



ADDIS ABABA UNIVERSITY
SCHOOL OF POSTGRADUATE STUDIES

**TENURE SECURITY OF OLD POSSESSIONS AND ITS CHALLENGES UNDER
URBAN LAND LEASE HOLDING PROCLAMATION NO 721/2011**

**A Research submitted in partial fulfillment of the Master's Degree of Law
(LL.M) in URBAN PROPERTY AND LAND LAW to the School of Law.**

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COLLEGE OF LAW AND GOVERNANCE STUDIES

LL.M PROGRAMME IN URBAN PROPERTY AND LAND LAW

**TENURE SECURITY AND ITS CHALLENGES UNDER URBAN LAND LEASE
HOLDING PROCLAMATION NO 721/2011**

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DECLARATION

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

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Abstract

The aim of this paper is to critically review the limitations and implications of the lease holding proclamation No 721/2011 on urban land lease holders as a general and on old possessor's as a particular with regard to the tenure security of the land holders through discussing the lease holding proclamations and related materials. The methodology employed here is doctrinal or legal analysis and may also conduct an interview with the relevant organ.

In this study what revealed is that the land holders are encountered land tenure insecurity due to poor real property registrations especially on old possession, restrictive rules on land holding, and frequent change of urban plan, unchallengeable administrative power in front of an independent institutions or court and lack of effective legal protections to secure the land holders. Tenure security is the cumulative elements of objective and subjective tenure security. The objective element of tenure security refers to the existence of an effective legal protection against eviction or arbitrary curtailment of land rights. The subjective element refers to the perception factor that landholders have sufficient confidence that they will not be arbitrarily deprived of their rights over their land. so the writer tries to assess the tenure security of new urban land holding proclamation NO 721/2011 in general and the tenure security of old possessions of urban tenure with in light of the above elements of tenure security(objective and subjective tenure security). When we see these elements with the tenure security of old possessions the new urban land holding proclamation affects the tenure security of old possessions regarding the limitations of lease period, compensations, Size of plot of land for replacement of the previous holding, and expropriations are the main issues for the tenure insecurity of the permit holding.

CHAPTER ONE

1. INTRODUCTION

1.0. Background of the Study

Land is the basic socio economic assets in our country. Thus; the issues of land tenure security is important. Land tenure designates the rights individuals and communities have with regard to land, namely the right to occupy, to use, to develop, to inherit, and to transfer land. Land tenure should thus primarily be viewed as a social relation involving a complex set of rules that governs land use and land ownership. While some users may have access to the entire ‘bundle of rights’ with full use and transfer rights, other users may be limited in their use of land resources. The exact nature and content of these rights, the extent to which people have confidence that they will be honored, and their various degrees of recognition by public authorities and the concerned communities, have a direct impact on how land is used.¹

While land tenure is broadly understood, as property relations in land and their administration. FAO has defined the term “land tenure” as: “the relationship, whether legally or customarily defined, among people, as individuals or groups, with respect to land... [It] is an institution, i.e., rules invented by societies to regulate behavior regarding on how land is accessed and used.”² There are three things to be noted regarding land tenure in this definition. Firstly, it refers to people’s relationship to land. Secondly, land tenure is an institution through which individuals’ access to land and use right is determined. Thirdly, it denotes rules of the game through which the content of rights and duties of individuals with respect to land are defined.³ The relationships are usually defined by customary rules or formal laws. In both cases, tenure rules define land property rights regarding access, control and transfer of rights with corresponding duties and restraints.⁴

Whereas land tenure security refers to the degree of the reasonable confidence not to be arbitrarily deprived of the land rights enjoyed or of the economic benefits deriving from. It is about the certainty that a person’s right to land will be recognized by others and protected in cases of specific challenges. Generally land tenure security is about the protection of the rights which is given to the possessors of the land to enjoy the full rights and protected from the interferences of others.

¹ Alain DURAND-LASSERVE*and Harris SELOD** ,The formalization of urban land tenure in developing countries(2007)

²FAO Corporate Document Repository, Land Tenure and Rural Development, Rome (2002), p.7

³Girma Kassa Kumsa, Issues of Expropriation: The Law and the Practice in Oromia, LLM Thesis (2011).

⁴Ibid

Land is a vital resource and a driver of economic growth and development. Land is a basic natural resource through which all human activity entirely depends on. Land is the basic for all human activities. Especially in our country the image of our societies regarding the land is very high since their livelihood is dependent on the land. In a country like Ethiopia where capital is quite scarce the only viable resource is land. So since the roles of land are high in economic developments of one country we should have to secure it. In urban area lands play main roles in the developments of one's country since the urban are mainly the centers of capital generations for the country. All of the importance's of lands depend on its security. Because all the investment and essential things for the development and livelihood of the human beings are depends on the tenure security of the land possessed.

Land tenure, as an institution, not only governs access to and control over land also land based resources and the flow of the benefits thereof. It is also a source of expectations, a basis for actors to simulate and predict each other's behavior in the sphere of activity to which the regime applies and thus the fundamental role it plays in a society should not be overstated.⁵

In 2011, Ethiopian government adopted a new urban land proclamation. Apart from eliminating all forms of tenure other than lease, the proclamation requires for conversion of old possessions to leasehold tenure system. Land tenure security has two core elements objective and subjective. The objective element refers to the existence of an effective legal protection against eviction or arbitrary curtailment of land rights. It's about the law which enacted to protect the tenure security of the possessors by granting them security for their holding. The subjective element refers to the perception factor that landholders have sufficient confidence that they will not be arbitrarily deprived of their rights over their land. Viewed from these elements, the new law adversely affects tenure security of holders of old possessions for the different reasons and the conversion has jeopardized rule of law and constitutionalism which are vital for a tenure security.⁶

According to UN-Habitat , security of tenure describes an agreement between an individual or group to land and residential property, which is governed and regulated by a legal and administrative framework (the legal framework includes both customary

⁵Ibid

⁶*Yared Berhe Gebrelibanos: "Conversion of Old Possessions to Leasehold and Its Implication on Tenure Security of Holders of Old Possessions" Mekelle University Law Journal Vol.3 No. 1 (2015)*

and statutory systems). Security of tenure derives from the fact that the right of access to and use of the land and property is underwritten by a known set of rules, and that this right is justifiable. The tenure can be affected in a variety of ways, depending on constitutional and legal framework, social norms, cultural values and, to some extent, individual preference. In summary, a person or household can be said to have secure tenure when they are protected from involuntary removal from their land or residence by the State, except in exceptional circumstances, and then only by means of a known and agreed legal procedure, which must itself be objective, equally applicable, contestable and independent. In order to take into account the perception of tenure security by people and communities, UN-Habitat expands the definition of tenure security by incorporating in the definition the degree of confidence that land users will not be arbitrarily deprived of the rights they enjoy over land and the economic benefits that flow from it.⁷

The urban land tenure system of Ethiopia has passed through a range of paths at different times and regimes. In the period before 1975, the urban land tenure system was a freehold tenure system that allows urban land to be sold, exchanged, rented, leased or transferred without restriction. When the Dergue government came to power in 1975, it passed a new law i.e., Proclamation 47/1975, which introduced the monopoly of land ownership by the state which abolished private ownership of land and, perhaps terribly, banned any form of transaction in land. The tenure system during the Dergue era (1975-1991) was then a public controlled permit system. In 1991, the Ethiopian Peoples' Revolutionary Democratic Front (EPRDF) assumed power by deposing the Dergue regime. Though the incumbent Ethiopian government followed similar land policy to that of the Dergue, the current land tenure system has its own peculiar features. Ethiopian urban land tenure system passed through two important periods since 1991. The first one is the period between the time when the first urban land lease law was enacted by the then Transitional Government of Ethiopia (TGE), and 2011, the year when the new urban land Lease Proclamation was adopted, which is the turning point in the urban land history of the country. In 1993, the TGE introduced a public lease form of urban land tenure system in Ethiopia by virtue of Proclamation No.80/1993, as revised by Proclamation 272/2002 and also revised by the proclamation No.721/2011 with a view to transfer use rights over land from government holding to private individuals. Apart from the revenue generation to support the urban infrastructure, one

⁷Geoffrey Payne and Alain Durand-Lasserve, "Holding On: Security of Tenure - Types, Policies, Practices and Challenges"

of the important objectives of the lease law was to "turn land from a timeless and costless resource into formally exchangeable commodity with both cost and time limit" thereby increase land use efficiency and investment.⁸ It's from these perspectives that the only forms of urban land tenure is by the lease holding system. it's because of these that the council of ministers are going to convert the old possession into lease holding tenure system based on the detail study undertaken in the future. Under proclamation No 721/2011 without prejudice to the provisions of Article 6, no person may acquire urban land other than the lease holding system.⁹ That means the modality of converting old possessions into lease hold shall be determined by the Council of Ministers on the basis of a detailed study to be submitted by the Ministry.¹⁰ Based on the detailed study the parceling of plots of urban land in the course of converting old possessions into lease hold may result in the reduction or increase of the size of a plot.¹¹ At this time even though the compensation is paid for the properties to be removed from the land so reduced it affects the tenure securities of the holders. The regulation No 182/2016 under article 7 also states the same thing that the old possessions are going to be converted to the lease holding in the future based on the detail study under taken by the concerned body. But this article adds that without prejudice to sub art 7(1) if the possessors of old possessions by their own consent wants to convert their old possessions to the lease holding possessions they can convert it by the bench mark price determined based on the land grade of such area. So in addition to the time when the possessors transfers his old possessions to the third parties except inheritance the consent of the possessors of the old possessions are also one mode of converting old possessions to the lease holding. But the majority of the possessions of old possessors are converted to the lease holding possessions at the time of transferring to the third parties except inheritance rather than based on the consent of the possessors.

We may see old possession by dividing into two types. This is old possessions which have title deeds and old possessions which have no title deeds and both of them have a problem of tenure security. The Lease Proclamation No 721/2011 comes up with an express definition of old possession. Accordingly, old possession as per Art 2(18) of the Proclamation refers to "a plot of land legally acquired before the urban center entered into the leasehold system or a

⁸BelachewYirsaw, Urban Land Lease Policy of Ethiopia Case study on Addis Ababa and Lease towns of the Amhara National Regional state.

⁹Cited above at note1, article 5.

¹⁰Id., article 6(1)

¹¹Id., article 6(2a)

land provided as compensation in kind to persons evicted from old possession.” From this definition, it is easy to conclude that old possessions refer to all landholdings outside of the lease system. It follows that old possession refers to the following forms of urban landholdings. First, it refers to holdings that are given before the enactment of the new lease law if the urban center was not a lease town. Secondly, in the case of lease towns, old possession refers to landholdings that were given prior to the introduction of the lease system. Thirdly, old possession refers to a holding that is granted as a substitute of an old possession if such possession is expropriated for public purpose.

The proclamation No 721/2011 and the Oromia regulation No 182/2016 under article 6(3) and art 10(1) respectively puts the modality of converting old possession to the lease holding system. Based on this proclamation and regulations the old possessions can be converted to the lease holding at the time of transferring to the third parties except inheritance which remain as old possession. That means the third party possess such possession by the lease holding system. The other modalities of converting old possessions to the lease holding are based on the consent of the possessors.¹² That means if the possessors of the land wants to convert his holding to the lease holding tenure system by his own will he can convert it to the lease holding system by the bench mark price for such holding.

We can see old possession based on the title given for it the old possession can be seen as old possession which has a title deeds and old possessions which has no title deeds. Old possession which has title deeds is possessions which acquired legally and have get a title deed from the concerned body. Such possessions can be transferred to third parties easily and more secured than that of old possession which doesn't have title deeds. Whereas old possessions which has no title deeds are a plot of land legally acquired and which has house built on such possessions or a plot of land acquired for a purpose of residence by farmers, pastoralist, and semi pastoralist and in which they built a house on such possessions and they are under urban center because of expansions of city administration or because of such areas got recognitions as urban center and which has not got a title deeds from the concerned body.¹³ For old possessions which has no title deeds, to give them title deeds, there should be a house giving service built on such possessions and its ownership should be proved by the kebele administrations and the owners should bring at least one evidences from the following lists as stated under article 8 of the regulation No182/2016 of Oromia urban land lease holding. These are; (a), if the possessors have a title deeds which was given for him before

¹²See Article 7(2) of the Urban Lands Lease Holding Regulation, Regulation No. 182/2016.

¹³ Id ,art 2(16)

proclamation 47/1967 and if it is proved that such possessions is not inherited by the government.

(b), if there is a file in store which shows that the possessions is occupied before proclamation 47/1967

(c), if there is evidence in the file which shows that at the time of occupying such possessions he gets it's legally.

(d), if the possessions is the possessions of farmers which enter urban center because of expansion of urban they should have to have at least a three year receipt which shows they paid taxes

(e), if they have a receipt which was given to the possessors by the concerned body.

(f), if the possessors have a decisions given from the courts and if there is a files in the store.

(g), if the possessors have title deeds of rural.¹⁴ Under the same regulation article 8(2) if the possessors of old possessions which has no title deeds fulfills one of the above criteria the concerned body permitted up to 500m for residence. But the standard of old possessions which do not have title deeds and which its service is not for residential purpose is based on the standard to be determined. From this article what we can understand is that for the old possessors of old possessions which its service is not for the residential purpose and do not have title deeds , there is no standard determined for them to have title deeds since standard allowed for such possessions is not known. Because of this they remained without having title deeds for his holding which in turn affect the tenure security of the holders of the possessions.

In this study I am going to show that how the tenure security of old possessor's are affected especially during expropriations and to show that they don't have any protections from the government as that of the lease holder even though the lease holders are also under shadow of tenure insecurity.

1.2. Statement of the problem

Proclamation No 721/2011 under its article 6 puts how old possessions should be administered until the time of converting to the lease holding system and how they are going to be administered at the time of converting to the lease. But this proclamation doesn't consider about the tenure security of the old possessions during expropriations and at the time of converting to the lease holding tenure system. That means the old possessors do not have

¹⁴ Id, art 8(1(a-g))

protection from the government as that of the lease holding even though the lease holding tenure is also under shadow.

1.3. Research Questions

1.3.1. General Research Questions

Is the old possession equally secure as lease hold?

1.3.2 Specific Research Questions.

Issues of objective Tenure Security: - What are the rights of land holder in old possession as compared to the land holder of lease hold on issue such as construction permit, transfer of holding, land clearance, illegal interference by third party, and town planning (change of plan affecting the holding)?

Issues of subjective Tenure Security: - the belief of the holder, third parties (especially of the belief of possible buyers of the immovable on the holding), the land administrative agencies.

1.4. Research objective

By this research the writer tries to fulfill the following objectives

1.4.1. General objective

To analyze proclamation No 721/2011 with respect to the tenure security as a general.

1.4.2. Specific objective

- To show how proclamation No 721/2011 affects the tenure security of old possession
- To compare the tenure security of old possessors with that of the lease holding tenure arrangement.

1.5 Significance of the Study

From the study finding different bodies supposed to be beneficial. Because land tenure security is important part of social, political and economic structure in strengthening of land rights by studying further is important. Especially old possessors are still remaining unsecured and based on the decisions of the council of ministers old possession is going to be converted to the lease holding system. So this study may help to show to different bodies the problems of old possessions before or after the conversions to the lease holding systems and also it may leads to the possible solutions. The basic limitation during this study may be obtaining relevant information and organized data to use as input to the study.

1.6. Methodology of the Study

In conducting the research, the study employs Qualitative methods by using both primary and secondary data. The writer used argumentative essay or legal analysis to conduct the research by using relevant data from relevant sources and also conducted interviews with the relevant organ.

Primary data: primary documentary sources including the FDRE constitution of 1995, Urban land lease holding proclamation no 721/2011, Oromia urban land lease holding regulation No 182/2008 and directives, have been analyzed in relation to the urban land tenure security and particularly with the tenure security of old possessions.

Secondary data; The study also has used the relevant literature materials as secondary sources.

CHAPTER TWO
2. GENERAL OVERVIEW OF URBAN LAND TENURE SECURITY
UNDER URBAN LAND LEASE HOLDING PROCLAMATION
NO.721/2011

2.0 Introduction

Land in general is the basic socio economic asset in our country. It is important asset for the populations since it is the basis for every activity to be undertaken. So land is the most important economic resource of Ethiopia and its demand is very high especially in urban areas because the other sources of revenues are meager the government use the urban land as a sources of revenues and to attract the investment. To protect this valuable and limited property the country has passed different laws and also at this moment the proclamation No 721/2011 states how one can possess the land.

2.1 Definitions of urban land tenure and tenure security

The forms of urban land tenure and tenure security have direct relationships. That means how one could access to the land may determine the security of such possessions. Because the person access to the land by way of permit system, by the illegal means and by the lease system do not have the same protections from the government. Tenure is a mode by which the land is held or owned or the set of relationships among people concerning land or its product. It is the right that one has over the land and it describes who shall get urban land, for what purpose and under what conditions. The urban land lease holding proclamation No 721/2011 under article 5 clearly Prohibit of Land Possession and Permission other than Lease Holding with the exception to article 6 which is going to be decided in the future.¹⁵

Land tenure system has much influence on the economic rights of citizens. Land tenure system may either encourage or discourage investment. Land tenure system encourages investment if it gives tenure security to the holder. Tenure security indicates among other things, longer period of holding that matches the period of expected investment; absence of arbitrary eviction, proper judiciary and sufficiently wider rights on the holding.¹⁶ It has two core elements objective and subjective. The objective element refers to the existence of an effective legal protection against eviction or arbitrary curtailment of land rights. The

¹⁵Cited above at note 1, article 5.

¹⁶Mesganaw kiflew, Urban land Tenure System in Ethiopia and its application in Addis Ababa.

subjective element refers to the perception factor that landholders have sufficient confidence that they will not be arbitrarily deprived of their rights over their land.¹⁷

2.2 History of urban land tenure and its security under different regimes in Ethiopia

In order to understand the failures and challenges as well as the prospect of land administration systems, understanding the background of the land ownership, its tenure security & tenure system for different period in history is very important. Land tenure in Ethiopia has undergone dramatic shifts from feudalistic systems under the monarchy of Emperor Haile Selassie (1930-1974) to socialist land policies under the Derg military government (1974-1991), to the current system under the Ethiopian People's Revolutionary Democratic Front (EPRDF) who took control in 1991. This has left populations uncertain about their rights. So we have passed through different types of tenure arrangements in Ethiopia.

2.2.1. Pre-1974 period of land tenure system (During Imperial Ethiopia)

Pre-1975 Ethiopia is generally characterized as a feudal state, where most of the land was controlled by the state and feudal lords, and in which citizens were using land under different tenure arrangements. Until the 1974 revolution, Ethiopia had a complex land tenure system. During the imperial regime the land tenure types refer mainly to the imperial administrative classification which is commonly distinguished between communal (rist), grant land (gult), freehold, or sometimes referred to as private (gebbar tenures), Church (Samon), and state (Maderia, Mengist) tenure régimes. Emperor Haile Selassie I, like Emperor Menelik the II (his predecessor), made extensive land grants to members of the royal family, the loyal members of the nobility, members of the armed forces and the police, top government officials and civil servants and notable businessmen. This type of land tenure system adopted by the Ethiopian Empire is described as one of the most complex compilations of different land use systems in Africa.¹⁸

During this regime the tenure system of urban land was a private holding tenure system and the land holding systems was perpetuated for long period of time and as a result, although most land areas were private property, most of it was owned by few land lords.

¹⁷Cited above at note 3.

¹⁸ Ibid

Urban land was widely idle and misused. The landlords and royal family who had immunity from the law in practice violated town plan. They built houses that did not abide by the plan and occupied public land whenever they needed it regardless of its being reserved for public use. The bureaucrats violated the plan by abusing their power. Hence, no plan was enforceable. All such bottlenecks of development created by the feudal system called for a radical land reform. At this time the owners of urban lands were private elite.

Generally prior 1975 land in Ethiopia was concentrated in the hands of absentee land lords, tenure insecurity was considered as one of the main limitations of pre-revolution reform. Land tenure system is manifested in various forms ranging from endless litigation over land rights to complete eviction from holdings. Tenure was highly insecure, arbitrary evictions were common, and many lands were underutilized. High inequality of land ownership reduced productivity as well as investment and led to political grievances and eventually overthrow of the imperial regime.¹⁹

2.2.2 The Derg Period

There was a radical change in a land policy during the derg; the demand for land reform was the main economic issue during the 1974 revolution in Ethiopia when most of the rural and urban population joined hands to making countrywide uprising. At this time Ethiopia move towards the socialist system and urban land was nationalized and made government property by the proclamation 47/1975. The main objective of proclamation No.47/1975 were the following as stated on preamble

- ✓ To nationalize all urban lands and to end the exploitations of the many by the feudal lords, aristocrats, high government officials, capitalists who by abusing their political and economic powers. That means by this proclamations it abolished private ownership of urban lands by putting private holding of urban land under government control and to eliminate the exploitations of many by the few.
- ✓ To improve the quality of life urban dwellers by providing sufficient land for dwelling house construction by putting privately owned lands under government control.
- ✓ To do away with the inexhaustible court cases involving urban lands and houses thereby saving valuable financial and human resources from wastage.

¹⁹Haimanot Woldgbrial Teferi, An Assessment of urban land lease policy implementation in Ethiopia: case study of Bahir Dar, Ethiopia March 2009.

- ✓ To bridge the wide gap in the standard of living of urban dwellers by appropriate allocations of disproportionately held wealth and income as well as the inequitable provision of services among urban dwellers by bringing land under the government ownership and control of urban lands and extra urban houses.
- ✓ To build urban areas on the basis of careful planning and study in order to utilize the resource in an economic manner, to improve the conditions of cities by preventing illegal activities which prevalent in urban areas.

During this period the Military Derg regime nationalized all urban lands and urban extra houses and abolished private ownership of land as it states under proclamation article 3. By making this change the urban lands which were under private ownerships were shifted to the property of the government. This act of nationalization wholly paralyzed land marketing in urban areas. Land was transferred only by way of state allocation or by inheritance of a building. The derg establishes government ownership of urban land and extra house proclamation No 47/1975²⁰ and Public Ownership of Rural Lands Proclamation No. 31/1975.²¹ At that time there was many restrictions which was put on the ownership rights both to urban and rural property ownership. For instance when we see some of the restrictions which were puts on the rights of ownership under proclamation no 47/1975; no urban land may be transferred by mortgage, donation, lease, sales and succession under these proclamations.²² It also limit the number of house that you may have by describing that a person may only have a single dwelling house in any urban area of his choice.²³ That means this proclamation does not allow any extra houses for urban dwelling which is against the right to have property. Proclamation No 47/1975 allows person to transfer the property on land freely by means of succession, sale or barter. However in case of sale the government shall have the right of pre-emption.²⁴ That means the person who builds land on his possessions can't allowed to sale his property which he has from such holding without consulting the government since the government has a right of pre-emption. In other words the owners of such

²⁰Government Ownership of Urban Land and Extra Houses, Proclamation No. 47/1975. *NegaritGazeta* Year 34, No 41.

²¹Public Ownership of Rural Lands, Proclamation No. 31/1975

²² Cited above at note 21, article (4).

²³ Id., article11(1)

²⁴ Id., article12(1)

property have no right to sale his property to person who he wants to sale. This can also affect the seller since they have no equal bargaining power with the government agent.

Also, those who used to live in private rental houses were allowed to continue possessing the houses, but made to continue paying a reduced rent to the state. Landless people were guaranteed to get not more than 500 square meters of land to construct a single dwelling house (Article 5.1). People became full owners of the houses they built on the granted land, and thus, were allowed to transfer it by way of sale, succession or barter provided that the government would have pre-emption right in case of sale (Article 12.1). In the same fashion as had been done with the rural land, in here as well, any relationship that existed between urban landlords and tenants was abolished, and the tenant was made free from payment of rent, debt or any other obligation arising from the relationship to the landlord (Article 6.1). Further, the law allowed any tenant without any dwelling house to possess or retain the land he used to rent before the enactment of the law (Article 7). Creditors who possessed buildings as security for a loan were denied any right of attachment to a house. The house was either to be returned to the debtor (if he has no other dwelling house) or to be nationalized by the state. The creditor was just expected to search other ways to collect his money (Article 17). There is no doubt that creditor who lent money on this basis must have lost their money. Upon the effective date of the proclamation, all people were prohibited from renting out their houses and receiving any rent accruing there from (Article 20.1)). The state was the only legitimate organ allowed to let properties and receive rent.

Regarding the size of the holding the ministry issued that, any person or family can be granted the possessions of urban land up to 500 square meters for the purpose of building a dwelling house whereas the maximum sizes for business houses shall be determined by the ministry.²⁵ This proclamation under the same article allows transfer of use rights of urban land by the means of succession to the wife or husband or children up on the death of the holder. By this statement this proclamation limits the person who can use such holding by means of successions only to those person

²⁵ Cited above at note 21, article 5 (1, 2).

stated above even though the proclamation didn't say anything how this successions could be implemented.

By this proclamation the relationship between landowners and tenants on urban lands are abolished. The tenant shall be free from payment to the landowner of rent, debt or any other obligations and the tenants shall have the possessory rights over the land he holds if it is within the limitations put by this proclamation.²⁶ This proclamation also gives priority rights for the person who or family which does not own a dwelling house to possess the lands which he holds whether by lease or rent if it is within the limitations of the size allowed to the dwelling houses.²⁷ Because since by this proclamation the right to lease or rent were the rights only given to the government the proclamation abolished such relations between the individuals and permit such land for the possessor or the person who holds such lands to use it according to the proclamations and create the relation between the government and the individuals.

Expropriation of private property is also allowed if it is with the interest of the public. If the ministry wants to expropriate urban lands for the public purpose, the ministry shall pay compensation in kind for the urban land held by a person, family or an organization and if such land has building on it the government may also expropriate such properties by paying compensation for the sake of public purposes.²⁸ The same article states that where a person or an organization fails to utilize his or its urban land within the period to be specified by the ministry, the ministry may take back such land and put it to appropriate use.²⁹ That means the appropriate body may take back the land if the possessor of the land does not use such lands according to the period specified by the ministry by following up the possessor whether they are undertaking the construction on time even or not. This proclamation authorized the Ministry of Public Works and Housing to retract possessory rights over any parcel not utilized within a specified period. This was mainly to avoid unjustified delays at the time of undertaking the constructions and to save unnecessary economic wastages. But the proclamations didn't put the time limit for completion of construction and it seems it lefts such decisions for the ministry.

²⁶Id., article 6(1,2)

²⁷Id., article 7(1)

²⁸Id., article 8(2)

²⁹Id., article 8(1)

Regarding enforceability of land rights the proclamation established three level judicial tribunals which are established by different levels of cooperative societies to solve disputes regarding urban land and housing.³⁰ These three layers of the judicial tribunals have their own jurisdiction at the time of entertaining cases brought before them. The appeal is only allowed within this judicial tribunal layer and the decisions rendered by these tribunals were final and it was not allowed to appeal to a presumably independent court of law.³¹ However, where the minister ascertains from an application submitted to him that the judicial tribunal's decision is ultra-virus; the minister shall review the case and decide it under this proclamation (47/1975). The decisions of the minister shall not be subject to appeal. These restrictions had the implication of impeding the land tenure security of urban land holders.

The person didn't have the right to rent and obtain income from urban land or house rent from their own property which was inhumane and against the tenure security of the possessors.

So it was hard to say there was a tenure security during the derg period. Since many of the rights relating to the lands was limited by the regime.

2.2.3. Urban land tenure system from 1991-2004

I. Urban land tenure system under Proclamation no 80/1993

At this time the then Transitional Government of Ethiopia (TGE) came up with a new urban land law. Unlike the permit system which was operational before then, the new urban land law follows a lease system. The Urban Lands Lease Holding, Proclamation No.80/1993 was introducing for the first time the lease system in Ethiopia.

The main objective of the urban land lease holding proclamation No.80/1993 was to provide monetary value for the utilization of urban land, to create equitable distribution of land, to control the growth of city centers, to increase urban revenue to finance urban infrastructure, to expedite construction of urban houses to alleviate the existing shortage, to provide land utilization value[market value of urban land] which was not in existence, to ensure transparency in land transfer and avoid land speculation, to promote the economic development of urban centers through involvement of investors, and to ensure tenure security

³⁰Id., article 24(2)

³¹Id., article 30

by providing land rights of longer durations.³² In this respect the leasehold policy of land is one step ahead of the previous policies on land. Proclamation No 80/1993 enabled the government to transfer urban land from permit system to leasehold system. According to this proclamation, all urban land is public property and its mode of transfer will only be carried out through the lease system. Regarding new land allocation, all new land allocation as of the date the proclamation entered into force (1993) is to be made under the lease system with a minimum duration of 50 years (for other activities) and a maximum of 99 years (for private residential purposes)³³

Regarding previous possession, all urban land held before the proclamation is divided into two.³⁴ The first one which includes all plots occupied by private and publicly owned dwelling houses is to be governed under an improved land rent law. The second group, which includes all other previous land users in the city, should be ruled by the new lease policy. Nevertheless, when lands previously held for residential purposes are transferred to other people other than through inheritance, they will be under the lease policy. Urban land lease holding is to be granted if the request is in conformity with the land use pattern of the urban center and after carrying out a competitive public tendering. Land lease is given for a fixed term and the duration of the lease varies depending up on the purpose for which the land is requested and the level of urban centers as stated under the proclamation.

Whereas regarding transfer of land use right any person who acquires the right to hold urban land on lease may transfer or pledge such right or contribute it in the form of a share to the extent of the rent paid.³⁵ As pro, No 80/ 1993, where the right to hold land on lease is mortgaged the building on the land and its auxiliary facilities shall, unless otherwise decided, also be mortgaged; likewise, where the building and its auxiliary facilities are mortgaged, the right to hold the land on lease shall also be mortgaged (pro. No 80/ 1993). According to this proclamation, the lessee may not, on transfer of his right of lease, collect income, which is higher than the rent of land he paid; nor may he mortgage such right at a value, which is higher than the rent. So compared to the permit holding the lease holding tenure system allow the free transfer of lease right in the form of sale, mortgage and

³² See the preamble of the proclamation to provide for the lease holding of urban land, Proclamation No. 80/1993.

Negarit Gazeta 53rd year, No. 40.

³³Id., article 7

³⁴Id., article 3(1,2)

³⁵Id., article 10(1-6)

contribution in share company within the limit of rent he paid. Where the lessee collects or gains higher than what he actually paid as ground rent, he has the duty to pay back the difference to town administration as stated under article 10(4) of the proclamation. The idea was that the increment in land value would be captured by the government rather than individuals.

II. Urban land tenure system under Proclamation NO 272/2002

At this time the government made some adjustment on the urban land tenure system via the re-enacted Urban Lands Lease Proclamation No. 272/2002. As stated on its preamble the main reason for the adjustment of this proclamations are; making leasehold system consistent with the principle of free market which would help to achieve overall economic, social and progressive urban development; the need to make leasehold system an exclusive mode of urban land acquiring system; the need to use urban land in conformity with the master plan; and the need to provide for transparent and expedient order, which could enable to resolve claims related with infringement of once legal right and benefits were cardinal reasons for the modifications.³⁶

Regarding its scope of application, these proclamations was applicable to an urban land held by the permit system or by the lease hold system or by other means prior thereto as well as to urban land permitted here after.³⁷ That means urban land tenure system through Lease Proclamation No. 272/2002 was the extension of the application lease landholding system for all those urban lands held by the previous permit holders. However, it has to be noted that the application of leasehold system on permit holders was suspended until the then regional and city governments decided the time and conditions under which permit holders could be converted in to leasehold system.³⁸ According to this proclamation urban land was permitted by the lease holding system if such holding is inconformity with urban plan based on auction or decisions of region or city administration.³⁹

The duration or period of lease agreements shall vary depending on the level of urban development and sector of development activity or the types of service.⁴⁰ This proclamation

³⁶ See the preamble of the Re-Enactment of Urban Lands Lease Holding, Proclamation No. 272/2002. Federal *Negarit Gazeta* 8th year, No. 19.

³⁷Id., article 3(1)

³⁸Id., article 3(2)

³⁹Id., article 4(1)

⁴⁰Id., article 6(1)

puts the maximum duration for the lease agreement up to 99 years for housing (personal and leasable), science, technology; research, and study, government office, non –profit making philanthropist organization, religious institution and puts the a ceiling of 5 years of lease period shall be Applicable to economic and social development undertakings intended to be invested on urban lands not designated for use within a short period of time. It may be renewed for the same period of time where it is necessary.⁴¹

Regarding period of renewal the proclamation states that Period of lease may, up on the termination thereof, be renewed for the lease-hold possessor as per the agreement to be reached, unless the urban land is wanted for public interest. Where the lease period is not renewed up on termination on account of the land being wanted for public interest however, compensation shall not be paid to the lease-hold possessor.⁴² In addition to this the proclamation puts the time limitations to request for the renewal. So according to this proclamation urban land was renewable:-

- ✓ If it doesn't need for the public interest.
- ✓ If the lessee and the lessor agree on the terms of agreement even though it is not clear on what issue the agreements to be reached.
- ✓ if only the land possessor has applied in writing to the appropriate body to that effect within 10years and not exceeding 2 years before the termination of the period of lease.

From the above criteria if such holding was wanted for the public interest, the appropriate body had the power to terminate the lease holding without compensation and had no duty to pay for the damage occurred on the possessor since they think they act according to the power given to them. But this act harms the tenure security of the holder.

Even at the time of renewal of the lease holding the Proclamation had lack of clarity. Because under the proclamation article 7(1) there is phrase “as per the agreements to be reached” it doesn't state on what they may agree clearly.

Regarding transferability of lease holding the proclamation allow free transfer of right of leasehold. It states that any lease hold possessor may transfer, or undertake a surety on his right of lease hold; and he may also use it as a capital contribution to the amount of the lease

⁴¹Id., article 6(1,2)

⁴²Id., article 7(1-3)

payment he has made.⁴³ So according to this proclamation lessees who had been transferring either the lease right (bare land) or lease right with construction on it have been getting the full profit of the transfer without any restrictions. So the beneficiaries are mainly Urban speculators since they have been profiting by selling bare land (only lease right) without adding value to it. This proclamation as opposed to Proclamation No 80/1993, allowed free transfer of lease right with the full advantage of capturing the enhanced value of the leased plots. Proclamation 80/1993, on the contrary, required the lessee to pay back the difference in profit between what he paid as lease rent and the sale price which is better in alleviations of shortage of house since it doesn't allow the transferability lease right of bare land

2.2.4. current urban land tenure system

2.2.4.1. Proclamation No 721/2011

The current land tenure systems has also constitutional basis and the right to ownership of rural and urban land, as well as of all natural resources, is exclusively vested in the State and in the peoples of Ethiopia. Land is a common property of the Nations, Nationalities and Peoples of Ethiopia and shall not be subject to sale or to other means of exchange.⁴⁴ More under this constitution (FDRE constitution No.1/1995) land tenure securities are provided under article 7 and 8 by stating that, Every Ethiopian shall have the full right to the immovable property he builds and to the permanent improvements he brings about on the land by his labour or capital. This right shall include the right to alienate, to bequeath, and, where the right of use expires, to remove his property, transfer his title, or claim compensation for it. Particulars shall be determined by law⁴⁵ The right to the land is also secured in that the state has the duty to pay in advance of compensation commensurate to the value of the property during expropriation.⁴⁶ From this article what we may understand is that the right which was given for the urban possessors are rights less than ownership since the full ownerships of land is given for the peoples of Ethiopia.

Mainly we may infer the less than ownership right given to the urban lands are impliedly understandable from the constitution of federal democratic republic of Ethiopia article 40(6,7) and article 97 in which they implies the term uses which shows us the possessor has the usus right. In current land tenure system besides the constitution, there are other

⁴³Id., article 13(1-3)

⁴⁴See article 40(3) of the Constitution of the Federal Democratic Republic of Ethiopia, Proclamation No. 1/1995. Federal Negarit Gazeta. Year 1, No.1

⁴⁵Id., article 40(7)

⁴⁶Id., article 40(8)

legislations in Ethiopia related to land tenure security matters among which the Urban Land Lease proclamation (Proc. 721/2011) and the Expropriation Proclamation (Proc.455/2005) are the main one in protecting the tenure security of urban land possessors.

The means of acquisitions of urban land under the current proclamations no.721/2011 is only through lease holding system by using the modalities of tender and allotment.⁴⁷In proclamation no.721/2011 transferring and mortgaging of lease hold rights are permitted. But at the time of transfer or mortgage the lessee may transfer his leasehold right or use it as collateral or capital contribution to the extent of the lease amount already paid.⁴⁸.From this article what we may understand is transfer is permitted before or after undertaking the construction as a principle. But the money that you get at the time of transferring the lease holding rights are depends on the construction you perform. Because there is intervening of government if zero construction or less than 50% construction is undertaken. So this proclamation put conditions for transferring the lease holding rights.

2.2.4.2. Urban Land Clearances with respect to tenure security

Clearing urban land should have to follow its procedural steps to protect the private property. Our land lease proclamation No.721/2011 has puts the main causes for clearing the urban land. The main causes listed by this proclamation under article 25 that the government may take back the land from the land holders are following termination of lease hold. The main grounds put under this proclamation are;

1. The lessee has failed to use the land for the prescribed purpose within the period of time stated in the lease contract.
2. 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.
3. Expropriation of land for ‘public purposes’. Are the grounds for the government to take back the land.⁴⁹

⁴⁷ See Article 7 of the Urban Lands Lease Holding Proclamation, Proclamation No. 721/2011, *FederalNegaritGazeta*, and Year 18, No. 4.

⁴⁸ Id., article 24.

⁴⁹ Id., article 25(1)

2.2.4.3. Terminations of leaseholding because of breach of contract.

Regarding the first one, if the landholder has not used the land as per the lease agreement it amounts to breach of contracts and creates the causes for termination of such lease agreement. Under article 21 of the 721/2011 lease proclamation it shows us that the land holder should only use the land for the intended purpose in the time limited with in the agreements. But if such persons want to change or convert the use of such land a lessee may apply to the appropriate body to convert the use of the land.⁵⁰ Then the appropriate body may authorize the proposed land use where it ascertain that it is in conformity with the land use plan of the urban center. From this article what we may see is that the person who want to change the use of such land should first get permissions from the appropriate body if such land is inconfirm with the urban plan center and the appropriate body may also allow such change only if such change is in conformity with plan of the urban center. Failure to comply with these land use rules results in termination of land use rights. So as per article 26(3) of the new lease proclamation if the lessee breaches his contract of lease the appropriate body will clear the land leasehold, prior to the expiry of the lease period.

But the proclamation also puts the exception for time extension when the land has not been used for the intended purposes due to force majeure by stating that, notwithstanding the provision of sub-article (1) (a) of this Article, where it is ascertained that the land has not been used for the intended purpose as a result of force majeure as provided for under the civil code, the appropriate body may authorize time extension to compensate time lost due to the force majeure situation.⁵¹ This provision shows us that if the land holder fails to use the land for the intended purpose as a result of unforeseeable problem the appropriate body may give him the time extension by determining whether there was a force majeure or not as per the article 1792 and the following. Thus the only ground for the lessee to save his contract of lease from termination in this regard is by ascertaining the fact that the land has not been used for the intended purpose as a result of force majeure. Otherwise no time extension will be granted and the contract of lease will be terminated. Even at the time of entertaining force majeure the proclamation gives much discretion to the administrative body which may affect the rights of the individual. If the lessee has dissatisfied with the decisions of administrative body regarding his claim for the time extension he has the right to take his case before the ordinary courts since there is no provisions which prohibit the person from taking his

⁵⁰ Id., article 21(2)

⁵¹ Id., article 25(2)

grievances to the ordinary courts which can enhance tenure security for the holder since he has the chance to challenge.

2.2.4.4. Expiry of lease period or non-renewal of lease period

The other means of terminations of urban land lease right is expiry of the lease period or non-renewal of lease period. Article 25(1/c) of proclamation no 721/2011 states that “the leasehold of urban land shall be terminated where the lease period is not renewed in accordance with sub-article (1) of Article 19 of this Proclamation”. The period of lease shall be renewed only if the lessee applies in writing to the appropriate body within 10 to 2 years before the expiry of the period of lease.⁵² So if the lessee holder doesn't apply for the renewal of period of lease within the specified time according to the required form before the expiry of lease period the appropriate body has terminate the lease contract. It also provided that when the lease contract is not renewed according to article 19 of the lease proclamation the lease holder is not entitled to compensation for the property attached on the land. The appropriate body may take over the land together with the property thereon without any payment where the lessee has failed to remove the property within the period of time set forth in sub article (5) of this Article, and may order the police where it finds it necessary for the enforcement of the takeover.

But this can affect the rights of the individuals and the economy of the country. Because as we know the building cannot be detachable from the land without demolishing and this can harm the individual since he demolish his property without any compensation from the appropriate body. At times, such undesired lease arrangements may also discourage real estate development and result in lower quality buildings as the owners of buildings have no guarantee that they/their children will continue to be owners of the building they erect after expiry of the lease period.⁵³

More over this act also harms the economy of one's country since the persons feels that, there contracts may be terminated without any compensation at the expiry of the lease period they hesitate to invest on such lands. This is tenure insecurity.

⁵²Id., article 19(2)

⁵³Legesse Tigabu ,The Ethiopian Urban Land Lease Holding Law: “Tenure Security and Property Rights,”*Jimma University Journal of Law* Vol. 6 (2014),p-106

2.2.4.5. Expropriations or clearance order

The other means of terminations of urban land use right are by the means of expropriations or clearance order. Expropriation is an inherent right of the state and may be exercised at any time and against any landholder⁵⁴. However; two requirements should be satisfied before the government expropriates land use rights: the land should be required for a public purpose and commensurate compensation should be paid. These grounds of terminations are different from the other since it is terminated by the state without holder's consent and faults with commensurate compensations. This act is also allowed under the 1995 of the FDRE constitutions by stating that without prejudice to the right to private property, the government may expropriate private property for public purposes subject to payment in advance of compensation commensurate to the value of the property.⁵⁵ Thus the State may "expropriate rural or urban landholdings for public purpose where it believes that it should be used for a better development project to be carried out by public entities, private investors, 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"⁵⁶

So at this time even though expropriation or clearance order is allowed, the constitutions and other laws put the limitations in what conditions it can be under taken. But the problem is what activities are considered as public purpose since there are no clear cut activities which are listed in our laws. When we see the definitions given for the public interest by the urban land lease proclamation No.721/2011 under article 2(7) it define 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. Whereas Proclamation no.455/2005 on the other hand use the term 'public purpose' and it defines 'public purpose' as "the use of land defined as such by the decision of the appropriate body in conformity with urban structure plan or development plan in order to ensure the interest of the peoples to acquire direct or indirect benefits from the use of the land and to consolidate sustainable socio-economic development".⁵⁷ According to this definition, any possible direct or indirect benefit to the public may justify expropriation/clearing order. So from this two definitions what we

⁵⁴Legesse Tigabu, Equal and Effective Protection for Ethiopian Urban Indigents:" Constitutionality of the Existing Urban Land Tenure System and Access to Land" Vol. 3 No. 2 (2011) p-52

⁵⁵Cited above at note 1, article 40(8).

⁵⁶See article 3 (1) of the Expropriation of Land Holdings for Public Purpose and Payment of Compensation Proclamation, Proclamation No.455/2005.Federal *Negarit Gazeta*. Year 11, No.43

⁵⁷Id., article 2(5)

may understand is that, public interest are seen as the land use as per the plan of the city that is meant for public purpose. It is also provided under article 26(3) of the new lease proclamation which states that “no land leasehold may be cleared, prior to the expiry of the lease period, unless the lessee has breached the contract of lease, the use of the land is not compatible with the urban plan or the land is required for development activity to be undertaken by government.” According to this article the land which was acquired by means of lease can also be expropriated if it is required for development activities. But there is no any criteria which was written regarding how the appropriate bodies are judged whether such activities are used for the public purpose or not. The proclamations are gives such powers only for the administrative body to decide it. This can also affects the rights of the individual if the administrative body doesn’t use the power given to them properly. the absence, vagueness, or open-endedness of the definition of “public purpose” provided under the pertinent laws, what constitutes a “public purpose” is decided by local administrative officials, who are political appointees lacking the necessary legal and technical knowhow, often politically biased, and even corrupt.⁵⁸

2.2.5. Experience of two European countries on ground lease and lesson drawn for Ethiopia

I. Finland

When we see the experience of some European countries such as Finland regarding the expiry of the lease period it’s good. Because the lease hold act of Finland contains provisions that make the cancellation of leasehold agreements difficult.⁵⁹ A lessor has the right to refuse to renew land lease contract only if a lessee fails to pay rent, neglects land maintenance; uses the property in a manner contrary to the contractual agreements; or does not develop the land within the specified period. If a lessee fails to fulfill this condition, the municipality may cancel the land contract and lease it to another party. These lease conditions encourage timely land development and prevent land speculation.⁶⁰ If the municipality has to terminate leasehold agreements due to compelling public interests, it can either negotiate with the lessee for a transfer of land rights or use compulsory

⁵⁸ Solomon Fikre Lemma 2015, “The Challenges of Land Law Reform, Smallholder Agricultural Productivity and Poverty in Ethiopia” <http://webcat.warwick.ac.uk/record=b2812673~S1pdf>>p164

⁵⁹ The Development Corporation Amsterdam, The use of public ground lease in European cities.

⁶⁰ Ibid

purchase. However, compulsory purchase is extremely rare in Finland.⁶¹ The lessee has the right to cancel the contract if the possibility of using the leased area has diminished. When a lease expires, leases for housing are renewable if lessor does not need the land for other public purposes. For industrial lots, land contracts are not automatically renewable whereas all other lots are automatically renewable.⁶² In Finland, the law and special lease agreements govern the compensation for lease hold improvements provided renewal is refused for justified reasons.⁶³ Since land improvements belong to lessee, if the contract is not renewed, the lessor will compensate the lessee for improvements made to the land. For industrial leases, compensation will be available only if the contracting parties have specified this right in the lease.⁶⁴ If there is no special agreement in advance, the lessee must demolish existing buildings and structures from the site when the lease expires.⁶⁵ As the experience of other countries show, the policy to be effective and fruitful, the interests of both the lessee and the lessor should be secured.⁶⁶

II. The public ground lease system in Amsterdam

In Amsterdam the land remains the property of the municipality, but the lessee gets the right to hold and use the land. In return for the right to use the land the lessee pays a ground rent to the municipality.⁶⁷

Reasons for the use of public ground leasing in Amsterdam

To generate income and to put such income for project of municipality: to prevent the risk of unwanted development by planning and zoning. Regarding laws as far as they complied with the mandatory laws the lessee and lessor has free to negotiate on terms and conditions of ground lease.

The step that followed in the process of grant ground leases are; first the resolution should be pass by the council then deed of granting has to be registered in the public Records to fully exercise the right

Regarding Period, disposal and termination of a ground lease in Amsterdam; In Amsterdam a long-term leasing system exists with. The ground lease rights are difficult to terminate. If the lessee wants to terminate the lease, he can do so at the end of an

⁶¹Ibid

⁶²Ibid

⁶³Ibid

⁶⁴Ibid

⁶⁵Ibid

⁶⁶Ibid

⁶⁷Ibid

administrative period of lease by not accepting the new conditions of the lease.⁶⁸ In that case the municipality is obliged to pay him the value of the buildings erected on that land. If the municipality wants to end the ground lease, a council resolution is required. The council must prove that the termination of the contract is in public interest. If this is the case, the municipality can terminate the ground lease right and will pay compensation for all losses, including consequential losses of the lessee.⁶⁹

Fixation of the ground price in Amsterdam

For community and social amenities, public housing schemes or other non-commercial designations, a lower standard price is used.

Ground rent

At the end of every administrative period of lease, the ground rent is revised. It is possible that the City Council has adopted new General Conditions by then. In the case that the municipality and the lessee do not agree on the new ground rent, independent experts will be called to determine the ground rent. Each party selects one expert and these two jointly choose a third one. These three persons will then determine the new ground rent that has to be paid by the lessee for the next administrative period.

Lessons drawn for Ethiopia

As we see from the practices of the above two European cities Ground leasehold system is a much known tenure arrangement in those countries. Most cities leased land within their control to collect revenue to run the city. Ethiopia is also used ground rent to collect revenue to run the cities. But since the ground leasing system is a recent phenomenon in Ethiopia there are many things which the Ethiopian may learn from the practices of the above European cities especially from Amsterdam land ground leasing and others system. Example; in Ethiopia at the time when the lease periods are terminated, the period of lease may be renewed up on its expiry on the basis of the prevailing benchmark lease price and other requirements provided, however that the lessee may not be entitled to compensation where the lease period could not be renewed. From these what we may understand is that renewal is not a principle, rather it depends on the good will of the administrators. When we see the practice of the Amsterdam the only reason for not renewing ground lease is when the location is needed for the interest of the public purposes. In Amsterdam even when such location is needed for the public purpose, first it should be decided by the resolutions of the council

⁶⁸Ibid

⁶⁹Ibid

which means without resolution of the council no one can be expropriate the lessee. In Amsterdam since the period of ground rent is for the indefinite period of time what they done is only adjustment regarding the ground rent. The only way they terminate the lease is only for the reasons of public purposes. But in Ethiopia even the reason why they refuse to terminate is not put on the legislations clearly. Such power is totally given to the administrative body which may affect the lessee's right. The other problem in Ethiopia at the time of terminations of lease is, if the administrative body refuses to renew it the lessee is not entitled to compensation for the property he has from such lands and for the development he made. Whereas, in Amsterdam and Finland at the end of every administrative period of lease the ground rent is revised. At the end of the period the city council has adopted new general conditions which are based on market value of the land. Even at the time of revisions of ground lease the lease has the right to refuse on the new revised ground lease if he thinks that the revised ground rent is not fair. At this time the independent experts which selected by the lessee and lessors determine the ground rent. But in our country even if the renewal is accepted by the administrative body there is no any mechanism to solve if the disagreement arises between municipal and the lessee on the amounts of revised ground rent. So it's good for Ethiopia to arrange such procedures if the lessee and lessor do not agree on the calculations of ground rent.

Generally the lessons that recommended for Ethiopia from the above two European countries are;

- First it's good for Ethiopia if the purpose for not renewal is clearly put in their legislations as that of Amsterdam and Finland.
- It's also advisable to pay compensations for the property and for the development made by lessee if they decided not to renew.
- There should also mechanisms to solve if there is any dis-agreements arise between municipalities and the lessee on the amounts of ground lease if the application for renewal is accepted.
- It's also good if there is an arrangement or adjustment for ground lease after the contract of lease as that of many European countries.

The other gaps of the 721/2011 of the lease proclamations are the power given to the administrative body was not stated on what they depend to refuse or to renew the lease period. So since this proclamation give the wide discretionary power to the administrative body to renew or not to renew it may create abuse of power. Even if the land is needed for public use after expiry of the lease period, there is no compensation to be paid. This would mean that there is no issue at all to be brought before ordinary courts. Thus, there is a room for tenure insecurity.

CHAPTER THREE

3. TENURE SECURITY OF OLD POSSESSION AND ITS CHALLENGES UNDER URBAN LAND LEASEHOLDING PROCLAMATION NO 721/2011

3:0 Introductions

Ethiopian government adopted a new urban land lease holding proclamation No 721/2011 and by this proclamation it eliminates all forms of tenure other than lease. In addition this proclamation requires the conversion of old possession to leasehold tenure in future time up on the decisions of the concerned organ after the detail study is conducted.

3.1 Definitions of old possessions and its types

The definitions of old possessions are given under proclamations NO 721/2011 and regulations of Oromia urban land lease holding No 182/2016. Accordingly, old possession as per Art 2(18) of the Proclamation refers to "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." From this definition, it is easy to conclude that old possessions refer to all landholdings outside of the lease system. It follows that old possession refers to the following forms of urban landholdings. First, it refers to holdings that are given before the enactment of the new lease law if the urban center was not a lease town. Secondly, in the case of lease towns, old possession refers to landholdings that were given prior to the introduction of the lease system. Thirdly, it refers to the holdings that were given through the permit system in lease towns in which both, the lease system and the permit system were operating in parallel. Fourthly; old possession refers to a holding that is granted as a substitute of an old possession if such possession is expropriated for public purpose.⁷⁰

⁷⁰ Cited above at note 3

3.2. Challenges of old possessions and its tenure security under the lease holding proclamations No 721/2011.

3.2.1. Modality of converting old possession to the lease holding system

Urban land lease holding proclamation No 721/2011 doesn't give the tenure security for the old possessions in many respects. When we start from the modality of the conversions of old possessions to the lease holding tenure system which stated under article 6 of the proclamations and article 10 of the Oromia urban land regulation states how old possessions could be converted to the lease holding system. Regarding conversion of urban land to the lease holding tenure system proclamation No 721/2011 under article 6(1) stated that the modality of converting old possessions into lease hold shall be determined by the Council of Ministers on the basis of a detailed study to be submitted by the Ministry; provided however, that the process of such study may not preclude a revision of the existing rental rate applicable to old possessions.⁷¹ That means the holder of the old possession have no confidence regarding his possession since they don't know what the council of ministers may decide regarding their possessions and they feel insecure about their possessions. In other means the holder of old possessions may hesitate to invest on their own possessions since they don't know what kinds of decisions may pass on their holding.

3.2.2. Expropriations

Other challenges to the old possessors are expropriation. First of all when we start from the definitions given to the expropriation, it is a forced taking of land by the government for public purpose activities against payment of fair amount of compensation.⁷² It has a constitutional base. Our constitutions of FDRE under article 40(8) states that a government can expropriate the private property up on payment of commensurate compensation in advance. So it is a means of land acquisition for the public purpose up on commensurate compensation by the government. The requirements or principles for expropriations are; it should be for the Public purpose (use), fair compensations based on the valuation method of

⁷¹ Cited above at note 1

⁷² Daniel Woldegbriel Ambaye (2012). "Land Rights in Ethiopia: Ownership, equity, and liberty in land userights", *FIG Working Week 2012, available at* <http://www.fig.net/pub/fig2012/papers/ts02d/TS02D_ambaye_5521.pdf>p20

expropriation proclamation (Proclamation No. 455/2005), only by the competent authority that it should be undertaken.⁷³

3.2.3 Legal Challenges to Tenure Security of Old Possessions the following are major insecurity problems that the Urban Land Law poses to the Old Possession.

3.2.3.1. Expropriation without sufficient Compensation

Expropriations are put as an exception against the right of private property based on commensurate compensation. Even though the expropriations are under taken based on the payment of compensation the tenure security of such persons are affected in our country since the regulation has not given value for the location of the properties and owners are being compensated only for the replacement cost of building as shown under regulation No135/2007. But the value of location should be included in the determination of the compensation to say just compensation. “The Ethiopian context, the core issue is whether the law should only allow compensation for the corporeal elements of the house that is demolished upon expropriation such as walls and roofs, or for the wider right that includes incorporeal land use rights.”⁷⁴ So to protect tenure security in a good manner we should have also put into account the location values and incorporeal land use rights. Property rights of urban house owners go beyond claims over the roofs and walls, but should also extend to the economic value of their rights to use the land.⁷⁵ So to protect tenure security we should have to accommodate equity and efficiency to bring schemes of win-win situations. Especially non lease holders are more affected in tenure security when we compare with that of the lease holders.

3.2.3.2. Unlimited Power of the Government to Clear Old Possession

Because proclamation No 455/2005 and 721/2011 discriminately treats lease holding and non-lease holding (old possessors) in case of expropriation of land for public purpose. We can understand this from proclamation No 455/2005 article 3(2) and from urban land lease holding proclamation No721/2011 article 26(3) respectively. The government has almost unlimited power to expropriate the non-lease holding under the guise of public purpose since the proclamation gives it broad power to expropriate old possessions easily. Whereas

⁷³ See Article 3(1) Expropriation of Land Holdings for Public Purpose and Payment of Compensation Proclamation. (2005). Proclamation No.455/2005. *Negarit Gazeta*. Year 11, No.43

⁷⁴Elias N. Stebek“Role Conflict between Land Allocation and Municipal Functions in Addis Ababa”*MIZAN LAW REVIEW*Vol. 7 No.2,p-245

⁷⁵*Id.*,at 250

regarding the lease holder the proclamation at least tries to limit the power of the government by putting the activities for which the government may expropriate the property. Let us see what the proclamation states on the land clearance for public purposes and compare whether the lease holding or non-lease holding is more secure.

Proclamation no 721/2011 under article 26 states as follows;-

1/ 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.

2/ A person displaced due to an action taken pursuant to sub-article (1) of this Article shall be provided with a substitute plot of land within the urban center the size of which shall be determined by the region or the city administration.

3/ Notwithstanding the provisions of sub-article (1) of this Article, no land leasehold may be cleared, prior to the expiry of the lease period, unless the lessee has breached the contract of lease, the use of the land is not compatible with the urban plan or the land is required for development activity to be undertaken by government.

Whereas proclamation No 455/2005 under article 3 also stated as follows;-

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

2/ Notwithstanding the provisions of Sub-Article (1) of this Article, no land lease holding may be expropriated unless the lessee has failed to honor the obligations he assumed under the Lease Proclamation and Regulations or the land is required for development works to be undertaken by government.

From the above provisions what we can understand is that most likely article 26(1) of urban land lease holding proclamation No 721/2011 and article 3(1) of Expropriation of Landholdings for Public Purposes proclamation 455/2005 are effective on the non-lease holding when we compare with that of lease holding. Because under both proclamations lease

holding is more secure regarding expropriation since both proclamations state clearly how it could be expropriated when compare with that of non-lease holding. Regarding to the non-lease holding the definitions given for the public purpose is too broad and it's up to the decisions of the appropriate body. For the leased land to be cleared there should be a breach of contract, change of urban plan, for the development of activity undertaken by the government and expiry period of leases are the major criteria to expropriate private property.⁷⁶ That means the government give protection to the lease holder at the time of expropriation and list clearly for what purpose the expropriation can be undertaken. Whereas there is no such protection's to the non-lease holder. So the non-lease holders are easily expropriated by the government for the different private investors.

3.2.3.3. Size of Substitute Plot

The other challenges to the old possessors under the lease proclamation are the size of the substituted land and the location at where such substituted land is given to the expropriated person. Regarding the substituted land proclamation No 721/2011 under article 26(2) state that a person evicted from his land is provided with a substituted plot of land with in urban center the size determined by the region.⁷⁷ That means even though the possessors can get the substitute plot of land it may not be equivalent with the size of his previous possessions since the size of the substituted land is determined by the region which can affect the tenure security of the land holder.

3.2.3.4. Expiry period of lease

On another account, the conversion of old possessions to leasehold entails eviction/expropriation without compensation which is a serious setback to tenure security. We can understand this from lease holding proclamation 721/2011 article 19 which states that, the period of lease may be renewed upon its expiry on the basis of the prevailing bench mark lease price and other requirements; provided, however, that the lessee may not be entitled to compensation where the lease period could not be renewed.⁷⁸ As mentioned above under the proclamation, the property rights for indefinite duration that one has over a land will be limited by time as a result of the conversion. According to the Lease Proclamation, the right holder is not entitled to any compensation other than removing his properties attached to the land at the expiry of the lease period. The fact that renewal of a

⁷⁶ Cited above at note 1, article 25

⁷⁷ Id, article 26(2)

⁷⁸ Id, art 19(1)

lease after the expiry of the lease period is not a right recognized by the Proclamation exacerbates the situation. Had the holder been able to keep on holding the land according to the permit system, s/he would not have been forced to surrender the land any time as s/he would have had an indefinite right. But the main problem is not limiting the time; the main problem is giving discretion for the government to renew or not to renew at the time of expires period of lease and demolishing the properties without any compensation when the concerned body refuses to renew the contract of lease agreement. Because of the conversion, however, s/he is losing property right over that particular land without commensurate compensation for the damage s/he sustained due to the taking of the land by government. This action of the government affects the tenure security of the land holders especially when the time of contract is going to be expired. Because the holders of the land do not know whether their holding may renew or not renew by the lessor. So they hesitate to invest anything on such holding especially when the time of the contract is near to be lapse since they understand that their holding is expropriated without any compensation on the will of the lessors.

The expropriation of property without payment of compensation during the lapse of contract also decreases the value of the properties of the owner based on the time left to end the contract. Because the buyer of such property may also things that he may be expropriated from such properties in the short period of time without any compensation. This is even direct expropriation of property rights without compensation and in contravention to the procedural safeguards provided by the Constitution, Proclamation and subsidiary laws and entails serious negative impact on tenure security.

3.2.3.5. Change of urban plan

The other challenges to the tenure security of old possession is issues of change of plan. Because we understand that from article 8(12) and following of regulation No 182/2011 of Oromia urban land lease holding. These article states that if the service of old possessions is changed from the service it was giving before due to the recent plan, now the title deeds is given by the service it is giving at the time of taking the title deeds. But title deeds given should show that the possessors should not undertake the new building. Without prejudice to art 8(12) if the possessors have a capacity to undertake construction according to the recent plan, he has the right to undertake it. But if he has no capacity to undertake construction as per the plan given to him he can surrender such possession without any compensation and he may get the substitution if he wants. These can also affect the tenure security of the old

possessors because the government prohibits the possessors not to undertake the construction on his possession because of the recent plan made by the governments. These provision also affect the possessors by making not to get compensation for the property he have from such possession if he wants to get substitutions of land by his willing to undertake the construction depending on his financial capacity. That means the government didn't pay him compensation for the property situated on such holding.

Under the same provision it states that without prejudice to article 8(10) if the government wants to undertake the implementations of urban plan, they can expropriate such possessions by paying compensation for the property situated on the land and give the substituted land for the possessors. From this what we may understand is that what the government is doing is only protecting the interest of him without giving any considerations for the holder of the possessions. That means if the urban administration have a plan to implement the urban plan in the long future they don't care about the possessors of old possessions unless the possessors of old possessions surrender such possessions by him since he has no options.

Regarding this issue I was done interview with urban administrations and they told me that, at the urban center where the previous urban plan was changed to other urban plan there is mainly a conflict to transfer it. Because mainly the holders wants to transfer his holding which was residential by the plan of the previous and now changed to the greenery due to change of urban plan. At this time since the urban administration has no capacity to pay them compensation and change their holding what the urban administration do is to make them stay on such holding and incapacitating them not to undertake any additional constructions on such holding since it may add value on urban administrations on future at the time of expropriation. Even if urban administrations allow them to transfer such holding the buyer should abide to the rules (he/she cannot undertake any additional constructions on such holding).⁷⁹ In other means this can affect the tenure security of the holder by different means. Because no one wants to buy such holding and even if one could buy such holding it may not buy at the market value.

⁷⁹ An interview with Ato Shemseddin Deddefo, Asella urban land development and management head, on Tihisas 15,2011

3.2.3.6. Urban Land Holding Registration

Land is a basic natural resource through which all human activity entirely depends on. In a country like Ethiopia where capital is quite scarce and the only viable resource is land; and due to historical, political and social rationales, the political economy is predicated on land, building and implementing an ample registration system, where interests in land are determined is quite timely and imperative.⁸⁰ Land that is registered is easier in transferring the attached property to third person and in making business for the possessors. It can also be important source of revenue to the Municipality. Once facts are recorded and individuals are given titles or documents, lands will be transferable as per the law allow, with fewer obstacles and helping the phase of development. This is possible with the system set up to issue documents quickly and efficiently. On the other hand, more people get access to credit as they could produce the documents they need for collateral. Land developers also will benefit from an efficient land registration, because it reduces their transaction cost. Taking this importance of registrations into mind the, other problems which affect the tenure security of old possession are lack of effective registrations of the property.

Registration" means the process by which a landholding right, restriction and responsibility is registered in the legal cadastre register.⁸¹. So it is a process of collecting information about whom and where of the land thereby defining every legal interest in land.

It tries to govern the legal relation between the individual (owner/holder) and the parcel of land under question. Hence, land registration as a substance and also as a procedure, tries to register all real rights recognized under the substantive property law. Registration has a main role in protecting the tenure security. Because if the rights of the land holding are effectively registered in the legal cadastre register it brings a guaranteed ownership and secured land tenure since the compilations of land information in cadastre should provide formal identification and used legal proof of ownership. It also helps to provide security and monitor land market. Hernando De Soto nicely puts, "Any asset whose economic and social aspects are not fixed in a formal property system is extremely hard to move in the markets and he also demonstrated that the major stumbling block that keeps the Third World, as clearly

⁸⁰Dawit Ameneshewa, Systematic Landholding Adjudication under the New Urban Land Holding Registration Proclamation No. 818/2014: Concepts, Process and Effects; Commentary

⁸¹ See article 2(18) urban land holding registration Proclamation, Proclamation No. 818/2014, Federal Negarit Gazet, year 20, No .25

opposed to the West, from benefiting from capitalism is its inability to produce capital.⁸² The reason for this inability is the failure to set an effective cadaster and land registration or formal representation.⁸³”That means if landholding rights and other restrictions are not register it is hard for the property to be transferable in the markets and to produce income. So from the mystery of capital what we may understand is that if we formalize our property we can easily transfer and produce capital for ourselves and for the country, we can get easily the information since the property formalized has title deeds. So when we analyze old possession regarding property registration there is a lot of problem especially regarding old possessions which has no title deeds. Because a property which is not registered is not only in effective in terms of income it brings to the possessors it’s also one of the sources for the conflict. Because when we compare old possession to the lease holding it is the old possessions which are the sources of the conflict mainly this comes from the problems of registrations. The other problems which may come because of lack of effective cadastres are expansions of informal settlement. This can also affect the tenure security and affect the urban developments. If we can also have an effective cadastre we can easily implement the plan of urban. Hence, security of land tenure is important to encourage investment in land improvements as well as the development of efficient land use through efficient and equitable land markets. Efficient functioning of land markets requires efficient and updated land registration systems which clearly indicate legal ownership of land. However, possessions in Ethiopia, like most cities in developing countries suffer from land market distortions caused by poor land development and management policies including poor planning, slow provision of infrastructure and services, poor land information systems. Distortions in the land market often lead to land speculation. If the land registration system develops in such a way that it clarifies all rights clearly, it minimizes disputes and enables the government to use the land in its maximum economic use.

Generally the tenure securities of one country are depends on the formalizations of the property to generate capital easily and to use such holding effectively and efficiently.

⁸² Hernando De Soto, *The Mystery of Capital; WHY CAPITALISM TRUIMPH IN THE WEST AND FAILS EVERYWHERE ELSE*,

⁸³ Id

CHAPTER FOUR

4. Conclusion and Recommendations

4.0. Conclusion

This paper investigates the tenure insecurity of the lease holders as a general and the problem of old possessors that they face under the lease holding proclamation No 721/2011 with respect to the tenure security at the time of conversion to the lease holding system and before converting to the lease holding. Within in this study the main problem identified as a problem of tenure insecurities as a general and specially for the holders of old possessions are the following;-

First;- conversions of old possession to the lease holding affects the tenure security of old possessors since lease holding is time bounded in its nature. That means the conversions make the life time entitlement into time bounded entitlement and expropriate without any compensation at the time of expiry of the lease period if the administrative body refuses not to renew the contract which affects the tenure security of the possessors.

Second; - the other problem identified is the issue of expropriations. Under the constitutions of Ethiopia expropriations are allowed with restrictions for the reason of public purpose with commensurate compensations. Based on this policy of constitutions the proclamation gives the definitions for the public purpose. But the problem is both proclamation of urban land lease holding and expropriation proclamation tries to secure lease holding at the time of expropriation by making effective only for the activities undertaken by the government. Permit holders are easily expropriated since proclamation 455/2005 under article 3(1) and urban land lease holding proclamation No.721/2011 denies tenure security to permit holding by defining public purpose broadly while enhancing the tenure security of lease holding by defining the public interest narrowly only to government work which is considered as public interest. So it doesn't give the same securities for the old possessors by making the old possessors to be expropriated easily under the guise of public purpose by the concerned organ which affects the tenure securities of old possessors. From this article one may see that the proclamation makes clear discrimination between lease holding and permit holding.

Third; - Power given for the administrative bodies are too broad and mainly uncontestable by the proclamation which affects the tenure security and against the definitions given for the tenure security. Even the power given to the administrative body is different for permit holding and for the lease holding at the time of exercising their power. Because the power given for administrative body on permit holding is too broad and the permit holders have no

means to contest the power of the administrative body if the administrative body believe that the action they took is for development purpose. Whereas the lease holders have the right to contest the actions of the administrative body if they believe that the decisions of the administrative body for clearance order is not for the government work only. That means the permit holders has no cause to defend their right whereas the leaseholders may use government work as the cause to defend their right before administrative tribunals even though both of them has no right to bring their contests before the ordinary court regarding the cause of actions for expropriations.

Fourth; - Change of urban plan frequently can also affect the tenure security of the possessors as a general and particularly old possessors. Because old possessors are affected if the plan of their holding is changed since they should adhere to the plan proposed or they should be surrender their holding to the administrative body without compensations and get the substitution of land which meets with his previous plan otherwise if he do not agree with the above options the fate of the old possessors is waiting until the urban administrations undertake the implementations of urban plan. So the problem is if the holders of old possessions have no capital to undertake as per the new urban plan he surrenders his possession without compensation if the government didn't want to implement such urban plan.

The other tenure insecurity of the permit holders are regarding compensation for the replacement cost of the building and the size of the plot given for such expropriations. The urban land lease holding proclamation No.721/2011 and expropriation proclamation No. 455/2005 doesn't assure the same right for the permit holding and lease holding regarding the size of the plot and location to be compensated. For the lease holding the size of the plot that compensated is equal to the plot of the previous possessions whereas the size of plot of land for the permitted land holding is based on the decisions of the administrative body. So in comparison lease holders are guaranteed both plot size and location than permit holders.

Generally when we see the tenure security of the urban land as a general and old possessions as a particular with the definitions of tenure security it doesn't fit with the definitions given for it. Because tenure security derives from right of access to land, known sets of rules which should be objective, equally applicable, contestable and independent including the perceptions that the people have regarding their holding. But the problem is the lease holding proclamation doesn't give the same right for the permit holding even though lease holding has also its own tenure insecurity.

4.1. Recommendation

By considering the above discussions and finding the writer suggests the following recommendations:-

1. At the time of converting even if the old possessions are converted to the time bounded to make a uniform law for all citizens there should be secured by giving them a guarantee that their possessions are more secured. Because what the governments do should be secure the holder by making more secured the holder rather than making them less secured. This can be done by enacting laws which secure them. That means the old possessions are more secured if the concerned organ enact laws which give them that they are secured even if they are limited by time bounded by giving them that it is time bounded only for the administrative purpose and good if the laws clearly puts the renewal as of right. So the writer recommends that its good if the law makes renewal as of right for the holder at the time of expiry period and if such possessions needs for the public purpose it should be expropriated with a fair compensations for the property situated on such possessions as stated under the FDRE constitutions.
2. One of the ways of securing tenure security is existence of effective legal protections against arbitrary eviction by law and laws which equally applicable for all. So to secure according to the definitions the laws should protect old possessions not to be expropriated easily as that of the lease holding possessions even until they can be converted to the lease holding.
3. The other recommendation is the government should put in its laws clearly the power given to administrative body by limiting their power and also should make such power to be challenged and contestable before the independent institutions and elaborate the terms which restricted the rights of the ownership to over control the abuse of power undertaken by the administrative bodies.
4. The other recommendations of the writer are regarding change of urban plan the government should put in its laws clearly the power given to administrative body by limiting their power and also should make such power to be challenged and contestable before the independent institutions. The decision given at the time of expropriation should accommodate or balance the equity and efficiency principle.

Formalizing the property by having effective land registration institutions are some of the recommendations for the problems.

Generally the writer recommends that to strength tenure security of the possessors the government should adhere to the definitions given for the tenure security. Because at the time of enacting laws if the concerned body make effective laws which protect the possessors from arbitrary eviction at the same time it makes the possessors to have confidence in his holding and solve the problem of tenure insecurity.

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Questionnaires

PART 1. Informant background

1. Sex: Male Female Age: 20-30 31-40 41-60 More than 60
2. Marital status: Married Unmarried Divorced Widowed
3. Educational qualification: Less than or equal to 12 Diploma Degree Master
PhD

Part.2

1. Does the current land tenure affect the tenure security of the old possessions?
 - A) YES
 - B) NO
2. If yes how can it affect the tenure security of old possession?
3. Which land tenure system seems good for you?
 - A) Permit
 - B) lease holding

Why _____

4. From permit system and lease holding system which would you think more protect the tenure security of the holder regarding
 - A) Expropriation
 - B) Transaction
 - C) Duration