠቃልላል፡፡

34. ግንባታን መጀመር

1) ማንኛውም ቦታ በሊዝ የተፈቀደለት ሰው የግንባታ ፈቃድ ከወሰደበት ቀን ጀምሮ ለግንባታ ደረጃው በተቀመጠው የግንባታ መጀመሪያ የጊዜ ገደብ ውስጥ ግንባታ መጀመር አለበት፡፡
2) የግንባታ መጀመሪያ የጊዜ ጣሪያ ለአነስተኛ ደረጃ ግንባታዎች እስከ 6 ወር፣ ለመካከለኛ ደረጃ ግንባታዎች እስከ 9 ወር እና ለከፍተኛ ግንባታዎች እስከ 18 ወር ይሆናል፡፡
3) በአዋጁ አንቀጽ 23 ንዑስ አንቀጽ 2 ከሀ-ሐ የተመለከተው ጣሪያ ቢኖርም በዚህ የጊዜ ጣሪያ ውስጥ በተለያዩ ምክንያቶች ግንባታ ሳይጀምር ቢቀር ለአንድ ጊዜ ብቻ ከማስጠንቀቂያ ጋር ለአነሰተኛ ግንባታዎች 6 ወር፣ ለመካከለኛ ግንባታዎች 9 ወር እና ለከፍተኛ ግንባታዎች 1 ዓመት ተጨማሪ የግንባታ መጀመሪያ ጊዜ በግንባታ ፈቃድ ሰጪው አካል ሊሰጣቸው ይችላል፡፡
4) በዚህ አንቀጽ በንኡስ አንቀጽ /2/ እና /3/ የሚፈቀዱት የግንባታ መጀመሪያ የጊዜ ዕርዝማኔ በማንኛውም ሁኔታ የግንባታ ማጠናቀቂያ ጊዜ ዕርዝማኔን ለመጠየቅ ወይም ለመፍቀድ በምክንያትነት ሊቀርቡ አይችሉም፤
5) የግንባታ ፈቃድ በሚሰጥበት ጊዜ የሊዝ ውል ከተፈረመበት ቀን ጀምሮ ለአነስተኛ ግንባታ ከ3 ወር፣ ለመካከለኛ ግንባታ ከ6 ወር እና ለከፍተኛ ግንባታ ከ9 ወር በምንም ዓይነት ሁኔታ መብለጥ የለበትም፡፡ የጊዜ ገደቡ በልጦ ከተገኘም ጉዳዩ ተመርምሮ በአዋጁ መሠረት ተጠያቂ ሊኖር ይገባል፡፡ ይህ እንደተጠበቀ ሆኖ ባለይዞታው ዲዛይኑን በተጠቀሰው ጊዜ ገደብ ካላቀረበ የግንባታ ጊዜው መቆጠር የሚጀምረው የሊዝ ውል ከተዋዋለበት ቀን ጀምሮ ይሆናል፡፡

35. ግንባታን ስለማጠናቀቅ፣

1) ቦታ በሊዝ የተፈቀደለት ሰው የሊዝ ውል ከሚመለከተው አካል ጋር በተፈራረመው መሠረት የግንባታ ፈቃድ ከወሰደበት ቀን አንስቶ በግንባታው ደረጃ ወይም ዓይነት በተወሰነው የጊዜ ጣሪያ ውስጥ ግንባታውን በማጠናቀቅ በቦታው ላይ አገልግሎት መስጠት መጀመር አለበት፡፡
2) አነስተኛ ደረጃ ግንባታዎች እስከ 24 ወራት፣ መካከለኛ ደረጃ ግንባታዎች እስከ 36 ወራት እና ከፍተኛ ደረጃ ግንባታዎች እስከ 48 ወራት የሚደርስ የግንባታ ማጠናቀቂያ ጊዜ ይኖራቸዋል፡፡
3) በዚህ አንቀጽ ንዑስ አንቀጽ /2/ የተደነገገው እንደተጠበቀ ሆኖ ለአነስተኛ የግንባታ ደረጃ ለአንድ ጊዜ ከማስጠንቀቂያ ጋር ተጨማሪ የግንባታ ማጠናቀቂያ ጊዜ 6 ወራት ሊፈቀድ ይችላል፡፡ ለመካከለኛ ለአንድ ዓመት እና ለከፍተኛ ደረጃ ግንባታዎች አንድ ዓመት ከማስጠንቀቂያ ጋር ተጨማሪ የግንባታ ማጠናቀቂያ ጊዜ ሊፈቀድላቸው ይችላል፡፡
4) በዚህ አንቀፅ ንዑስ አንቀፅ /3/ የተደነገገው እንደተጠበቀ ሆኖ በአዋጁ አንቀፅ 23 ንዑስ አንቀፅ /3/ በተደነገገው መሠረት በማንኛውም ሁኔታ የአነስተኛ፣ የመካከለኛና የከፍተኛ ደረጃ ግንባታዎች እንደቅደም ተከተላቸው 2 ዓመት ተኩል፣ 4 ዓመትና ከ5 ዓመት በላይ የግንባታ ማጠናቀቂያ ጊዜ ሊፈቀድላቸው አይችልም፡፡ ሆኖም ግዙፍ እና የተቀናጀ ልማትን የሚጠይቁ የቦታ ስፋታቸው ከአንድ መቶ ሺህ ካሬ ሜትር በላይ የሆኑ ፕሮጀክቶች በክልሉ ወይም በከተማው አስተዳደር በኩል ተጨባጭ እና ልዩ መርሀ ግብር ወጥቶላቸው ሊፈጸሙ ይችላሉ፡፡

36. የግንባታ መጀመሪያ ጊዜ ስላለፈባቸው ይዞታዎች

1) አግባብ ያለው አካል በሊዝ መሬት የተፈቀደላቸውን ሰዎች መረጃ በመያዝ የግንባታ መጀመሪያ ጊዜ ከማለቁ ቢያንስ ከሁለት ወር ቀደም ብሎ እንደአመቺነቱ በደብዳቤ በአድራሻቸው ወይም ማስታወቂያ በቦታው ላይ በመለጠፍ ወይም በአካባቢው በሚገኝ የህዝብ የማስታወቂያ ሰሌዳ ላይ በመለጠፍ ማስጠንቀቂያ መስጠት አለበት፡፡
2) የግንባታ መጀመሪያ የጊዜ ገደብ ያለፈበት ሰው ቦታው በተፈቀደበት የአስተዳደር ዕርከን ለሚገኘው አግባብ ያለው አካል ቀርቦ ግንባታ ያልጀመረበትን ምክንያትና በቀጣይ ግንባታውን ለመጀመር ያለውን ዝግጁነትና አቅም የጊዜ ገደቡ ከመጠናቀቁ በፊት ወይም ካለፈ በኃላ አንድ ወር ባልበለጠ ጊዜ ውስጥ በጽሁፍ ማቅረብ አለበት
3) ጥያቄው ተቀባይነት ካገኘ በዚህ ደንብ የተቀመጠው ተጨማሪ ጊዜ ሊፈቀድለት ይችላል፡፡ በዚህ ጊዜ ውስጥ ያልቀረበ የጊዜ ይራዘምልኝ ጥያቄ ከአቅም በላይ የሆነ ችግር እንዳጋጠመው በማስረጃ ማረጋገጥ እስካልተቻለ ድረስ ተቀባይነት የለውም፤

4) ተጨማሪ የግንባታ መጀመሪያ ጊዜ ተፈቅዶለት በተጨማሪው ጊዜ ውስጥ ግንባታ ያልጀመረ ወይም ተጨማሪ የጊዜ ጥያቄው ተቀባይነት ያላገኘ ወይም ቀርቦ ያልጠየቀን ሰው ውል በማቋረጥ አግባብ ያለው አካል ቦታውን መልሶ መረከብ ይችላል፡፡
5) የሊዝ ውል የተቋረጠበት ሰው በዚህ ደንብና በሊዝ አዋጁ አንቀጽ 24 ንዑስ አንቀጽ (3) ከፊደል ተራ ሀ-ሐ የተደነገገው ቅጣት እንደአግባቡ ተፈጻሚ ይሆንበታል፡፡

37. የግንባታ ማጠናቀቂያ ጊዜ ስላለፈባቸው

1) አግባብ ያለው አካል እንደግንባታው ደረጃ በዚህ ደንብ የተቀመጠው የጊዜ ጣሪያ ካለፈ ከአንድ ወር ባልበለጠ ጊዜ ውስጥ ግንባታውን ያላጠናቀቀበትን ምክንያት በአሥር የስራ ቀናት ውስጥ የሊዝ ባለመብቱ ቀርቦ በማስረጃ እንዲያስረዳ በጽሁፍ ጥሪ ማድረግ አለበት፡፡
2) ባለመብቱ ጥሪው ከተላለፈበት ቀን ጀምሮ በ10 የሥራ ቀናት ውስጥ ቀርቦ ካላስረዳ ወይም አሳማኝ ምክንያት ማቅረብ ካልቻለ የግንባታው ማጠናቀቂያ የጊዜ ገደብ ካበቃበት ቀን ጀምሮ ለሚፈቀድለት ተጨማሪ ጊዜ ከጠቅላላው የሊዝ ዋጋ የሚታሰብ ለእያንዳንዱ ተጨማሪ ወር የ3% የገንዘብ ቅጣት በአንድ ጊዜ እንዲከፍል ይደረጋል፡፡
3) የሊዝ ባለመብቱ በተሰጠው 10 ቀናት ውስጥ ቀርቦ ካመለከተና ግንባታውን ያላጠናቀቀው ከአቅም በላይ በሆነ ምክንያት መሆኑን በማስረጃ ካረጋገጠ ያለቅጣት ተጨማሪው ጊዜ ሊፈቀድለት ይችላል፡፡
4) የሊዝ ባለመብቱ በተጨማሪ የጊዜ ገደብ ውሰጥ ግንባታውን ካላጠናቀቀና በቦታው ላይ የተገነባው ግንባታ ከተፈቀደዉ ጠቅላላ ግንባታ ከ30% ያነሰ ከሆነ ያለምንም ቅድመ ሁኔታ የሊዝ ውሉን በማቋረጥ ቦታውን መረከብ ይችላል፡፡ ሆኖም በቦታው ላይ የተገነባው ከተፈቀደው ጠቅላላ ግንባታ 30% እና ከዚያ በላይ ከሆነ በሊዝ አዋጁ አንቀጽ 23 ንዑስ አንቀጽ 7 የተደነገገው እንደ አግባብነቱ ተፈጻሚ ይደረጋል፡፡
5) የሊዝ ባለመብቱ ተጨማሪ የጊዜ ገድብ ውስጥ ግንባታውን ማጠናቀቅ ባለመቻሉ አግባብ ያለው አካል በአዋጁ አንቀፅ 23 ንዑስ አንቀጽ 4 ከፊደል ተራ ሀ-ሐ መሠረት የሚሰጠው ጊዜ ገደብ እንደ ግንባታ ማጠናቀቅያ ተጨማሪ ጊዜ የሚታሰብ ይሆናል፡፡
6) በአዋጁ አንቀፅ 23 ንዑስ አንቀፅ 7 መሠረት በወጣው ጨረታ ተወዳደሮ ያሸነፈ ባለሀብት በስሙ ይዛወርለታል፡፡ አግባብ ካለው አካል ጋርም አዲስ ውል ይዋዋላል፡፡ ግንባታ ማጠናቀቅያ ጊዜን በተመለከተ ግንባታው ያለበት ደረጃ ታይቶ ለቀሪው ሥራ የሚያስፈልገው ጊዜ በባለሙያ ተረጋግጦ ይሰጠዋል፡፡ ዝርዝሩ በመመሪያ ይወሰናል፡፡

38. በሊዝ የተሰጡ ቦታዎች የአገልግሎት ለውጥ ስለመፍቀድ፣

1) በከተማው መዋቅራዊ ፕላን መሰረት ለአንድ የአገልግሎት ዓይነት በተሰጠ ቦታ ላይ ተመሳሳይነት ላለው ሌላ የሥራ ዘርፍ የቦታ አገልግሎት ለውጥ ጥያቄ ሲቀርብ በአካባቢው ካለው ወይም ወደፊት ከሚኖረው አገልግሎት ጋር የማይጋጭ ሆኖ ከተገኘ የአገልግሎት ለውጡ ሊፈቀድ ይችላል ፡፡
2) የቀረበው የአገልግሎት ለውጥ ጥያቄ የፕላን ምደባ ለውጥ (የዞኒንግ ለውጥ) የሚያስፈልገው ከሆነ መጀመሪያ የፕላን ለውጥ ጥያቄው በፕላን አፈጻጸም ክትትል አግባብነት ላለዉ አካል ቀርቦ ምላሽ ማግኘት ይኖርበታል ፡፡
3) የአገልግሎት ለውጥ ሲፈቀድ አስቀድሞ በተገባው ውል መሰረት ሊዝ ውሉ ይፈረማል፡፡ሆኖም ቀደም ሲል የተፈረመው ውል የአገልገሎት ለውጥ እንዲደረግ ከተጠየቀበት የሊዝ ዘመን ጣርያ ከበለጠ ለአገልግሎቱ በተሰጠው የዘመን ጣርያ መሰረት የሊዝ ዘመኑ ይለወጣል፡፡
4) ይህ ደንብ ከመውጣቱ በፊት አግባብነት ያለው አካል ሳያውቀው ወይም ሳያፀድቀው የተፈፀመ ማናቸውም የአገልግሎት ለውጥ ፕላኑ የሚቀበለው ከሆነ ብቻ የግንባታውን ዝርዝር ዋጋ 0.5 በመቶ በማስከፈል ለውጡ በዚህ ደንብ ድንጋጌ መሰረት እንዲስተካከል ይደረጋል ፡፡
5) በዚህ አንቀጽ ንዑስ አንቀጽ 4 ላይ የተደነገገው እንደተጠበቀ ሆኖ በዚህ አንቀጽ ንኡስ አንቀጽ 1 እና 2 ስር ከተደነገገው ውጭ በማናቸውም ሁኔታ የአገልግሎት ለውጥ ተፈጽሞ ከተገኘ የአካባቢው ከፍተኛ የሊዝ ዋጋ 3 በመቶ ቅጣት ተከፍሎ መዋቅራዊ ፕላኑ የሚፈቅድ ወይም ሊስተካከል የሚችል ከሆነ ለውጡ ሊፈቀድ ይችላል፤ የሊዝ ዋጋውም አዲስ በተቀየረው የአገልግሎት ዓይነት መሰረት ተስተካክሎ በቀሪው የሊዝ የመክፈያ ዘመን እንዲጠናቀቅ ይደረጋል፣
6) የዚህ አንቀፅ ድንጋጌዎች እንደተጠበቁ ሆነው ለአገልግሎት ለውጡ የሚከፈለው የሊዝ ዋጋ ቀድሞ ከነበረው አገልግሎት ዓይነት የሊዝ ዋጋ የሚያንስ ሆኖ ከተገኘ ቀድሞ በነበረው የሊዝ ዋጋ ስሌት 3 በመቶው ቅጣት ተከፍሎ ለውጡ ሊፈቀድለት ይችላል፡፡

39. የአገልግሎት ለውጥ የማይደረግባቸው ዋና ዋና ሁኔታዎች

1) በማናቸውም ሁኔታ የፕላን ምደባ ለውጥ ማድረግ የማይፈቀድባቸው ቦታዎች፡-

   ሀ) የፕላን ምደባቸው ለአረንጓዴ ወይም ደን፣ ለፓርክ እና ለጥብቅነት የተከለሉ ቦታዎች፤

   ለ) የፕላን ምደባቸው አርኪኦሎጅካል የሆኑ ወይም በተፈጥሮአዊ አቀማመጣቸው የተለየ ገጽታ ያላቸው ቦታዎች፤

ሐ) ማንኛውንም ዓይነት ብክለት ሊፈጥሩ የሚችሉ አገልግሎቶች ከፕላን ምድባቸው ውጭ ለማቋቋም የሚቀርብ ጥያቄ ተቀባይነት አይኖረውም፡፡

40. የአገልግሎት ለውጥ በልዩ ሁኔታ የሚደረግባቸው ሁኔታዎች

1) በመርህ ደረጃ የፕላን ምደባ ለውጥ ማድረግ የማይፈቀድባቸው ነገር ግን አስገዳጅ ወይም አሳማኝ ሁኔታዎች ሲኖሩ በልዩ ሁኔታ በሚከተሉት ቦታዎች ላይ የፕላን ምደባ ለውጥ ሊፈቀድ ይችላል ፤

   ሀ) ለስፖርት ማዘውተሪያ የፕላን ምደባ የተሰጡ ቦታዎች፣

   ለ) ለገበያ፣ ለመናኸሪያ፣ ለእምነት ተቋማትና ለቀብር ቦታ የተመደቡ ቦታዎች የሚመለከታቸውን የህብረተሰብ ክፍሎች በማወያየት መግባባት ላይ ሲደረስ ለውጥ ሊደረግባቸው ይችላል፡፡

2) በዚህ አንቀጽ ንኡስ አንቀጽ 1 ሥር በተመለከቱት ጉዳዮች ላይ የፕላን ምደባ ለውጥ ሊፈቀድ የሚችለው ከተማው እና የከተማውን መዋቅራዊ ፕላን እንዲያስፈጽም ውክልና በተሰጠው አካል ብቻ ነው፡፡

ክፍል ስምንት

የሊዝ መብትን ስለማስተላለፍ

41. ግንባታ ያልተጀመረበትን ቦታ የሊዝ መብት ስለማስተላለፍ

የሊዝ መብትን የማስተላለፍና በዋስትና የማስያዝ አፈፃፀም በአዋጁ አንቀጽ 24 መሠረት ተግባራዊ የሚደረግ ሆኖ፡-

1) ማንኛውም የሊዝ ባለይዞታ ግንባታ ለመጀመር በዚህ ደንብ አንቀጽ 34 የተቀመጠው ጊዜ ከማለፉ በፊት የሊዝ መብቱን ለሶስተኛ ወገን ማስተላለፍ ይችላል፡፡
2) ማንኛውም የሊዝ ባለመብት ግንባታ ለመጀመር የተመለከተዉ ጊዜ ከማለፉ በፊት የሊዝ መብቱን ሲያስተላልፍ ከውርስ በስተቀር በአዋጁ አንቀጽ 24 ንኡስ አንቀጽ 3(ሐ) የተመለከተው የሚፈጸመው የሚመለከተው አካል በሚወስነው ወቅታዊ የመሬት ሊዝ መብት መሸጫ ዋጋ መሰረት ይሆናል፡፡

3) በዚህ አንቀጽ ንኡስ አንቀጽ 2 በተመለከተው መብቱን ለመሸጥ ቅሬታ ያለው አካል ቅሬታውን አግባብ ላለው አካል በጽሁፍ ማቅረብ ይችላል፡፡ አግባብ ያለው አካልም በአስራ አምስት የስራ ቀናት ጊዜ ውስጥ መሬቱን ለጨረታ በማቅረብ በአዋጁ አንቀጽ 24 ንኡስ አንቀጽ 3 (ሀ) እና (ሐ) በተመለከተው መሰረት መብቱን የሚያስጠብቅለት ይሆናል፡፡
4) በዚህ አንቀጽ ንኡስ አንቀጽ 3 የተመለከተው እንደተጠበቀ ሆኖ ባለመብቱ በመሸጫ ዋጋው ካልተስማማ እና መሬቱም ለጨረታ እንዲወጣ ፈቃደኛ ካልሆነ የሚመለከተው አካል በአዋጁ አንቀጽ 24 ንኡስ አንቀጽ 3 (ሀ) የተመለከተውን ክፍያ በመፈጸም ቦታውን መልሶ ይረከበዋል፡፡
5) በዚህ አንቀጽ ንኡስ አንቀጽ 4 መሰረት የሚመለከተው አካል ቦታውን በህጉ የተቀመጠው ጊዜ ገደብ ከመድረሱ በፊት መልሶ ለመረከብ የሚችለው ባለመብቱ በጽሁፍ ስምምነቱን ሲያቀርብ ብቻ ይሆናል፡፡
6) በዚህ አንቀጽ ንኡስ አንቀጽ 1 መሰረት ወደ ሶስተኛ አካል በሽያጭ የተላለፈ የሊዝ መብት የሽያጭ ውል እና የስም ዝውውር የሚፈጸመው ገዥው ለሚመለከተው አካል የሽያጭ ዋጋውን ገቢ ሲያደርግ ብቻ ነው፡፡ ዝርዝሩ በመመሪያ ይወሰናል፡፡
7) የሚመለከተው አካል በዚህ አንቀጽ ንኡስ አንቀጽ 6 ገቢ ከተደረገለት ገንዘብ ላይ በአዋጁ አንቀጽ 24 ንኡስ አንቀጽ 3 (ሀ) እና (ሐ) የተመለከተውን ክፍያ ገንዘቡ ገቢ በተደረገ በሶስት የስራ ቀናት ውስጥ ለሻጭ የሚከፍለው ይሆናል፡፡

42. ግማሽ ግንባታ ያረፈበትን ቦታ የሊዝ መብት ማስተላለፍ

1) ማንኛውም የሊዝ ባለይዞታ የግንባታ ማጠናቀቂያ ጊዜ ከማለፉ በፊት ከግማሽ በታች ግንባታ ያረፈበትን ቦታ የሊዝ መብት ለሶስተኛ አካል ማስተላለፍ ይችላል፡፡
2) የሪል ስቴት ልማትን በተመለከተ በተናጠል በተጠናቀቀ ግንባታ ላይ የሪል ስቴት ባለሀብቱ በገባው ውል መሰረት ለተጠቃሚው ማስተላለፍ የሚችል መሆኑ እንደተጠበቀ ሆኖ ሙሉ በሙሉ ሪል ስቴቱን ወደሶስተኛ አካል ከውርስ በስተቀር ለማስተላለፍ ሲፈልግ በሁሉም ብሎኮች ላይ በዚህ ደንብ አንቀጽ 2 ንኡስ አንቀጽ 21 መሰረት ግንባታውን ማከናወን ይኖርበታል፡፡
3) በዚህ አንቀፅ ንኡስ አንቀጽ 1 መሰረት የተላለፈ የሊዝ መብት ዋጋ ለሚመለከተው አካል የሚቀርበው የመሬት ሊዝ መብት ዋጋ እና የግንባታ ዋጋ በሚል ተለይቶ ይሆናል፡፡
4) በዚህ አንቀፅ መሰረት ከግማሽ በታች ግንባታ የተፈጸመበት ቦታ ዝውውር የሚፈጸመው ባለመብቱ በቅድሚያ በሚመለከተው አካል በቀረበው የመሬት ሊዝ መብት መሸጫ ዋጋ ከተስማማ ይሆናል፡፡
5) በዚህ አንቀጽ መሰረት ከውርስ በስተቀር ወደ ሶስተኛ አካል የተላለፈ የሊዝ መብት የስም ዝውውር የሚፈጸመው መብቱ የሚተላለፍለት ሰው ለሚመለከተው አካል የመሬት ሊዝ መብት ዋጋውን ገቢ ሲያደርግ ብቻ ነው፡፡

6) የሚመለከተው አካል በዚህ አንቀጽ ንኡስ አንቀጽ 5 መሰረት ገቢ ከተደረገለት ገንዘብ ላይ በአዋጁ አንቀጽ 24 ንኡስ አንቀጽ 3 (ሀ) እና (ሐ) የተመለከተውን ክፍያ ገንዘቡ ገቢ በተደረገ በሶስት የስራ ቀናት ዉስጥ ለሻጭ የሚከፍለው ይሆናል፡፡
7) በዚህ አንቀጽ ንኡስ አንቀጽ 4 በተመለከተው መሰረት የሊዝ መብቱን ለማስተላለፍ ቅሬታ ያለው አካል ቅሬታውን አግባብ ላለው አካል በጽሁፍ ማቅረብ ይችላል፡፡ አግባብ ያለው አካልም በአስራ አምስት የስራ ቀን ጊዜ ውስጥ ቦታውን ለጨረታ በማቅረብ በአዋጁ አንቀጽ 24 ንኡስ አንቀጽ 3 በተመለከተው መሰረት መብቱን የሚያስጠብቅለት ይሆናል፡፡
8) በዚህ አንቀፅ ንኡስ አንቀጽ 7 መሰረት የጨረታ መነሻ ዋጋ የመሬት ሊዝ መብት መሸጫ ዋጋ ከግንባታው ዋጋ ጋር ተደምሮ ይሆናል፡፡
9) በዚህ አንቀጽ ንኡስ አንቀጽ 8 የተመለከተውን የግንባታ ግምት የሚመለከተው አካል ግልጽ በሆነ አግባብ የሚገምተው ይሆናል፡፡ ግንባታን ለመገመት የወጡ ወጪዎች ካሉ ከሽያጩ ላይ ተቀናሽ ይደረጋል፡፡ ዝርዝሩ በመመሪያ ይወሰናል፡፡

43. ግማሽ ግንባታ የተከናወነበትን ቦታ የሊዝ መብት ማስተላለፍ ላይ የተቀመጡ ክልከላዎች

1) በአዋጁ አንቀጽ 24 ንኡስ አንቀጽ 7 በተመለከተው መሰረት በመሬት የወቅት ጥበቃ የሚመጣን ጥቅም ለማግኘት ሲባል ግንባታ ከመጀመሩ ወይም በዚህ ደንብ አንቀጽ 2 ንኡስ አንቀጽ 21 መሰረት ግንባታውን ከግማሽ በላይ ከመገንባቱ በፊት በሦስት ዓመት ውስጥ ለሦስት ጊዜ የሊዝ መብቱን ያስተላለፈ ከሆነ ለሁለት ዓመት ከማንኛውም የመሬት ሊዝ ጨረታ እንዳይሳተፍ ይደረጋል፡፡ ዝርዝሩ በመመሪያ ይወሰናል፡፡
2) በዚህ አንቀጽ ንኡስ አንቀጽ 2 በተመለከተው መሰረት የእግድ ውሳኔ የተላለፈበት ሰው በእግዱ ጊዜ ውስጥ በጨረታ ሂደት የተሳተፈ ከሆነ ከጨረታው ተሰርዞ ለጨረታ ማስከበሪያ ያስያዘው ገንዘብ ለመንግስት ገቢ የሚደረግ ሆኖ በሊዝ ጨረታ እንዳይሳተፍ ለተጨማሪ አንድ ዓመት እግዱ ይራዘማል፡፡

44. የሊዝ መብት መሸጫ/ ማስተላለፊያ ዋጋ

1) ማንኛውም የሊዝ ባለመብት ግንባታ ያልተከናወነበትን መሬት ወይም ከግማሽ በታች ግንባታ ያረፈበትን መሬት የሊዝ መብት ወደሶስተኛ ወገን ሲያስተላልፍ የሚመለከተው አካል መብቱ የተላለፈበትን ዋጋ የሚወስነው በሊዝ መብት መሸጫ ዋጋ መሰረት ይሆናል፣

2) የሊዝ መብት መሸጫ ዋጋ የሚወሰነው ቦታው በተላለፈበት አካባቢ ያለው የወቅቱ ከፍተኛ ጨረታ ዋጋ እና መሬቱ ቀደም ሲል ለባለመብቱ የተላለፈበት ዋጋ ተደምሮ እና ለሁለት ተካፍሎ በሚኖረው አማካይ ውጤት ይሆናል፡፡
3) በዚህ አንቀጽ ንኡስ አንቀጽ 2 መሰረት የተገኘው ውጤት ገዥ ለመሬቱ ካቀረበው ዋጋ እኩል ወይም የሚያንስ ከሆነ ማስተላለፉ በሚመለከተው አካል ተቀባይነት ይኖረዋል፡፡
4) ገዥ ዋጋ ባልሰጠበት ሁኔታ የሊዝ መብት መሸጫ ዋጋው (አማካይ ውጤቱ) በዚህ አንቀጽ ንዑስ አንቀጽ 2 የተጠቀሰው ተቀባይነት ይኖረዋል፡፡
5) በዚህ አንቀጽ መሰረት አማካይ ውጤቱ ለባለመብቱ መሬቱ ቀደም ሲል ከተላለፈበት ዋጋ በታች ከሆነ የሚመለከተው አካል ከሁለቱ ተደማሪዎች በተሻለው የመሸጫ ዋጋውን ሊወስን ይችላል፡፡
6) በዚህ አንቀጽ ንዑስ አንቀጽ 3 የተመለከተው እንደተጠበቀ ሆኖ ገዢው ከተገኘው አማካይ የሰጠው ዋጋ ውጤት ከ5 በመቶ በታች ከሆነ የሚመለከተው አካል አማካይ ውጤቱን መነሻ በማድረግ ቦታውን ለጨረታ የሚያቀርበው ይሆናል፡፡

ክፍል ዘጠኝ

የሊዝ መብትን በዋስትና ስለማስያዝ

45. ግንባታ ያልተከናወነበትን ቦታ በዋስትና ስለማስያዝ ወይም በካፒታል አስተዋጽኦነት ስለመጠቀም

1) ማንኛውም የሊዝ ባለይዞታ በአዋጁ አንቀጽ 24 መሰረት ግንባታ ከመጀመሩ በፊት የሊዝ መብቱን በዋስትና ለማስያዝ ወይም የከፈለውን ቅድመ ክፍያ በካፒታል አስተዋጽኦነት መጠቀም ይችላል፣
2) ማንኛውም ባለይዞታ በዚህ አንቀጽ ንኡስ አንቀጽ 1 መሰረት በዋስትና ማስያዝ የሚችለው ከሊዝ የቅድሚያ ክፍያው ወይም ከቅድሚያ ክፍያው ተጨማሪ የከፈለም ከሆነ ከክፍያ መጠኑ ላይ በአዋጁ አንቀጽ 22 ንዑስ አንቀጽ 3 መሠረት ሊደረጉ የሚችሉ ተቀናሾች ታስበው በሚቀረው የገንዘብ መጠን ላይ ብቻ ይሆናል፡፡
3) በዚህ አንቀጽ ንዑስ አንቀጽ 2 መሠረት የሊዝ መብቱን በዋስትና ያስያዘ ሰው የዋስትና ግዴታውን ባለመወጣቱ በህጉ መሰረት የተመለከተው የሚፈጸም ይሆናል፡፡

46. ግንባታ ያረፈበትን ቦታ በዋስትና ስለማስያዝ ወይም በካፒታል አስተዋጽኦነት ስለመጠቀም

1) ማንኛውም የሊዝ ባለይዞታ በማንኛውም ደረጃ ላይ ግንባታ ያረፈበትን ይዞታ የሊዝ መብቱን በዋስትና ለማስያዝ ወይም በካፒታል አስተዋጽኦነት ለመጠቀም ይችላል፡፡
2) ማንኛውም ባለይዞታ በዚህ አንቀጽ ንኡስ አንቀጽ 1 መሰረት በዋስትና ማስያዝ የሚችለው ከሊዝ የቅድሚያ ክፍያው ወይም ሌላ በተጨማሪነት የተፈጸመ ክፍያ ካለም በተከፈለው መጠን ላይ በአዋጁ አንቀጽ 22 ንዑስ አንቀጽ (3) መሠረት ሊደረጉ የሚችሉ ተቀናሾች ታስበው በሚቀረው የገንዘብ መጠን እና የግንባታ ዋጋው ተሰልቶ ብቻ ይሆናል፡፡
3) በዚህ አንቀጽ ንኡስ አንቀጽ 2 መሰረት በመሬቱ ላይ ያለውን የሊዝ መብት መጠን መረጃ የሚመለከተው አካል የሚሰጥ ሲሆን የግንባታ ዋጋ ግምቱ በዋስትና የሚይዘው አካል ሀላፊነት ይሆናል፡፡
4) ይዞታውን በዋስትና የሚይዘው አካል የንብረቱን ግምት እና ያበደረውን የገንዘብ መጠን ዕዳውን ለሚመዘግበው አካል በጽሁፍ ማሳወቅ ይኖርበታል፡፡
5) ከዚህ ደንብ መውጣት በፊት በዋስትና የተያዙ የሊዝ መብቶች ደንቡ ከፀደቀበት ቀን ጀምሮ ለአንድ ዓመት ጊዜ ብቻ በቀድሞው አሰራር መሰረት የሚፈጸሙ ይሆናል፡፡
6) በዚህ አንቀጽ ንኡስ አንቀጽ 5 የተመለከተው እንደተጠበቀ ሆኖ በመያዣነት የተያዘ የሊዝ ዕዳ ያለበት ይዞታ በተለይ ግንባታው በጅምር ወይም ከግማሽ በታች ሆኖ ዕዳው ሳይጠናቀቅ እና ተበዳሪ ግዴታውን ባለመወጣቱ የሚሸጥ ሆኖ ሲገኝ የሚመለከተው አካል ቀሪ የሊዝ ዕዳው ቅድሚያ ከሽያጩ ላይ የሚከፈለው ይሆናል፡፡ መብትና ግደታዎቹን በተመለከተ በአዋጁ መሠረት ተፈጻሚ ይደረጋል፡፡
7) በዚህ አንቀጽ ንኡስ አንቀጽ 6 መሰረት ቀሪ የሊዝ ዕዳ ያልተፈጸመ ሆኖ ሲገኝ የሚመለከተው አካል የስም ዝውውሩን የሚፈጽም አይሆንም፡፡

ክፍል አስር

የሊዝ ዘመን አወሳሰን፤ የሊዝ ውል እድሳት እና የሊዝ ውል ማቋረጥ

47. የሊዝ ዘመን አወሳሰን

የከተማ ቦታ የሊዝ ዘመን በአዋጁ አንቀጽ 18 የተመለከተው ይሆናል፡፡ ሆኖም በአዋጁ በግልጽ ባልተደነገጉ የልማት ሥራዎች ወይም አገልግሎቶች የሊዝ ዘመንን በተመለከተ በክልል ወይም በከተማ አስተዳደር ካቢኔ ይወሰናል፡፡

48. የሊዝ ውል እድሳት

1) የሊዝ ዘመን እድሳትና የእድሳት አፈፃፀም ሁኔታ በአዋጁ አንቀጽ 19 በተመለከተው መሠረት ይሆናል፡፡
2) በዚህ አንቀጽ ንኡስ አንቀጽ 1 የተመለከተዉ እንደተጠበቀ ሆኖ በሚከተሉት መሠረታዊ ምክንያቶች ፡-

   ሀ) በመዋቅራዊ ፕላን ለውጥ፤

   ለ) ቦታው ለህዝብ ጥቅም ሲፈለግ፤

   ሐ) ነባሩን ልማት ቦታው ወደሚጠይቀው የልማት ደረጃ እና አግባብ ለመቀየር የማይቻል ሲሆን የሊዝ ውሉ ዳግም ሊይታደስ ይችላል፡፡

49. የአጭር ጊዜ የሊዝ ዉል ዕድሳት

1) የአጭር ጊዜ ሊዝ ውል ቦታው ለሌላ ልማት የማይፈለግ መሆኑ በሚመለከተው አካል ሲረጋገጥ ለአንድ ጊዜ ብቻ ሊታደስ ይችላል፤ሆኖም የውል እድሳቱ ከአምስት ዓመት ሊበልጥ አይችልም፡፡ ዝርዝሩ በመመሪያ ይወሰናል፡፡
2) ለማስታወቂያ ሰሌዳ መትከያ የተፈቀዱ ቦታዎች ቦታው የማይፈለግና የትራፊክ እንቅስቃሴ ላይ ችግር የማይፈጥር መሆኑ እየተረጋገጠ በየጊዜው ሊታደስ ይችላል፤

50. የሊዝ ውል ስለማቋረጥ እና ካሳ አከፋፈል

1) የከተማ ቦታ የሊዝ ይዞታ በአዋጁ አንቀጽ 25 ንዑስ አንቀጽ 1 (ሀ) መሠረት ሲቋረጥ ተገቢው ወጪና መቀጫ ተቀንሶ የሊዝ ክፍያው ለባለመብቱ ተመላሽ ይሆናል፡፡
2) የከተማ ቦታ የሊዝ ይዞታ በአዋጁ አንቀጽ 25 ንዑስ አንቀጽ 1 (ለ) መሠረት ሲቋረጥ ባለይዞታው አግባብ ባለው ሕግ መሰረት ተመጣጣኝ ካሣ ይከፈለዋል፡፡
3) የከተማ ቦታ የሊዝ ይዞታ በአዋጁ አንቀጽ 25 ንዑስ አንቀጽ 1 (ሐ) መሠረት ሲቋረጥ ባለይዞታው እስከ አንድ ዓመት ባለው ጊዜ ውስጥ በቦታው ላይ ያሰፈረውን ንብረት የማንሳት መብቱን በመጠቀም ንብረቱን በማንሳት ቦታውን አግባብ ላለው አካል መልሶ ማስረከብ አለበት፡፡
4) ባለይዞታው በዚህ አንቀጽ ንዑስ አንቀጽ 3 በተመለከተው የጊዜ ገደብ ውስጥ እና በተሰጠዉ መብት ተጠቅሞ ንብረቱን ካላነሳ የሚመለከተው አካል ለንብረቱ ክፍያ ሳይፈጽም ቦታውን ሊወስደው ይችላል፡፡ ለአፈፃፀሙም አስፈላጊ ሆኖ ሲያገኘው ፖሊስን ማዘዝ ይችላል፡፡

51. አቤቱታ ማቅረብና ውጤቱ

የከተማን ቦታን ከማስለቀቂያ ጋር ተያይዘው የሚቀርብ አቤቱታዎች እና በተሰጡ ውሳኔዎች ላይ የሚቀርቡ ይግባኞች በተመለከተ በአዋጁ 28 ፤29 እና 30 መሰረት የሚፈጸም ሆኖ ዝርዝሩ በመመሪያ ይወሰናል፡፡

52. የከተማ ቦታ የማስለቀቅ ትእዛዝ አሰጣጥ

1) ይህንን ተግባር ለመፈጸም ስልጣን የተሰጠው አካል የማስለቀቂያ ትእዛዝ ወይም ማስጠንቀቂያ በጽሑፍ ለባለይዞታው ይሰጣል፤ ጊዜው እንደየክልሎች ተጨባጭ ሁኔታ ቢሆንም በማንኛውም ሁኔታ ከ90 ቀን ማነስ የለበትም፡፡
2) በዚህ አንቀጽ ንኡስ አንቀጽ 1 የሚሰጠው ትእዛዝ ወይም ማስጠንቀቂያ በሚከተለው አግባብ ለባለይዞታው እንዲደርሰው ይደረጋል፡-
   ሀ) በአድራሻው በጽሁፍ እንዲደርሰው ይደረጋል፡፡
   ለ) በአድራሻው ያልተገኘ ከሆነ በሚለቀቀው ይዞታ ላይ እንዲሁም በሚመለከተው አካል የማስታወቂያ ሰሌዳ እና ህዝብ በሚሰበሰብባቸው ቦታዎች ላይ እንዲለጠፍ ይደረጋል፡፡
   ሐ) በዚህ አንቀጽ ንኡስ አንቀጽ 2 (ለ) መሰረት የተለጠፈ ማስጠንቀቂያ ለባለይዞታው እንደደረሰው ይቆጠራል፡፡
3) በትእዛዝ የሚለቀቀው ይዞታ የመንግስት ንብረት የሰፈረበት ከሆነ የማስለቀቂያ ትእዛዙ የሚደርሰው ንብረቶቹን ለሚያስተዳድረው መንግስታዊ ተቋም ይሆናል፡፡
4) በዚህ አንቀጽ ንዑስ አንቀጽ (3) መሠረት የማስለቀቂያ ትዕዛዝ የተላለፈበት ንብረት ተከራይቶ ከነበረ ትዕዛዙ የደረሰው አካል የማስጠንቀቂያ ጊዜው ከማብቃቱ በፊት የኪራይ ውሉን ለማቋረጥ የሚያስችል እርምጃ መውሰድ አለበት፡፡
5) የከተማ ቦታ ከማስለቀቅ ጋር ተያይዞ መከናወን የሚገባቸው ጉዳዮች በአዋጁ አንቀጽ 27 እና 28 መሰረት የሚፈጸም ሆኖ ዝርዝሩ በመመሪያ ይወሰናል፡፡

ክፍል አስራ አንድ

ልዩ ልዩ ድንጋጌዎች

53. ከዚህ በፊት በሊዝ ተይዘው ግንባታ ያላጠናቀቁትን በተመለከተ

ቀደም ሲል ቦታ በሊዝ አግባብ ወስደው ግንባታቸው ያልተጠናቀቀ ይዞታዎችን በተመለከተ ከከተሞች ጋር በሚደረግ ስምምነት መሰረት መርሀ ግብር በማውጣት የሚፈጸም ይሆናል፡፡

54. የክልሎችና የከተማ አስተዳደሮች ሥልጣንና ተግባር

1) በሁሉም ከተሞች ውስጥ የሚገኘውን መሬት በአዋጁ መሠረት ያስተዳድራሉ፤
2) ይህንን ሞዴል ደንብ ከተጨባጭ ሁኔታቸው ጋር በማጣጣም አዋጁን ለማስፈጸም የሚያስችል ደንብ ያጸድቃሉ፤ ደንቡንም ለማስፈፀም የሚያስፈልጉ መመርያዎች ያወጣሉ፡፡

55. የሽግግር ጊዜ ድንጋጌ

1) ቀደም ሲል ቀርበው በእንጥልጥል ላይ ያሉ የከተማ ቦታ ጥያቄዎችን በሚመለከት አዋጁ ከፀናበት ቀን ጀምሮ ባሉት ሦስት ወራት ጊዜ ውስጥ በቀድሞው ህግ መሠረት ውሳኔ መስጠት አለባቸው፡፡
2) ደንቡ ከመጽናቱ በፊት አግባብ ባለው አካል የተፈረሙ የሊዝ ውሎችና በእነዚሁ መሠረት የተከናወኑ ሥራዎች ህጋዊነታቸው ተጠብቆ ተፈፃሚነታቸው ይቀጥላል፡፡

56. የመተባበር ግዴታ

ማንኛውም ሰው ይህንን ደንብ ለማስፈፀም በሚደረግ ማናቸውም እንቅስቃሴ ትብብር እንዲያደርግ ሲጠየቅ የመተባበር ግዴታ አለበት፡፡

57. የተሻሩና ተፈጻሚነት የማይኖራቸው ህጎች

1) በክልል ወይም የከተማ አስተዳደር የከተማ ቦታን በሊዝ ስለመያዝን እደገና ለመደንገግ የወጣውን ደንብ ቁጥር------- /--------ዓ.ም በዚህ ደንብ ተሽሯል፣

2) ከዚህ ደንብ ጋር የሚቃረን ማናቸውም ደንብ፣ መመሪያና አሰራር በዚህ ደንብ በተሸፈኑ ጉዳዮች ላይ ተፈፃሚነት አይኖረውም፡፡

58. ደንቡ የሚፀናበት ጊዜ

ይህ ደንብ በክልሉ ወይም በከተማ አስተዳደር ካቢኔ ከጸደቀበት ቀን ጀምሮ የፀና ይሆናል፡፡

Abstract

This paper attempts to analyze the salient features of the new Ethiopian urban land lease holding Proclamation No.721/2011 and its implications on the Ethiopian economy. Today the new lease holding proclamation has become a burning agendum of discussion throughout the country. This proclamation prohibits the allocation of urban land other than through lease holding and designs a general direction through which all urban land holdings will in the future be converted to the lease system. Moreover, it highly restricts transfer of use right on urban land, provides unreasonably short time for commencement and completion of constructions, stipulates strict measures for failing to commence and complete construction within the time and restricts the right to appeal of aggrieved parties.

In order to identify the implications of the proclamation on the Ethiopian Economy, the writer has consulted various literatures and collected information through interviews and focus group discussions with different concerned bodies. Based on this it has been founded that the changes and restrictions introduced by the proclamation have a negative bearing on the transaction of immovables i.e., land and buildings, security of tenure of urban residents, the construction industry, banking services, urban housing service, the market and investment. This in turn affects money circulation, job opportunity and the income of both individuals and the government which has a negative influence on the country's economy.

The paper also attempts to show that there is no provision under the FDRE constitution which provides that all urban residents will be allocated urban land through the lease system. It is also indicated that the lease system designed by the proclamation which in principle allows land allocation based on tender does not take in to account the capacity of most urban residents and thus such residents as they are also joint owners of the land should be allowed a plot of land based on the permit system at least for residential purposes.

Moreover, it is stated that the government should not impose any restriction on transfer of properties attached with the land as long as individuals pay the required transfer tax and related charges. It is argued that the period of payment of lease, commencement and completion of construction should take in to consideration the prevailing realities on the ground. It is also recommended that the government should pay compensation at market price for the properties attached with the land and the permanent improvements on the land to the lessee when the contract of lease can't be renewed because of the fact that the appropriate body refused to renew the lease contract when the land is needed for public interest. It is also stated that aggrieved parties should be entitled to take their appeal on all issues to the regular courts regarding urban land clearance. It has also been indicated that rather than trying to amend the proclamation through a regulation the government should amend the proclamation itself as a regulation which is enacted to implement the proclamation cannot legally amend the same.