



Addis Ababa University

School of Law

College of Law and Governance Studies

**The Role of Urban Land Laws to Urban Good Governance: The
Case of Adama**

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Addis Ababa, Ethiopia

DECLARATION

I hereby declare that this Thesis entitled: “**The Role of Urban Land Laws to Urban Good Governance: The Case of Adama**” my original work that has been carried out under the supervision of Dr. Misganaw Kifelew , during the year 2018 as part of the degree of Master in Law of Urban Property and Land Law in accordance with the rule and regulation of Addis Ababa University School of Law and Governance Studies. I further declare that this work is my original one and has not been yet submitted to any other university or institution for the award of any degree or diploma and sources of materials used for the Thesis have been duly acknowledged.

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Acronym

FDRE	Federal Republic of Ethiopia
MoUDC	Ministry of Urban Development and Construction
FAO	Food and Agriculture Organization of United Nations
SIDA	Swedish International Development Agency
EPRDF	Ethiopian People's Revolutionary Democratic Front

Abstract

This paper tries to analyze the Urban Land Laws to urban good governance in the case of Adama city administration. Though the proclamation enacted to resolve some problems and challenging urban land governance matters and ensure the property rights of the beneficiaries, it lacks not considering some essential elements. Thus, the urban land laws has no transparency, accountability and unable to protect property rights of the beneficiaries. Moreover, there is no uniformity in the payment of compensation in all places plus by ignoring value, grade and location of urban lands during compensation. During the substitute land, it is open for negotiation and thus exposed to corruption.

Moreover, the concept public purpose is not clearly defined and as a result susceptible to wide range of interpretation and abuse of power by an appropriate body and government officials. The role of courts is also limited and gives ultimate power to an administrative tribunal and this in turn brings abuse of power by this organ.

The non-inclusive of these essential elements in the proclamations i.e. urban land laws and lack of clarity of some provisions of the lease proclamation created bad governance on the beneficiaries in that, the administrative tribunal and other government officials use their power as they wish due to such gaps in the law.

Both primary and secondary data collection systems are applied, however, majority of them collected through conducting interview of the beneficiaries, government officials and employees of land sector and judges of the city high court. The other data collected through physical observation and analyzing different laws.

Therefore, it is recommended that the urban land lease law incorporates provisions that empower the judiciary in the implementation of the law so that individuals get fair compensation and minimize abuse of power by government officials. Particularly it advises those concerned government organs responsible with the urban land administration to give due care during the implementation of expropriation procedure and take proper measures to reduce the impact of expropriation.

CHAPTER ONE

Introduction

1.1 Background of the study

Land is the major resource and driver of an economic growth and development. The way it is governed and administered has an impact on the country's future. Many scholars agree that land is not properly administered and in good use in Ethiopia¹. The absence of clear policies, lack of transparency and accountability, improper use of the resource and lack of active participation of the public are the major factors for the problem².

In Ethiopia since land is under the public/state ownership as per the Constitution³, it is not subject to sale or any means of exchange. People have the right to use this common property and in using the land appropriately; land governance is a key so that land resources can be enjoyed by all parts of the population⁴. In the country like Ethiopia, land is a basic for the livelihood. In addition, it is the source of wealth, economic growth, and employment⁵. Land is a source of all material wealth; it provides us with all our needs. In many developing countries, including Ethiopia, it is an important economic and social asset⁶.

Good governance in land administration is very critical as land is a very essential resource for the growth and development of any country. In Ethiopia under the FDRE, urban land is governed and administered by the urban land leasehold law which has been amended three times since its first enactment in 1993(80/93, 272/2002 and 721.2011).

The good governance to land sector is aimed at protecting property rights of individuals and that of the state by such tools like accountability, transparency, rule of law, equity⁷.

The uncontrollable population increase always puts pressure on this sector due to the demand for land. On the other hand, due to its scarcity in nature it is impossible to satisfy the needs of all

¹www.u4.no/publications/ethiopia-overview-of-corruption-in-land-administration.

² Ibid

³ The Constitution of Ethiopia, 1995, Proc. No. 1, Fed.Neg. Gaz., Year 1, no.1, article 40(3)

⁴ Ibid

⁵ Nigusie Melese, Application of Good Governance Principles for Urban Land Development and Management in Addis Ababa City Administration: The Practices and Challenges in Yeka Sub-City[unpublished] Addis Ababa University, Law Library (2016) p.1.

⁶ Daniel W. Ambaye, "Land Rights and Expropriation in Ethiopia," (2015), p. 27.

⁷ Dinka Tessema (PI), Girma Defere and Ermias Admas, "An Assessment Of The Challenges And Prospects Of Good Urban Governance Practice In The Land Administration System: Case of Shambu Town, Oromia Region, Ethiopia," Journal of Good Governance and Sustainable Development in Africa, Vol. 3, no. 3 (2016), p. 23.

population. Thus, these two conflicting ideas lead to the existence of bad governance in the urban land sectors due to the fact that the proclamation imposed restrictions on the accessibility of urban lands by majority of the population.

Urban land is accessible to the people only through lease system and it avoids all other means as comparing to the previous two proclamations. Hence, the inaccessibility of the urban land by the majority, not all due to such restrictions on the proclamation dissatisfied and discouraged the public at large and led to bad governance.

This study is conducted what good governance looks like in relation to the Urban Land Laws particularly in the study area, which is Adama city administration and assess the gaps in the laws.

1.2 Statement of the problem

Urbanization is a phenomenon that is happening in all parts of the world, especially rapidly in the developing countries like Ethiopia. Resources are scarce in their nature. Such resources like land, is very demanding. However, the land demanding by every person is not accessible as required due to restrictions imposed on it. One of such limiting factors is the law; Proclamation No. 721/2011. It provides for the administration of all urban lands through the lease system and imposes some restrictions.

As a result, many people have been questioning about the new urban land lease holding proclamation as it narrowed property rights of individuals. It restricted accessibility of urban lands by majority of the people due to its leasehold in nature.

On the other hand, though the proclamation was intended, to ensure 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, it couldn't satisfy the need for the objective set out. Moreover, it lacks clarity in some concepts in the proclamation which resulted in abuse of power by land administrators.

This newly enacted Proclamation No. 721/2011 and an expropriation proclamation No. 455/2005 have many discrepancies regarding good governance matters. Some of them are the unclear concept of the term "public interest", the restriction imposed on power and role of courts in resolving urban land disputes and methods of valuation of properties during expropriation. This paper mainly discusses these issues in how they affecting the good governance.

The concept “public interest” is unclear. As stated on the Civil Code of Ethiopia⁸, land may not be expropriated for the sole purpose of financial benefit. Under the expropriation proclamation⁹“Public purpose” is any activity made by public bodies or others for the direct or indirect benefit for the society. The concept ‘direct and indirect benefit’ is somewhat controversial. It is not clearly stated and explained rather defined in general terms in the proclamation. Hence, it created abuse of power by an appropriate body.

The other point is valuation of properties on the payment of compensation during expropriation. Expropriation is a compulsory taking of private property by the government for public purposes and it is an inherent power of the government and resulted in loss of land holding right of individuals and tenure insecurity.

Compensation is a guarantee for the owner of the property. The aim of the spirit of the law is to place the owner of the property if possible in a better position if not in the place where before had it not been taken the property. Compensation shall be fair and commensurate¹⁰ and based on replacement cost¹¹.

The assessment method is complicated and open for corruption. The concept “commensurate” is simply nominal; it neither represents the current value of the land due to it neither considers the value of the location or satisfies the need of the owner of the land, hence creates insecurity on their landholding rights. As a result, the law has a gap in the above mentioned areas and against the principles of good governance.

The law couldn’t protect the property rights of the individuals. The study was conducted mainly to fill this gap that the proclamation has in relation to urban land governance, or else it will give a hint for further studies in the area.

⁸ Civ. C., Art. 1464

⁹ Expropriation of Landholdings for Public Purposes and Payment of Compensation, 2005, Proc. No. 455, Fed. Neg. Gaz. Year11, no. 43.

¹⁰ Article 40(8), cited above as note 3

¹¹ Article 7(2), cited above as note 9

1.3 Objective

1.3.1 General Objective

The basic objective of the study is to assess and identify the gaps and the problems of urban land governance system in relation to proclamation 721/2011 in the application of the law, rules and regulations and recommend the possible solutions. It also examines the policy, reform and procedural implementation of these tools.

1.3.2 Specific Objectives

The study aimed to:

- √ Assess the implementation of proclamation 721/2011 and other urban land laws, rules and regulations in the urban good governance
- √ Examine the power of courts in the entertainment of urban land matters and how the decision of courts affect individual property rights
- √ Examine how the concept of “public purpose” is applicable
- √ assessing how the calculation of valuation of compensation is working and show the gaps

1.4 Research Questions

The research will answer the following questions:

What is urban good governance?

1. Do the law, proclamation 721/2011 and policies in relation to urban land governance in Ethiopia and particularly in Adama City Administration properly address issues of urban land governance mainly concepts of “public interest” and “valuation of properties” on the process of calculation of compensation for expropriation? To what extent the law is compatible with the practice?
2. What in general the new urban land lease holding proclamation looks like regarding the tendering, tenure security system and accessibility of urban lands?
3. What is the role of courts and other bodies for the issues related to urban lands decision made by the office?
4. How is the concept of ‘public purpose’ practically applicable?

1.5 Methodology of the Study

To undertake this action research, a combination of various data collection instruments and methods shall be adopted. The types of data to be collected include primary data and secondary data. It would be descriptive and qualitative.

1.5.1 Primary data

1.5.1.1 Interview

The method that applied to obtain the primary data is a face to face interview with customers, judges from woreda and zonal courts, lawyers, employees and officials from the urban land development and management agency of Adama city administration. Interviewees are selected randomly with no criteria in the study area i.e. Adama city administration.

1.5.1.2 Physical observation

In addition to the interview, physical observation conducted at the city's urban land development and management office, and in different parts of the city's local government administration (kebeles) of the land administration branches. Interviewees are those key informants almost from all kebeles who be familiar with the problem and concerned personalities around offices and at the kebeles.

1.5.1.3 Review of relevant Documents

Primary documents including The FDRE Constitution, Proclamation 47/67, 80/93, 272/2002, mainly The Urban Lands Lease Holding Proclamation No. 721/2011, Proclamation 455/2005, Proclamation 574/2008, Proclamation 818/2014, Proclamation 243/2011 Regulation 182/2016, and other related laws will be analyzed in relation to the urban land governance of Adama City Administration. In addition the working manuals, guidelines and structure of the land administration shall be reviewed wherever required so.

1.5.2 Documentary data

At municipality and other sectoral offices, journals, unpublished materials, books, reports and others shall be collected, organized, analyzed and interpreted to enrich other information collected and conclusions can be drawn.

1.6 Literature Review

Several studies were conducted by different researchers in relation to the above concepts in one way or another. Here below are some.

Araya Asgedom¹²; in his LL.M thesis by the topic ‘Salient Features of the New Ethiopian Urban Land Lease Holding Proclamation No. 721/2011 and its Implications on the Ethiopian Economy’. The aim of his study was the implication of the lease proclamation on the general economy of the country.

The study was generally descriptive type and both primary and secondary data collection sources were used including the two former urban land lease proclamations 80/1993 and 272/2002, draft model regulation prepared by the MoUDC in 2012; secondary sources like books, journals, focus group discussions, unpublished materials, newspapers, reports and other related documents. In his conclusion he stated the proclamation does not include issues of the size and location of substituted land. In addition, the amount of compensation during expropriation is solely determined by the government without the involvement of the land holder. As a result, it is against the fruits of good governance principles. The result showed that there are weak government practices in urban land governance areas.

Berhanu Kefale Alemie, Jaap Zevenbergen and Rohan Bennet¹³ in their topic ‘Assessing Land Governance in Ethiopian Cities: Lessons for the Implications of the 2011 Urban Land Management Policy’.

The aim for their study was generally to provide lessons for the implementation of the 2011 urban land policy to achieve its desired outcomes such as sustainable urban development. It considered the implementation of urban land leasehold law from 2002-2011. They collected empirical data from three case study cities such as: Bahir Dar, Dire Dawa and Hawassa. A SWOT analysis technique was made.

The result of their study indicated that, the land administration and land governance situation in the case study cities during 2002-2011 were deterred by the lack of: an underlying land policy,

¹²Araya Asegedom Tareke, Salient Features of the New Ethiopian Urban Land Lease Holding Proclamation No. 721/2011 and its Implication on the Ethiopian Economy, [Unpublished], Addis Ababa University, Law Library, (2013)

¹³Berhanu Kefale Alemie, Rohan Bennett, Jaap Zevenbergen, The Socio-Spatial Synergy in Land Governance: A Case of Informal Settlements in Bahir Dar, Ethiopia, Annual World Bank Conference on Land and Poverty, Washington DC, March 24-27, 2014.

independent responsible institution, coordination between different institutions, societal participation, and weak enforcement of laws and spatial plans. In their conclusion, formulating and implementing policies and laws through the prime consideration of the principles of governance are important to create a harmony between urban people and urban land.

In general, land administration and land governance situation in the study areas was generally weak and surrounded by a growing number of weaknesses and threats. These included the absence of independent responsible institution at the federal and region level, lack of underlying urban land policy, lack of coordination of the existing institutions, lack of societal participation and transparency, and weak capacity for implementation and monitoring of laws and spatial plans.

Abebaw Abebe Belay¹⁴ in his topic ‘Expropriation, Valuation and Payment of Compensation; the Law and the Practice in Addis Ababa City, Ethiopia.’ The aim of his study was to show the current problems of the city with regard to expropriation, valuation and payment of compensation. Methodology used was desk review in legal framework in the study area and researches made by others.

In his conclusion, there is a big gap between what is stated in the laws and the actual practice. One problem is, there was ambiguity in the definition of ‘public interest’ in that it was not defined explicitly in either statutory or case law. As a result, the government has been using unlimited power in an expropriation practices. The other is lack of using standardized valuation methods and procedures have been used. Hence, it created unfairness among individuals in calculating compensation schemes.

Dinka Tessema, Girma Defere and Ermias Admas¹⁵ in their journal article, ‘an assessment of the challenges and prospects of good urban governance practice in the land administration system: case of Shambu town, Oromia region, Ethiopia. The aim of their study was to assess the challenges and prospects of good urban governance practice in land administration of Shambu

¹⁴Abebaw Abebe Belay, Expropriation, Valuation and Payment of Compensation; The Law and the Practice in Addis Ababa City, Ethiopia, (available at abebawabebe@gmail.com)

¹⁵Dinka Tessema (PI), Girma Defere & Ermias Admas, An Assessment of the Challenges and Prospects of Good Urban Governance Practice in the Land Administration System: Case of Shambu Town Oromia Region, Ethiopia, *Journal of Good Governance and Sustainable Development in Africa* (2016), Vol. 3, no. 3

town on the basis of the five good governance principles, such as: accountability, transparency, participation, equity and effectiveness.

The study was a descriptive case study and was collected both from primary and secondary sources. Data was collected from primary and secondary sources. Primary data was obtained through questionnaires, interviews, and focus group discussion. Secondary data involved reviewing relevant literature from journals, books, magazines and proceedings. Data collected by survey questionnaires was entered SPSS for statistical analysis, and data collected by focus group discussion and interviews were analyzed using words and statements ,and used for the purpose of triangulation.

From the study they found that, corruption and rent seeking behavior and activities, negligence by officials and employees of the municipality, delay of response, lack of mechanism to ask municipality about its deeds and officials run for getting political loyalty from their bosses to either sustain their power or to upgrade their position rather than working to solve residents' problem, lack of financial, material and human resources, lack of institutional capacity regarding major challenges of good urban governance practices.

Tagesse Mathewos Sugebo¹⁶ in the topic 'Assessment of the Challenges and Prospects of Good Governance: The case of Gedeo Zone Municipalities'. The aim of the study was to assess challenges and prospects of good governance in the study area. Both qualitative and quantitative research methods were employed. Regarding the data, both types of sources i.e. primary and secondary were used. Primary data included questionnaire, focus group discussion and structured interview using descriptive and narrative methods.

From the study he found that, there were practices of rent seeking, lack of commitment from the leaders and employees of the municipalities, lack of qualified personalities and lack of standardized of performances, in the municipalities. In his conclusion, there were no enough good governance practices in the study area and thus, the municipalities should promote transparency, accountability, rule of law and participation of local communities.

¹⁶TagesseMathewosSugebo, Assessment and the Challenges and Prospects of Good Governance: The Case of Gedeo Zone Municipalities, International Journal of Research, (2015), Vol. 2

The other researcher, Mhrtey Addisalem Tikue¹⁷ in the topic ‘Good Governance in Land Administration Below: The Case of Naeder Adet Woreda, Ethiopia’. The aim of the study was, to identify and examine factors and practices that hinder the performance of accountability.

Data were collected through interview and focus group discussion by selecting 182 households via convenience sampling methods. In addition, secondary data were used.

The result of the findings showed that, the performance good governance in the woreda land administration pertaining to accountability is weak where much is left to be done. In this regard, the prime factors that inhibit the good governance in the land administration were found, among others, corruption, weak public education, weak monitoring and evaluation system, and coordination among stake holders and low incentives.

In conclusion, the performance of accountability in the woreda is hindered by lack of qualified man power and in adequate resources; weak coordination among stakeholders; weak implementation capacity; weak public awareness coupled by weak education system; absence of strong monitoring and evaluation mechanisms and corruption.

Girma Kassa Kumsa¹⁸ in his LL.M Thesis with the topic ‘Issues of Expropriation: The Law and The Practice in Oromiya reviewed the legal rights of peasants and pastoralists in Ethiopia in general and the Oromia Regional State in particular; and examined the adequacy of compensation payable for expropriation of rural landholdings in Oromiya. In his findings, though the FDRE Constitution and Oromiya Regional State Revised Constitution 2001 guarantee ‘commensurate’ amount of compensation for expropriated properties, still there were low payment of compensation due to unscientific method of valuation.

Moreover, ‘public purposes’ were not implemented in accordance with the time and manner agreed. He finally recommended, policy makers and implementing agencies of the regional state should rethink about the issue.

¹⁷MhrteyAdisalemTikue, Good Governance in Land Administration from Below: The case of NaederAdetWoreda, Ethiopia, International Journal of African and Asian Studies, (2016). Vol. 23

¹⁸GirmaKassaKumsa, Issues of Expropriation: The Law and the Practice in Oromia, [Unpublished], Addis Ababa University, Law Library, (2011)

Daniel Woldegebriel Ambaye¹⁹ in his topic ‘Land Valuation for Expropriation in Ethiopia: Valuation Methods and Adequacy of Compensation’ argued that because of valuation follows backward valuation system, cost replacement method, compensation being paid is not adequate and this creates insecurity on their land holdings. Accordingly, land taken by a state from a person for the purpose of expropriation without public purpose and payment of ‘commensurate’ amount is illegitimate expropriation.

All the above researchers made their arguments in such a way. They made their contributions to understand the concepts. However, there are still unanswered questions. For example, Araya Asgedom mainly discussed how the new urban lease holding proclamation no. 721/2011 affected the economy of the country. It is all about the financial benefit that would be collected from exchange of transaction on sale or transfer of urban lands.

It doesn’t show how it affects urban good governance. Zelalem Yirga Adamu discussed how land lease policy reform affected urban lands since early 1990’s. He stated the incompatibility of payment of lease to the market consideration, lessees’ right of transferring and pledging right was restricted and other issues as well. This also doesn’t show how the law affects the public at large in relation to urban good governance.

Abebaw Abebe discussed all about valuation and payment of compensation of rural lands in Addis Ababa. It doesn’t indicate the real situation in Oromiya although he explained the vagueness of the concept of ‘public purpose’. He stated, it was not defined explicitly in either statutory or case laws.

Hence, this study fills the gaps that the previous studies failed to address.

1.7 Significance of the Study

This study will contribute some steps forward for the legal framework in strengthening provision of government services in the land sector and improving customer satisfaction. In addition it helps in minimizing the challenging and problematic regulations, rules and procedures. It will also help potential researchers to conduct further studies on the issue.

¹⁹Daniel Woldegebriel, Land Valuation for Expropriation in Ethiopia Valuation Methods and Adequacy of Compensation 7th FIG Regional Conference, Spatial Data Serving People: Land Governance and the Environment-Building the Capacity Hanoi, Vietnam, (October 2009)

1.8 The Study Area

The City of Adama was established following the Ethio-Djibouti railway, as a train station in the first place and gradually grew into urban center, public administration and trade center. The sizeable settlements were clustered around the railway line and began to grow around the railway line settlements of the city, after the completion of railway line at the beginning and later sprawled in different directions of the city. It is located at 99 km south east of metropolitan of Addis Ababa via Modjo and situated in the central Rift Valley.

Rapid population growth and high rural urban migration are attributed to frequent change of the face of the city. To accommodate the growing size of population and more people and buildings, the master plan of the city was revised several times. According to the newly revised master plan by Adama master plan revision project office the city in 2004 G.C., updated and sophisticated master plan have been introduced to address environmental challenges and complex social issues we can expect to face in near future and required to observe environmental, health and safety standards that help expand all directions of the city and achieve a physically more balanced development.

Adama's current master-plan covers an immense area of 13,366.5 hectares or 133.6 km² to accelerate the growth and development of the city in systematic, organized and sustainable manners and facilitate the supply of urban land to different purposes and guide city development in desirable paths. Adama has become one of the most rapidly changing and expanding cities in the country.

According to the third Ethiopian population and housing census which was conducted in 2007 (the most recent year for which data are available), people of whom 109,659 males and 112,376 females that distributed over a land areas 133.6 km² were inhabited Adama. Now, the population size of Adama is estimated to be nearly 400,000. It is among the largest cities in Ethiopia.

Adama had showed an increase of over the population recorded in the 1994 due to the strategic location and natural attractions with rapid flow of people from different segments of the population to seek job and better life.

Administration of urban centers especially large cities like Adama is often confronted with multitude of key problems like: high urban densities, transport, traffic congestion, energy inadequacy, un planned development and lack of basic services, illegal construction both within

the city and in the periphery, informal real estate markets, creation of slums, poor national hazards management in over populated areas, crime, pollution, climate change and poor governance arrangements.

As land is the most valuable asset of all natural resources, governing of land in urban centers is not a simple task. It is where big decisions on the use of land are made and where competing interests on land are managed. Land is not managed by a single body; it needs coordination of multiple stakeholders like land agencies, courts and ministries responsible for land, as well as non-statutory actors such as traditional bodies and informal agents. It covers both the legal framework and informal and traditional way of controlling.

Land is about exercise of power and this power is reflected in the rules of land tenure. The quality of governance can affect this power in the society. Tenure is the relationship of people with respect to the land. It includes the use of land rights, control and transfer lands, restrictions on the use rights and etc. If land tenure could not address societal needs appropriately it creates many problems.

As we could observe problems in urban land governance in many countries, so does in Ethiopia. Urban land governance especially in the developing countries is complex. From the simple border conflicts among neighbors up to the biggest state border conflicts all are land issues. Others may include: family inheritance, informal settlement, forced eviction, compensation and re settlement, corruption etc.

When government makes wrong decisions or unable to solve those above problems people are affected, complaints could be raised on the government and social tensions increases as a result it may lead to instability.

In the case of Adama urban land governance, one or more of such above problems are observed. Urbanization, rural-urban migration, land markets and land speculation, informal settlement, institutional structures, poverty and others are the main factors for the problem.

Currently the city expands at an increasing rate due so such urbanization and rural urban migration. These factors facilitate poor urban land governance in such a way the city government is unable to identify the lands under its control, the registered and the non registered lands, the

number of informal settlers, the legal households, failure in the implementation of land rules and regulation, tenure security issues and the likes.

1.9 Limitation of the Study

In conducting this study, some key informants were not willing to respond to the questions due to their expectation that the government will make no solutions for their problem. Moreover, some officials were unavailable during the study. Some written data were not in place and missed due to different reasons. The other is, in interpreting the questions in to the local language (Amharic or Afan Oromo) in the process of clarifying the questions; they may lose their exact meaning or the central point. The research is limited to Oromiya regional state Adama city administration, particularly few selected kebeles and governmental offices.

1.10 Organization of the paper

Generally the paper is organized in to four chapters. The first chapter is introduction. It includes the background, statement of the problem, the objectives, the methodology, research questions and limitation of the study.

Chapter two is all about the concept of good governance, meaning and nature of it. Factors affecting good governance are also included. How good governance affects in the urban lands. Corruption is one of the factors affecting good governance. When urban land administration is affected by corruption, the public at large is also affected, i.e. access to land and tenure security will be under question. People lose trust on government.

Chapter three is about the urban land lease holding proclamation and good governance. Here objectives of the urban land lease holding proclamation no. 721/2011, history of the urban land lease proclamations are discussed. Areas where the proclamation lacks good governance will also be discussed.

Chapter four is about presentation and findings of the research. Conclusion and recommendation are also part of this chapter.

CHAPTER TWO

The Concept of Urban Good Governance

2.1 Meaning and Nature of Good Governance

"Governance": the activity of governing a country or controlling a company or an organization; the way in which a country is governed or a company or institution is controlled²⁰. It includes the formal institutions of government but also informal arrangements. Governance is the act of governing; exercising authority.²¹

"Governance": is an exercise of political, economic and administrative authority in the management of a country's affairs at all levels. It comprises the complex mechanisms, processes, and institutions through which citizens and groups articulate their interests, mediate their differences, and exercise their legal rights and obligations.²²

Based on certain conditions governance could be either good or bad. Thus, there is a measurement for it. There are ways to measure the governance of a country by comparing with another country. There are indicators observed over time for the trends in governance²³.

Good governance is the effective and responsible management of an organization, a country, etc. which includes considering society's needs in the decisions it makes²⁴.

It is among other things participatory, transparent and accountable. It is also effective and equitable and it promotes the rule of law. Good governance assures that political, social and economic priorities are based on broad consensus in society and that the voices of the poorest and the most vulnerable are heard in decision-making over the allocation of development resources.²⁵ Urban governance refers to how government (local, regional and national) and stakeholders decide how to plan, finance and manage urban areas²⁶.

²⁰Oxford Dictionary of English

²¹<https://www.thefreedictionary.com>

²²<https://www.gdrc.org/u-gov/governance-define.html>

²³Id., note 13

²⁴<https://www.dictionary.cambridge.org>

²⁵Id., note 14

²⁶<http://www.gsdr.org>

Good governance can be characterized by principles of universality of tenure security, equitable participation, adherence to the rule of law, sustainability, and effectiveness and efficiency²⁷. Under good governance there is clear decision making procedure at the level of public authorities, civic society participation on decision making processes, and the ability to enforce rights and obligations through legal mechanisms²⁸.

Different institutions suggest different elements of basic principles of good governance. However, there are common elements in general. These are accountability, participation, transparency, equity and effectiveness & efficiency.

Good governance is participatory, transparent, accountable, efficient and effective, equitable and promotes rule of law. It also ensures that decisions are based on participatory. Good governance helps in removing hurdles and challenges in a land market so that every individual whether the poor or the rich compete to access the urban land²⁹. Therefore, the eight elements and characteristics of good governance are discussed below.³⁰

1. Rule of Law

Good governance requires fair legal frameworks that are enforced by an impartial regulatory body, for the full protection of stakeholders.

2. Transparency

Transparency means that information should be provided in easily understandable forms and media; that it should be freely available and directly accessible to those who will be affected by governance policies and practices, as well as the outcomes resulting there from; and that any decisions taken and their enforcement are in compliance with established rules and regulations.

²⁷<https://www.google.com/search?q=towards+improved+land+governance&ie=utf-8&oe=utf->

²⁸Ibid, cited above at note 16

²⁹NesruHassenKoroso, *Assessment of Urban Land Market from Good Governance Perspective*, University of Twente, 2011

³⁰<http://www.governancepro.com/news/>

3. Responsiveness

Good governance requires that organizations and their processes are designed to serve the best interests of stakeholders within a reasonable time frame.

4. Consensus Oriented

Good governance requires consultation to understand the different interests of stakeholders in order to reach a broad consensus of what is in the best interest of the entire stakeholder group and how this can be achieved in a sustainable and prudent manner.

5. Equity and Inclusiveness

The organization that provides the opportunity for its stakeholders to maintain, enhance, or generally improve their well-being provides the most compelling message regarding its reason for existence and value to society.

6. Effectiveness and Efficiency

Good governance means that the processes implemented by the organization to produce favorable results meet the needs of its stakeholders, while making the best use of resources – human, technological, financial, natural and environmental – at its disposal.

7. Accountability

Accountability is a key tenet of good governance. Who is accountable for what should be documented in policy statements. In general, an organization is accountable to those who will be affected by its decisions or actions as well as the applicable rules of law.

8. Participation

Participation by both men and women, either directly or through legitimate representatives, is a key cornerstone of good governance. Participation needs to be informed and organized, including freedom of expression and assiduous concern for the best interests of the organization and society in general.

2.2 Factors Affecting Good Governance

As good governance is one of the tools in which the state controls the decision making process, there are factors which can affect this process. These affecting factors could be either positively or negatively. Such negative factors tend to weaken the governance activities. The complexity, inconsistency and obsolescence of laws, fragmented institutional arrangements, weak institutions and weak judiciary systems aggravate the situation³¹.

Corruption is another governance problem. It is defined as: *“Illegality: is a vicious and fraudulent intention to evade the prohibitions of the law: something against or forbidden by law: moral turpitude or exactly opposite of honesty involving intentional disregard of law from improper motives”*³².

Corruption corrodes economic and social relations. It distorts markets and erodes attempts to improve quality of life. The World Bank identifies it as the key element in economic underperformance and a major obstacle to poverty alleviation and development. In major parts of the world, the public sector has been plagued with corrupt practices. Corruption has attained serious levels in more than two-thirds of the 159 nations surveyed in Transparency International’s 2005 Corruption Perceptions Index³³.

Corruption exists in all countries and in different forms. Corruption takes many various forms like bribery, embezzlement, fraud, blackmail, and nepotism. It also differs in extent from the simple petty corruption up to the bigger grand one. Petty corruption is a small scale corruption and lowest in degrees and occurs at individual levels who are officials or an employee of a certain status.

Grand corruption is characterized by the involvement of senior politicians and public officials who illegally use their positions to enrich themselves or to cling to power. The third type is state capture. This is when weak states permit non state actors and elites to influence lawmaking and regulations or other in the involvement of the state’s activity³⁴.

³¹ Supra note 12, p.5-8.

³² Henry Campbell, Black, Black’s Law Dictionary M.A., 1968, (4th ed. 1968),

³³ <http://repository.upenn.edu/ictafrica/6>

³⁴ <http://www.sida.se>

Favoritism is still another factor. This may be described as when jobs are reserved for some individuals or groups who are members of a particular ethnic group or religious institutions, race, gender or the likes³⁵.

Thus, when a state is hit by one or all of these factors, such fruits of good governance are affected. Wrong decisions will be made; as a result, the public at large would be affected by those decisions.

Weak governance will strip off legal protection of the public. It promotes inequality between genders, social classes and others. Weak governance hinders development by increasing risks. Foreign investors will not be encouraged to invest in a country where government decisions are wrong and weak³⁶.

2.3 Urban Land Governance

Urban lands in majority part of the world become problematic due to the ongoing urbanization along with the increasing population create huge demands of urban lands for the purpose of residence, green areas, investment, infrastructure, and social services³⁷.

Land governance may define as follows:-

“Land governance concerns the rules, processes and structures through which decisions are made about access to land and its use, the manner in which the decisions are implemented and enforced, the way that competing interests in land are managed³⁸.”

Land is governed by statutory, customary and religious institutions as well as informal institutions. It includes state structures such as land agencies, courts and ministries and municipalities. It covers the legal and policy framework for land. There are also informal land developers and traditional bodies. In general, it includes all the state, civil society and private sectors.

³⁵ Supra note 12, p.13.

³⁶ Ibid p13

³⁷ Berhanu Alemie, Jaap Zevenbergen and Rohan Bennett, Assessing Urban Land Governance in Ethiopian Cities (2002–2011): Lessons for the 2011 Urban Land Management Policy Implementation (7477), FIG Working Week (2015).

³⁸ <https://www.google.com/search?q=towards+imporoved+land+governance&ie=utf-8&oe=utf-8>

Good governance in land administration aims to protect the property rights of individuals' and enterprises as well as of the state by introducing principles of good governance such as: transparency, accountability, rule of law, equity, participation and effectiveness in to land related management³⁹. On the course of this, tenure security will be high. With the absence of these good governance tools in land administration, can easily lead to land transfers through which legitimate land users lose their possession or land ownership rights.

Land is among all sectors, is susceptible for corruption and rent seeking due to it is a valuable asset. Hence, this value creates a door for corruption for those individuals who have such legal power like government officials. The demand for land and its scarcity also contribute as factors for bad good governance of land administration and management system.⁴⁰

2.4 Why Urban Land Governance Matters?

As land is the most valuable asset, it is one of the sectors most affected by bad governance. Moreover, as it reduce corruption and bribery, good land governance is critical for sustainable economic development and social justice.⁴¹

Managing cities and urban growth is one of the defining challenges of the twenty-first century. If managed well, cities can act as engines of growth and provide inhabitants with better job opportunities and improved healthcare, housing, safety and social development. Further, cities can contribute to national growth through increased revenue generation and political stability. Conversely, cities that are poorly planned, managed and governed can become centers of poverty, inequality and conflict.⁴²

The well-being of the urban poor can be improved by facilitating access to economic opportunities, supportive social networks and greater access to land, infrastructure and services. Whether and how these are available to the poor depends to a significant extent on urban governance.⁴³

³⁹ Supra note 7 p23.

⁴⁰ Tony Burns, Klaus Deininger, Harris Selod, and Kate Dalrympl, Implementing the Land Governance Assessment Framework, (2010), FIG Congress, Sydney Australia, p 2

⁴¹Ibid, p12-13

⁴²<https://gsdrc.org/topic-guides/urban-governance/concepts-and-debates/why-does-urban-governance-matter/>

⁴³ Ibid

Land is the single greatest resource in most countries. However, land administration systems often fail as a result of weak governance. Failings in governance have adverse consequences for society as a whole. Ineffective urban governance affects the poor disproportionately. In particular, oppressive regulation of informal enterprises and settlements can negatively impact upon livelihood opportunities. In contrast, good governance can help to achieve economic development and reduce poverty. Land administrators may be part of the overall problem of governance, or they can, and should, be part of the solution. Their role is critical.⁴⁴

In conclusion, urban land governance is decisive in any urban development and hence, should demand attention for the fact that it is a source of revenue and contribute to political stability, if not managed well; it increases urban poor and becomes source of conflict.

Under the current land lease holding proclamation, (preamble), and the prevalence of good governance is assumed to be fundamental for the development of an efficient, effective, equitable and well-functioning market.

Land is a matter of survival. The way it is governed and administered, therefore, has a significant impact on a country's future. This implies the issue of land needs very strong institutions at all levels to ensure tenure security, equal distribution of land and to minimize transaction costs and potential conflicts. Therefore, good governance is critical issue especially in the land administration sector and it is a matter of choice, but a must to accept it⁴⁵.

Improving urban governance particularly, an urban land by increasing transparency and accountability is a key success development. As land is a limited resource, it is obvious that everybody competes for it over access and use of this resource. Neighbors claim for boundaries; family members argue over inheritance of their immovable; pastoralists compete over grazing lands etc. All these people compete over the land; however, the resource is scarce so that it needs special attention. It needs keeping this scarce resource for future generations.

⁴⁴Ibid

⁴⁵MhreyAdisalemTikue, International Journal of African and Asian Studies, Good Governance In Land Administration From Below: The Case Of NaederAdetWoreda, Ethiopia, Vol. 23 (2016), P.85.

When governance is weak, such scarce resource, the land, is dominated by few individuals, such as family members, clans, groups or large companies or few government officials. Those with power can illegally transfer lands to themselves, their family members or groups. Thus, the public at large may lose their right⁴⁶.

On the other hand, with the existence of good governance, land will be accessible equitably, security of tenure, reduces social tensions, decision making is more transparent and participatory, application of rule of law equally, and disputes are resolved before conflict arises.

⁴⁶<https://www.google.com/search?q=towards+imporoved+land+governance&ie=utf-8&oe=utf-8>

CHAPTER THREE

The Lease Proclamation and Issues of Governance

3.1. Defining Lease

Longman dictionary⁴⁷ defines the term ‘lease’:-

Is 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.

From the definition we understand that ‘lease’ is an agreement made in a written form bounded by law. It is between an owner and another person for a specified period of time for the use of rent of a building or piece of land.

Black’s Law Dictionary⁴⁸ defines ‘lease’ as:

A Contract for possession and profits of lands and tenements, either for life or for certain period of time, or during the pleasure of the parties

Under the new lease proclamation, it is defined as follows:-

“Lease” means a system of land tenure by which the right of use of urban land is acquired under a contract of a definite period;

3.2. The History of Lease in Ethiopia

The concept ‘lease’ is incorporated in the Ethiopian laws, during the Emperor Haile Silassie when private ownership of land was allowed⁴⁹. However, there was no such concept during the Derg regime since it abolished all private lands⁵⁰.

After the downfall of the Derg regime, the current government, EPRDF took over the power and the name ‘lease’ emerged again into the Ethiopian law. The first lease proclamation enacted in 1993, during this time, permit system was changed into lease, but the ownership of urban lands remained under the state.

⁴⁷Longman’s Dictionary of Contemporary English, 1986, London

⁴⁸Supra note 24

⁴⁹Supra note 12, p14

⁵⁰ Ibid

After some time another new proclamation enacted and replaced the former one, Proclamation No. 272/2002. Still this one had a gap in applicability, i.e. not applicable in all urban centers. The reason is that as it is stated on the proclamation⁵¹, the applicability of the proclamation was decided as per the time and conditions to be set by the concerned city or Region government. The Regions had the power to implement the proclamation as per their practical situation; hence its applicability had no uniformity in all the Regions. Later on it replaced by another one, which is proclamation no. 721/2011.

3.3 An overview of the Lease Proclamation 721/2011

• Objectives of the Law(preamble, and Art 4)

As we can understand from the preamble of the new urban land lease holding proclamation, it has the following objectives:

√ 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.

➤ Ultimate Objectives

According to the preamble of the new urban lands lease holding proclamation, the ultimate objectives of the law are: ensuring the compatibility of increasing urban land demand with the supply of land resources and the sustenance of a robust free market economy of the country. Moreover, it helps to ensure the rights and obligations of the lessor and the lessee.⁵²

➤ Missions

In order to attain the objectives of the new urban land lease holding proclamation, the following conditions shall be fulfilled. These are: lease tender and land delivery system shall adhere to the

⁵¹ Re-Enactment of Urban Lands Lease Holding Proclamation, 2002, Proc. No. 272, Fed. Neg. Gaz., Year 8, No. 19.

⁵²Urban Lands Lease Holding Proclamation, 2011, No. 721, Fed. Neg. Gaz , Year 18, no. 4 article 5(1)

principles of transparency and accountability, preventing corrupt practices, tender shall reflect the prevailing transaction of value of land and urban land delivery system should give priority of the public interest.⁵³

➤ Goals

Urban lands are resources of any country and this resource has to be administered properly. Thus, uniform land policies and administration can contribute significantly for building transparent and accountable land administration system.

In this sense, the goals of the new urban land proclamation as it stated in the preamble and article 4 of this proclamations are to ensure compatibility of demand and supply of urban lands due to growth in the economic development so that appropriate administration of this resource requires so, for building transparent and accountable land administration system, to prioritize the interests of the public and the urban centers and ensure the sustainability of the country's development.

• **Urban Land Tenure System(Art 5,6,)**

The FDRE Constitution 40(3-7) provides a guideline to Ethiopian land tenure system in general and urban land tenure in particular⁵⁴. The right to ownership of rural and Land is vested exclusively on the state and the peoples of Ethiopia⁵⁵. This implies that the state of Ethiopia and the peoples are joint ownership of the land. However, all the peoples cannot have this legal right and own the property. Hence, nobody can claim of ownership right of land. Generally, nobody owns land right in Ethiopia.

Under the current urban land lease holding proclamation, no person may acquire urban land other than the lease holding system⁵⁶. This means that, land possession and permission other than lease holding is prohibited.

The prohibition is so strict that no person is allowed to enclose and use any plot of land adjacent to his lawful possession without the permission of appropriate body⁵⁷.

⁵³Id, article 4

⁵⁴MisganawKifelew, Urban Land Tenure System in Ethiopia , [unpublished], Addis Ababa University, Law Library, (2011)

⁵⁵ FDRE Constitution, Art., 40(3).

⁵⁶See the preamble of proclamation 721/2011 cited above at note 44

⁵⁷ Id., article 5(2)

The prohibition is not only limited to individual level, but also in a region and city administration level. Likewise, no region or city administration is may permit or transfer urban land in a manner contrary to the provisions of this proclamation⁵⁸.

➤ New Land Transfer

Once an urban land is permitted and acquired by a person, the tenure system will be administered by lease. The proclamation recognized lease holding system the only means for one to get land in an urban area⁵⁹. Then the individual has the right either to use or transfer his right on the land.

The urban land permitted and acquired under lease basis will be transferred to any third party in the same manner. Whereas, if a property attached to 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 holding⁶⁰.

Under the proclamation there are provisions that limit or restrict free transferability of lease right. Any person who acquires the right to hold urban land on lease may transfer such right to contribute in the form of a share to the extent of the rent paid. In implementation, a lessee may not transfer his right of lease but may collect income which is higher than the rent of land he paid. When the lessee collects an income higher than the rent he paid, he has the duty to pay the difference to the city administration or municipally⁶¹.

Though the federal lease proclamation, the regional and city administration lease laws limit transferability of lease right, analysis of the trend indicated that there are no specific bodies follow up and ensure the seller hands over the difference of rent to a city administration. Only such laws and other directives are there which may prohibit transfer of bare land or foundation to discourage land speculation⁶².

In practice a few years ago urban bare lands and a small percentage of built construction below half, have been transferred to third party by the city administration workers and officials.

⁵⁸ Id., article 5(3)

⁵⁹ Id., article 5(1)

⁶⁰ Id., article 6(3)

⁶¹ Id., article 24

⁶² Zelalem Yirga, Critical Analysis of Ethiopian Urban Land Lease Policy Reform since early 1990's, FIG Congress Engaging the Challenges-Enhancing the Relevance, Malaysia, (2014) p16.

The proclamation allows transfer of urban lands in two ways: these are through the modality of tender or allotment⁶³. Allotment of urban land may, upon decision of the government authorities of the region and city administration be permitted for development activities that benefit the public since 1993.

The Proclamation No. 721/2011 provides detail lists that can request for urban land lease holding through allotment. Under this law, except urban land holdings granted by allotment for two entities, the budgetary government and religious institutions, all other users of the land allotment were assigned administratively to public agencies or state-owned enterprises⁶⁴. These institutions are required to pay land use rent as those granted use rights through auction. It is noted that a budgetary government entity or religious institution provided with an urban land allotment will pay an amount equivalent to the compensation paid in the course of clearing an urban land.

➤ **Conversion of Old Possession**

The term ‘old possession’ is defined under article 2(18) of the new land lease 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”⁶⁵. The modality of converting old possession into lease hold shall be determined by the Council of Ministers on the basis of detailed study⁶⁶. Though old possessions through time are changed into leasehold system there are exceptions to this rule. This exception incorporated in the regional regulations.

On the other hand where parceling of plots of urban land in accordance with the approved national standard and the urban plan, in the course of converting old possession into lease hold results in reduction or increase of the size of land⁶⁷. This can be done in order for the compatibility of the urban any plot of land with the urban plan.

According to the urban plan proclamation⁶⁸, ‘*Any contemplated reallocation scheme shall be compatible with the land use plan of an urban center.*’

⁶³ Proclamation 721/2011 article 6(2).

⁶⁴ Id., article 12

⁶⁵ Id., article 2(18)

⁶⁶ Id., article 6(1)

⁶⁷ Id., article 6(2)

⁶⁸ Urban Planning Proclamation 2008, Proc. No. 574, Fed. Neg. Gaz. Year 14, no. 29

Additionally, compensation shall be made in accordance with an appropriate law for any property to be removed from the land so reduced or payment to be made for the additional land obtained shall be treated in conformity with the relevant lease principles⁶⁹. This is true only if it compatible with an urban plan and 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 decision is passed by the council of ministers holds true if no transfer except inheritance has taken place with regard to such property.

➤ Regularization

In principle, land is not for sale by the competent Ethiopian laws. Some studies indicate that there are illegal land sales both in urban and rural areas. The practice indicates it is common in peri-urban areas. In most cases the source of illegality emanates from the imbalance between the demand and supply for land. When access to urban land and basic services are beyond the reach of low and middle income population through the formal way, people are forced to look the other way out. Therefore, due to their illegality in nature, the state takes measures in removing those illegal settlements. One and the common method are demolishing those illegal structures and the other is use of law and courts in eviction illegal settlers.⁷⁰

However, the practice shows that removing using demolishing methods those illegal settlements is not effective and could not bring the intended result. Hence, the government employed regularization as an alternative for resolving such problem.

Regularization is defined as: it is the process of making regular or be lawful. In order to regularize possession held without the authorization of an appropriate body of a certain plot of urban land, there are pre-condition set to be fulfilled first.

These are: possessions shall be acceptable in accordance with urban plans and parceling standard and those possessions shall be administered by lease holding system.⁷¹

The urban land holding registration proclamation⁷² recognizes uniform protection of land holding rights of private, government and non-government institutions. Moreover, in the same

⁶⁹Proclamation 721/2011 article 6(3) cited above at note 44

⁷⁰ZarfuHailu, Land Governance Assessment Framework Implementation in Ethiopia, (2016), p58

⁷¹See article 6(4) of proclamation No. 721/2011 cited above at note38

proclamation article 30/1, recognizes the registration of all rights, restrictions and responsibilities of old possessions and lease holdings. However, the proclamation does not recognize the registration of informal settlements unless changed in to lease holding administration.

- **Access to Urban Land (7, 12):who are entitled to hold urban land**

One of the major factors that determine access to urban land is its availability. According to the FDRE Constitution article 40(3), land ownership is vested on ‘the state and peoples of Ethiopia’⁷³. Though the Constitution declared urban land for the peoples of Ethiopia, in practice, not majority of the people are enjoying from the fruit. There are various challenges in access to urban land in Ethiopia. Some of them are: land market imperfections, challenges in land tender and allotment process, breadth and security of lease rights, transferability of lease rights, institutional fragmentation in land management, and etc.⁷⁴

The Constitution recognized two modalities of access to land; through the modality of tender and allotment⁷⁵.

- Tender (those who pay more)

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.

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

⁷² “Urban Landholding Proclamation No. 818/2014”, *Fed. Neg. Gaz.* Art. 4/1, Year 20, no. 25

⁷³ Elias N.Stebek, Challenges in Access to Urban Land for Business Activities under Ethiopian Law: Between Oligarchy and Broad-Based Private Sector, *Mizan Law Review*, Vol., 9, no.1, 2015, p37.

⁷⁴ *Ibid*

⁷⁵ The FDRE Constitution, Article 7(2).

by regulations of regions and city administrations; provided, however, that it may not be less than five percent of the land lease benchmark price⁷⁶.

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 projects 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.

The highest bidder then declared the winner based on bid price and amount of advance payment offered⁷⁷. The list of winners of the bid with their scores then shall be made public on a notice board⁷⁸.

➤ Allotment(those which provide special benefits to the public)

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 cabinet⁷⁹.

Moreover, a person who is displaced due to urban renewal program shall be entitled to a substitute of plot of land⁸⁰. Here one has to take in to consideration is that such person shall be entitled to some legal right, i.e. lawful possessor.

Request for allotment of urban land shall be accompanied by the following conditions in accordance with the proclamation⁸¹: support letter from the supervising authority of the

⁷⁶Proclamation 721/2011 article 11(3) cited above at note 44

⁷⁷ Id., article 11(5)

⁷⁸ Id., article 11(6)

⁷⁹ Id., article 12(1)

⁸⁰ Id., article 12(2)

⁸¹ Id., article 13

requesting institution or from pertinent sectoral bodies; detailed study of the project to be implemented at the requested site; and evidence showing the budget allocated for implementing the project.

- **Urban Land Transfer(7-15)**

Once the urban land is obtained either on lease hold basis or by allotment, the person is entitled to his legal right to that land by having leasehold certificate⁸². He can use the land until the lease period lapses or he can transfer to any third party upon certain conditions. No land is transferred to third party without any construction built.

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. Most urban land is granted to urban dwellers and investors on the basis of **time restriction** and use rights as it defined under the proclamation are provided for a **specific period** obtained from the landowner who shall be the state⁸³.

Under the new lease holding proclamation different lease periods ranging from 5years for short-term economic and social activities+16 to 99 years for residential housing based on different types of ground leases⁸⁴.

- Modes of Transfer(Tender & Allotment)

Urban land transfer is made only in two ways in accordance with the lease proclamation Article 6(2); these are by lease and allotment. No urban land is transferred and acquired other than the lease holding system⁸⁵.

- Tender Conditions & Procedure

Tender⁸⁶ is defined as: ‘means a modality of transferring lease of urban land to a bid winner fulfilling the competition requirements issued based on the rule of market competition of urban land tenure.’ From the definition tender is one means of urban land transfer on lease basis after competitive bidding is made. The bid winner shall fulfill certain condition set for the tender by

⁸² Id., article 17(1)

⁸³ Id., article 2(1)

⁸⁴ Id., article 18

⁸⁵ Id., article 5(1) & (3)

⁸⁶ Id., 2(9)

an appropriate body in this case the city administration. Tender is public in its nature so that, every person fulfilling the requirements set for it can compete⁸⁷.

An appropriate body should ascertain those urban lands ready for tender, fulfill certain conditions before advertise to the public⁸⁸. These are: are free from legal claims of any party; are prepared in conformity with the urban plan; have access to basic infrastructure; are parceled, delineated, assigned with unique parcel identification numbers; have site plans and fulfill other necessary preconditions; and the tender process is implemented in a manner that secures the appropriate price of the land following the rules of transparency and accountability.

➤ Allotment Conditions & Procedure

One of the modality of acquiring an urban land is allotment⁸⁹. According to the new urban land lease holding proclamation, allotment is defined as: ‘a modality applied for providing urban lands by lease to institutions that could not be accommodated by way of tender;’⁹⁰ Here there are institutions which are exceptionally treated under such modality of obtaining an 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; public residential housing construction programs and places of worship of religious organization; 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 cabinet⁹¹.

The cabinet of the concerned region or city administration has an ultimate power in deciding these projects whether or not having significant advantage to the region or the city

⁸⁷ Id., 8(1)

⁸⁸ Ibid

⁸⁹ Id., article 7(2)

⁹⁰ Id., 2(10)

⁹¹ Id., article 12(1)

administration. On the other hand, projects having special national significance are considered by the president of the region or mayor of the city administration; however, referred to the cabinet⁹².

- **Urban Land Lease Contract(Art 16-25)**

Once the winner of the bidding of an urban land is declared, the lessor and the lessee begin a relationship. This relationship established by signing contract of lease agreement. Thus, in accordance with the new urban land lease proclamation article 2(1), such contract of lease is a system of land tenure by which the right of use of urban land is acquired under a contract of a definite period.

A contract of lease is categorized under the administrative contract and hence provisions of the Civil Code starting from article 3131 are applicable depending on the circumstances.

The lease contract should include the following elements. These are: the construction start-up time, completion time, payment schedule, grace period, rights and obligations of the parties as well as other appropriate details⁹³.

- **Lease Contract Necessary Precondition to Urban Land Holding(16(1))**

In order for existence of contract of lease agreement between the parties, in this case the urban land administrator and the individual or any entity owning an urban land on urban land lease tender shall sign a contract⁹⁴. This is the precondition that should come first ahead of anything else. By signing this lease contract, the individual or entity is entitled to a legal right to use such an urban land provided that other conditions are fulfilled.

- **Contract Terms(Art 16(2-4,18-23))**

Any contract agreement contains its own unique elements; so does the lease agreement. According to the lease proclamation article 16(2), the listed elements are part of this contract agreement. The lessee should know and understand the contents the lease contract. Accordingly, a person permitted urban land lease holding shall be made aware of the contents of the lease

⁹² Id., article 12(1)(g)

⁹³ Id., article 16(2)

⁹⁴ Id., article 16(1)

contract⁹⁵. Moreover, the parties shall be bound by the terms of the contract and by such incidental effects as are attached to the obligations having regard to the nature of the contract⁹⁶.

During the lease contract, the lessee shall make the down payment of the lease price prior to signing the contract⁹⁷. 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 land⁹⁸. The remaining balance of the lease amount shall be paid on the basis of equal annual installments during the payment term⁹⁹.

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. The proclamation stated different period of urban land lease. Thus, it varies for residential and other investment sectors¹⁰⁰.

The renewal of contract should also be taken in to account, in connection with the lease duration.

The new lease proclamation stated 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 renewed¹⁰¹. 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 lease¹⁰². If the lessee fails to apply within the aforementioned time limit then the contract will not be renewed.

The application for renewal of the lease contract shall be made and then the appropriate body shall notify the applicant in writing, and its decision within a period of one year from the date of

⁹⁵ Id., article 16(3)

⁹⁶ Civil Code of Ethiopia, article 1713

⁹⁷ Proclamation 721/2011 article 16(3) cited above at note 44 article

⁹⁸ Id., article 20(2)

⁹⁹ Id., article 20(3)

¹⁰⁰ Id., article 18

¹⁰¹ Id., article 19(1)

¹⁰² Id., article 19(2)

submission of the application¹⁰³. However, 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.

➤ Obligations of the Parties(18-23)

In any contractual agreement parties should discharge their obligation in accordance with their terms of agreement. The land administrator body should set the necessary conditions for the effectiveness of the contract and the lessee should also perform his or obligations stated on the terms of their contractual agreement. One of such obligation of the lessee is payment of lease.

According to 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 term¹⁰⁴.

Failing to pay the lease payment has its own consequences. Thus, as per the proclamation, where a lessee has failed to 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.¹⁰⁵

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 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.¹⁰⁶ 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.¹⁰⁷

¹⁰³ Id., article 19(3)

¹⁰⁴ Id., article 20(2)&(3)

¹⁰⁵ Id., article 20(6)

¹⁰⁶ Ibid

¹⁰⁷ Id., article 20(7)

Another obligation of the lessee is utilization of urban land lease holding. Hence, 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.¹⁰⁸

Moreover, the lessee has an obligation to use the urban land in accordance with the prescribed urban plan. As per the proclamation, the appropriate body may authorize the proposed land use where it ascertains that it is in conformity with the land use plan of the urban center.¹⁰⁹ There are conditions where such urban plans are not authorized by an appropriate body. According to the urban plan proclamation, the following reasons are rejected when an application is submitted to an appropriate body for an urban development permit.¹¹⁰ These are: the proposed development plan is not in harmony with the approved plan of the urban center; the development is likely to have a negative impact on the environment and generally to the public in the area; and the development is not in accordance with any other condition as may be specified under regulations to be issued pursuant to this Proclamation.

Still there is another obligation in the side of the lease; which is commencement and completion 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.

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.*¹¹¹

Though the lease proclamation said nothing about the exact date when the lessee commences the construction, customarily it is known that the date when he received construction permit within the period specified in the lease contract intended for the project¹¹². However, this is not true in practice. Due to certain reasons the date of commencement of construction may be extended. Likewise, as per the proclamation, the period of commencement of construction may be

¹⁰⁸ Id., article 21(1)

¹⁰⁹ Id., article 21(3)

¹¹⁰ Id., article 29

¹¹¹ Id., article 2(14)

¹¹² Id., article 22(1)

extended depending on the complexity of the construction and in accordance with regulations to be issued by the concerned region or city administration.¹¹³

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 land¹¹⁴. 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.

A lessee shall also complete construction within the period specified in the lease contract¹¹⁵. Under the lease proclamation, '*completion is of construction*' is defined as: 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.¹¹⁶ 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.¹¹⁷

However, the period may be extended, from 6 months for small to 12months 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.¹¹⁸

➤ Consequences of Non-Performance (Art 25.)

Nonperformance results from failure to perform in accordance with the terms of the lease contract by the parties. Article 21 of the 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, the lessee used the land for a purpose other than that stated under the lease contract, then the lessee has breached his contract of lease and

¹¹³ Id., article 22(2)

¹¹⁴ Id., article 22(3)

¹¹⁵ Id., article 23(1)

¹¹⁶ Id., article 2(17)

¹¹⁷ Id., article 23(2&3)

¹¹⁸ Id., article 23(4)

this act gives rise to termination of the lease contract.¹¹⁹ Moreover if the lease period is not renewed in accordance with article 19(1) of the proclamation, it can cause termination of lease contract.¹²⁰

On the other hand, if it is ascertained by the appropriate body that the land is not used for the intended purpose as a result of force majeure as provided for under the Civil Code, the lost time may be authorized and compensated.¹²¹

- Transfer of Urban Land Lease Holding Right(Art 24)

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.¹²²

However, there restrictions imposed on transfer of such rights. Under the lease proclamation 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, 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”.¹²³

When the right is transferred to any third party, unless agreed otherwise, 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.¹²⁴

¹¹⁹ Id., article 26(3)

¹²⁰ Id., article 25(1)(a)

¹²¹ Id., article 25(2)

¹²² Id., article 24(1)

¹²³ Id., article 24(2&3)

¹²⁴ Id., article 24(6)

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.¹²⁵

Finally it should be noted that there is no chance of transferring bare land and using it as collateral.

- Proof of Urban Land Holding (17)

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.¹²⁶

- Extinction of Urban Land Lease Holding Right

Leasehold right is used for specific period of time. Therefore, there are various reasons in which lease contract is terminated. The urban land lease holding proclamations stated as a result of the following grounds. These are: The lessee has failed to use the land for the prescribed purpose within the period of time stated in the lease contract;

It is decided to use the land for other purpose due to public interest; or 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.¹²⁷

- Urban Land Lease Administration

In an administration of an urban lease land, both the appropriate body and the lessee should discharge their duties and exercise their rights. After the declaration of the urban land lease tender, the winner of the lease tender shall conclude the contract of lease with an appropriate body.¹²⁸ The lease contract contains such elements like the construction start-up time, completion

¹²⁵ Id., article 24(8)

¹²⁶ Id., article 17

¹²⁷ Id., article 25(1)

¹²⁸ Id., article 16(1)

time, payment schedule, grace period, rights and obligations of the parties as well as other appropriate details.¹²⁹

The lessee shall pay the down payment of the lease price ahead of signing the lease contract and then issued with a lease holding certificate. The lease certificate contains all elements stated under article 17 of the lease proclamation followed by receiving a plot of land.¹³⁰

The appropriate body shall follow up and ensure every activities of the lessee from the date of signing the lease contract up to the realization of the project and the use of an urban land for the intended purpose such as the annual lease timely payment, renewal of lease contract, commencement and completion of constructions, transfer of leasehold right and finally termination of leasehold right are amongst the major activities that an appropriate body should accomplish.

- Clearing Urban Land (Art 26-31)

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.¹³¹ The appropriate body in this case is a body of a region or a city administration vested with the power to administer and develop urban land.¹³²

What is the public interest is another controversial issue. The lease proclamation defined it 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;’¹³³ Similar definition is given under expropriation proclamation as: ‘the use of ~~lan~~ land defined as such by the decision of the appropriate body inconformity 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;’¹³⁴ The law is not clear in this regard as to the type of the public service and economic benefit given to the society from an expropriated land.

¹²⁹ Id., article 16(2)

¹³⁰ Id., article 16(3&4)

¹³¹ Id., article 26(1)

¹³² Id., article 2(6)

¹³³ Id., article 2(7)

¹³⁴ See article 2(5) of proclamation No. 455/2005 Cited above at note9

The ultimate power is given to this appropriate body to decide every matter in relation to public interest. If this body believes that expropriation of privately occupied land is suitable for developers, it has the power to remove those individuals from that land and give to the developer. No parameter is given to this whether a certain act is as to the benefit of the public purpose. This shows that the term/concept public interest is not clearly defined by the law and it is susceptible for abuse of power by the public officials.

Following displaced due to an action by an appropriate body for public purpose, the individual 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.¹³⁵ However, in case of illegally occupied urban land, the appropriate body shall have the power, without the need to issue a clearance order pursuant to Article 27 of the lease Proclamation 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 on the land.¹³⁶

➤ Purposes of Clearing Urban Land

In order for the interests of the public are prioritize and urban centers to ensure rapid urban development and equitable benefits of citizens and thereby ensure the sustainability of the country's development, the urban delivery system shall be systematic.¹³⁷ As stated on the FDRE Constitution article 40(8), the government shall have the power to expropriate private property. With this power the government may take private property mainly for public purposes. Likewise, as it stated on the expropriation proclamation, the government needs to use land for development works it carries out for public services; and to satisfy the need for an urban land with the increasing number of population of urban dwellers from time to time and thereby land redevelopment for the construction of dwelling houses, infrastructure, investment and other services has become necessary in accordance with their respective plans as well as preparation and provision of land for development works in rural areas has become necessary.¹³⁸

On the other hand, a person who holds an urban land lease right, his property may be expropriated based on conditions as such, breach of lease contract and incompatibility of the use

¹³⁵ See article 26(2) of proclamation No. 721/2011 cited above at note 44

¹³⁶ Id., article 26(4)

¹³⁷ Id., article 4(4)

¹³⁸ Expropriation Proclamation, (preamble), cited above at note 9

of land with the urban plan.¹³⁹ Moreover, an appropriate body, in order to prevent illegal settlements and illegal occupied of urban lands, shall have 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 on the land.¹⁴⁰

➤ Lease Holding exemption

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 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.¹⁴¹

The time limit for completion of construction is also given as 24, 36 and 48 months for small, medium and large construction projects respectively.¹⁴² 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 2.6, 4 and 5years for small, medium and large constructions respectively.¹⁴³

➤ Conditions of Clearance

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.¹⁴⁴ However, the lessee may not remove from the urban land prior to the expiry of the lease period unless, the lessee has breached the contract of lease, the use of the

¹³⁹ See article 26(3) of Proclamation No. 721/2011, cited above at note 44

¹⁴⁰ Id., article 26(4)

¹⁴¹ Id., article 15(2)

¹⁴² Id., article 23(2)

¹⁴³ Id., article 23(4)

¹⁴⁴ Id., article 26(1)

land is not compatible with the urban plan or the land is required for development activity to be undertaken by government.¹⁴⁵

When the appropriate body decided the possessor of the land holding or the lessee to be removed from the land holding, a written clearing order stating the time the land has to be vacated, the amount of compensation to be paid and the size and locality of the substitute plot of land to be availed.¹⁴⁶ Here the period of notification to be given shall be determined by regulations to be issued by the regions and the city administrations; provided, however, that it may not, in any way, be less than 90 days.¹⁴⁷ However, additional time up to 30 days may be given based on the conditions.¹⁴⁸ The clearing order may be given in one of 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.¹⁴⁹

In the case of the clearing order 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 and if a house subject to a clearing order is rented, the body which received the order shall take the necessary action to terminate the contract of rent prior to the expiry of the notice period.¹⁵⁰

✓ Compensation & Substitute Holding

Once an appropriate body cleared an urban land, 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.¹⁵¹ According to the Oromiya Regional Government Urban Land Lease Holding Regulation Article 27, the substitute land will be determined by city administration standard.

Moreover, where the leasehold of urban land is terminated in accordance with the lease proclamation, the lessee shall be paid commensurate compensation in accordance with the

¹⁴⁵ Id., article 26(3)

¹⁴⁶ Id., article 27(2)

¹⁴⁷ Id., article 27(2)

¹⁴⁸ Oromiya Urban Land Regulation No. 182, (2008), article 57(2) (translation by the author)

¹⁴⁹ Proclamation 721/2011 article 57(3) cited above at note 44

¹⁵⁰ See article 27(3&4) of Proclamation No. 721/2011, cited above at note 44

¹⁵¹ Id., article 26(2) and 8(4) of Proc No.455/2005, cited above at note 9

relevant law.¹⁵² The compensation will be paid either in cash or in kind. Likewise, When an urban land lease holding is expropriated prior to its expiry date, the lease holder shall, in addition to the compensation referred to under Article 7 of the expropriation proclamation and this article, be provided with a similar plot of land to use it for the remaining lease period. The leaseholder 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 the holding did not want take the Land he can take the remain ~~rent~~ rent payment.¹⁵³

✓ Clearance Order

The clearing order shall be given to the urban land possessor with a written order after a decision is made by an appropriate body stating the time the land has to be vacated, the amount of compensation to be paid and the size and locality of the substitute plot of land to be availed.¹⁵⁴

The period of notification to be given shall be determined by regulations to be issued by the regions and the city administrations; provided, however, that it may not, in any way, be less than 90 days.¹⁵⁵ Likewise the Oromiya Urban Land Lease Regulation, based on certain conditions, may add up to 30 days of additional time.¹⁵⁶

✓ Taking Over of the Land

After the clearance order is served to the urban land lease holding possessor, the appropriate body shall takeover 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.¹⁵⁷

Then the appropriate body shall take over a land in respect of which a clearing order or notice has been served in the following conditions: 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 and

¹⁵² Id., article 25(4)

¹⁵³ See article 28(6) of Proc No.455/2005, cited above at note 9

¹⁵⁴ See article 27(1) of Proc. No. 721/2011, cited above at note 44

¹⁵⁵ Id., article 27(2)

¹⁵⁶ See Oromiya Urban Land Lease Regulation No. 182, (2008), article 57(2), cited above at note 121

¹⁵⁷ See article 31(1) of Proclamation No. 721/2011, cited above at note 44

no further appeal is made against the decision; or c) where an appeal is dismissed in accordance with the law.¹⁵⁸ Sometimes when the urban land possessor is disobedient to the clearing order given by an appropriate body, the appropriate body may order police force when it finds it necessary to use force to take over the land.¹⁵⁹

➤ Grievance against Clearance Order

The lease proclamation is also incorporated means for grievance handling. According to the lease proclamation, 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 evidences substantiating his cause, within 15 working days after receipt of the order.¹⁶⁰

On the other hand, any person with an illegal settlement served with a notice may submit his grievance to the appropriate body, together with evidences substantiating his cause, within seven working days after receipt of the notice.¹⁶¹

At the time of clearing of an urban land not only the urban land lease beholder be affected, but also other third party organs may be directly or indirectly be affected by the order; for instance, the creditors whose land has been used as collateral or those parties in relation to construction of the project. Interest of these parties will be negatively affected by this clearing order.

Before an appropriate body makes decision up on the grievance submitted to, the appropriate body shall properly examine a grievance and notify its decision to the applicant in writing and where the complaint is found to be unacceptable, the decision shall state the reasons thereof.¹⁶²

✓ Organ Empowered to Hear Grievances & Cause of Action

According to the lease proclamation Article 26(1), it is an appropriate body that has the power to clear an urban land. An '*appropriate body*' is defined as: a body of a region or a city administration vested with the power to administer and develop urban land.¹⁶³ Once an appropriate body gives clearing order of an urban land and this order is executed, any party who

¹⁵⁸ Id., article 31(2)

¹⁵⁹ Id., article 31(4)

¹⁶⁰ Id., article 28(1)

¹⁶¹ Id., article 28(2)

¹⁶² Id., article 28(3)

¹⁶³ Id., article 2(6)

is affected by this order has the right to appeal to an appellate tribunal. Likewise, an applicant who is aggrieved by the decision of the appropriate body rendered may appeal to the Appellate Tribunal established within 30 days from receipt of the decision.¹⁶⁴

The tribunal in accordance with article 30 of the lease proclamation:

1. Consists of not less than five members drawn from different relevant bodies
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 Appellate Tribunal after examining the case submitted to it, to confirm, vary or reverse a decision rendered and to enforce its decision.¹⁶⁵ Sometimes some group of the society may resist the decision rendered by this body. Hence, the Tribunal may order and use police force where it finds it necessary to execute its decisions and orders.¹⁶⁶

The tribunal may not be governed by provisions of the ordinary Civil Procedure Code while conducting its function; rather be governed by expedient procedures to be issued by the region or city administration.¹⁶⁷ However, the Tribunal may not be free from the influence of law.¹⁶⁸

¹⁶⁴ Id., article 29(1)

¹⁶⁵ Id., article 30(2)

¹⁶⁶ Id., article 30(6)

¹⁶⁷ Id., article 30(8)

¹⁶⁸ Id., article 30(7)

✓ Appeal and Cause of Action

The tribunal sees and gives decision on cases like issues of law and facts including claims for substitute land.¹⁶⁹ Decision of the tribunal in all cases except relating to compensation shall be the final.¹⁷⁰

Issues relating to compensation, the appellant who is dissatisfied with the decision of the Tribunal 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.¹⁷¹

The appellant has to fulfill certain requirement before submitting an appeal, i.e. He has to hand over the land subject to the clearance order to the appropriate body and attached evidence to this effect.¹⁷²

✓ Period of Action

After all these procedures have been followed, the next step is takeover of land. Hence, the appropriate body shall takeover 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.¹⁷³

Though this is true, the appropriate body shall take over a land in respect of which a clearing order or notice has been served: served with the clearing order or notice has not lodged a grievance against the action; where the grievance is dismissed in and no further appeal is made against the decision; or where an appeal submitted is dismissed.¹⁷⁴

On the other hand, 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.¹⁷⁵ Police force may be used when

¹⁶⁹ Id., article 29(3)

¹⁷⁰ Ibid

¹⁷¹ Id., article 29(4)

¹⁷² Id., article 29(5)

¹⁷³ Id., article 31(1)

¹⁷⁴ Id., article 31(2)

¹⁷⁵ Id., article 31(3)

necessary to take over the land against any group or individual resisting the action of an appropriate body.¹⁷⁶

3.4 Areas Where the Proclamation Lacks Good Governance

3.4.1 Limitation on the power of Court

Courts are state organs which have powers over disputing matters arising out of individuals, organizations or state matters. They give the last decision on such matters. Accordingly, the Federal Supreme Court in its Cassation Bench has any final decision in any final court decision as stated below in the Constitution.¹⁷⁷

Under the lease proclamation, article 29(3) all land matters except issues related to compensation, shall be seen by the appellate tribunal. It is established by regions and city administration. The appellate tribunal is a special or ad hoc type of court established for such purposes i.e. for the purpose of urban clearing and compensation cases in related to urban lands.

It is not governed by provisions of the ordinary civil procedure code accountable for the region or city administration. Under the FDRE Constitution¹⁷⁸

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.

From the above statements we can conclude that, complaints and appellate regarding land matters except compensation, is given to executive body which is against the people's access to justice. It is against the fruits of good governance. Since it stripped off the power of courts, it is against the Constitution.

3.4.2 Fluidity of the Conception of Public Purpose

The concept 'public purpose' is known by different names in different countries, these are: public use, public benefit, public good, public interest, public purpose or public welfare.¹⁷⁹

¹⁷⁶ Id., article 31(4)

¹⁷⁷ FDRE Constitution, article 80(2&3), Cited above at note 3

¹⁷⁸ Id., article 78(4)

¹⁷⁹ Daniel Weldegebriel, Compensation for Expropriation in Ethiopia and the UK: A Comparative Analysis, (2014), FIG Congress, Kuala Lumpur, p 4.

The Black's Law Dictionary¹⁸⁰ defined it as:

A public purpose has for its objective the promotion of the public health, safety, morals, general welfare, security, prosperity, and contentment of all the inhabitants or residents within a given political division, as, for example, a state, the sovereign powers of which are exercised to promote such public purpose or public business.

What exactly meant by 'public purpose'? Is that to mean all projects made by the government whether federal, regional or local government? Or it may include projects made by private investors or individuals? What are the criteria or parameter whether the project has the nature of public purpose or not? What are the interests of the public? What are the parameters for this? Do the public give their consent during expropriation or is it not necessary? Do all projects benefit the public at large? Does the concept include taking of private land holding and giving it to private investors?

And other related questions have to be properly addressed, but when we look at the definition and its content, the concept is unclear and it cannot create common understanding among all people. It needs some judicial scrutiny in order to clear the vagueness.

The concept public purpose incorporated in the Ethiopian laws early in 1930's during the 1931 Ethiopian Constitution. Under the 1960 Civil Code of Ethiopia article 1460, the expropriation proceedings surrender private property by the competent authority for public purpose matters. In the same code, expropriation is enabled the public to benefit from such proceedings.¹⁸¹

Constitutions and Other Laws on Public Purpose

Under the 1931 Constitution Article 27 *"Except in the public utility determined by law, no one shall be entitled to deprive any Ethiopian subject to movable or landed property which he holds."* The Constitution used the word "public utility" instead of public purpose.

These public utilities may include services like water, electricity, railway, etc. The concept public purpose is limited to those works and projects made by the government only. The definition is narrower to such projects only.

¹⁸⁰ Supra note 24

¹⁸¹ The Civil Code of Ethiopia, article 1464(2)

The 1955 Ethiopian Constitution, “*Everyone has the right within the limits of the law to own and dispose of property. No one may be deprived of his property except upon a finding by ministerial order issued by pursuant to the requirements of special expropriation law enacted in accordance with the provisions of Articles 88,89 or 90 of the present Constitution, and except upon payment of just compensation determined in the absence of agreement, judicial procedures established by law. Said ministerial order, to be effective shall be approved by the Council of Ministers and published by Negarit Gazette.*”¹⁸²

Here, no clearly stated concept of public purpose. However, one’s property may not be expropriated except by the Ministerial Order with special laws enacted and with the precondition of payment of just compensation. It is more of procedural requirements than defining the concept public purpose.

After the down fall of the Derg, in 1991, the current government has shown no policy change on land ownership in the country. Urban land was administered by the lease proclamation of 272/2002. It was enacted after the repeal proclamation 80/1993. The lease law provided that urban land would be changed into lease system and every holder of urban land would get land from the state through lease arrangement. Finally it came in to the enactment of the FDRE Constitution in 1995 where all lands were under state ownership.¹⁸³

Under the Current Constitution, “*Every Ethiopian citizen has the right to the ownership of private property. Unless prescribed otherwise by law on account of public interest, this right shall include the right to acquire, to use, and in a manner compatible with the rights of other citizen, to dispose of such property by sale or bequest or to transfer it otherwise*”.¹⁸⁴ Again the concept ‘public purpose’ replaced by ‘public interest’ which have equivalent meanings.

In the same Constitution these two words are interchangeably used. The wordings stated in the Constitution, the concept ‘public purpose’, ‘public interest’, ‘public utilities’, ‘public use’, ‘public benefit’ or other, all to mean works, projects or activities made for the sake of the public at large. This is to mean works, projects or activities that the public will benefit from them in anyway direct or indirect.

¹⁸² The 1955 Ethiopian Constitution article 44

¹⁸³ Daniel Woldegebriel, *Informal Settlement in Ethiopia, the Case of two Kebeles in Bahir Dar City*, (2011), Marrakech, Morocco, FIG working week, p 5

¹⁸⁴ The FDRE Constitution, article 40(1), cited above at note 3

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. From the definition it is an appropriate body who can decide the use of the land for such public interest. Moreover, such public interest should bring sustainable socio-economic development either directly or indirectly from the use of the land. But such use of land that the public can use is not clearly defined and general as well.

Under the same proclamation 4(1),

The right to use of urban land by lease shall be permitted in order to realize the common interest and development of the people. Here again the concept 'public interest' is replaced by 'common interest' and not clearly defined what those common interests of the people.

The expropriation Proclamation on the other hand replaced the term 'public interest' by 'public purpose' and defines, '**public purpose**' as "*the use of land defined as such by the decision of the appropriate body inconformity 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*".¹⁸⁵

3.4.3 Lack of Compensation for Expropriation

The term 'compensation' in Black's Law Dictionary¹⁸⁶ is defined as follows:-

Indemnification; payment of damages; making amends; making whole; giving an equivalent or substitute of equal value; that which is necessary to restore an injured party to his former position; consideration or price of a privilege purchased; equivalent in money for a loss sustained; equivalent given for property taken or for an injury done to another; giving back an equivalent in either money which is but the measure of value, or in actual value otherwise conferred; recompense in value; recompense or reward for some loss, injury, or service, especially when it is given by statute; remuneration for the injury directly and proximately caused by a breach of contract or duty; remuneration or satisfaction for injury or damage of every description; that return which is given for something else. An act which a court orders to

¹⁸⁵See article 2(5) of proclamation No. 455/2005 Cited above at note9

¹⁸⁶ Supra note 24

be done, or money which a court or other tribunal orders to be paid, by a person whose acts or omission have caused loss or injury to another, in order that thereby the person indemnified may receive equal value for his loss, or be made whole in respect of his injury.

Under an Expropriation Proclamation it is defined:

"Compensation" means, payment to be made in cash or in kind or in both to a person for his property situated on his expropriated landholding”¹⁸⁷

It is logical and fair that expropriated properties are compensable. The FDRE Constitution recognizes compensation by stating as follows:”*Without prejudice to the right to private property, the government may expropriate private property for public purposes subject to payment in advance of compensation commensurate to the value of the property.*”¹⁸⁸

Urban Land Lease Holding Proclamation in its Article 26, stated:”*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.*”

The same idea is stated under Expropriation Proclamation:

*A woreda or an urban administration shall, upon payment in advance of compensation in accordance with this Proclamation, have the power to expropriate rural or urban landholdings for public purpose where it believes that it should be used for a better development project to be carried out by public entities, private investors, cooperative societies or other organs, or where' such expropriation has been decided by the appropriate higher regional or federal government organ for the same purpose.*¹⁸⁹

From the above descriptions we can conclude that, the aim of Compensation during expropriation is putting affected people into the position they had been before expropriation has been undertaken. It is neither to enrich them through over compensation nor worsen them through under compensation.¹⁹⁰ However, the definition and descriptions given in the laws above doesn't necessary mean they are exactly similar in their content hence, there is a gap in the law.

¹⁸⁷See article 2(1) of proclamation No. 455/2005 Cited above at note9

¹⁸⁸ See The FDRE Constitution article 40(8), cited above at note 3

¹⁸⁹See article 3(1) of proclamation No. 455/2005 Cited above at note9

¹⁹⁰MuraduAbdo, “Reforming Ethiopia's Expropriation Law,”Mizan Law Review, Vol. 9, no. 2 (2015), pp. 309-

CHAPTER FOUR

The Role of Urban Land Laws to Urban Good Governance: The Case of Adama

4.1 Introductions

The topics to be discussed are: urban land lease tender, compensation, the concept public purpose and the role of courts with the selected cases.

Under the selected topics, in the first part, in the first part, what does the calculation of compensation looks like practically in the study area and see if the proclamation lacks something. Under the second point, I will try to discuss how the concept of “public purpose” understood in the study area and in the last part, the role of courts regarding urban land matters will be discussed with the selected cases.

4.2 An Overview of the Practice of Relation Ship of Good Governance and Lease Proclamation

Good governance is the process of making a decision and implementing the same. Basically decisions are made based on laws, rules and regulation. When laws are clear and unambiguous, decisions will be fruitful; otherwise if it is on the contrary it creates bad governance. Hence, Laws play a great role for the existence of good governance.

The Urban Land Laws are one of those laws. They are laws that currently all urban lands are administered by. At first and during enactment of these laws they seem perfect, but meanwhile it is observed that they have some gaps and implementation becomes very difficult.

During conducting this study in the study area, Adama City Administration, I observed how the current urban land lease proclamation No. 721/2011 and other related land laws were difficult on implementation in some selected areas. Here below are discussed as follows.

4.2.1 Calculation of Compensation

- The power of Expropriation

The Expropriation Proclamation in its Article 3 gives the power to expropriate the land to a woreda or city administration. Under the Oromiya Urban Land Regulation Article 56, the power of expropriation is given to the city’s urban land development and management office. The Office based on lease proclamation Article 26(1), executes and exercises its power. Likewise, in

the regulation Article 56(1) after the necessary compensation is made, the individual's land will be expropriated.

Accordingly, the Adama Urban Land Development and Management Agency has been authorized to expropriate urban landholdings for public purpose where it believes that such land should be used for a better development project to be carried out by public entities, private investors, cooperative societies or other organs, or where such expropriation has been decided by the appropriate higher regional or federal government organ for the same purpose.

The problem here is that, once these people evacuated from this land for the said purpose, they will no more use this land until the said development begins whatever time it lasts. Moreover, there is no other means, temporary shelter or payment set until they will move to another place in majority of cases before compensation payment is due. As interviewed some residents, they were earning some income participating on small trade in that area at least they could satisfy their subsistence due to they located in the center of the city. After evacuation they lost all this income and suffered a problem on their lives. As a result, the law hasn't incorporated such temporary solutions.

- **Amount of Compensation**

The Constitution in its Article 40(8) guarantees the compensation to be “commensurate”, i.e. fair and just. In general, in Ethiopia, calculation of compensation is very controversial and difficult for implementation. What to compensate? How is compensation made? When is compensation made? These questions should be answered appropriately.

Currently, the Adama city administration urban land development and management agency has been expropriating those lands, usually farm lands in the city and at peri-urban areas for “Teff” crops, because majority of the land covered by these crops as Abebe, an expert on preparation for urban land explained. The others are government houses and idle lands with no development on them.

Lands have been expropriated for different reason as He explained. These are urban development like: industrial park, urban development by investors, land development by the farmers themselves on their own land (for instance backlog), for housing development projects for residence by teachers, government employees and urban residents.

Once the land is expropriated, the next step is calculation of compensation. Calculation for compensation has been changing since the past years. For instance, 15 years before any urban land was calculated 90centsper square meters. Then 10 years before it was birr 3per square meters. In the year 2008 it was birr 18/per square meter, 27birr per square meteror37birr per square meter. Two years ago it was again birr 53.42 per square meter. Currently in 2017/18, it is 80.6birr per square meter. This is the calculation that the government (the city administration) has been paying for the farmers whose lands have been expropriated. The calculation is for any plot of land whether it is in the center of the city or at the peri-urban areas without considering the grade and location of the land.

On the other hand, if an individual wants to sell his land, he would probably sell it at least for birr 3000-5000 per square meter based on the grade and location of the land. This huge difference is really unfair. (What standards should we employ to judge whether such gap is fair or unfair???)

Obviously, every plot of land in an urban administration has its own grade level, according to Article 17(2) (c) of lease proclamation No 721/2011.Accordingly, it will be transferred to the beneficiary by an urban land lease tender by this grade. On the other hand, it is logical that calculation for compensation should be in a similar manner, i.e. the location value of the land should be taken into account to calculate the compensation to be paid to the farmer. However, the reality is in the contrary in the city administration. The question worth raising here is, why urban plot of lands marked grade level for the purpose of lease tender and fail to do so during calculation of compensation for an expropriated land? Is it not harmful for the beneficiaries? Is it not losing one's right? Is it not discriminatory act among societies? The only asset for a farmer living in an urban center is land. No asset is valuable than this land for him or her. He gives his land with full consent and without hesitation for better development expecting at least equivalent compensation.

Moreover, after an individual is evicted from his place, no prompt compensation is made. As one farmer, Ato Siyyum Yilma, witnessed due to urban expansion, his land was expropriated by the urban administration. His children declared the right to heir in 04/03/1999. Based on this the local administration wrote him the letter no. W/B/N/4391/1999 dated 22/09/1999 to the city's urban land development and management agency confirming that he has no residence and land

by his name. However, until the day this interview made, the office didn't hand over him the land that he should be granted as part of the compensation.

About 27,500 square meter land was taken from his father. Now it is 11 years ago which is too much time has been taken to calculate the compensation. In addition, he witnessed that he received only birr 40,000 for such amount of land i.e. birr 1.45 per square meter. In the proclamation and in the regional urban land regulation no time boundary is set for execution of this activity. Hence, the beneficiaries are exposed to different problems. During my study at the area, people were saying compensation payment is not prompt, substitute land takes longer times and as a result they exposed for extra costs, data are not well organized and etc.

The other problem is regarding the substitute land. According to the lease proclamation and an expropriation proclamation, land will be substituted for the displaced people provided that the law grants them the right beholder. Whatever the size of the expropriated land it is (for those above 500m²), the replaced size of the land is only 500m² for the beholder according to Article 6(a) of the regional urban land regulation. The substitute size of land is not equal to the land taken by expropriation; the substitute land is based on the standard of the city¹⁹¹, which means the size is different from city to city. This lacks fairness. Look one who lost 501m² of land and one who lost 50,000m² of land can get equal size of land, which is 500m² which is absolutely unfair.

4.2.2 Public Purpose

The appropriate body, in this case the regional or city administration according to the Proclamation Article 26(2), has the power to expropriate urban lands for the intended development. In the case of the Oromia Regional State Government, the urban development and management agency particularly in accordance with Article 56(1) of the regional government Regulation No. 182/2016 shall have the power to expropriate urban landholding for the public purpose when it required so.

The concept public purpose is still controversial and has no clear definition. According to Adama urban land development and management agency, the following two preconditions should be fulfilled in order for a project or development to be 'public purpose', as Solomon Abebe Expert on Urban Land Preparation explained.

¹⁹¹ See proclamation 721/2011, article 26(2) and proclamation 455/2005, article 8(4)(a), cited above at note 9

These are:

- i. The concept ‘public purpose’ is any project undertaken by either the government itself or private investors where many people can use it from or benefited by many people. For instance, projects like food complex, manufacturing industries, agro processing, seed cleaning etc carried out by private investors or projects like school, health center, water supply etc. made by government. Moreover, the main focus is these projects should create job opportunity.
- ii. The projects shall be product based; i.e. there should be some products or services produced from these projects.

The projects listed are simply enumerated not exhaustive. This opens the door for controversy. The appropriate bodies decide which projects are of public purpose or benefit the public at large without the consent and participation of the local community. These appropriate bodies may abuse their power in making those decisions. The definition lacks the participation of the local people in the decision. Participation of the local community has two advantages. For one thing, it empowers the local people to decide on their matters. The other is, they will know and identify which projects are really beneficial to them in relation to their customs, values, norms and total social make ups.

Since the local communities are the first people benefiting from these better development projects directly, they should be consulted. There are lots of projects which can harm the environment with environmental pollution. The law should keep such local community’s environment free from pollution and keep values and norms. Land especially in Ethiopia, for a farmer is everything, his livelihood. The only asset he has is the land. Once it has taken, their lives are in danger.

Sometimes even land will not be used for the intended development. Some are left idle for more than a decade which we can observe in the majority of the cities including the capital and some others are used for other projects other than the previous one. These all may not be followed up either by the appropriate body or by the local communities. This is a big and critical issue for the people and as well as for the country for the fact that the land became unproductive for many years. On one hand it minimizes the productivity of the land, and on the other hand, the local community could not get the intended development on time.

In order to create common and balanced understanding among people, because they are directly affected by the projects and development in their locality in comparing with other people like government officials peoples in the development locality should be consulted and part of the decision making process.

For illustration let's see the following case: As the interviewee Hannan Musa dated 05/07/2018 resident of Adama city administration kebele 15 witnessed, she was living on that public house for more than 40 years with her families. The area included both public and private houses together. They are about fifteen households. The city administration, three years ago approached these people in the area and notified them to leave the place as the land was given to a private developer for some kind of investment. There was no consultation with people in the formal manner. This investor was threatening the people for the last seven years to leave the place explaining that as if the land was given to him.

The residents tried to bring their complaints to different governmental organs including urban land clearance Tribunal, but no one was willing to respond to their case including the court. Finally, they evacuated from their place without any proper and sufficient compensation. After the investor took over the possession of the land, he built the house for them. The surprise was the houses as I observed at its place, were inferior in quality even not fulfilling minimum standard. The city administration gave the investor confirmation letter as if he completed building of these replacement houses, however the fact was he did not completed them plus reported false total number of houses. During my interview with some of the residents, they were not consulted when taking the land, rather the public officials were threatening them in different means to leave the place, they witnessed. Finally they left the land before the city administration taking measures up on them.

Now these days majority of the evacuated people are without jobs, no regular incomes and became laborers for their livelihood. The aged people remained at home and became dependent on others. Their new site has many problems. No basic facilities are fulfilled properly, no sanitation due to no proper toilets built in the area.

Therefore, the law should be inclusive in participation of the local community plus rehabilitation programs during an expropriation procedure and it should not be against the constitutional the right to freedom of expression of individuals.

On the other hand, in an interview with Ato Haile Gurmu, resident of Adama city administration Bole Sub City kebele Dhaddacha Arara, shared the same idea. Due to the lack of clarity and vagueness of the concept 'public purpose', people are suffering from many problems. They are losing their right and property. Anybody can come and give order to evacuate the land in the name of development for public purpose without any justification. In addition, the courts are not seeing such cases due to the proclamation limits their power. The city or woreda cabinet do everything it seems right in which it is the only organ with an authority to justify the reason.

4.2.3 The Role of Courts in Urban Land Matters

While courts have been established throughout Ethiopia on the Federal, regional, and local levels, they have given with jurisdiction by the constitution.

In conducting my studies, I interviewed one of the Adama City Administration Special Zone High Court judge named Shimelis Balcha. According to him there are two types of urban lands claims and these are: private v private and private v government claims. In case of private v private claims, courts see and decide on all types of cases and it has no limitations regarding property and tenure security. In case of private v government claims, since the new urban land lease holding proclamation restricts the power of courts see and decide only those cases that are clearly given to the courts and all the cases not clearly given to administrative bodies. All the other power is stripped off from courts and given to administrative tribunals.

Courts are giving decisions and orders in many cases outside their jurisdiction. For instance, without investigating the case thoroughly for the fact that the respondent is a government, transfer of ownership on illegal settlements, on transfer of ownership by taking the land from the investors with no sufficient reasons, on cases relating to compensation by individuals, they order and put burden on the individual to take compensation amount rather than taking serious measures during an expropriation, and generally the judges give decision before individuals taking compensation in advance.

He concluded that individuals are losing their rights, no justice at all; their right is under question mark: it is an administrative tribunal that sees all the cases and gives last decision and no other option at all. Therefore, right of individual is affected.

He believes that such stripping of courts power has brought up many good governance problems. He recommended, courts are independent organs and should see and decide on all matters relating to land. An administrative Tribunal accumulated all such powers relating to land, giving and taking land, accepting appeals and again giving decisions. This causes abuse of power when it accumulated by a single organ. Hence, this power has to be checked by another independent organ like courts.

In another interview with Ato Bonson Gelassa, Attorney and resident of Adama city administration, beyond false evidences given by witnesses, even the body authorized to give holding certificate of land rights give false evidences to courts thus, many lost their property rights. Especially, those engineers and officials of the urban land development and management agency of the city administration do whatever they like without referring to the law, and this is against the fruits of good governance practices. Justice is denied and people suffer economically, psychologically and politically, he explained. He added, the law should include clear responsibility and those officials who committed wrongs and do against the law shall at least charge with corruption.

He has a land case on hand at the moment. The claimant started the case eighteen years ago. His land was expropriated for development and has been claiming for compensation but the case at hand was rejected by the city administration with no justification. Finally he brought the case to the court. The claimant was requesting compensation, however not paid yet. The procedure and implementation is weak due to the vagueness of the law.

In conclusion, since the land matters are given to an administrative tribunal, it caused many problems of good governance. Justice is getting denied; the right holders are unable to get protection from the law and in addition they are losing their property.

Therefore, the lease proclamation should be revised because it has many gaps especially in protecting individual property right. Moreover, revision of the proclamation should incorporate power of courts to see and decide up on land matters only not compensation cases, he recommended.

4.3 Assessment of Cases

Here below are some selected cases seen at Adama Special Zone High Court.

Case 1: Case No. 28982¹⁹²

Appellant: W/ro Sofiyaa File Nurhussein

Address: Kolfe Keraniyo Sub City Woreda 4, Addis Ababa

Respondent: Adama City Administration Urban Land Development and Management Agency

Address: Bole Sub City Kebele Goro

The cause of this appeal was the appellant, who was a respondent at lower court on 22/01/2010 filed an accusation by Adama Urban Land Development and Management Agency (hereafter the Agency). As she stated, the land 1854m² with certificate no. 10090/2001 dated 26/12/2001 land use was for Real Estate which was the cause for the litigation was possessed to herein 1980 by the city administration by her own name.

The story at the lower court was as follows: The Agency wrote her different letters in different times notifying that her land certificate was cancelled and the land was returned to the bank without any justification and sufficient reason as she said. She replied to the court, this is interference of possession upon my property and asked the court the Agency plea of guilty. Then the Agency replied to the court writing the letter on 13/02/2010 stating that, according to lease agreement made between us she could not develop the land as per the agreement and as a result after cancelling her land certificate we returned the land to land bank and this is normal and part of our daily activity and exercising our power as per the proclamation. After many litigation made between the parties, the court gave the decision on 29/06/2010 that no interference of possession is made and the action taken by the Agency was proper and closed the file.

Her appeal is stated as follows: At the beginning, 40years ago, the land was 3000m² for residence and some part of this land was used for animal fattening. In 1984 land certificate no. 277/84 on 17/07/1984 was given to her.

Unfortunately she lost this certificate. After that, the city administration prepared new master plan and this master plan brought 10m wide road in four directions to this land.

¹⁹²W/ro Sofia v Adama City Administration Urban Land Development and Management Agency, (28982), (Adama Special Zone High Court), (19/04/2018), p5-8

She approached the city administration requesting for the new certificate. As a result of this new master plan, a new land certificate was given to her in 2001 with 1854m² with a land certificate no. 10090/2001.

The said road was not built till now and no any lease agreement is made between us, she said. Therefore, this is interference of possession, and I plea the court to stop the action made by the Agency in accordance with the Civil Code Article 1149 in addition to all the expenses made by me, she stated.

The Agency replied, the land use was Real Estate and she failed to develop the land in accordance with the agreement. As a result of her action we cancelled the agreement and no interference of possession is made.

After the parties litigated in such a way, the lower court rendered the decision that, no interference is made and the accusation rejected. Then, the now plaintiff appealed to the High Court opposing the decision made by the lower court. The High Court reframed an issue 'Is there any interference of possession made by the Agency on The plaintiff?' After hearing the litigation of both parties, the court made decision analyzing the case in the following way: On the basis of the Agency wrote the letter notifying the appellant that the agreement made was cancelled and the land is returned to land bank, it is impossible to sue an accusation and there is no interference of possession made by the Agency, and the accusation filed to the court is rejected and both parties should set off their expenses.

From the case above, the cause for the argument is possessory act. The question worth mentioning here is that, is it the power of the court or the power of the Agency? As both parties did not raise the question of ownership, it is clear that it is up to the court to see and decide on the matter. The act done by the Agency was right and justifiable because the plaintiff did not develop the land as per their contractual agreement. In conclusion, it is the court that should decide on the matter as far it is the question of interference. Had it decided by the Agency, it will become abuse of power. It was right that the seen by the court.

Case 2: Case No. 26153¹⁹³

Applicant: Ato Dereje Kebede

Address: Adama kebele 09

Respondent: Urban Land Development and Management Agency

Address: Adama Kebele 12

The applicant filed an accusation on 12/08/2009 to Adama Special Zone High Court stating the case as follows: The applicant due to expansion of the city, the farm land with the size of 5000m² located in Boku Shanan kebele was expropriated by the city administration without paying the necessary compensation in 2005. In addition to this, another 2500m² of farm land was expropriated by the city administration without paying compensation.

The applicant was requesting compensation and replacement of 500m² for residence according to the lease proclamation and the subsidiary Regional Regulation land for the total 7500m² of farm land expropriated in different times. The farm land was growing “teff” and compensation for the farm land was ETB 53.45/m² and the total amount is ETB 400,875.00(four hundred thousand and eight hundred and seventy five birr only). Hence, the applicant requested this amount of money plus replacement of residence land 500m².

The Agency in its preliminary objection plea of innocence to the court stating, it is beyond the jurisdiction of the court in accordance with the proclamation and regional regulation. Therefore, the accusation should be rejected and let them free. Otherwise if the court should have to see the case, the applicant has no evidence on the said land. Therefore, the Agency pleaded the court free of the accusation and requested all the necessary expenses.

The court rejected the preliminary objection by stating that, anybody requesting compensation before the land is expropriated, can request such right the court. After that, the court reframed issues in the following ways and established committee from different sectors for clarification.

¹⁹³ AtoDerejeKebede v Adama City Administration Urban Land Development and Management Agency, (26153), (Adama Special Zone High Court), (14/12/2017), p18-24

The committee assigned to clarify the following questions.

- i. Is it really the land expropriated for public purpose or not? If so, what size?
- ii. What was the rate for calculation per m² of land?
- iii. Is 500m² of land replacement done for the beholder or not?

In the general, the committee investigated and found out the following results: the total existed land was 4181m², no payment of compensation is made before and the land for the cause of the disputed was not registered by the name of the applicant and no replacement of 500m² land is done before for the right beholder. The court also understood that the applicant succeeded the land from his father together with others as the file no. 1083/1997 on 14/06/1997 shows.

After the court investigated every piece of evidence from both parties, decided the following. The total land expropriated, as the committee investigated and reported was, 4181m² and since the applicant succeeded the land from his father, he granted 200m² of land according to the city standard and in accordance with the lease Proclamation Article 26 and Regional Regulation Article 27. Finally the total amount of compensation was calculated $3982 * 53.45 * 10 = 212,784.45$ (Two hundred and twelve thousand seven hundred and eighty four and forty five cents only).

According to the FDRE Constitution and the subsidiary laws, compensation should be paid in advance before the land was taken. However, the act done by the Agency was not correct and it is an abuse of power, against Constitutional right of an individual. On the other hand the applicant in excess of his right which was a wrong act. Both parties tried to exercise beyond their right.

If the case hadn't seen by the court, the individual may lose his right and the Agency may abuse its power. Court is an independent body and such cases seen by courts after the necessary investigation is made, deserves the right and proper act. The lease proclamation has a gap in this regard. Any legal body whether a natural person or an artificial person, or whether a public institution or a private one, may commit a wrong act either procedurally or by breaking the law. Therefore, such wrong act should be corrected by the court not because it is due to basic error of law, but also the right of individual shall be respected. Lose of compensation amount may be a minor, what about loss of urban residence land? What about being homeless? Who do people trust other than courts?

Case 3: File No. 27693¹⁹⁴

Applicant: Ato Cheru Tesfa

Address: Adama kebele Chokonu, Sekekelo and Dhaka Adi

Respondent: Urban Land Development and Management Agency

Address: Adama

The applicant is a farmer at aforementioned kebele, and the respondent without any notification and payment of proper compensation, expropriated my 0.8434 hectare or 8750m2 of farm land in May 2008. Then he approached the Agency and requested payment of compensation if the city administration wanted the land for the proper development; however the Agency refused to do so. Then, he filed an accusation on 15/02/2010 to the Adama Special Zone High Court for payment of compensation ETB 450,797.30(Four hundred and fifty thousand and seven hundred and ninety seven and thirty cents only) plus all the expenses including per Diem of the attorney.

The respondent in its answer denied taking of the farm land for expropriation so we shouldn't pay the compensation and generally it has no substance for accusation, hence asked the court plea of innocence. After the court failed preliminary objection of the respondent, framed issue as follows:

- i. Is the farm land really expropriated or not?
- ii. Is the respondent refused payment of compensation or not?

Regarding the first issue, the respondent on the litigation mentioned taking of the aforementioned farm land is on the process but not yet happened before and the applicant denied the fact mentioned by the respondent. In the second issue, letter was written to the office of finance for payment of compensation, it is up to the applicant to take the payment from that office not our duty even he can go and take it now, the respondent explained. The applicant, in his litigation, requested to come to the office physically to write the letter to the finance, I think this is not proper; the office of the respondent should accomplish its duty no need of expecting the customer to present physically this is not fair and it is a wrong act, he explained.

¹⁹⁴AtoCheruTesfa v Adama City Administration Urban Land Development and Management Agency, (27693), (Adama Special Zone High Court), (19/11/2017), p5-8

Finally, the court passed the following decision: The respondent didn't deny the disputed land and payment of compensation. The only disputing issue was the applicant should present physically in order to write the letter to the office of finance. Then, the court understood that, is it an obligation for somebody to appear physically to write a letter to a certain office? The court understood, definitely not. It is not convincing that a person should appear physically since the respondent accepted all the major issues and refused this minor one. Hence, the respondent has responsibility in accordance with Article 2027(1) and Article 2028(1) of the Civil Code.

From the case above, the officials and employees of the agency commit so many wrongful acts like this. So many minor problems may not be solved on time; it may take years. In order to write a simple letter, is necessary for the right beholder to be presented physically? Not convincing. Imagine this is procedural, what about if laws are broken?

Generally, since all urban land cases except compensation brought to an administrative tribunal, all the power is on its hand and it is exposed to corruption. Power is abused by officials; nobody revised their decisions and even if appealed, seen by the same bodies i.e. the administrative tribunal. Therefore, the law has a gap. As a result the lease proclamation should be revised.

Conclusion and Recommendations

Conclusion

Expropriation is one of inherent power of the government to take individual properties. The law clearly stated compensation is paid in advance before taking of the land. Though the proclamation indicated the time frame of clearance of the expropriated land and payment of compensation, the procedure is taking long times even years in some situation up to ten years and more. As result, people are suffering from such long and limitless time in the clearance of the land and payment of compensation. Even payment was not done in advance due to unknown and unjustified reasons. This opened a room for rent seeking and corruption which are problems of good governance practices.

Compensation is made at least in order to restore an individual whose land is expropriated in its normal place. However, the amount of compensation is not enough to settle the affected people. There are no uniformity and clear procedures in all the places in the calculation of the compensation. In addition, it does not consider current market value, grade and location of the land whereas; these conditions are considered when land is ready for tender. This implies government is not fair and just in payment of compensation against the people. Moreover, the less amount of payment of compensation became factor for expansion for illegal settlements.

Due to the fact that compensation is based only on actual loss of properties and economic losses, it lacks encouragement for opportunity for employment, it does not consider market estimates and therefore, lacks transparency, accountability and not equal treatment of the right beholder.

Regarding the substituted land, the proclamation does not indicate whether the size and location of the substitute land given in the event of expropriation is proportionate to what has been taken. What so ever the land is taken, the size of replaced land is the same. For instance, whether the land will be taken is 5000m² or 50,000m², the substituted land is only 500m² for the right beholder. The proclamation even does not indicate how these individuals are additionally compensated in a special way due to their size of land. In addition, the substitute land is regardless of grade and location of the land. It is given anywhere vacant or based on the wish of the appropriate body hence, open for corruption and abuse of power due to it is based on negotiation with the beneficiary.

The government may expropriate private property for public purposes as per the FDRE Constitution Article 40(8). However, the concept ‘public purpose’ has not been defined clearly either in the Constitution or the subsidiary laws and susceptible to wide range of interpretation. As a result, it created abuse of power by the government officials during expropriation. Private lands be taken from individuals and given to another individual or investor without any justifiable reason. Or else the land may put idle for many years without any development due to no plan has been made from the beginning or may be changed accidentally. In another case, even the land expropriated will not be used for the intended development rather, for other unplanned and unproposed projects deliberately.

The roles of courts relating to urban land matters are restricted under the lease proclamation. Only a few cases are brought to courts especially cases related to calculation of compensation. Majority of the power is given to the Administrative Tribunal of the city or woreda administration. The Administrative Tribunal gives final decision in any land matters except compensation. On the other hand, courts are established to correct error of law and to give the people fair justice. Hence, as a result of limitation of these court powers, people are suffering from fair justice. These in turn created problem of urban good governance.

Recommendations

Based on the above discussions the writer would like to recommend the following points:

1. In the calculation of compensation during expropriation for the land holders, some factors should be taken into consideration so that the right holders then at least obtain fair compensation. These are current market value, location and grade of the land. This is because during lease tender of urban lands these things are usually included and observed so that the city or woreda administration collects maximum revenue by the help of these elements.
2. The government in addition to paying fair and reasonable compensation, it has to set mechanisms to rehabilitate the affected property owners when their property is taken for public purpose
3. Those expropriation and compensation laws should be revised to ensure the fairness and appropriateness of compensation payments. Especially, incorporation of laws regarding on how the local people benefit from the development either in a membership form by buying shares or be employee of that development depending on the type of the project.

4. Land is valued more when it is used for public purpose than individual purpose. However, since the concept of 'public purpose' was not clearly defined either in the Constitution and the subsidiary laws, it is exposed for abuse. Public officials abuse their power due to this unclear and ambiguous concept. Land is not used for the intended development, rather became idle for long years and changed into another projects without any justifiable reasons. Hence, the upcoming proclamation should at least define this concept clearly and exhaustively in order to minimize abuse of power and to use the land for the intended development.
5. Under the lease proclamation the role of courts in relation to urban land matters is minimized, even it is possible to say at level of no role. Due to this, people are affected in getting fair justice in which it is against Constitutional right of individuals and good governance practices. It is an Administrative Tribunal that decides in urban land matters except in calculation of amount of compensation. As a result, abuse of power by this tribunal is not revised and seen by another body as its decision is the last. Hence, in order to grant the people fair justice, at least regular courts should be given power for seeing and deciding on the case or an appeal or should involve in final decision making process at some level in order to minimize abuse of power made by an Appellate Tribunal.
6. Local communities play a vital role in the effectiveness of development of a country as different studies reveal. The local communities are the direct beneficiary of any development. Hence, developmental activities should involve the local communities. However, in some situations these local communities are undermined especially, during expropriation. Therefore, it is recommended by the researcher that both the expropriation procedure and the post expropriation activities should involve local communities in order to bring the intended development.
7. The last but not the least, is some provisions of the proclamation need to be revised and amended especially those articles that restricted the power of courts in relation to urban land matters. People are feeling either as if courts are stripped off their power and no justice at all. The reason is that, land is the most valuable asset and the clarity of the laws minimizes corruption and corrupt practices and abuse of power by government officials in which cases these are against the fruits of good governance.

Reference

Legislations

- Ethiopian Constitution of 1931, Neg. Gaz. Established in the Reign of His Majesty Haile Silassie I, 16th July 1931
- Ethiopian Constitution of 1955, Neg. Gaz. Established in the Reign of His Majesty Haile Silassie I, 4th November 1955
- Federal Democratic Republic of Ethiopia Expropriation of Landholdings for Public Purposes and Payment of Compensation, Proclamation No. 455/2005 Fed. Neg. Gaz., Year 11, No. 43.
- Federal Democratic Republic of Ethiopia Re-Enactment of Urban Lands Lease Holding, Proclamation No. 272/2002 Fed. Neg. Gaz., Year 8, No. 19.
- Federal Democratic Republic of Ethiopia Urban Land Holding Registration, Proclamation No. 818/2014 Fed. Neg. Gaz., Year 20, No. 25.
- Federal Democratic Republic of Ethiopia Urban Land Lease Holding , Proclamation No. 721/2011 Fed. Neg. Gaz., Year 18, No. 4.
- Federal Democratic Republic of Ethiopia Urban Planning, Proclamation No. 574/2008 Fed. Neg. Gaz., Year 14, No. 29.
- The Civil Code of Ethiopia, Proclamation No. 165, 1960, Fed. Neg. Gaz., Year 19, No. 2
- The Federal Democratic Republic of Ethiopia Constitution, Proclamation No. 1, 1995. Fed. Neg. Gaz., Year 1, No. 1
- The Oromia Regional State Urban Lands Regulation, No. 182/2008, MegeletaOromia, May 16, 2008 E.C

Unpublished Materials

- Araya AsegedomTareke, Salient Features of the New Ethiopian Urban Land Lease Holding Proclamation No. 721/2011 and its Implication on the Ethiopian Economy, [Unpublished], Addis Ababa University, Law Library, (2013)
- GirmaKassaKumsa, Issues of Expropriation: The Law and the Practice in Oromia, [Unpublished], Addis Ababa University, Law Library, (2011)
- MisganawKifelew, Urban Land Tenure System in Ethiopia , [unpublished], Addis Ababa University, Law Library, (2011)
- NesruHassenKoroso, Assessment of Urban Land Market from Good Governance Perspective, University of Twente, 2011
- NigusieMelese, Application of Good Governance Principles for Urban Land Development and Management in Addis Ababa City Administration: The Practices and Challenges in Yeka Sub-City [unpublished] Addis Ababa University, Law Library (2016)

Books Journal Articles and other References

- Abebaw Abebe Belay, Expropriation, Valuation and Payment of Compensation; The Law and the Practice in Addi Ababa City, Ethiopia, (available at abebawabebe@gmail.com)
- Berhanu Kefale Alemie, Rohan Bennett, Jaap Zevenbergen, The Socio-Spatial Synergy in Land Governance: A Case of Informal Settlements in Bahir Dar, Ethiopia, Annual World Bank Conference on Land and Poverty, Washington DC, March 24-27, 2014
- Berhanu Alemie, Jaap Zevenbergen and Rohan Bennett, Assessing Urban Land Governance in Ethiopian Cities (2002–2011): Lessons for the 2011 Urban Land Management Policy Implementation (7477), FIG Working Week (2015).
- Daniel Woldegebriel , Compensation for Expropriation in Ethiopia and the UK: A Comparative Analysis, (2014), FIG Congress, Kuala Lumpur
- Daniel Woldegebriel, Informal Settlement in Ethiopia, the Case of two Kebeles in Bahir Dar City, (2011), Marrakech, Morocco, FIG working week
- Daniel Woldegebriel, Land Valuation for Expropriation in Ethiopia Valuation Methods and Adequacy of Compensation 7th FIG Regional Conference, Spatial Data Serving People: Land Governance and the Environment-Building the Capacity Hanoi, Vietnam, (October 2009)
- Dinka Tessema(PI), Girma Defere and Ermias Admas, “An Assessment Of The Challenges And Prospects Of Good Urban Governance Practice In The Land Administration System: Case of Shambu Town, Oromia Region, Ethiopia,” Journal of Good Governance and Sustainable Development in Africa, Vol. 3, no. 3 (2016)
- Elias N.Stebek, Challenges in Access to Urban Land for Business Activities under Ethiopian Law: Between Oligarchy and Broad-Based Private Sector, Mizan Law Review, Vol., 9, no.1, 2015
- Ethiopia: Overview of Corruption in Land Administration available at www.u4.no/publications/ethiopia-overview-of-corruption-in-land-administration.
- Black, Henry C. Black, Black’s Law Dictionary, (5th eds. 1968),
- Longman’s Dictionary of Contemporary English, 1986, London

- Mhrety Adisalem Tikue, International Journal of African and Asian Studies, Good Governance In Land Administration From Below: The Case Of Naeder Adet Woreda, Ethiopia, Vol. 23 (2016),
- Muradu Abdo, “Reforming Ethiopia’s Expropriation Law,”Mizan Law Review, Vol. 9, no. 2 (2015),
- Nesru Hassen Koroso, Assessment of Urban Land Market from Good Governance Perspective, University of Twente, 2011
- Oxford Dictionary of English
- Report of urban land auction committee of the Adama city administration, 2014 available at the city’s Urban Land Development and Management Agency archive
- Tagesse Mathewos Sugebo, Assessment and the Challenges and Prospects of Good Governance: The Case of Gedeo Zone Municipalities, International Journal of Research, (2015), Vol. 2
- Tony Burns, Klaus Deininger, Harris Selod, and Kate Dalrympl, Implementing the Land Governance Assessment Framework, (2010), FIG Congress, Sydney Australia,
- Zarfū Hailu, Land Governance Assessment Framework Implementation in Ethiopia, (2016)
- Zelalem Yirga, Critical Analysis of Ethiopian Urban Land Lease Policy Reform since early 1990’s, FIG Congress Engaging the Challenges-Enhancing the Relevance, Malaysia, (2014)

List of Interviewees

Interview with Ato Shimelis Balcha, Adama Special Zone High Court, Judge, June18, 2018

Interview with Ato Siyyum Yilma, Farmer at Dabe Soloke Kebele, June25, 2018

Interview with Ato Debela Chala, Expert on Urban Lease Agreement, June26, 2018

Interview with Ato Solomon Abebe, Expert on Urban Land Preparation, June 26, 2018

Interview with Ato Bonson Gelassa, attorney, June 05, 2018

Interview with Ato Haile Gurmu, resident of Adama City administration, June 05, 2018

Interview with W/ro Hannan Mussa, resident of Adama City Administration, June 11, 2018

Addis Ababa University school of Law LL.M Thesis Interview Questions to concerned Government Officials of urban land development and management agency

Type I

Name _____ Position _____

1. From which parts of the city administration do people are displaced for an expropriation purpose? What are the reasons?
2. What is the procedure of expropriation?
3. How payment for compensation is made? What is amount of calculation per m2 previously and currently?
4. How do you understand the concept 'public purpose'?
5. Is it really practical that an expropriated land is used for the intended development?
6. Do you think the amount of compensation is proper? Why?

Type II

Name _____ Position _____

1. Regarding urban land lease tender, how many times per year is advertised based on demand and supply of the land?
2. Do you think demand and supply for land is equivalent? If not what will be the solution?
3. What was the maximum price per m2 of land for both residence and investment in the past five years?
4. What does this price show?
5. Is there any other option for individuals who seek urban land for residence? Why?
6. What is the basis for the city administration to advertise urban land lease tender; is it based on revenue or demand for land? Why?
7. What are/were problems regarding the proclamation in relation to urban lease tender? What will be/was the solution?
8. What are/were the problems of urban good governance in relation to advertisement of urban land lease tender? If not, do you think the proclamation is 'perfect' in this regard?

Addis Ababa University school of Law LL.M Thesis Interview Questions to Adama Special Zone High Court Judges

Type I

Name _____ Position _____

1. What are the powers of courts in relation to urban land matters?
2. Who restricted this power, the lease proclamation or other?
3. As a result of this restriction, do think courts are stripped of their power?
4. What about the right to justice of the people? Is it not justice denied?
5. Do you think the lease proclamation created problems of urban good governance? How?
6. If you think the lease proclamation created urban good governance problems, which of this proclamation articles need to be cancelled, amended or added?