

Urban Land Lease Policy of Ethiopia

Case study on Addis Ababa and Lease towns of the Amhara National Regional state

Belachew Yirsaw, Ethiopia

SUMMARY

Achieving efficient land use, encouraging investors and investment and realizing the cost of urban land and make an efficient use of it are some of the major national and regional goals in Ethiopia. To achieve these goals, the government of Ethiopia has accepted urban land lease policy as the alternative land tenure system so as to provide a room for individuals and investors to land to use land use rights through transferring from the state to land users.

Once individuals or investors acquire these land use rights they acquire tenure. So that they can either sell or use it to the maximum economic benefit. 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, the lease towns of 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 and slow land transaction procedures. Distortions in the land market often lead to land speculation. If the land registration system develops in such way that it clarifies lease rights, it minimizes disputes and enables the government to use the land in its maximum economic use.

Opinions collected from residents, investors and financial institutions in Addis Ababa and the lease towns of the Amhara national regional state is used to assess the major problems related to the implementation of the policy in an efficient utilization of urban land in encouraging investment and the appropriate use of the money generated from lease. We found out that from the view of investors, tenure security is more important than the mode of ownership. Hence, tenure security is important for investment attraction and expansion. Institutional constraints, legal gaps and proper land and mortgage registration systems should be given due attention so as to get the desired objectives of the lease policy.

Keywords: Urban land lease, lease rights, security of land tenure, efficient land use,

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Chapter I: Introduction

The transition of many former socialist countries from a command to a market oriented economy has brought radical changes in previous policies. One of the sectors, which have undergone a radical transformation, is the issue of urban land. Land is a key natural resource that requires proper consideration in urban development. The misuse of land does not only waste a scarce resource but also affects other sectors of development. The proper utilization of land requires the recording of rights over land and conditions of use and facilitating the smooth transfer, on a market principle or otherwise, to other users. The issue of land everywhere in the world is economically, politically and socially the most sensitive and significant aspect of human beings. Since long, land has been the major source of controversies, disputes or conflicts among individuals, groups, societies, and countries. This implies that land ownership is extremely a basic state of affairs for individuals, societies and governments. In this regard, the need to tenure reform for former communist countries is in no way an issue that is left aside. Almost every development is based on secured ownership of land. Those countries that have well registered and secured land title witnessed, other things being equal, a good level of economic development. Hence many former socialist countries would have been taking radical policy changes to use land and land related resources for enhancing economic development. As studies show several city administrators would have been using incomes being collected from land and land related developments for covering expenses being used for infrastructure and other urban development activities.

In the process of market oriented land development mainly two different approaches are being followed. The first one, which is used in Russia, Poland, and some other countries allow private ownership of urban and rural land. While the second one, which is mainly used by China, is the one that gives the "use and benefit rights" to the user but the government retains ownership.

Ethiopia one of the former socialist countries in the horn of east Africa had taken so many policy measures following the fall of the socialist government. One of the policy measures that would have been taken by the present government of Ethiopia is urban land lease holding system, which is one form of land tenure that enables the government to transfer land use rights and benefits from the state to private individuals. According to the Federal Government's urban land lease holding proclamation No. 80, 1993, all urban land is public property and transfer will only be carried out through the lease system.¹

¹ *Urban land lease holding proclamation No, 80 / 1993, Art,5-7*

Despite the policy measure did not enabled the people to have secured land access, the government of Ethiopia had been taking urban land lease system as one of the policy measures aiming to enhance the transfer of land use rights, value the urban land and to encourage investment and the provision of social services to the residents.

Hence, this paper tried to evaluate how the Ethiopian urban land lease policy functions and works in line with efficiency and equitable distribution of land in particular and the economic development in general. Furthermore, the paper tried to see the experience of other countries so as to get important lessons for the present urban land lease policy of Ethiopia.

1.1 Research problem statement

Due to the unbalanced urban growth, unskilled man power, lack of private sector involvement and financial constraints, it would be very difficult to tackle the urban problems such as inadequate of housing, poor infrastructure, unemployment growth, low investment, etc both in Addis Ababa, the capital city of the country and the lease towns of the Amhara national Regional state. However, it is necessary to come across on each problem and conducting researches to assist the implementers to look at different options based on other countries experience. Certain basic problems have been observed regarding the application of land lease policy, which would discourage investments on land and housing development. it could be described as follows.

- One of the tasks of the land administration agency of Addis Ababa city government is providing serviced land in efficient way for housing development. The agency could not realize the tasks due to weak coordination with sectoral authorities, high demand for cost of development and insignificant role of the private sector involvement on land development. For these reasons satisfying the demand for serviced land would be impossible. What has been observed in un-serviced land was either the homes builders have not interest to go to new the sites or even if they wish to build their houses, the houses might be vacant for long time.

- The reasons for the escalation of land price would be the growth of land speculation. The price of land has grown unexpectedly high and underutilized land has been spread all over the city. Though the local government did not confirm the figure, it is expected that more than 50% of land occupied by individuals are either vacant for the last couple of years or underutilized. The occupiers have claimed that the increase of the cost of building materials, inaccessibility of getting bank loan due to bureaucratic procedures, and the policy itself have contributed for the halt of their investment. Some of the reasons seem right but it may be possible to conclude that they may speculate or in other word they might wait for the increase of land value.

In this respect, different measures have been taken to reduce speculation but the efforts that

have been made were not ended successfully² .

1.2 The Research objectives

Since 1991, Ethiopia has been following the free market economy. Following the free market philosophy, the present government of Ethiopia had taken so many policy measures related to land. Among the policy measures, urban land lease policy was one and undertaken concerning urban land management issue in relation to a market oriented land allocation policy. There fore, this paper has the following general and specific objectives:

- General objectives:
 - To find out why the land lease policy does not work and to elaborate a proposal that make it work.
- Specific Objectives: This paper has the following specific objectives
 - To evaluate the urban land lease policy in line with its effect on economic development and financial contribution for infrastructure development and on investment expansion.
 - To evaluate the practice of the policy and bottlenecks that affects the implementation of the policy.
 - The Ethiopian urban land lease policy (represented by the lease towns of the Amhara national regional state and Addis Ababa the capital city of the country) would have been evaluated as compared to some experienced countries and
 - To forward recommendations that would be useful for concerned parties.
 -

1.3 The Research questions

In the socialist government of Ethiopia, both urban and rural land was nationally owned and investment decisions were made without land market. As the result, large tracts of urban land were allocated for free to individuals, private and public sector enterprises. Where as in the present government land is publicly owned and a new urban land lease policy has been designed since 1993 in line with a market-oriented economy. The question is therefore to what extent the policy addressed the following issues and what has the Ethiopian urban land lease policy lacked as compared to some other countries.

1. Did the policy in its past practice contribute in efficient land use and investment expansion and economic development?
2. Did the policy enhance the financial capacities of the cities for the provision of services and infrastructures of the cities?
3. What are the main bottlenecks that affect the implementation of the policy?

². *The Addis Ababa city government Urban Land Leasehold regulation 29/2002 has set the conditions of the performance of advance payment. The intention of the advance payment was to ensure the financial capacity of applicants in order to offer land holding certificate. It has stated that the price shall be 10 up to 20% of the total price depending to the types of development activities.*

4. What has the policy lacked and should be improved as compared to some experienced countries?

1.4 Research Methodology

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

1.5 Relevance of the research

The land lease policy should be helpful to improve housing and land supply to be more responsive to demand. The existing urban land development and management practices need to be improved to use land as a resource for social and economical development programs. The intention of the research is to link the policy with the provision of serviced land for housing and to make suggestions how to reduce the trends of speculation through property taxation. Providing different options based on other countries experience would be the aim of this research.

The finding from this research would provoke further studies in the area of land policy especially identifying the obstacles that have occurred during the implementation process. So it is essential to critically and comprehensively review the existing pitfalls of the policy and directing towards the requirements of the free market economy within the framework of the constitution of the public ownership of urban land. In general the research has intended to review where the real problem for improving the delivery of serviced urban land has encountered and set out clear recommendations on how the priority objective of the policy will be achieved. The result and findings will be helpful for the responsible bodies of the city to apply the urban land lease policy properly.

1.6 Scope and Limitations of the Research

The Ethiopian urban land lease policy which would be represented by Addis Ababa the capital city of the country and the leased towns of the Amhara national regional state, the second largest region of the country would have been covered by this study. Hence, the policy's contribution on infrastructure development and investment expansion in particular and the economic development in general, the practice and the bottle necks that affect the implementation of the policy would have been covered by this paper.

Concerning the design and implementation of a market oriented land policy in the country's **urban** centers, the government of Ethiopia enacted its first proclamation in 1993, where it made clear that public ownership was to be continued and transactions

could only take place in the form of a lease hold system. Hence, one of the limitations of this thesis was that analyses of the possible impacts of the policy on economic development and financial contribution had not been carried out separately and clearly.

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

Table1: Actors and number of samples taken for the study

Actors	Sample
House Owners: owners of residential dwelling houses with an income from the lowest to the highest	50
New house builders: people in the waiting list for access to land (from the lowest to the highest income)	50
Old investors: with a capital of 10,000 birr and above.	20
New investors: with a capital of 10,000 and above.	25
Financial Institutions	
▪ Private banks	
Dashen bank	1Dep.head
Abyssinia bank	1Dep.head
Awash bank	1Dep.head
Government banks	
Mortgage Bank	3 Dep.heads
Commercial bank	3 Dep,heads
Agriculture and industrial development bank	3 Dep,heads
Municipalities of ANRS Lease towns and lease office of Addis Ababa	5
Others: people who are living in lease towns of ANRS and Addis Ababa, such as small scale traders	20

Note: Old investors are those who have already invested in the cities before the policy. The target group for this study is selected from those who are engaged in private and

public investment activities and from those who are affected in one or the other way by the policy.

Chapter II: Assessment of the current land holding systems of Ethiopia (since 1991)

Immediately after the downfall of the socialist government of Ethiopia, no body was certain what course the new government would take regarding land tenure. The transitional government itself had declared that the issue of private versus public ownership would be settled in the process of developing the new federal constitution. When the new federal constitution came out, the issue was settled in favor of public ownership of land. Then, like the Dreg/ socialist oriented government/ the present government maintained the state ownership of land.

The 1995 Ethiopian constitution draws a broad framework for land policy in the country and enshrines the concept of public land ownership and the inalienability of landholdings. The Ethiopian constitution asserts state ownership of land; there are no private property rights in land. Article 40 sub article 3 (which is about property right) states:

“The right to own rural and urban land, as well as of all natural resources belongs only to the state and the people of Ethiopia. Land is an inalienable common property of the nations, Nationalities and peoples of Ethiopia and shall not be subject to sale or to other means of transfer.”³ It can be argued that at least up to now; there are no fundamental difference between the legal framework of the Dreg and the present government of Ethiopia on rural land issues. Moreover, if those policy changes made by the Dreg following its mixed economy version are taken into consideration, there is more continuity than change. Not only officially stated policies but also what has been taking place on the ground is also more important. In practical aspects as well, there are more similarities in land administration between the two regimes than differences.⁴

Despite the fact that there are no fundamental difference between the legal frame works of the two governments on rural land issues, the present government that took power in 1991, following the fall of the socialist government – while committed to a free market philosophy has made important changes on policies of urban land lease holding system. It is believed that lease has been in place as a cardinal land holding system to transfer urban land to appropriate users to the extent possible in accordance with master plan. It is believed that transferring urban land by lease for a fair price, consistent with the principles of free market, will help the expansion of investment and urban land development in particular and overall economic and social development in general. It has been found necessary, arising from these circumstances, that lease has been issued as the exclusive urban land- holding system. Despite the government retains the “ownership right” the

³ *Proclamation No. 1/1995, p.98*

⁴ *Yigremew Adal, 2002, pp. 22-23.*

right to possess, use, benefit from, and dispose of lands, a transaction can take place in a form of lease hold with the lessee having the “right to use” and “benefit from” .As Federal government’s urban land lease holding proclamation No. 80/1993, all urban land is public property and transfer will only be carried out through the lease system.

2.1 Urban land policies

Governments around the world pursue urban land policy objectives and they rely on a vast range of policy tools and institutions to achieve them. Many cities use master plans, zoning, subdivision regulations, building codes, and other public policies to shape development. These regulations are normally adopted to help protect the urban and natural environment, gear infrastructure investments with development, and maintain and enhance property values. Other objectives are more difficult to achieve: providing the poor with access to land, controlling land speculation, and land inflation. In the minds of many policy makers achieving these goals requires stronger medicine: nationalization of land, public land development, and highly centralized property registration systems to control and monitor land ownership.”⁵

“... Since many government interventions are inefficient and lead to sub – optimal distributions of land resources, some policy experts argue that the best way to “manage” land use and development patterns are to rely on market forces. On the other hand, without planning and regulations, land markets are likely to generate enormous external costs and fail to produce public spaces. In fact, without government intervention critical public facilities such as parks, open spaces, and major infrastructure and urban services, which the private sector cannot profitably produce and sell, will not be provided. Thus the solution to ineffective and counter productive urban land policies is not to do away with governments interventions and policy initiatives, but to find the proper balance between the public and private sector regarding urban land development and management.”⁶

In countries of free market economics, private property is recognized and protected by the state as a natural means of accomplishing individual, familial and societal aims. However, the role of the state in providing essential services for society and the growing environmental and other social concerns, have influenced the concept of private urban land ownership by subordinating all or some land to the needs of the Nation and of the common welfare. Even in countries where private land ownership constitutes a basic element of the society’s values, such as the USA and Switzerland; a more focus towards the communal aspect of land ownership has been recently observed. On the other land, in countries where the private ownership of land was restricted and the communal concept was the only criterion in the use and allocation of land (countries of the command economy), a transition is being made towards privatization where individual ownership of land through lease hold or free hold is allowed. Other non socialist developing countries such as Nigeria, India, etc, which nationalized urban land for the benefit of the community

⁵ Clarke, G. and Dowall, David.E. 1991, p.1.

⁶ *Ibid*, p. 6

in the belief that public control and allocation of land will be both more efficient and more equitable than leaving it to market forces or to traditional authorities, have proved the failure of the public sector to accomplish this task efficiently and equitably.⁷

A national approach to land allocation was and is still seen as an important aspect of nation building. This is not the view every where, however; extreme inefficiencies (as in India), corruption and partially (as in Nigeria), over-centralization (as in Ghana) have affected the management of public lands by land administration agencies so that the wheel has in effect come full circle, and the argument now is that land is more efficiently and equitably allocated by the market⁸

The above argument shows that in the case of private ownership of land, the private market has proved to be adequate for the effective demand but inadequate for the need of the society at large. On the other hand, the public ownership has also been unable to satisfy the communal and individual demand.

What we can learn from all this is that concerning land ownership and allocation, the most efficient system may be neither the government monopoly, which foster corruption, bureaucracy, lack of transparency and probity, etc, nor the market, which brings negative externalities and inequity.

Thus, the solution to ineffective and counterproductive urban land is not to do away government interventions and policy initiatives but to find the proper balance, or division of labor, between the public and the private sector regarding urban land development.⁹

The major aim of this paper is not to deal extensively with the issues of most efficient system of land ownership but to deal with the performance of the present urban land policy of Ethiopia. The Federal government of Ethiopia enacted laws and regulations on issues of urban land tenure. Article 8 of the Economic policy of the Transitional period of Ethiopia is devoted to urban land and house construction policy .Sub-article 1 to 4 of the same article define the role of the government with respect to urban land and houses. Urban land remains under the control of the government and shall be distributed for those who want to construct houses. As resources permit government agencies are to construct low cost houses for rent or sale to consumers. The government was given the role of issuing directives governing the relationship between owners and renters to direct and control the benefit of both parties. Governmental construction institutions are to be restructured with a view to ensure their profitability and operation in a free market economy competing with private construction enterprises.

Table 2: Summary of housing developments: 1976 – 1988 (amount in Ethiopian birr)

⁷ Favacque, C.and McAuslan 1991, p.27

⁸ Ibid, p.28

⁹ Dowall and Clarke 1991, p. 1.

No	Source of Investment	House		Expenditure		Average unit cost
		No	%	Number	%	
1	Government	4,029	7.9	69,475	10.0	17,200
2	Organizations	498	1.0	2,998.6	0.4	6,000
3	Individuals (own source)	4,482	8.7	28,987.6	4.2	6,000
4	UDAS	12,631	24.6	48,328	6.9	12,281
5	AARH	9,609	18.7	304,806	43.8	37,840
6	HSB	15,698	30.6	205,398	29.5	13,084
7	Foreign Sources	4,332	8.3	36,317	5.2	8,383
Total		51,279	100	696310.2	100	13,580

Source: Tarekegn Assefa, "Housing efforts and pending problems." Birritu, No. 46, Published every two months by the Banking and Insurance sector, October 1989

N.B * No 1 – 3 include information for the period 1976 – 81 only.

N.B * No 1-3 include information for the period 1976-81 only.

** Birr 19.3 million granted through Agent Bank (C.B.E) not included.

Sub –article 8.2 of the policy points out the need to expand and strengthen the participation of private investors in the areas of urban development, housing and construction sector. It under lines that the private sector needs to play a major role with respect to the above; the policy provides provisions in sub-articles 1 to 5 of the same article. Anyone who wants to construct houses for residential or other purposes shall obtain land in accordance with government directives, and shall be given security of ownership and have the right to sale, rent, and bequeath etc the house. The policy provides that upon payment of the necessary compensation the government may take urban land given privately if the land is needed for public or government purposes.

An urban administration, can expropriate rural or urban land holdings for public purpose where it believes that it should be used for a better development project to be carried out by public entities, private investors or other organs with payment of compensation”¹⁰ Capital, individual or collective, in the construction of houses; and it encourages and supports the construction of cooperative houses and it encourages and supports the construction of cooperative houses provision is made for the sale of nationalized houses by the government and payment of compensation to previous owners on the basis of a study to be carried out. Both national and foreign investors are allowed to participate in any construction activity; priority being given to the former. Investors are encouraged to establish construction enterprises either individually or collectively.

2.2 The lease policy and its characteristics

In spite of the fact that there are an infinite number of tenure arrangements in every country, however, when dealing with the legal policy issue (whether land is considered to

¹⁰ . Proclamation No.455/2005, Art.3

be a public and or private property), the two most common ways of owning and using urban land are “lease hold” and “free hold.”

Oxford student’s dictionary (1988), defines lease as a written agreement by which the owner of land or a building (the lessor) agrees to let to another (the lessee) to have the use of it for a fixed rent payment and period of time. Simpson (1978) on the other hand defines lease as follows:

A lease may be defined as a contract granting the exclusive right to possession of land for a fixed or determinable period\ shorter in duration than the interest of the person making the grant. The interest created by the grant is formally called a term of years “but is more usually referred to as a” lease” or a “lease hold interest.” The grantor is called the “lessor” or “land lord” and the grantee the “lessee” or “tenant”. All leases are necessarily derived directly or indirectly from the free hold. Thus A, the free holder, may grant a lease to B for any period of years he thinks fit. B may then grant a lease to C for any period ending before the expiration of his own term. B’s lease is then known as the “head lease,” and C’s an “under lease” or “sublease.”¹¹

Farvacque and McAuslan define free hold tenure as the absolute ownership of the land¹². A freehold is of indefinite duration and is inheritable. Leasehold tenure, in contrast, involves a landlord and in most cases the tenure is of fixed duration. The main difference between the two is that the leaseholder is governed by the laws of the land and the terms of the lease lay down by the landlord while the freeholder is only bound to the laws of the land and nothing else. Leasehold made of land tenure is not new to Ethiopia; however, it was part of a variety of land holding types prior to 1974. It became part the over-riding urban land holding system through proc.No.80/1993.The National lease hold policy of urban land was enacted to address the inequalities brought about the nationalization of urban land and extra houses (pro. No47/1975) brought land under public ownership; however, the real benefit occurred only to those who had access to it. This law did increase the accessibility of land to low income people, but its inability to express land value in monetary terms decreased the distribution of benefits to those who can not get access to land for different reasons.¹³ Therefore, the main objective of the urban land lease holding policy (proclamation No.80/1993) was to provide monetary value for the utilization of urban land. In this respect the leasehold policy of land is one step a head of the previous policies on land. Proclamation No 80/1993 enabled the government to transfer urban land administration from permit system to leasehold system. According to this proclamation;

- **Ownership:** All urban land is public property and transfer will only be carried out through the lease system;
- **New land allocation:** All new land allocation to Ethiopians or foreigner, as of the date the proclamation entered into force (1993) is to be made under the lease

¹¹ Farvacque, C. and McAuslan 1996, pp.38-39.

¹² Farvacque and McAuslan 1991, p. 46.

¹³ Wub consult 2004, p.82.

system with a minimum duration of 50 years (for commercial activities) and a maximum of 99 years (for residential purposes).

- **Previous possession:** All urban land held before the proclamation is divided into two.

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.

Table 3: Duration of lease holding in Addis Ababa by purpose and level of urban centers

Type of Activity	Grade				
	1	2	3	4	5
Dwelling private	99	99	99	99	99
Letting	-	99	80	70	60
Industry	95	90	80	70	60
Education, science, Technology, cultures etc.	99	99	99	99	90
Others	90	80	70	60	50

Source: Pro.No.80/1993, article 7 sub-article a-e pp 94-95.

The Maximum duration of lease holding of 99 years is given for private residential houses of all levels of urban centers. The policy gives the right to determine the rate of rent of the lease to the national/ regional self –governments. Factors such as the level of urban centers, zoning of the urban center and the purpose for which the land is requested to be considered in the determination of the lease rate. The rate is to be low for land used for social services and low cost houses. Provision is made to grant urban land free of lease payment and without public tendering for investment that the government encourages and social services, which directly benefit the public.

The main features of the leasehold policy (proc No. 80, 1993) as it relates to urban development include its scope of application, property rights related to transfer, mortgaging, compensation, and associated duties, ways of acquiring new development land, manner of fixing rates and modalities of lease fee payment, and duration of lease period. Proc.No 80/1993 was amended in 2002 as the previous lease hold policy of land proved ineffective. The comparison of the two proclamations is shown in the table 4 below.

Table 4: Comparison of developments in Federal urban land leasehold policy

Criteria	Pro, No/1993	Pro. No 272/ 2002
Lease rate and provisions for housing	-Minimum rate of rent to set -Actual rate to be determined by public tender only -For low cost housing lowest rate -For higher cost-similar to other Uses	-Rate of lease to be determined by city administrations or Regional governments. -No minimum lease rate -Regional or city government can permit land up to nil lease payment
Land allocation	-Public tendering only	-Public tendering (minimum rate to be set) -Negotiation (minimum rate to be set) -For housing –to be regulated by city or regional governments.
Launching of construction	-Period to be regulated by city regional governments	-Period to be regulated by city or regional governments
Grace period for development completion	Not specified	-Period to be regulated by city or regional governments
Size of holding	Not regulated	Not regulated
Scope of application of the policy	-All new developments -Existing possession upon transfer of title in ways other than inheritance	-All urban land under the rent System and leasehold system. -for lands not in the leasehold System period of transfer to leasehold to be decided by city or regional governments.
Title transfers and income from land held through lease	-Lessee can transfer right; -can mortgage the holding ,or collect income for up to the lease rent only	-Lessee can transfer right for the period the lease is valid -can mortgage the holding -income from transfer of rights has no maximum
Lease period	-Based on level of urban center and type of use class -Period fixed for each level of urban center from 50-99 years.	-Category of towns limited to Addis Ababa level and others only -Use classes for A.A level from 50-99 years, others from 70-99 years.

Source: Federal proclamations No.80/1993 & Pro.No.272/2002

2.2.1 Advantages of a lease system

The present government of Ethiopia accepted urban land leaseholds in its new urban land policy to exploit the following advantages of the lease system:¹⁴

- **To achieve efficient land use planning:**

In order to plan and control land development, it is recommendable to do it from a position of ultimate owner rather than from a position of statutory regulator. In countries

¹⁴ Federal proclamations No.80/1993

where land is privately owned, to get all the owners agreed to develop the land has proved to be time consuming.

Contracts of leaseholder ship enable a municipality to control land uses more actively than is permitted by building and planning legislative measures. Problems involving land assembly are more flexibly solved under leaseholds than free holds. It becomes easier to carry out major readjustment when land is held under lease. The most frequent subject of controversy, expectations of future values, is then largely eliminated¹⁵

- **Encourage investors and investment:** Another advantage of the lease system for investors is that when the price of land is to be paid in a form of a lease rent, the initial investment will be small and it gives the investor additional capital to invest on construction. However, if the individual has to buy land, he will have to pay the whole price and after the purchase, he will have less or nothing for the project.
- **Possibility of reclaiming:** The other advantage of this system, which is constantly mentioned by the municipality, is the possibility it gives to reclaim land from leaseholders when it is required for other purposes. In the leasehold system, it is certainly less expensive and easier to take land back than when it is in private ownership.
- **Appropriation of future land price increases by the public and distributing it to society:** One of the advantages of retaining land in public ownership is to have the increase in land values accrue to the community at large and make it easier to allocate land to other uses at some time in the future. When a municipality grants the use of land under a leasehold system, it reserves the right to claim substantial proportion of future increments in the capital value of land at the end or in the middle of the contract.

To exploit these and other potentials, the federal government of Ethiopia issued the lease holding proclamation, which entered into force as of December 1993.

Despite the government issued the lease holding proclamation to meet these advantages it has also disadvantages. The most debated disadvantages of the system will be presented in the last chapter.

2.2.2 Objectives of the lease policy

In addition to the above-mentioned broad advantages of the lease system, the federal and regional governments of the country also traced some other specific objectives. The major five are:

- Give the market value to land: one of the basic goals of the new urban land policy is to turn land from a timeless and costless commodity into land with both cost and time limit. With this approach:

¹⁵ *Darin-Drabkin; H 1977, p. 317*

- a. The government will be able to generate the required revenue;
 - b. Land users will realize the cost of urban land and make an efficient use of it;
 - c. Land prices will give a clear signal that leads to efficient land use and allow the land recycling of prime lands for most profitable uses.
- Control the undesired expansion of the city: The main cause of the uncontrollable horizontal expansion of the city is the fast increasing urban population growth. By using urban land efficiency, and attaching a value to it, it is aimed to address this and other problems.
 - Provide housing and infrastructure: At present, there are serious shortages of houses and provision of water and other facilities in almost all big towns of the country.
 - Do away with speculation and the non-transparent system (corruption) of plot allocation: By charging the extra profit made in the case of undeveloped land transaction, and designing a proper institutional set up for the disposal of land (using mainly auction system), it is aimed to discourage those land speculators and government officials of the past who benefited from public sector land allocation.
- With the aim of achieving these and other objectives, the government has enacted the lease proclamation and regional states have published regulations in line with the federal government proclamation for the implementation of the policy.

2.3 Components of Ethiopian urban land lease policy

To enhance over all economic and social development in general and urban development in particular, the present government of Ethiopia had taken the measure of urban land lease policy to transfer urban land to different urban land users with a fair price consistent with the principle of free market. Urban land lease holding proclamation No. 80 /1993 was issued to transfer the previous permit system to lease hold system. Some of the major reasons for the new urban land lease policy are given in the preamble of the proclamation. These are

1. To provide for the utilization of urban land to satisfy the needs of the various sections of the population.
2. To address the problems associated with a high rate of urban population growth which resulted in the expansion of urban centers;
3. To address the inadequacy of the financial capacity of urban centers to finance the building of infrastructure and the provision of social services to urban dwellers;
4. The need to implement the free market principles of the government by creating conditions where by the right to use urban land can have market value;
5. The need to control loopholes, corruption and appropriation of unjustified gains realized during the transfer of the right to use urban land whose value has appreciated;
6. The need to lay down a frame work with in which Ethiopian investors can participate in

the economic development of urban centers in accordance with the economic policy of the country.

With a view to achieving the above objectives, the Ethiopian urban land lease policy was issued containing the following components.

2.3.1 Land ownership and Administration system

For many years controversies involved in land ownership have remained among the most contentious social political and economic issues in developed, developing and transitional economics.¹⁶ Land ownership is debatable not only because of its economic issue but also because of its possession of important ideological and political meanings. From an economic point of view, there have been prolonged disputes over the distribution of wealth generated from increases in land values. In most situations a land value increment is a product of both public and private investments. For instance, the value of a privately owned property does not depend solely on its owner's investments in land but also on the government investments in public infrastructure and social services.

When we see land ownership from ideological and political point of view, it plays an important role for liberty and democracy in liberal western countries. For example, according to Thomas Jefferson quoted by YU-Hung Hong and Steven C. Bourassa describes the importance of land ownership for liberty and democracy, as "private land ownership is the corner stone of the political and social institutions that ensure liberty and democracy."¹⁷ At the other end of the ideological spectrum, many people in some former socialist countries still believe that governments should not sell or lease public interest in land to private entities for profitable under takings. This action, they believe, would deprive citizens of their equal entitlement to land and it will threaten the programs of the socialist state to build an equal society.

The ideology is so incompatible with the beliefs of private property rights that land is owned and used by private individuals. In order to minimize the economic and political conflicts that arise from land reforms; public officials in many former socialist countries have been practicing public leasehold system. They hope that leasing public land may lessen the tension between the communist's desire to uphold public land ownership and the reformists' demand for increasing private property rights. In practice, public leasehold does not appear to be a compromise, what matters is how lease conditions are constructed.

The government ownership of urban land and extra – houses proclamation No 47/1995 which was issued by the previous socialist government of Ethiopia did not provide for the value of land utilization to be expressed in terms of money. In addition to that because of non-transparent application of the permit system of land holding, it was difficult to control discriminatory treatment of applicants and corruption. The present government of

¹⁶ Steven C. Bourassa and YU-Hung Hong 2003, P. 4

¹⁷ *Ibid*, p.4

Ethiopia, in order to create the conditions that the right to use urban land can have market value and there by implement the free market principles in line with the economic policy of the government, issued new urban land policy.

The Ethiopian constitution asserts state ownership of land; there are no private property rights in land. According to the federal government's urban land lease holding proc. No 80/1993, all urban land is public property and transfer will only be carried out through the lease system

As far as land administration in Ethiopia is concerned, despite the central government has decentralized administration of land to the regional governments, the formulation of broad land policy still rests with the federal government of Ethiopia. The current Ethiopian land administration programmes are not harmoniously coordinated between national and regional levels. Federal government proclamations provide some land rights guarantees and some requirements for regional councils, but there is no land policy and administration unit that might serve as a coordinating body at the national level of government for policy discussion and coordination of land administration. Land administration requires clear legal frame works, updated data, and a well – integrated institutional network. One of the critical legal frame works is the presence of a clear land policy that provides guidance on land rights, reliable information system, and requirements of land use planning as a development tool, administrative mechanisms related to land development, allocation and administration. Land policies and the general legal framework should have clear, socially responsive provisions for land ownership, rights over land and tenure security. In Ethiopia, there is no separate land administration and land registry unit which is responsible for land administration and registering all essential juridical information allowing any one viewing the system to identify third party right as well as the name of the land users.

Due to the absence of separate land record unit that have been serving as registers of ownership and other land rights, it is highly difficult to get certain user rights and knowledge of all the rights that exist in the land. “Title registration is itself a proof of ownership and its correctness is usually guaranteed and insured by the state”¹⁸

2.3.2 Land Market

A market is a set of arrangements in which buyers and sellers are brought together through the price mechanism. In market exchange goods and services are sold and purchased on free will with no longer-term social obligation in the transaction. The purchaser is assumed to know what he/she wants and to have the capacity to choose from a given set of goods and services. The seller competes with other sellers to provide the best for a given price. The seller and the purchaser may enter in to agreement willingly, but it is for their agenda – to secure customer – ship on the part of the seller and to get the best service or

¹⁸ Gerhard Larsson 2000, p.18

good on the part of the purchaser. A land market in private landowner ship system operates in this way.¹⁹

One difficulty facing many developing and former socialist countries is the absence of a real land market. The reasons may be unclear delimitation of individual and group rights, insecure ownership and so on. The necessity for a functioning land market will become increasingly apparent the more the society is transformed in to a market economy. It makes it easier to bring about appropriate land uses, and will facilitate the establishment of efficient and consistent land policies. A smoothly functioning land market opens the way not only for private development but also for public land acquisition and other means of ensuring that land is available for dwellings and other urban needs. However in the former socialist countries, the government and central planning authorities were the only determinant and decision making organs of activities related to land and its distribution.

Hence, there were not a smoothly functioning land market that leads to private development and a means of land transfer for different urban needs. Off course, it does not mean that there was land market but it was not legal. It was functioning through black market. Due to bureaucratic chain, corruption and other non-transparent activities; it was not functioning smoothly in the principle of free market.

Similar to other former socialist countries, in the socialist government of Ethiopia, there was no smoothly working legal land market. The present government of Ethiopia, in order to make conducive environment for land market and to make it easier to bring about appropriate land uses, has issued and practicing lease hold system.

The new urban land policy was issued consistent with the principle of free market to promote private investment to facilitate credit activities to create efficient land and landed property market, and to enhance the financial capacity of municipalities for constructing infrastructure and provision of social services.

Despite the new urban land lease policy was issued to meet the aforementioned and other unstated objectives, in practice so many things has left that needs strong effort in order to be fulfilled a head of time. For example, absence of mechanism for searching titles, and over all lack of title information inhibits lenders from issuing mortgages. There is no title insurance. Absence of appropriate title registration legislation results in difficulty to introduce new measures that support a market system for land.

2.3.3. Transfer of Land use rights

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. As pro, No 80/ 1993 ,where the right to hold land on lease is mortgaged the building on the land and its auxiliary facilitates shall, unless otherwise decided, also be mortgaged; like wise, where the building and its auxiliary facilitates are mortgaged, the right to hold the land on lease

¹⁹ Wub consult 2004, p.39.

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. Since this hinders private investment expansion, it was improved in the amended lease policy proc. No 272/2002. According to the amended proclamation, the lessee can transfer his lease right for the period the lease is valid and he can collect income from transfer of lease right without maximum limit.

In Ethiopia, there are two types of methods for transferring of land use rights. These are²⁰

A. Lease

Based on the urban land lease holding proclamation No 80/1993, article 1, 3 and 12, **lease sale** and **lease grant** are the two methods of lease transfer. All urban lands except those previously used for the construction of residential houses are governed by these lease transfer methods.

Lease Sale

Lease sale is one of the two urban land transferring methods that are used to transfer urban land with in a certain determined period of time from the lessor (Government) to the lessee. It is the system that enabled the lessee who has acquired the right to hold urban land on lease of use the developments and profits from investment on land, sublease or full transfer to third party.²¹

Lease grant

The government may grant freely or with out public tendering urban land which is to be utilized for investment that the government encourages or social services establishments or for other purposes which directly benefit the public. Hence, provision is made to grant urban land free of lease payment and without public tendering which directly benefit the public.²²

B. Permit

It is the method that is used to administer and transfer land use rights which is applicable to all urban land held before the issuance of the new urban land lease policy. Urban lands held before the issuance of the new urban land lease proclamation No 80/1993 and utilized for private dwellings, private dwellings transferred through inheritance and private dwellings rented to others because of leaving the city due to various reasons such as work, education, medication etc are not administered under the lease hold system. According to this provision, each and every possessor, who possessed urban land law fully prior to the coming in to force of this proclamation is forced to pay annual ground rent depending up on the level of urban centers, zoning of the urban center, level of area and type of services.

²⁰ Addis Ababa city Administration 2005, p.10.

²¹ Addis Ababa city Administration 2001, p.11.

²² . Ibid P. 12

The buildings constructed on the land and facilities accessory there to the land, the right stipulated in the lease contract can be transferred. But the land can not be sold and pledged as the collateral. However, when the possessor transfers the building and facilities accessory to it, it is the right of the possessor to determine the type of possession either lease or rent. If the possessor wants to develop adjust land together with its possession with in one possession map, the whole possession will be administered under the lease system. Since there is no time limit in permanent possession, when it is decided that all permanent possession with adjust land is leased, there is no clear indication when the lease period starts.

2.3.4 Land Sales Modalities

Despite it is clearly indicated in the constitution of the Federal democratic republic of Ethiopia that land is public property, the government of Ethiopia designed land sales modalities to transfer land user rights from state to private developers and users. In order to implement the land transferring methods (lease sale and lease grant), urban administrators and municipalities have been using two land sales modalities. These are:

i. Auction

It is a type of leasehold permit through setting minimum price for the urban land to be permitted. Any person, to whom lease-hold of urban land is permitted through auction, shall be entitled to obtain lease-hold title deed after he has signed a contract of lease with the body permitted the land or the appropriate body

Land auctions create the opportunity to establish and learn market values of land parcels, thus providing crucial information for buyers and sellers. “Land auctions remove the shroud of secrecy surrounding many land allocation decisions and place such decisions in an open and transparent form, eliminating to a substantial degree the possibility of improper considerations.”²³ However, the applied method of the bid-principle to determine the price in Ethiopia is inadequate in administrative and economic aspects; it rather obstructs the process. This policy not only delays the contractual land leases process, but also disproportionately privileges the highest bidder. In Ethiopian context, not only need the investments of the highest bidders but also depend on the investment of a possibly large number of investors.

ii. without auction

It is one of the two land sales modalities that are used to transfer land use rights to those investors who demand urban land for their investment activities with out public tendering. Despite the minimum price for the urban land to be permitted with out auction is taken from the price of auction which has been accepted by the board of lease, the government provides incentives from discount to free of lease payment according to the type and use of investment. But, it creates loopholes for corruption, privileges to relatives and friends.

2.3.5 Duration of the lease period and renewal of contracts

²³ *Proclamation No.272/2002, article 3 &7*

For some investors, the duration of the lease period might be a critical issue. The period of lease shall vary depending on the level of urban development and sector of development activity or type of service. The following table compares the duration of lease arrangements between Addis Ababa and other big regions.

Table.5: Duration of the lease arrangements between Addis Ababa and other big cities.

Type of activity	Maximum lease period in years				
	Addis Ababa	Amhara	Oromia	Tigray	S.N.N.
Dwelling private	99	99	99	99	99
Dwelling letting	60	70	70	70	70
Education, health, culture,	90	99	95	99	99
Industry	60	70	70	70	70
Other	50	60	60	60	60

Source: Negarite Gazeta, Re-Enactment of urban land lease holding proc. No. 272/2002

As shown in the table above the lease terms range from 50 years to 99 years. The differences among regions in each type of activity are minimal. The renewal of contract should also be taken in account, in connection with the lease duration. This issue is legal granted as follows:

A reply (of renewal) shall be given in writing its decision with in one year from the date of the submission of the application. If no reply is given with in the specified time, the contract is considered as renewed”²⁴

By this formulation the lessee is legally entitled to renew his contract at the end of the lease period, if there is no public demand for the land. However, where the lease period is not renewed up on termination on account of the land being wanted for public interest, compensation shall not be paid to the lease – hold possessor²⁵

2.3.6. Compensation for compulsory purchase

“Compensation implies a full and complete equivalent, usually monetary, for the loss sustained by the owner whose land has been taken or damaged. It is the value of the land taken and the damage, if any to the land taken. It must reflect justice to both the acquiring authority and the claimant.”²⁶ Financial equivalent to loss compensation is paid as a lump sum in order to leave the aggrieved person as well off but no better than he or she would be with out the change in their expectations. Compensation there fore, represents another way of explaining the basic measure of damages for the breach of contract and tort. In such a case compensation is “that sum of money which will put the party who has been injured or what he has suffered in the same position as he would have been if he had not sustained the wrong for which he is now getting his compensation. This type of compensation for compulsory purchase might typically reflect the price, which the

²⁴ Proclamation No.272/2002, article 7 (3)

²⁵ Proclamation No.272/2002 Article, 2-7

²⁶ Cletus E. Ndjovu 2000 p.19.

claimant could have expected to obtain for the property on a sale in the open market together with other consequential losses.

In Ethiopia, a landholder whose holding has been expropriated shall be entitled to payment of compensation for his property situated on the land and for permanent improvements he made to such land shall be equal to the value of capital and labor expended to the land.²⁷ According to this regulation, the cost of removal transportation and erection shall be paid as compensation for a property that could be relocated and continue its service as before. But, location, distance and other factors that determine demand for land were not taken in to consideration for compensation determination.

The legal foundations of compulsory purchase

“If no public intervention and coercive collective power is used in the acquiring property for the “gainers” and compensating losses for the “losers” it would be legally difficult and economically almost impracticable to transact.”²⁸ Forcing someone to surrender land against his wish is of course a powerful incursion on the individual right of ownership. Accordingly there have to be very good reasons for building up legislation sanctioning this kind of coercion.²⁹ In market oriented European and other western countries; one fundamental legal prerequisite is that compulsory acquisition may only be prompted by purposes which are in the public interest.

A fundamental legal rule concerning compulsory purchase is to be found in the European convention for the protection of Human Rights and Fundamental Freedoms.³⁰

Article 1. Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by general principles of international law. On the basis of this rule one of Sweden’s constitutional Acts, the instrument of Government, contains the following provision on the terms of compulsory purchase.³¹

Section 18: The property of every citizen is protected in such a way that no-one may be compelled, by means of compulsory purchase or any other such disposition, to surrender his property to the public administration or to any private person, or to tolerate restriction by the public administration of the use of land or buildings, other than whom necessary to satisfy urgent public interests.

Any person who is compelled to surrender property by means of compulsory purchase or other such disposition shall be guaranteed compensation for his loss. Such compensation shall also be guaranteed to any person who use of land or buildings is restricted by the public administration in such away that on going land use in the affected part of the property is substantially impaired or injury results which is significant in relation to the

²⁷ *Proclamation No 455/2005, article, 7*

²⁸ *Cletus E Ndjovu 2003, p. 18.*

²⁹ *Thomas Kalbro 2001, p.9*

³⁰ *Protocol March 20th 1952. Article, 1*

³¹ *Swedish constitutional Acts, chap. 2 sec. 18*

value of that part of the property concerned. Compensation shall be determined according to principles laid down in law. The Swedish constitution expressly provides that compulsory purchase may take place for the benefit both of “the public administration” and “private persons”³²

Many developing countries suffer from badly outdated expropriation legislation, which makes expropriation so costly and time-consuming that it is, for many purposes, almost useless. With out reasonable efficient expropriation procedures, most of the tenure reforms that have been held in developing countries were impractical. Even when most public acquisitions are in fact negotiated, an effective expropriation law is necessary as a “back-up” possibility to prevent owners from demanding excessive prices³³ “Adequate compensation” also poses questions when expropriation is to be applied on a large scale. The elimination of small business, for example, may involve greater losses than simply the value of physical assets. For the poor increasing the journey to work as a result of displacement can be a critical matter and should be included in the compensation process. Dividing compensation between lessees and lessors also poses difficult issues of equity. Once again; these are all matters, which have been dealt with effectively in the codes of various countries. The problem is that most developing countries do not have the trained personnel and library facilities to seek out the legislation most appropriate to their own needs.

The legal foundation of compulsory purchase in Ethiopia is found in the constitution of the Federal Democratic republic of Ethiopia. “With out 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.”³⁴ Similarly the government issued Expropriation of land holdings for public Purposes and payment of compensation proclamation No. 455/2005, for the land to be expropriated when ever needed for development works to be under taken by the government subject to payment in advance of compensation. In Ethiopian constitution and proclamation No. 455/2005, it is not provided expressly that compulsory purchase may take place for the benefit of both private persons and the public administration.

Reasons for compulsory purchase

Changes of land use, property subdivision, ownership and rights can normally be achieved by voluntary agreement, based on negotiations between buyer and seller. But property owners can be forced to surrender property and rights against their wishes. Thus it is legally possible for a buyer to acquire properties / rights at a lower price than would probably have resulted from free negotiations with the seller. Fundamentally, then, the coercive rules are related to the amount of compensation to be paid.³⁵

³² *Kalbro 200, pp.7-8*

³³ *World Bank 1978, staff working paper No. 283,*

³⁴ *Ethiopian constitution 1995, article 40 (8).*

³⁵ *Kalbro 2001, pp.6-7.*

Certain specified areas of land are needed for the purpose, and so the buyer can not approach any property owner what so ever with a view to acquiring the necessary land on the open market. If, then compulsory purchase were not possible, these measures could be prevented by the owner refusing to part with his land. The owner of strategically situated land could frustrate measures which are desirable from a community view point³⁶ One argument in favor of compulsory purchase legislation, then is that force must be used to prevent individuals from refusing to sell their property to the government at reasonable price³⁷ Individuals could use their “veto powers” to exploit their monopolistic positions by demanding excessive and un realistic property values contrary to these arguments To avoid public purposes being delayed or frustrated by resistance from landowners, land has to be acquired compulsorily³⁸

Another argument given to justify collective coercive power in compulsory purchase is that it prevents a property owner from obtaining monopolistic profits by owing land which happens to occupy a strategic position³⁹ An other third purpose of compulsory purchase is that of “reallocating” Wealth from seller to buyer, which as a rule means in favor of” the community”

In Ethiopia, As for as the reasons in expropriate land holdings is concerned, it is merely stated in the constitution of the Federal democratic republic of Ethiopian and in the Federal Negarit Gazeta, proclamation No. 455/2005, that the government (A woreda or an urban administration may expropriate private property for public purposes where it believes that it should be used for a better development project to be carried out by public entities, private investors, cooperatives, societies or other organs.

In the perspective of law and economics, the criteria that have to be met in order for compulsory purchase to be deemed in the public interest were not set clearly. It is merely stated in the constitution and proclamations that the Federal and local government organs expropriate the land for the benefit of the people. But it did not say any thing about the significance of the benefit and the number of the people that benefit from the acquisition or expropriation of the land. In Sweden for example, the purpose of expropriation must be “important” which means that the benefits of purpose must be significant to a not excessively small number of people. While in Ethiopia, Expropriation is carried out merely by the interest of government authorities. If they believe that the land that will be expropriated is important, they expropriate it with out considering the significance of the benefit and the number of people that are affected.

2.4 The Lease policy of Addis Ababa and Amhara National Regional state

2.4.1 The Addis Ababa lease policy

³⁶ , *Ibid*, p.7

³⁷ , *Cletus E. Ndjovu 2003*, p.18.

³⁸ *Ibid*, p.19

³⁹ *Ibid* p, 17

The city of Addis Ababa, as the seat of the Federal Government and as the economic, social and cultural centre of the country, has to fulfill a national role and be equipped a comprehensive and integrated urban management system, detailing policy directives and strategic actions. Addis Ababa is also expected to fulfill the demands of an international city as a diplomatic center of African union and other international organizations. Social Services and infrastructure facilities should also be fulfilled and provided to its dwellings. In addition to that the city of Addis Ababa should be able to adequately contribute to the socioeconomic development of the entire nation.

In accordance with the power given to national/ regional self government to issue regulations and directives necessary to implement the provisions of the pro.No.80/1993 and other proclamations, Region 14 (Addis Ababa city administration) has enacted two regulations. The first one which deals with new land allocation is entitled “the urban land lease holding regulations No 3/1994 and the other one which operates during a transition period until all land comes under the leasehold systems, and only applies on all previous possession is called “rent holding of urban land and the fixing of rate of rent regulations No 4/1994”

Urban Land Lease Holdings Regulation No. 3/1994

- **New land allocation:** With the objective of limiting the expansion of the city, and using land efficiently and equitably, the regulation provides a minimum plot of 73 m² free of charge. When the demand is between 73m² and 175m² the payment will rise to 0.50 birr/m²/ year. For those who want a plot bigger than 175m² for a dwelling house, for business and other activities the lease price will be the current tender price.
- **Lease payment:** The lessee can pay at once (at the signing of the contract), or periodically with bank compounded interest on the unpaid portion. For residential dwellings with a plot between 73m² and 175m², the payment is done annually.
- **Previous possession:** The only previous possession to be governed under the lease holding regulation is when a previous land holder wants to enlarge his investment by demanding more land for expansion, and is accepted. In this case, the whole possession has to be put under the lease system.
- **Privileges:** contrary to the federal government’s lease policy decisions to appropriate all extra gain from land transfer, the Region 14 regulation allows 60% of the profit made to the lessee and the rest 40% for the municipality.
- **Compensation:** If the land is required for public purpose, those who acquired a plot of land which does not exceed 175m² for the dwelling house are compensated only the market value of the structure while those who acquire land through the tender (lease) are compensated either the current market value of the property on the land plus the amount of rent out standing for the remaining duration of the lease with its bank compound interest or the current market value of the property on the land plus and equivalent land as a substitute to the land taken. The lessee may choose one of the two alternative compensation schemes.

The rate of lease payment per m² is given in the table below: The maximum is set at birr 6000/m² for land in zone1, Grade 1, while the lowest is birr 33.25/m² in zone five,

Table 6: The rate of lease payment of the city of Addis Ababa

Grade of Zone	Grade of Land		
	1	2	3
1	6000	3000	1200
2	3960	1920	768
3	2660	1330	532
4	792	396	158.40
5	166	23	33.25

Source: Article 8 of the Regulation for Region 14, Addis Ababa

As per the proclamation, urban land lease holding is granted through public bid. Previously held urban lands which are now governed by the lease system will not be involved in the bid, but shall pay the lease rate as determined by the public tendering in the near by areas. As a 5th level urban center the duration of the lease is set at 99 years for dwelling houses and 60 years each for rental houses and industry. See table: 5

Table 7: Duration of lease holding by purpose and level of urban centers in Addis Ababa

Purpose of House	Grade of Land				
	1	2	3	4	5
Dwelling	99	99	99	99	99
Letting	-	99	80	70	60
Industry	95	90	80	70	60
others	90	80	70	60	50

Source: Proc.No.80/ 1993, Article 7, sub-article a-e, pp 94-95

At least 30 percent of the total lease payment is paid as down payment up on the signing of the lease agreement and the remaining is paid, along with the interest rate, between 10 to 30 years depending up on the purpose for which land is leased.

The regulation reserves the right to give urban land free of charge and / or without public bid to investments which the government encourages, social service institutions, low cost house constructions, and others which benefit the public at large.

Rent Holding of Urban Land and the Fixing of Rate of Rent Regulation No. 4/1994

Based on the infrastructure development and the economic benefit, the Addis Ababa master plan has divided the city into five zones. Each zone is again divided into three grades. The rate of rent the regulation imposes is therefore in accordance to the zone and grade of the land. The rent for the different land uses are as follows:

- **Land rent for business activities:** Any person holding urban land for business activities shall pay a maximum of 4 birr /m² and a minimum of 0.80 birr/m².
- **Land rent for industry:** To encourage industrial activity, the maximum rent to be paid is 2 birr/m² and the minimum is 0.40 birr/m².

- **Land rent for residential activities:** For dwelling houses, the rent ranges from a maximum of 2.38 birr /m² to a minimum of 0.09 birr/m² for more information, see table 8.

Table 8: Rental rates and lease price for commercial & Industrial land uses

Rental rate/m ² of land				Lease price/m ² /year	
Zone	Sub-zone	Commerce Birr/m ²	Industry Birr/m ²	Commerce Birr/m ²	Industry Birr/m ²
1	1	4.00	2.00	337.5	
	2	2.66	1.33		
	3	1.33	0.66		
2	1	3.50	1.75		
	2	2.33	1.17		
	3	1.16	0.58		
3	1	3.00	1.50	150.00	
	2	2.00	1.00		
	3	1.00	0.50		
4	1	2.80	1.40		60.00
	2	1.85	0.93		
	3	0.80	0.40		

Table 9: Rental price for existing residential land

Area/m ²	Zone 1 Birr/m ²	Zone 2 Birr/m ²	Zone 3 Birr/m ²	Zone 4 Birr/m ²
From 73-175	0.15	0.13	0.11	0.09
Up to 275	0.17	0.15	0.12	0.10
“ 375	0.19	0.16	0.14	0.11
“ 475	0.11	0.18	0.16	0.13
“ 575	0.24	0.21	0.17	0.14
“ 675	0.31	0.26	0.22	0.18
“ 775	0.37	0.32	0.27	0.22
“ 875	0.43	0.37	0.37	0.26
“ 1000	0.50	0.43	0.37	0.30
“ 1100	0.64	0.55	0.47	0.38
“ 1200	0.79	0.69	0.58	0.48
“ 1300	0.96	0.83	0.71	0.58
“ 1400	1.14	0.99	0.84	0.69
“ 1500	1.33	1.16	0.98	0.80
“ 1600	1.53	1.33	1.12	0.92
“ 1700	1.74	1.50	1.27	1.04
“ 1800	1.95	1.69	1.43	1.17
“ 1900	2.16	1.87	1.58	1.30

“ 2000	2.38	2.06	1.74	1.43
Minimum sales price /m2	400	300	100	25
Maximum sales price/m2	600	500	300	100

Source: Regulation No. 4/1994

Note: The maximum rent is for land located in the first zone first grade where land price is the highest, while the minimum is for sites located in the fourth zone third grade (Far from the center where land price is low)

- **Privilege:** previous land holders do only have the use right. If they want to benefit from their possession, they have to transfer their property to a lease holding system by paying the average current tender lease price of the area. However, the transfer can only be effected when the bureau grant a written permission.
- **Compensation:** When the land is required for public or any other purpose and compensation is to be effected, the amount to be paid is the market value of the property on the land.

The main intention of region 14 with the lease policy is summarized in their report as follows:

The main objective of the new urban land lease policy is just to bring urban lands under the lease – hold system. The strategies through which the system may be effected are:

- a. sales and
- b. rent

Under the lease – sales, the lessee is entitled for:

- a. fetching the full gains of his/her investment on the leased land/ asset
- b. collateralizing and
- c. sub leasing

What actually remains with the owner is the nominal legal interest. By this arrangement, all economic rights/ interests are transferred entirely to the lessee.

In the case of the rental arrangement the lessee’s rights are very much restricted. Unlike the sales variety, all gains well above the rental rate/ sum are refundable to the lessor. Collateralizing unless agreed upon is not permissible. Termination is effected at short notice and with out involving too much compensatory dealings. In instances of breach, what is expected of the lessor is to return the sums, if payment is made in advance.

Therefore, the amended proclamation can employ the two strategies alternatively, depending on the type of sector it is dealing with⁴⁰

Weakness and defects of the current urban land lease policy of Addis Ababa

⁴⁰ *Region 14 administration 1994, p.1.*

Despite the Addis Ababa administration has enacted laws and regulations on urban land policy to generate revenue for construction of infrastructure and to develop use of urban land in accordance with the master plan, the following issues emerge clearly as the main weakness both from studies available as well as from the interviews.

- a. The lease rates in Addis Ababa are seen as being too high; lease rates usually range around the assumed purchase price.
- b. Banks do not seem to accept lease as a security (collateral)

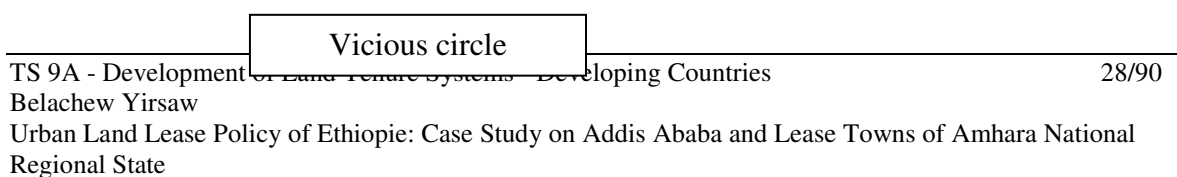
The above mentioned factors reduce liquid assets (cash) of investors particularly at that time when they need it most at the initial phase of their investments. Investors, who have already made a land – lease contractual agreements with the city government are also complaining about arbitrary changes, which came to effect only after signature of their contract. However, if this was true, one would have to emphasize; not respecting contractual agreements and any other form of legal insecurity will divert potential investment capital to other countries.

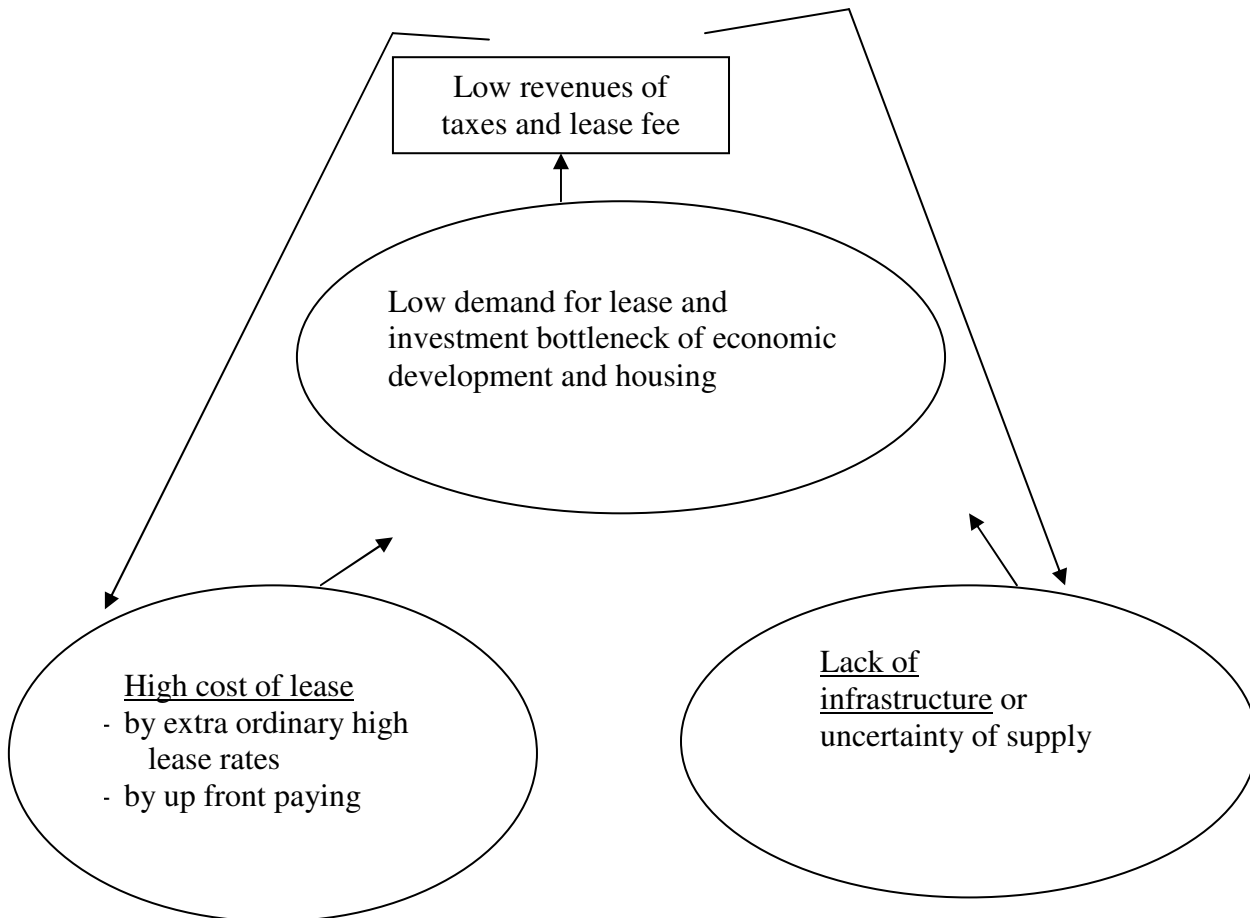
The majority of the investors interviewed by the researcher, complained about problems related to the provision of infrastructure, especially in the outskirts of the city.

- Infrastructure is partially or completely lacking
- Infrastructure is provided with long delays
- In most cases, there is no binding commitment by the municipality, so that the investor can not rely on the availability of the facility at any given time.
- On top of this, the investor is usually being left alone for the completion of the infrastructure; leasing land thus becomes even more unattractive.

In connection with the points mentioned above the approaches of bid and tender also require special attention. The applied method of the bid – principle to determine the price is inadequate in administrative and economic aspects; it rather obstructs the process. This policy not only delays the contractual land leases process, but disproportionately privileges the highest bidder. However, the urban economic development of Addis Ababa and Ethiopia do not only need the investments of the highest bidders, but depend on the investment of a possible large number of investors. Under the current procedure, the second – and third – highest etc. bidders are left with out land, and a high number of plots remain undeveloped. An equally damaging policy is the favoring of investors who pay in advance over those who could not afford to do the same. These approaches reduce the total amount of investments in the city and the country. As per proclamation No. 80/93, income generation is the most important goal of the lease policy. Lease revenues shall be used to finance the construction of infrastructure and low – cost housing. Investors are not prepared to lease land at such high prices, especially if a large lay-out of cash is required at the starting – up period of their business; this is even truer if the land is not serviced. As the result of this, public revenue collected from land lease is much lower than expected, which in turn curtails the allocation of the budgets for infrastructure and low – cost housing projects, as well as other incomes from tax: This is described with figure 1: as a typical vicious circle below.

Fig 1: Current situation -vicious circle



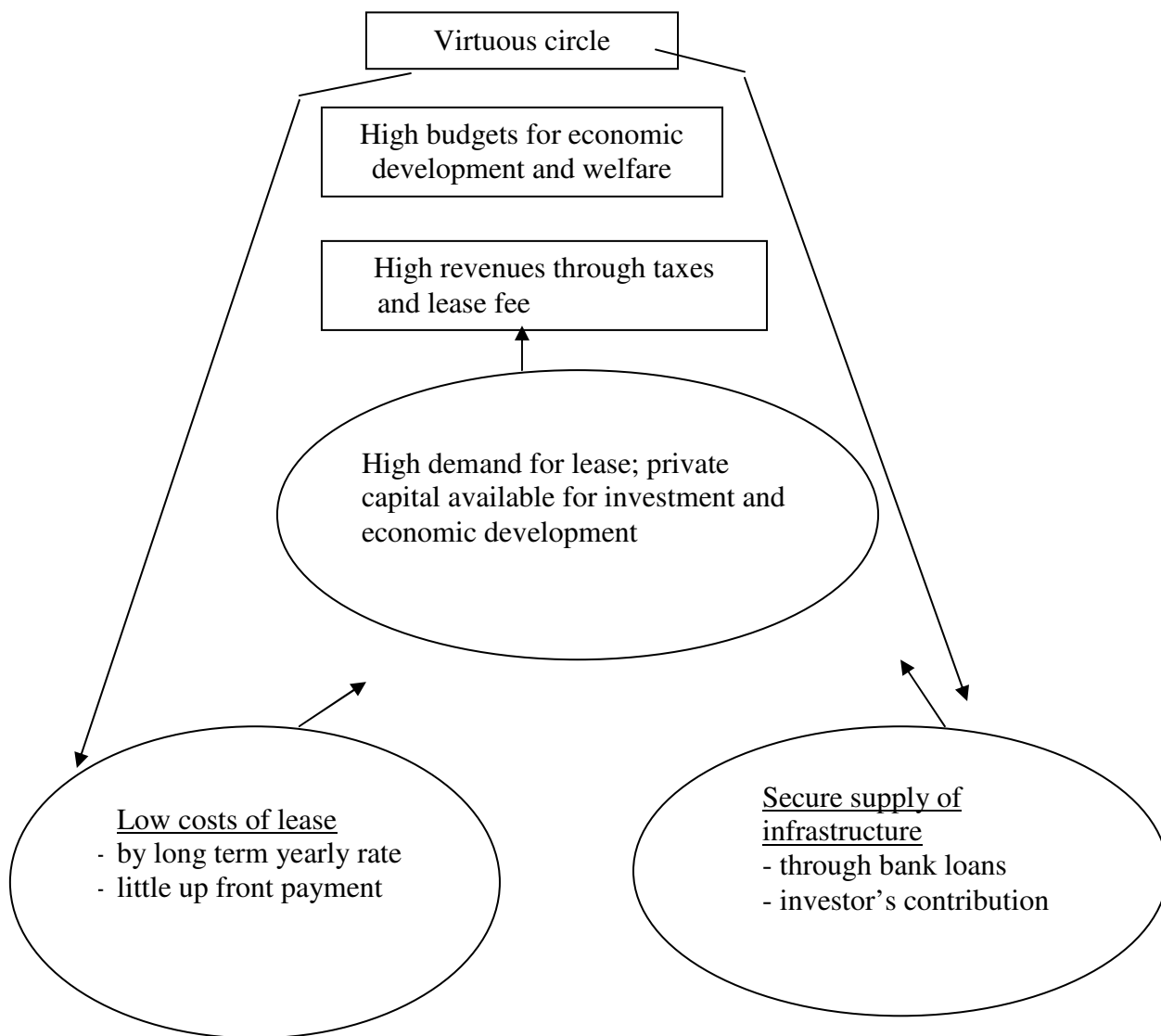


Source: Gerhard Stepper (2000), enhancing urban land lease policy of Addis Ababa, p.7

As Gerhard Stepper described, it seems to be practically impossible to overcome the weaknesses of the lease policy that the Addis Ababa city municipality has faced and to break through the vicious circle through piecemeal measures. Rather, a fundamental review of the policy is required. Politicians and professionals should work towards changing the present vicious circle into a virtuous one in which low cost of lease and certainty of infrastructure provision lead to higher investments, increased public revenue and ultimately to higher budgets for economic development and social welfare.⁴¹

Fig 2: Virtuous circle

⁴¹ Gerhard Stepper. 2000,p. 7



Source: Gerhard Stepper (2000), enhancing urban land lease policy of Addis Ababa, Addis Ababa P.7

Broad participation of the private sector in urban and economic development will lead to a higher number of tax payers and a sustainable increase in municipal revenue. Hence, in order to attract investors (especially domestic investors), the government should improve credit facilities and the lessee's access to credit, which is currently restricted by the banks, should be enhanced by the provision of government guarantees.

- In order to attract potential investors, the necessary infrastructure facilities (roads, water, drainage, etc) should be provided in advance. Alternatively a binding, written agreement between the investors and the administration or its agent must be reached

with fixed deadlines for supply of infrastructure. Here, the investor should also be free of any legal claims by third parties, and he should be offered a cleared – up plot.

urtail the application of the tender procedure to selected cases. Among the bottle necks that private investors have been facing in the access to land, it is recommended, that the bid procedure should only be applied in special cases where a high number of investors are interested in certain plots of land otherwise, and especially for new settlement areas, the tender principle is unsuitable. All interested persons should be offered the land on an equal basis (prices) by application. The current low level of economic development does not allow focusing only on the highest bidder.

By reducing the resource and time consuming tender procedure to a few cases only, the lease office can use its manpower in a more effective way. Therefore, the number of offered lease plots could be drastically increased and the lease procedure for all cases speeded up

2.4.2: The Amhara National Regional State lease policy

“The Amhara National Regional State (ANRS) is the second most populous region in Ethiopia next to Oromia with a total population of 17, 205,000 in habitants in July 2002. As such it accounts for more than one fourth of the total population of the country. In more or less similar pattern it houses about 22.4% of all the urban centers in the country currently, not less than two million people live in its 208 urban centers. This means that the proportion of the region’s population that lives in urban areas is approximately 11%. In view of the fact that the corresponding figure for the nation as a whole is approximately 16%, it is not difficult to see that the region is trailing far behind the country as regards level of urbanization. None the less, the fact remains that the region is currently witnessing one of the fastest of urban growth (approximately 5% per annum)⁴² population growth and fast urbanization increases the pressure on land with out a capacity to make available planned and serviced land, the orderly development of urban areas can not be achieved.

Though ANRS has a very low level of urbanization, the growth rate is very high: hence, it requires an urban land policy that properly addresses the land need of the growing demand. The main principle of the urban land policy of the ANRS emanates from that of the Federal urban land policy; that land is the property of the people and the government and it shall be administered through the lease hold system.

Pursuant to the national law on lease holding of urban land, the ANRS has enacted its lease hold regulation (Regulation No. 2/1995 and its amendment Regulation No. 6/2002). The applicability of this regulation is limited up to now to the biggest three urban centers in the region. Bahir Dar the capital city of the region, Dessie and Gondar. All other urban centers are still under the rent system of land as stipulated in the national law (proc. No 47/1975).

⁴² *WUB consult 2004, p.13.*

The Addis Ababa Administration and Oromia Regional State have also enacted their own laws on lease holding of urban land (Regulation No 3/1994 for Addis Ababa and Reg. No. 1/1995 for Oromia). These regulations were amended in 2002 (Regulation No. 29/2002 for Addis Ababa. and Reg. No. 1/1995 for Oromia, Amended). In appendix 1 the provision of the regulation of ANRS, Addis Ababa, and Oromia are compared. The provisions of interest for this review include accessibility of land, lease period, launching and completion time of development, size of holding and transfer of rights.

The lease hold policy of the ANRS has provisions that try to regulate basic aspects of urban land holding and development. However, the implementation of the policy is reported to be far from being realistic in all three lease cities. The main reasons cited for this are the implementation regulations being not attractive to the private sector, the low technical capacity of urban centers to prepare land for lease and the limited financial capacity of the cities coupled with their inability to involve the private sector in financing land development.⁴³ One of the major problems faced by municipal officers of most urban centers is the difficulty to clear land and deliver it to investors. Former holders whether legal or illegal, for example, Kebele house residents and farmers, resist eviction using various mechanisms that range from legal to traditional means.

Urban grade and land rent

Most urban areas in Ethiopia are administered through the urban land rent system, not through

lease hold system. Proclamation No. 80/1979 and its amendment proc. No. 161/1979 provided the basis for fixing urban land rent and house tax. Accordingly, urban centers were classified into four categories with three grades each and land rents decreased progressively from higher to lower grades. The urban grading exercise at national level aimed at identifying the dynamism of urban center. However, except for taxation purposes, it had limitations to channel development assistance, as the federal rating does not coincide with that of the regions.

In the Amhara National Regional State, the lease hold policy applies to level 4 cities (Bahir Dar, Gondar and Dessie); all other urban centers are administered through the rent system. However, within these cities, lease hold system applies to new development only. The land rent is based on level of urban centers and grade of land within urban centers (Regulation No. 1/1995).

Land within urban centers was subdivided into either five grades (for level 4, 3 and 2 urban centers) or three grades (for level 1A & 1B urban centers). There is no difference in rent between land held prior to the enactment of this regulation and those developed prior to its enactment.

⁴³ *Ibid*,p,14

In the case of Oromia the lease hold policy applies to only eleven urban centers. Even within these urban centers the proportion of property under the leasehold system of land is very low. Land rent is administratively fixed by considering market value. The market value of land was considerable higher than the previous land rent hence the minimum rate was fixed at about four times the minimum rate in proc. No. 161/1979. Further more except for terminology (lease or rent); the revenue from land in most Oromia urban centers with similar category and grade has been evened out.⁴⁴

In the case of Addis Ababa, the rate of urban land rent is based on the charter of the city (proc. No. 87/ 1997) and proc. No. 311/2002), its development plan, the leasehold policy (Reg No. 29/2002), and regulations for the fixing of land rent (Regulation No. 4/1994). According to these regulations land within the boundary of the city is categorized into four zones and each zone is subdivided into three grades each. The rate of rent is based on the type of function (commerce, industry, or housing.), the zone and grade of land. In the case of housing, the size of land holding is also considered to fix the rate of rent.

Legal frameworks

The issues related to legal frameworks include the multiplicity of land holding system (lease hold, rental, free), that poses difficulty for redevelopment planning and revenue generation. The legal framework for urban land development and management should be clear, fair and transparent. Legal provisions should be developed in such a way that it addresses manners of land acquisition, expropriation, compensation, rehabilitation, and redevelopment, subdivision, informal settlements, and land evaluation. However, in ANRS just similar to the country as a whole, there are legal gaps that exist for the transfer of land: no clear regulations for expropriation, compensation, informal settlements, subdivision, and land occupied by Keble houses. More over, intuitions are not empowered properly (legal, financial, equipment, man power). In addition to that here is lack of public awareness about leasehold policy.⁴⁵

Land acquisition for urban expansion and redevelopment

The assessment indicated that in some cases, such as in Dessie and other urban centers that are located on unfavorable landscapes, there is natural limitation for expansion. However, the major limitation to urban growth as it relates to land is the legal aspects of urban – rural boundaries, methods of land transfer from agricultural to urban use and the notion of public ownership of land.

The major problems reported by urban administrations with regard to land acquisition are related to the absence of legal frameworks for expropriation and compensation to previous holders and the lack of capacity to compensate current holders that are not willing to vacate the land required for development. Rural – urban conflict exist due to lack of clear compensation regulation. Where regulations exist, they are urban oriented peasants not

⁴⁴ *Ibid*,p.58

⁴⁵ *Ibid*,p.14

given sufficient attention moreover; the capacity of urban centers to mitigate problems of displacement is very low.

In addition to the lack of clear regulations for expropriation and compensation, municipalities have financial limitations to acquire land. In lease – administered cities of the region the lease fee comes in installments where as compensation has to be made at the beginning of the eviction. The lease policy stipulates that the urban administration will deal with previous land holders prior to reallocation for investors. Such an arrangement is appropriate but still leaves open the question of capacity to compensate for land and property. Most of the urban centers in ANRS have low capacity to develop land. The only developers of land so far are municipalities with their own finances.

Informal land acquisition and development

One of the critical problems that urban centers in the ANRS are facing is informality of developments. Informal developments that comprise construction with out permit on legally occupied land and informal land occupation is high in major cities. There is no organized land occupation and informal accesses to land are through gift or market mechanisms. There is lack of public awareness on land policy and negative consequences of informal developments. The magnitude of informal urban land development has direct relationship with the dynamism of urban areas: major urban centers and those that are fast growing experience concerted informal developments.

The magnitude of informal developments in some selected urban areas shows the trend is growing. For example, in Gondar about 700 informal settlers were registered. The situation is the same in Bahir Dar & Addis Ababa (WUB consult (2004).The intensity of informal development varies with the dynamism of the urban centers. The capacity of urban administrations to combat informalities is very low: where actions are taken, eviction and demolishing are the main administrative measures (WUB consult (2004:85)

Urban land market

Land market requires clear and unambiguous legal frameworks for rights to hold and to transfer in various ways – this is not the case in ANRS. Operations, procedures and legal formalities in the transfer of land are not simple and effective. Land market needs choices; this is not the case in ANRS. Land price determination requires clear planning provisions and information about infrastructure. The lack of urban plans has made land markets to be informal. Insufficient production of legally developed land has promoted informal and quasi-legal transfers; urban areas are held not for development but for speculation.

Public ownership of land and the lease system of holding provide the basis for land markets. However, currently the land market is inefficient and highly non-transparent. In order to change this situation the urban administration should take measures like facilitating the availability of reliable time series for information on land and property prices and discourage land speculation through the production of legally developed land and facilitating legal transfers.

Duration of the lease period and renewal of contracts

The duration of the lease period is critical issue especially for those investors who invest huge amount of capital in projects that need long period to recover the initial cost. The following table indicates the duration of lease arrangements in lease towns of the Amhara National Regional state.

Table10: Duration of maximum lease period in Amhara Region

Type of activity	Maximum lease period in years
Private dwelling houses	99
Rental dwelling houses	70
Social & culture	99
Industry	70
Business and others	60

Source: Regulation No. 2/1995 a regulation to provide for the administration of Urban lands under lease holding

Despite the government authorities have stated that the maximum lease period satisfies the investors, it is not necessarily satisfactory for those who invest in high valued projects that need long period of time to recover its initial cost.

The renewal of contract should also be taken in accounts in connection with the lease duration. This issue is legal granted as “A reply (of renewal) shall be given with in six months from the date of the submission of the application. If no reply is given with in the specified time, the contract is considered as renewed.”⁴⁶ This formulation the lessee is legally entitled to renew his contract at the end of the lease period, if there is no public demand for the land. If the contract is renewed, the lease value of the land shall be the current market value.

An urban land holding acquired on lease may be terminated where the lessee fails to utilize the land in accordance with master plan or when the renewed charge is not paid and when the contract is not renewed at the end of the duration of the lease.

Condition for the payment of lease value of lands

⁴⁶ *Reg. No. 2/1995, article 5 sub article19*

The payment for urban lands held on lease for private dwelling houses shall be paid on annual basis without interest and completed within 99 years. Urban lands allotted on lease other than private dwelling houses shall be paid with the total amount of the lease value at the signing of lease contract; or the total amount of lease value with simple and compound interest in case of:

I. Industry	40 years
II. Business	30 years
III. Social and cultural establishment	40 years
IV. Dwelling houses for letting	40 years

The principle of up-front paying and of compound interest rate for the unpaid portion are equally disadvantageous for the investors, especially in the initial phase of their investment, which is the most critical phase. As a result of this the investors will be in a very critical financial situation to operate the firm. It shall note that this modality of payment discourages the initiatives of any investment (Gerhard Stepper, 2000)

Urban land development and lease policy and Application problems in ANRS

The assessment of urban land policies and practices in leased towns of the Amhara region has shown that there are several issues that need attention. The problems that tackle urban land development and application the lease policy could be categorized in various ways; however, legal gaps, institutional aspects of land development and management, land markets, and informal settlements seem to be main ones. In this direction, the problems are:

Problems related to current land legislation

1. Legal gaps exist in the transfer of land: no regulations for expropriation, compensation,

Rehabilitation, informal settlements, and occupied by kebele houses

2. Institutions are not empowered properly (legal, financial, equipment, manpower).
3. There is lack of public awareness about lease hold policy.

Land acquisition/ banking related problems

1. Lack of expropriation and compensation regulations hampers acquisition
2. Rural-urban conflict due to lack of compensation
3. Urban oriented approach, peasant not given sufficient attention
4. Capacity to mitigate problems of displacement very low.
5. Banks do not seem to accept lease title as a security (collateral) for loans to investors. Thus access to credit is severely constrained.

Land market related problems

1. Land market requires clear and unambiguous legal frame works for rights to hold and to transfer in various ways-this is not the case in ANRS.
2. Operations, procedures and formalities are not simple & effective.
3. Land is not available for sale

4. There is no reliable time series information on land price determination and there is lack of planning provision & information about infrastructure.

Problems related to urban land administration systems

1. Lack of a consolidated land registry for urban areas
2. Lack of uniform land information system-what to register non-uniformity of proof documents
3. Inaccessibility of land information to the public
4. Lack of private sector involvement in surveying and registration
5. Lack of laws and regulations for providing legal entity to plots
6. Lack of urban plan in general.

Problems related to informal urban developments

1. Informality of construction with out permit is very high
 2. Informal land occupation is high in major cities no organized land occupation
 3. Lack of public awareness on land policy
 4. Eviction and demolishing are the main administrative measures.
 5. Limitation of capacity of urban administrations to combat informalities.
- Due to these and other unmentioned problems, the new urban land lease policy is not successful in Amhara National Regional State in particular and over all the country in general

2.5 Challenges of the current urban land leasing system

Implementation of the leasing policy faces multiple challenges, as became evident from the experience to date in cities where land leasing was introduced, and discussions with municipalities and other users of the policy.

2.5.1 The structure of payment for auctioned and negotiated leases is highly unusual by international standards and imposes one of the biggest difficulties for managing leases in Ethiopia

Usually (i.e. in most countries and cases), a charge for leased real estate – both in the private and governmental sectors – is structured as a stream of regular payments (monthly, quarterly, or semi-annual or annual) during the entire lease period. The underlying concept is that a lease payment is the payment for the use of the landlord’s resource (property), which is charged on the “pay-as-you-go” basis. There are several typical ways of defining lease payments the most common of which are as follows:⁴⁷

- a) Equal periodic installments during the entire lease period
- b) Equal periodic installments, time to time adjusted up for inflation
- c) A low base rate plus some percentage of a tenant income generated by the leased property (though this form is used usually only in the private sector for commercial leases or in unique public-private partnerships)

⁴⁷ *Olga Kaganova, CRE, 2005, p.12.*

The simple types (a and b) are quite standard for leasing government-owned Properties. A few exceptions include the land lease in Hong Kong and Mainland China (where it was modeled after the Hong Kong system), where the total sums is required to be paid upfront. However, one-time payments create a very uneven revenue stream for the government and is not sustainable in long-run, because land for lease is limited and after the most of it is allocated for long term leases, this source of revenue will dry up.

G.peterson.Report and Recommendation on Municipal Finance situation in Amhara Region. Discussion draft, June 2005.Urban institute reads as follows. (From 53 to54)

Regarding the payment structure for leases, the Ethiopian government has moved even further than China and Hong Kong. In its federal Proclamation No. 272/2002 on lease holdings of urban land, for leases sold through auctions or negotiations, the total lease value is supposed to be paid upfront as in Hong Kong and China; if, however, a buyer cannot afford this, he may pay in installments over a specified period of time, but with the interest assessed on the unpaid portion of the lease value. Thus, the unpaid part of the total lease value is de facto interpreted as a loan from the government, subject to the interest. From an administrative point of view, this system has two main differences from the simple systems (a) or (b) above, which make it extremely difficult to administer.

- (i) It allows varying payment schedules (a buyer may choose any size of a down payment above 5% of a purchase price and a duration of a payment period for the outstanding part of the price) and
- (ii) It requires calculating and collecting the interest.

In fact, administrating the current Ethiopian system is more difficult than administrating standard mortgage loans in the West. Western countries have large, sophisticated, and well-equipped private-sector industries involved in managing mortgages, and still the sector became efficient only after the standardization of mortgage loans. Not surprisingly, financial departments at the City Administrations in Ethiopia, which tried to implement the interest-paying system, have been swamped in attempts to calculate interest-loaded payments over varying payment periods

This up-front loaded payment system also has potentially dangerous fiscal implications, as it results in a volatile revenue stream. Analysis of the database on 341 auctioned and negotiated leases in Bahir Dar provides a useful insight on what can be expected. First, it shows that:

- The payment period varies from 0 to 25 years, with the average of 6.3 years
- The average down payment is 40% of the total purchase price, and
- 16% of the purchases are paid fully at once (i.e. have zero payment period).

Second, it shows that the expected revenue stream from these leases is very uneven over time. as the picture below demonstrates. Specifically, it shows that in addition to the average 40% down payment, the total of about 78% are expected to be paid after the first 5 years of leases, the rest 22% are spread thinly over the rest 20 years; after that, revenues from leases end. Such a steep decline of the expected revenue stream from existing leases supports the concern formulated by G.Peterson that a current high portion of land lease revenues in overall local finance may be not sustainable in medium and long run. The

picture confirms that revenues from auction-based leases will decline very quickly, as soon as newly sold leases would stop feeding the system.

Further, selecting an auction winner based on the highest price offered and then allowing the buyer to choose the down payment and payment schedule implies that the government receives not the highest possible revenue, as the “correct” choice among offers would require to assess offers based on the complete information about offered cash flows and use Net Present Value of these cash flows. Such a complex approach is absolutely not feasible for mass land allocation, and even in developed countries is used only for unique large-scale projects.

Given that the current lease payment system in Ethiopia and mortgage systems in developed countries have comparable complexity, it would not be realistic to expect from City administrations in Ethiopia that they would be able to handle effectively the interest payments imposed on leases. Finally, the current interest-payment system does not add popularity to land leasing. First in this specific context, the concept may be interpreted as being anti-poor (“poor pays twice” – a lease principle and interest). Second, it appears that the concept of borrowing and paying an interest is not too popular among Ethiopians; therefore the interest on lease payments works against the whole land lease concept. An obvious question that emerges is: What are the benefits for Ethiopia of overburdening itself by such a complex system of charging for auctioned land, given that the system is expensive and too cumbersome to operate and is damaging the appeal of leasing in the eyes of the population? A single rationale that is attached to the system of charging the total lease upfront – to use the collected funds for investing in land infrastructure, similar to what has been done in Hong Kong and China and is required by Proclamation 272/2002 – turned out to not be working in practice so far, at least in big cities where the issue was investigated. Whether additional revenues from the interest on unpaid lease amounts could justify the troubles associated with charging the interest seems to be very questionable. It appears that simplifying the structure of lease payments, on one hand, and improving collection of lease and rent revenues, on the other hand, along with other measures to enhance municipal revenue, could greatly benefit the Country: make the leasing system easier and cheaper to administer and more attractive to the population.

2.5.2 The current lease system needs more flexibility to respond to local market Conditions

Current insufficient flexibility of leasing hinders its usefulness for reaching objectives of the urban development policy, such as fostering real estate markets and supporting land development. The problem can be best illustrated by an example (Box 1)

Box: 1

Case study

What to do with a land lessee who is not building on his site?

TS 9A - Development of Land Tenure Systems - Developing Countries

39/90

Belachew Yirsaw

Urban Land Lease Policy of Ethiopia: Case Study on Addis Ababa and Lease Towns of Amhara National Regional State

FIG Congress 2010

Facing the Challenges – Building the Capacity

Sydney, Australia, 11-16 April 2010

Situation

The City of Bahir Dar has resettled farmers from 60 hectares of land, in order to convert this land into an industrial zone according to the Master Plan and the concept of urban expansion. Out of this total, 41 hectares have been serviced with infrastructure, at the cost of 33 birr/ m². By April 2005, 19 out of these 41 hectares have been given to various investors for the subsidized lease price of 1 birr/m², and the remaining 21 still did not find lessees. On one of the taken sites – in a prime location along a main road – a lessee put a fence around the site, set up guards, but did not start building. Eighteen months for initiating construction, as required by the regional Regulation No. 6/2002, already passed. Following the federal Proclamation 272/2002, the Regulation establishes that the City has either to terminate the lease or extend the construction start period by a special directive of the Region's Trade, Industry, and Urban Development Bureau. The land managers at the City Administration are asking themselves what could be the best solution for the City.

Discussion

Obviously, terminating the lease would be to the city's disadvantage: there is no current demand for industrial land other 21 hectare of serviced land offered almost for free is sitting without tenants would go away, the land will be open for squatters. Thus, the solution would be to negotiate with the lessee, giving him a choice of either to start construction or agree to pay a progressively increasing lease until the moment when he starts. If he agrees to pay, the City at least would return a part of its investment in the infrastructure. However, the City does not have a strong position for these negotiations, as it substantially oversupplied land and created the situation called "buyers' market", when buyers dictate the conditions, not sellers. A lone leverage that the City may be has is the good location of the site along the main road. Therefore, the negotiation strategy, which the City can use, is to offer the lessee to choose between three options:

Option 1: Lessee immediately starts construction and completes it within the schedule agreed upon as a part of this agreement, or

Option 2: Lessee immediately starts paying the city a gradually increasing periodic lease Payment, according to an agreed schedule, until the City returns its investment in infrastructure, after which the payment stabilizes at some reasonable level. The payment will be stopped as soon the lessee starts construction and completes it according to a construction schedule. Setting a payment schedule is the matter of some economic common sense, market analysis, and negotiations.

Options 3: If Lessee does not agree to either of the first two options, the City should notify him that it will let him retain the site but will put it back for aggressive marketing, and if anyone would wish this site, Lessee would be immediately evicted from it.

A broader idea to consider about this industrial zone would be re-zoning of a part of these 41 hectares

With infrastructure and putting on auctions for other land uses.

Source: Olga Kaganova, CRE, Establishing more efficient and effective land management in

What are the broader implications that this example evokes?

1) Taking back the land if a lessee does not start construction is not the best solution from several viewpoints.

- Under certain market conditions (for instance, such as in the example above, when there is oversupply of land) it is plainly counterproductive, as taking land back could bring more trouble than good to a city
- The very idea that land will be taken back if construction does not start in a prescribed time is one of commonly cited factors that make land lease less attractive.

2) Many provisions in land leases should be flexible and cannot be defined as “one size fits all” by region-wide regulations. Conditions for starting constructions strongly depend on local market conditions that always vary from city to city and can also depend on many individual circumstances of lessees.

3) The city’s reaction on lessee’s non-compliance with a construction schedule should also depend, among several other factors, on whether he pays a market lease or holds a subsidized lease as in the example above. For subsidized leases, the City should at least try to revoke the subsidy by imposing the increasing lease payment, as it is suggested above. However, if the lessee had already paid land’s market value on an auction, and there is no acute shortage of land, increases on the land payment as a penalty should be much smaller than above.

4) Leasing as an instrument of land management can be standardized only to certain extent, but not completely, and should allow sufficient room for negotiations; this is a lone way to reach economically beneficial solutions in many real-life situations. This, in turn, illustrates that leasing is a complex and expensive instrument of land management.

5) Land supply by the government should be well measured and directly related to local demand for this type of land. Over-supplying land for certain uses should be avoided, especially if massive involuntary resettlement of farmers or other land tenants was required to assemble the land, as in this example.

In sum, by choosing the land lease model as an instrument of privatizing property rights, the government positioned itself as an active actor in the land market. Performing this role requires flexibility as one of main abilities and skills.

2.5.3 Long-term lease contracts need further improvements to define and protect long-term interests of parties involved

Practices of all countries where long term land leasing has been tried for sufficiently long periods of time – from Hong Kong to Kuwait to the US – indicate that the quality of lease contracts is critically important, if the interests of both parties – the land owner and land lessee – are to be well protected. For long – term leases this is especially true, because laws can change many times during the 50-99 years of the lease, and the contract should eliminate all possible uncertainties related to this. The current long-term lease contracts of Ethiopia are not sufficient from this point of view. Even a “simple” contract that would address main issues should be substantially more detailed. This illustrates one of the

biggest challenges that the leasing system poses for Ethiopia. A central piece of the leasing model is a lease contract, and it is a complex legal instrument, which normally requires a much higher legal and contractual sophistication on both sides – the owner and tenant-than Ethiopia has to date.⁴⁸

2.5.4 Land leasing needs a boost in popularity

Insufficient popularity of the lease model among the public is a widely known fact. Especially instructive is that international analysts and local real estate brokers independently from each other identify the same core factors that make leasing not attractive for tenants. In particular, they name insufficient duration of commercial and industrial leases, the fact that land use is written into the lease, that land can be taken away if construction did not start within a prescribed time.⁴⁹

The overall conclusion that can be drawn is that the current leasing system needs improvements along several lines. First, it should be made more attractive to the public. Second, existing disincentives for leasing should be removed or at least reduced. Third, the leasing system can and should be simplified in order to become easier and cheaper to operate. Fourth, the quality of lease contracts should be improved. Finally, release of new land should flexibly reflect demand and be based on monitoring this demand. Further, real progress in this area cannot be achieved by the government alone making modifications, even if the government is assisted by foreign advisers. Direct constructive cooperation with the private sector and non-governmental experts is essential. Furthermore, this cooperation should incorporate local practitioners – both governmental and private.

In sum, further progress in introducing the leasing model will depend not only on which changes will be made but also on how the process of their elaborations will be organized.

2.5.5 Distorted payments for overall systems of land rights

First, there are huge differences in the amounts of payments. On one hand a vast majority of land “rent” and lease tenants pay quite low, administratively defined amounts. On the other hand, a very small portion of all holdings – leases acquired through auctions – have to pay high prices. For example, in Bahir Dar, the highest “rent” for commercial land (Grade – 1 location) is 2.0 birr /m² / year, which would be equivalent to 140 birr / m² paid over 70 years permitted for commercial leases. At the same time, an average price for commercial land on auctions (for land mainly worse than Grade – 1) was 297 birr / m². In other words, an average lessee of the commercial land pays more than twice more than a holder of a comparable commercial ‘rent’ site. For other land uses, the gap between “rent” and lease is even bigger. When land is relatively easily available either through heavily subsidized leases or on the secondary market of “rent” real estate, one cannot expect high demand for land on auctions with benchmark prices not justified by the market.

⁴⁸ *Ibid.*, p.17

⁴⁹ *Olga Kaganova, CRE, 2005*

III. Lease policy Experiences from other countries

Urban land lease system is one of the many types of land tenure arrangements that allow government (as the representative of the public) and private parties to negotiate the delineation and assignment of multiple land rights through contractual arrangements. A government that is the owner of the public land can retain the title of land and lease the right to use, develop, transfer, inherit and benefit from land to private entities. These private lessees can enjoy the assigned land rights only for a specified time and as stipulated in their land contracts.

In principle, the lessee can enjoy all the rights of the leased land except retain the title of land. But all bundles of lease rights are not accomplished by the lessee in countries where governments are experiencing with public land leasing. A perpetual leasehold that imposes no restriction on the transfer or use of land and requires a lessee to pay only an up-front payment for leasing land at its fair market value would be very similar to fee simple because the lessee possesses almost all elements of the bundle except the title of land. In this case, the government would not resume land ownership without fair payment, just as fee title would not be taken away from private property owners without just compensation. Conversely, if a government holds all land rights except for temporary use rights assigned to private parties, such as a lease hold system would more closely resemble absolute public landownership.

What we can learn from the experience of those countries which have a perpetual leasehold system is that, not only undertake a decision on urban land lease policy as the alternative land tenure system but also consider the degree to what extent the lessee can enjoy all the rights of the leased land.

After the collapse of the Soviet Union and socialist era, despite land reforms in many former socialist countries and transitional economies seem to have no clear direction, urban land lease policy has been taken as the alternative land tenure to bring forth the efficiency of land market and to transfer land from the state to private individuals.

Since Ethiopia is one of the former socialist countries which have been practicing urban land lease policy as the alternative tenure system, the main intension of this chapter is to assess the lease policy practice and draw meaning full lessons from selected countries around the world which have some major leasing experiences.

Experiences from selected European countries

As the experience of some countries show, despite governments holds all land titles, there exist vibrant private markets that facilitate the leasehold rights among private entities. Lessees are free to sell or transfer their land rights to other parties and use their leasehold land as collateral to obtain mortgage loans. These types of lease arrangements are far from the types of public land ownership found in the previous

communist regimes. (Steven C. Bourassa and YU-Hung Hong, Lease public land) Most of the former socialist countries which have been practicing urban land leasing faced legal and institutional problems. Hence, lessees are not free to sell or transfer their land rights to other parties and use their leasehold land as collateral to obtain mortgage loans.

Ethiopia similar to most former socialist countries has been facing so many problems in practicing urban land lease policy. Hence, it seems reasonable to assess the lease policy practice of selected countries all over the world so as to draw important lessons that are important to revise the present urban land lease policy of Ethiopia.

Experiences from Finland

Land ownership and its legal protection

The Finnish property system is based on private land ownership⁵⁰. The ownership is protected by the constitution. Finland, like Netherlands, Sweden and Poland, has less restrictive constitutions that allow the coexistence of leasehold and freehold.

Private landownership in Finland is also well protected. According to the renewed 2000 constitution, any expropriation of private property for public purpose must be based on law, and compensation must be paid in full (that is, the property's market value.) If there is no compensation or the compensation is below market value, municipality must justify its action according to the special legal procedures regulated by the constitution. Since there is no constitutional restriction on private landownership; municipalities sell off leasehold land to lessees as fee simple when they find it appropriate.

Lease term and lease payments

In Finland, the leasehold act governs all land leases. It prescribes the duration of different types of land contracts. Lease terms for residential land range from 50-60 years; 50 years for commercial land leases and 20-30 years for industrial land contracts. Although the law does not prohibit total or partial prepayment of rent at the beginning of the lease, lessees seldom make such a prepayment to municipalities⁵¹. If the lessee is not making a total or partial prepayment of rent at the beginning of the lease, it should pay 4-5% of estimated land value as the land rent to the lessor. The lease hold act permits periodical adjustments of land rents.

Land rent determination

Negotiation between the lessor and lessee determines the rent. There is no legal restriction on the maximum rent, but the law contains a section about the arbitration of rents and other rental terms to protect the interests of both lessee and lessor.

⁵⁰ *Kauko vittanen, Jussi Palmu, Matti Kasso, Erja Hakkarainen, Heidi Falkenbach 2003, p.6*

⁵¹ *Pekka V. Virtanen 2003, p.6*

Lease termination and Renewal

The lease hold act of Finland contains provisions that make the cancellation of leasehold agreements difficult. A lessor has the right to cancel a land 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. 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 purchase. However, compulsory purchase is extremely rare in Finland. 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.

Compensation and Transferability

In Finland, the law and special lease agreements govern the compensation for lease hold improvements. 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. If there is no special agreement in advance, the lessee must demolish existing buildings and structures from the site when the lease expires⁵²

Lessees have the right to transfer their contracts. They can also use their leased land rights as collateral to secure a mortgage loan. According to the Finland basic code of land laws, the leasehold agreement and the transactions must be registered in the public land register. The leasehold needs not be registered if the period of the leasehold is less than two years⁵³

Public attitude toward public leasehold

Despite smaller municipalities prefer free hold as leasing incurs high administration costs, attitude is mainly positive among public authorities and municipalities. In Finland, lease conditions play no role in controlling land use. Land use is controlled by the detailed plan.

Experiences from Ukraine

Land ownership and legal protection

There was private land holding in Ukraine in past centuries and in this century, until the advent of communism. After the coming of communism, the dominant tenure form was state ownership. The choice of tenure for urban land in independent Ukraine has been heavily influenced on the one hand by private land holding in past centuries and on the other hand by the nation's socialist past as part of the union of Soviet socialist Republic. After its declaration of independence on August, 1991 Ukraine gradually has moved to

⁵² *Bid*,p.7

⁵³ *Kauko vittanen, Jussi Palmu, Matti Kasso, Erja Hakkarainen,Heidi Falkenbach 2003,p.44*

divest itself of ownership of various types of land. Municipalities have been privatizing urban residential lands. The state, acting through cities is offering some enterprise lands for lease or public purchase at auction or by negotiation sale.

Since the independence in 1991, Ukraine moved to acknowledge that public and individual ownership were equal under the law. Despite the fact that uncertainty still exists as to what forms of land tenure rights have been granted to enterprise, the constitution of 1996 includes enterprises, as well as individuals, as those whose right to property is protected. A decree which was issued by the president Kuchma acknowledges that privatization of urban land has not progressed as rapidly as desired, with the effects that investment in this sector has been limited and municipal revenues from private land holding have been insufficient. The decree recognizes the difficulties posed by inadequate enabling legislation.

In Ukraine...conditions for efficient functioning of market institutions (land exchanges, land banks, land auctions etc), which should facilitate development and functioning of the secondary land markets, are not created, clear and accessible information on land plots, their value, their market history (information on time value of land plots) and restrictions on their use are absent. Lack of a clear, publicly accessible system for managing market transactions is an other great disincentive to investment in land. Potential investors are more concerned with the existence of a reliable, stable and transparent structure than with the specific nature of property rights.⁵⁴

Lease term and Right of renewal

The auctions involved sales of the leasehold to parcels of land for 49 years, with the lease renewal for an additional 49 years. Leases were fully transferable for enterprise land; otherwise, lessee must obtain permission from lessor to sublet land. Land was offered with prior approval for specified types of development. Starting prices at the auctions were intentionally set low to encourage bidders to participate. Bidders were required to deposit 10% of the starting price and received this money back if their bids were unsuccessful. The winning bid amounts were paid to the city, which then also received annual rents.

Compensation and Transferability

All plots were subject to detailed state plans governing their use. All rights could be withdrawn by the state, with compensation if the state took the land for public use, and with out compensation if the holder failed to use the plot in accord with the terms of the grant or lease⁵⁵ Lessee must obtain permission from lessor to sublet land lease.

3.2 Experiences from selected Asian countries

Experiences from Beijing, china

⁵⁴ Ann Louise Strong 2003,p.186

⁵⁵ Ibid,p.186

In 1990 China officially adopted land leasing as the basis for assigning land use rights to urban land users, since then and especially after 1992, china's urban land reform has created a fast-growing real estate market. The history and common practice of public land leasing in china shows that local government and the growth of the private sector are the two driving forces behind urban land reform. Since the old system is not compatible with the growth of a market economy and the economy demands better delineation and protection of private property rights, public land leasing has become the basis for china's land allocation method. The two major goals of public land leasing are to improve local public finance and to optimize urban land use through the reestablishment of private property rights.⁵⁶

Land ownership

According to the Chinese land law, the government owns all urban land in china. Yet, the law does not stipulate which level of the government is the owner. Private parties can lease urban land from the government, then sell or mortgage the land use rights.

Lease term and lease payments

The maximum lease terms are 70 years for residential 50 years for industrial and 40 years for commercial. In Beijing, there are three ways to obtain a land lease: private negotiation, private tender and public auction. Private negotiation is the most common. It is a direct negotiation between the land user and the government over land prices and land use conditions. In private tender, multiple land users bid for a parcel of land with an offer price and a land use plan. It can involve either open or closed bids and the winner may not necessarily be the highest bidder. In contrast, the winner at public auction must offer the highest price.

Payments for leasing land usually consist of three major components: lump sum premium, urban infrastructure fee and community infrastructure fee. All three components must be paid up front to the government at the beginning of the lease. Since lease price is updated every five years or longer, most cities rely on some market –based land valuation methods to adjust leasing prices to account for changing market conditions. It is also true that most leasing prices depend on negotiations between local governments and developers. After obtaining the lease, the lessee must apply for planning permit before developing the land. The lease usually requires the lessee to complete a certain portion of land development within two years. Its original purpose is to prevent land speculation.

Right of lease renewal

A lessee can negotiate with the local government for a lease renewal when the lease expires. In the absence of a renewal, the land and improvements revert to the government.⁵⁷

⁵⁶ *F.Frederic Den 2003 pp.228-229*

⁵⁷ *Ibid, p.235*

Since China's land leasing started recently, many contractual problems- such as lease renewal, lease modification, and regulatory takings and remedies –have not yet arisen. Further, there is no well –defined legislation that governs these operations; instead, whenever, they emerge, the government deals with these leasing issues through negotiation, obviously, the government does not like to bind itself to the rule of law, but the growth of the market economy will suffer from lack of explicit legislation⁵⁸.

3.3. Experiences from selected African countries

Experiences from Kenya

Land tenure and land administration

Prior to British colony, urban lands were administered under public holdings. At the end of the 19th century, the time when the country fell under British colony, those lands under public holdings were transferred to leasehold and freehold to function different users being as crown lands. As a result, at present, urban land is administered by city administration councils as trust land. However, since the current land holding tendency has become more of free holdings, the transfer of land to different users is made through state governments, city administrative and private holders.⁵⁹

Land marketing

Supplies of urban lands, which are transferred from city administrative and private holdings to different users are mainly determined by demand and supply signals of free market. Transfer of land use rights is made through freehold sale, leasehold sale and grant.

Land pricing and decision making

In Kenya, the minimum price of leasehold sales (when land use rights are transferred through auction) is determined by Ministry of land tenure and experts of city administration. Effort is made to compare the price of leasehold sales and with their respective collateral values estimated by bank so as to check whether rating of leasehold sale price is fair or not. More over, selling documents recorded by private businesses are considered to be a supportive reference for price rating of lease hold sales. Land use plan, site location and development level of infrastructures are also some of the input parameters used for rating of price of leasehold sales. However, the final decision is made both by Ministry of land tenure and city councils. Price rating is revised within ten years time interval.⁶⁰

Lease term and lease payments

In Kenya, the ceiling of lease period is 99 years; however, the lessee has the right to decide to decide upon the use –period with in the ceiling limit. As far as lease payment is concerned, the lessee is required to pay 25% in advance and the remaining 75% after receiving the required land. Moreover, when the lessee wants to rent or transfer part of the

⁵⁸ *Ibid*, p.235

⁵⁹ *Addis Ababa city administration 2001*,pp. 18-20

⁶⁰ *Ibid*, p.18

leased land to the third party, he/ she has to get permission from Ministry of Land Administration.

Lease termination and Right of renewal

The lease is renewable if the government does not need the land for other public purposes. The lessee has two options if the lease contract is renewed. The lessee has a right to use the lease right for another similar lease period or if the lessee is interested to make the leased land for private holding, he can take the leased land for his private property by paying the whole current market value of the land at the beginning or 20% principal with 6.5 percent interest per annum. If the land is needed for public purpose either leasehold or freehold (especially for electricity poles and water pipe line distributions) the government has the right to take the land with out compensation. However, if there is development on the land, it has to pay the lessee the market value of the developments as compensation.⁶¹

Revision of lease price

In Kenya, lease price is not renewed during the lease period. But when the period is over and the contract is permitted for renewal, then the lessee is expected to pay the current market price of developed land.

Laws for development of land and related properties

In Kenya, there are different rules and principles that enables and facilitating the market of land and related properties. Some of the laws in force are real-estate representative law, surveying law; rent law land utilization plan law, law of land administration and law of land holding are the laws that are used to manage the land.

Experiences of South Africa

Land ownership and Administration

Though, in South Africa, land is owned both by the government and private sector, the lion share goes to the private sector. Due to this fact, land is transferred to different users either by perpetual sale or lease sale. In general, as the country follows market oriented economy, more of the land marketing is undertaken by private sector.

Land marketing

In South Africa, land marketing is taking place based on the current demand situation; however, transfer of land use rights is accomplished through freehold sales and leasehold sales. In freehold sales, land marketing is taking place between buyers and sellers on the basis of demand and supply principles of the market. Moreover, landownership rights are transferred to the buyers perpetually with no time limit. Leasehold sale is also another method of transferring land to users within a limited time period whereby transfer of land use rights is accomplished on the basis of market principles.

Land pricing and decision making

⁶¹ *Ibid*, p. 19

In South Africa, both pricing and decision making is accomplished in accordance with market forces-demand and supply. For marketing of leasehold sales and similar properties, however, four types of price rating are used. These are market approach, capitalized income approach, residual value method and summation method. Of these four price rating methods, residual and marketing methods are widely applied. Locality and location, land use function, material and size of property and topography are the factors considered as an input for land price rating. Finally, price rating is decided by the government, financial institutions and professional experts.

Lease term and lease period renewal

Nowadays, the average lease period is ranged from 20 to 30 years. As a result, there is a limitation in issuing title deed. Hence, the title deed is given to those lease contracts having a contract period of 10 years and above only. Moreover, the lease can be renewed if the land is not needed by the lessor. If the city administration needs the land for public purpose such as sport centre, expansion of the town, etc it has a right to take the land through the compensation of the land and related developments⁶²

Lease payment and Revision of lease price

Payment of lease price is accomplished through upfront and monthly payment. The payment is completed in ten years of time. Monthly payment is enacted by law to be renewed within five years of time interval.

Laws for development of land and related properties

South Africa has no much more experience in implementing lease system and hence there are no specific laws on lease contracts and lease hold rights as well. However, lease contracts are legally accepted in the country and hence, the country has developed practical experiences in determining lease period and lease payment. In South Africa, lease sales are governed by laws of contracts and standardized documents which have a legal basis.⁶³

⁶² *Ibid*,p.20

⁶³ *Ibid*,p.20

3.4 Lessons adopted from others experience

Even though each country has its own unique and peculiar features and characteristics, some lessons might be drawn from the experience of other countries. Lessons learned from the experience of some other countries may not be transferable directly to other countries since different countries have different circumstances. However, there are some factors that have to be considered by countries who are implementing leasehold systems.

Some countries have long experience and well established institutions to implement the policy while some other countries especially the former socialist countries have less experience.

Internationally, leasing has allowed governments to manage uncertainty in land markets during periods of transition. This has been true, for example, in post-communist, Eastern European countries such as Poland and Ukraine, where private markets and the institutions necessary for their operation are poorly developed or where impediments to market operations exist. These countries have used leasing in the context of a transfer of land authority from central to local governments. In these cases leasing has enabled local governments to allow needed development and to avoid speculative land pricing while appropriate market institutions develop.⁶⁴

Ethiopia, one of the former socialist countries who have been implementing urban land lease policy can draw important lessons from the experience of other countries. The following points are drawn as an important lesson in practicing urban land lease policy from the experience of some other countries.

1. Good leasehold legislation and regulation

- Right of lease contract renewal
- Reasonable compensation if the land and its attachments are expropriated.
- Transferability of land use rights
- Good mortgage and bankruptcy laws

2. Competent and non corrupt administration

3. Clear policy goals and supported by enforceable lease conditions.

4. Tenure security.

1. Good leasehold legislation: In Ethiopia there are legal gaps that exist for the transfer of land: no clear regulations for expropriation, compensation, subdivision and informal settlements. Hence the interests of both lessees and lessors are not secured and guarded by law.

⁶⁴ *Christie I. Baxter 2003, p.225.*

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. For example, as the leasehold act in Finland and as the experience of other Nordic countries show, these countries securer reasonable compensations to meet the interests of both lessees and lessors. Leasehold rights of lessees are so secure that there is no fear of eviction. The interests of both lessees and lessor may be met if the leasehold legislation is designed in such a way that it meets the interests of both parties.

Right of lease contract renewal

In Ethiopia as urban land lease holding proclamation No.272/2002, article 3&7, Reply (of renewal) shall be given in writing its decision within one year from the date of the submission of the application. If no reply is given within the specified time, the contract is considered as renewed. Here the submission period is very long. The lessee in one way or another may forget to apply a year advance for renewal in that case the contract may not be renewed.

In Kenya the lessee has two options as far as renewal is concerned. If the lessee is interested to make the leased land his private property he can make it (which is completely forbidden in Ethiopia) through full payment or through annual payment until the full payment is completed. If he needs to renew the contract he can renew the contract for another term. When we see the experience of other countries like Finland, Sweden, Ukraine, Beijing, and South Africa, the lessee has the right to renew the contract if the land is not needed by public purposes., In Poland, leases can be renewed unless the lessor serves notices not later than five years prior to the expiration of the term. It gives sufficient time to the lessee to take necessary arrangements before the expiration of the lease period⁶⁵. In most lease practicing countries the lessees have not a right to cancel the contract. But in Finland the lessee has the right to cancel the contract if the possibility of using the leased area has diminished.

- **Reasonable compensation**

In Ethiopia as proclamation No.272/2002, if the lease period is not renewed upon termination on account of the land being wanted for public interest, compensation shall not be paid to the leasehold possessor. On the other hand according to proclamation No. 455/2005 of Ethiopia, a land holder whose holding has been expropriated shall be entitled to payment of compensation for permanent improvements made to the land.

In Finland, and other experienced countries, the law and special lease agreements govern the compensation for leasehold improvements. The rule is that a lessor must pay compensation to the lessee for the improvements. Compensation in Finland is set at 60-70 percent of the “technical value” of the building which takes depreciation into account. For industrial estates,

⁶⁵ *Steven C. Bourassa and Yu-Hung Hong 2003, p. 21*

compensation will be available only if the contracting parties have specified this right in the lease. If there is no special agreement in advance, the land improvements will not be compensated.⁶⁶ In China, a lessee can negotiate with the local government for a lease renewal when the lease expires. In the absence of renewal the land and improvements revert to the government.⁶⁷ In Kenya, if there is development on the land, the government has to pay compensation equivalent to the market value of land and its development with 15% of the cost of removal transportation and erection as compensation.⁶⁸

“In Poland, upon termination of the leasehold, either due to expiration or as a result of legal action, the land owner must compensate the lessee for the value of land improvements, as of the termination date.”⁶⁹ Early termination of the leasehold rights may take place if the lessee does not complete the stipulated land improvements in time. In that case the lessor returns the initial payment and the amount of ground rents prepaid for the period beyond the date of termination.⁷⁰ In Israel, legally all land improvements belong to the state. But most leases that if a lease expires or is terminated permanently, lessee must be compensated for the value of improvements to land.⁷¹ As the experience of different countries show, unless the lessees are secured to be compensated reasonably when the lease contract expires or when leased land is taken by compulsory purchase, they would not like to lease the land rather they prefer other mechanisms to get land.

- **Unrestricted transfer of land use rights: (Develop and monitor land transfers)**

The introduction of a cheap and secure way of transferring land rights means that those who wish to transfer land can do so with speed and certainty. Those who do not wish to transfer their land can be protected-no persons need be dispossessed of land unless they so wish since their rights should be guaranteed. The registers should be public so that any time a land user can confirm his or her rights.⁷²

As Rachele Alterman says, in Finland, the lessee has a full right to transfer-sector leases at their full market value to (almost) any one at any time. A lessee usually can sell, sublease, bequeath, rent out or give the property at will, at any time, to any one. There is, however, a small bureaucratic errand to under take upon transfer of lease holds. Because the leases stipulate that the administration must give its consent for the transfer of the lease, the seller must obtain the administration's consent.⁷³ According to the Finland basic code of land laws, lessee has the right to transfer their contracts. They can also use their leasehold rights as

⁶⁶ Pekka V. Virtanen 2003, p. 106

⁶⁷ F. Frederic Deng 2003, p236

⁶⁸ Addis Ababa city administration 2001, p 20

⁶⁹ David Dale-Johnson and W. Jan Brzeski 2003, p.256

⁷⁰ Ibid, p.256

⁷¹ Steven C. Bourassa and Yu-Hung Hong 2003, p. 18

⁷² EPLAUA 2003, p.9

⁷³ Pekka V. Virtanen 2003, pp.105-106

collateral to secure a mortgage loan. According to the basic code of land, the leasehold agreement and the transactions must be registered in the public land register.⁷⁴ When we see the experience of even former socialist countries, there is unrestricted transfer of land use rights. In Hong Kong, China, no restriction on any transfer of leased land rights. In Beijing, China, lessee can sell mortgage or transfer land rights. Similarly, in Poland no restriction on transfer of leasehold rights. If the lessee is free to transfer his land use rights, it is possible to use the land in its maximum economic use.

- **Good mortgage and bankruptcy laws**

In Ethiopia, there is no clearly stated law on mortgage and bankruptcy. It is one of the causes of tenure insecurity in the existing tenure system of Ethiopia. There is no clearly stated legal system for mortgage and bankruptcy, and the availability of a reliable, stable and transparent system for land transactions. Because of these and other unmentioned factors Banks in Ethiopia do not seem to accept lease title as a security (collateral) for loans to investors. As the experience of former socialist countries show, there is no open accessible record of property transactions, and the market for any given parcel of land is quite speculative. Hence, Banks are unlikely to issue mortgages if the borrower's credit is difficult to ascertain. On the other hand when we see the experience of well experienced countries, for example, Sweden, Finland, Australia, etc, there is proper title and mortgage registration and hence creditors can get full information about the borrowers. A clearly registered land rights provide the greatest benefit to both creditors and borrowers. Good mortgage and bankruptcy laws can be taken as prerequisite to investment expansion and economic development.

2. Competent and non corrupt administration

“A land administration system should provide order and stability in society by creating security not only for land users and their partners but also for national and international investors and money lenders.”⁷⁵ Land administration requires clear legal frameworks, updated data and a well integrated institutional network. In Ethiopia, there is no separate land administration and land registry unit at the federal level who registers all essential juridical information allowing any one viewing the system to identify third party rights as well as the name of the land users.

As the experience of Finland, Sweden, Australia and other well experienced countries show, an efficient administration system is required to collect land rents and reevaluate property values in a timely manner. The national and local governments should be coordinated so as to create a system of checks and balances for administering public leasehold. For example, when we see the experience of Finland, the national government and municipalities are composed of members from several parties, none of which usually has the majority. Hence, this multiple

⁷⁴ Ibid, p.107

⁷⁵ EPLAUA 2003, p.6

party system in turn creates a system of checks and balance for administering public leasehold.

3. Clear policy goals and supported by enforceable lease conditions

As the experience of other countries show, a clearly stated policy goal supported by enforceable lease conditions protects the interests of both lessees and the lessors. In some countries, the government lessor includes the building clause in all leases. If the lessee does not use the leased land according to the contractual agreement, the lessor can cancel the contract and impose penalty. This type of enforceable lease condition encourages timely land development and prevents land speculation.

4. Tenure security

“With out secure land rights there can be no sustainable development, for there will be little willingness to make long-term investments. Countries in transition will, in particular, find it difficult to obtain some foreign investment”⁷⁶

Land tenure security is essential to stimulate the development of land. If land tenure is not secure, both local and foreign investors will be hesitant to invest in land development. Economists and international development specialists posit further that land title security not only stimulates a market for land and its development, but that it is the very foundation of a market economy and sustainable economic growth. Economists and development experts agree that "modern capital markets generate economic growth in part because formalized property rights remove uncertainty, which lowers transaction costs Without formal property [relationships], a modern social market economy cannot exist"⁷⁷

From the investors' point of view, their investment decision is not based solely on the specific nature of property rights (fee title or leasehold); rather the important factor is the presence of clear legal systems for land holding and the availability of a reliable, stable and transparent system for land transaction. Certainty of user rights and knowledge of all the rights that exist in the land should provide confidence for banks and financial organizations to provide funds so those land users can invest in their land. Mortgaging land is one way to acquire capital for investing in improvements. Land users can then construct or improve buildings and infrastructure.⁷⁸ Legal authority, certainty, generality, congruity, enforcement, and a viable legal profession are all prerequisites to managing investment risk⁷⁹

⁷⁶ Ibid,p.5

⁷⁷ _____ *Urban Land Tenure policy options: Titles or right.*, paper presented at the world bank forum, Westfield's Marriott, Virginia, USA

⁷⁸ Ibid, p.9

⁷⁹ Joyce Palomar, *Land tenure security as a market stimulator in china.*

IV. Assessment of the Policy's Effect on the Efficient and Equitable Resource utilization:

Since the idea of the lease system has been forwarded, the public at the lower level of government, the business community, politicians and community leaders, experts and the free press, etc. have been forwarding their fear about the possible impact of the new policy on investment. Most of their suggestions however, does not seem to have been paid due attention to. In the following sub-chapters an assessment of the major problems related to an efficient utilization of resources (the use of urban land in encouraging investment in housing and other sectors, and the appropriate use of the money generated from leasing will be made.)

The first part of this chapter (5.1) will deal first with common and then individual view of the investment community and the population at large. In the second part of this chapter (5.2) the opinion of financial institutions will be incorporated. Based on these opinions, the next sub-chapters (5.3 and 5.4) will try to analyze if the perception of the population about the policy is right and the objectives of policy will be achieved.

Definitions

Based on the economic and social nature of urban land, efficiency is defined as follows:

Efficiency: In the world staff working paper No. 283 on urban land policy issues and opportunities the term “efficiency” has been given extensive coverage in comparing with the different types of land tenure systems in different countries. According to this discussion, efficiency is defined in the following three broad ways:⁸⁰

- Responsiveness to rapid increases in demand: Refers to responding to the demand of the market and the need of those who do not have easy access to the market (the low income groups and the poor);
- Responsiveness to rapid changes in urban form: This refers to the ability to be adaptive to the dynamic development taking place in urban centers;
- Maximum productivity: Refers to making the maximum productive use of land.

Siembieda (1994), considering land from a commodity case a “good” that can be traded in the market) and social (a natural resource that belongs to society) point of view, defines efficiency as follows:

“As a general concept, efficiency refers to the ability to produce (provide) an out put (goods) at the least cost possible given a set of minimum conditions”⁸¹ Further on he widens this definition and says

⁸⁰ *World Bank 1978, pp.123-151*

⁸¹ *Siembieda, W.J.1994, p.9*

From a public point of view, efficiency occurs when enough urban land is available so that all demand for it can be satisfied. Taken to its broadest interpretation, this means that all segments of society can obtain urban land that serves an immediate useful purpose, such as, for housing, commercial sites, centers of work, and public schools. Inherent in this definition is the assumption that at all levels of demand there will be some supply made available either from existing stock or from new flows to meet the needs of all sectors of society.⁸²

Based on these definitions, an efficient land policy has an economic implication. Due to an inappropriate land policy that does not allow flexibility of land use to match the dynamic development taking place in cities, transaction costs can become very high; the release of serviced land by possible suppliers in the city can be minimum causing a very high land price. Monopoly can reign and prohibit competitions and ease of entry in the market. As a result of all these constraints, investment is not forthcoming or is delayed. In a situation of liberalized world economy and fierce competition among the different producers, this condition will increase the cost of doing business and is likely to affect the position of the country in attracting domestic and external investment in general. Then, the direct impact of a bad policy on investment, employment and efficient use of urban land (the cost of not using land to its most profitable use for society's total welfare) is serious.

Land use efficiency has also direct impact on local government finance. Land being a fixed asset is the main source of income for many city governments in many countries. An inefficient utilization of land constrains the annual income of the municipality from taxes and any user charge. An extravagant and inefficient use of land is also the major drain of resources by demanding a lot of investment on servicing and provision of infrastructure. Both the World Bank and Siembieda define efficiency from an economic and social point of view taking demand to mean the effective demand (for bidders with enough money to pay a supply price) and the non effective demand (the one that does not show up in the legal market but is explained in a form of a "need" by the low income groups and the poor).

In this paper, we take efficiency in the economic and financial sense to mean the impact of the policy on investment and use of land, and on local finance and use of land derived resources respectively.

4.1 Public Opinion

Opinions of people who are directly affected by the policy (the investment, and housing sector) and financial institutions that are involved in the implementation of the policy would have been used to evaluate the current urban land lease policy. Although with small samples

⁸² *Ibid*, P. 10

that I have taken from Addis Ababa & the lease towns of ANRS, I do not intend to represent the whole community in the cities, it is possible, however, to get some qualitative information to start the descriptive analysis and to see the possible impact of the policy in the next sub-chapters. At first, the common view will be presented to be followed by investors, financial institutions and community individual opinion.

The Common View

The common view of the majority of the business community and the population at large starts from the following different perception on the ownership and management of urban land.

“Land is a natural resource of a nation. As members of the society to whom this and other resources belong by virtue of birth, individuals are entitled to own their share. The fact that people should own their share does not deprive the future generation from making use of land. Because people die, but land is ever lasting”⁸³

4.1.1 Investors opinion

Investors: As the investment regulation of Ethiopia, investors are those which have been registered by the Investment Office of the regions and by the chamber of commerce with a minimum investment capital of 250,000 birr and birr 10,000 respectively.

Investment: Is considered in this paper in its broader sense including the mobilization of public and /or private resources in the business, housing, services, infrastructure and other sectors.

What does the business community think about the policy?

A summary of the different opinions forwarded by individual investors, higher level representatives of the organizations is given. The main focus is whether the policy in their point of view will achieve the objectives mentioned in 3.2.1 and particularly “Encourage investment” in the city of Addis Ababa & ANRS lease towns.

Efficiency arguments

- Pro
blems of public monopoly: Monopoly owner ship, whether public or private is a constraint to development and to an efficient allocation of resources. The past two decades of public ownership of land and centralization has proved the public sector’s inefficiency, sluggishness and bureaucratic land allocation that did not cape with the fast

⁸³ ARD, inc. (2004) p.3

growing demand of the population, only contributing to land price escalation and corruption.

- The

lease payment discourages investment: The provision of priority in land acquisition to those who can pay the total lease price in advance is a major constraint to investment. Those investors which are planning to use part of their money for machinery and other means of production are therefore, obliged to invest the major part of their capital in land acquisition. As a result, many will be out of the investment business. This contradicts with the advantage of the lease system (mentioned in sub-chapter 3-2-1) which by facilitating payment installment and not at once, creates a favorable financial condition for investors.
- It

discourages competition: Investors who have already acquired land when it was being given for free are in a better position than those who will acquire it through leasing. For example, a commercial enterprise located in zone 1 is paying a rent of 4 birr/m²/year while the lease price in this same area, based on the presently held auction, is almost 337 birr/m²/year (see table:8). Therefore, in the latter case, the production cost /unit of good is higher than in the former case. This means that the owner of the leased land can not compete with that of the rented land. As a result of lack of competition, monopoly of production and the consequent price increase will follow affecting the economy of the country.
- The

lease period which is already agreed upon discourages investment in long lasting buildings: Real estate developers in the city have shown their fear that a maximum of 60 years given for commercial and apartment buildings (buildings that last long) is likely to be unattractive and discouraging particularly for multi storey buildings and large scale industries which demand long lease hold or free hold tenure as a precondition the present lease period is considered to be short.

Social (equity) arguments

- The policy discourages new entrepreneurs, the low income and the informal sector: On the one hand, due to the major emphasis given to land as a means of income generation for the municipality, poor people (with natural talent) are in a difficult position to get land.

This will undoubtedly contribute to the increase of the already high level of unemployment (which at present stands at almost 40% of the active population in the city) on the other hand, being given only the “right of use”, previous land holders are not allowed to use their plot of land as a collateral particularly the poor who earn a

living through informal activities, but who want to improve their situation using their properties as a collateral to get formal credit, are seriously affected.

- The lease changes the public monopoly into private monopoly: As there is no limit on the amount of land one person can lease, only very few rich individuals will lease the most important sites in the city of A.A & ANRS for the purpose of investment but speculation. If land prices for different land uses are decided by auction as is being done now, the access to urban land will be blocked for the majority. The few rich and politically influential individuals who benefited from the past land allocation policy are likely to benefit even now.

Institutional constraints

- Problem of centralization of power: The public sector has proved to be inefficient in the last two decades to allocate land for the different uses on the right place and at the right time. The time from application to approval of a plot of land for business activity used to take from a minimum of few weeks to a maximum of two or more months, even some times it may take a year. However, if people are allowed to own land and to sell their possession, the options of getting land will be very wide and transaction costs will be less.

To reflect their discontent of this policy, the central committee of the chamber of commerce on behalf of its members submitted a petition to the committee who prepared the country's recent constitution with the following two main points to be paid attention to:

1) Experience of other many countries has shown that in order to proceed to wards the free market economy, and to encourage the private sector to play the most important role in development, security of ownership is the main element. From this point of view, on the one hand, individuals should be allowed to buy and own land (whether it is from government or from other land holders), and on the other hand, discrimination concerning the use of land is necessary between the previous and future possessions.

2) One of the major steps to be made to implement a free market economy is to define properly what the role of the government should be. If it is too wide, it will directly lead us to our previous experience of command economy. Therefore, the government instead of competing with its own citizens in the exploitation of resources should rather enable the private sector and the Community to use their initiatives, efforts and financial and manpower resources in improving the social and economic problem of the country.⁸⁴

⁸⁴ *“petition of the chamber of commerce, 1994, pp 2-4*

4.1.2 Residents opinion

House holders and another people from Addis Ababa and lease towns of the Amhara National regional State have been interviewed about their opinion concerning the impact of the current lease policy on investment expansion and financial sector. The following sub-chapter summarizes their observations.

Social (equity) arguments

- It encourages segregation: The policy provides for private dwelling houses a highly subsidized plot of land which does not exceed the maximum 175 m² in case of Addis Ababa and 250m² in case of ANRS for a period of 99 years. Those individuals who need more than this maximum can obtain land through auction. If this is allowed to happen, then the result will be that the rich will commute and live together on very expensive and environmentally safe land. The poor then will be left congested and crammed together in the centre or will be obliged to leave the city and move nearby towns and rural areas where the land price is relatively cheap. This will contribute to the development of small towns and to an unnecessary expansion of the city.

- It does not pay attention to culture and past tradition:
Ethiopians are characterized by having a very close linkage with the ownership of land. As Mesfin WoldeMaram (1966) puts it, the socio-economic and political lives of Ethiopians are inseparably tied to land. Whenever they want to invest in housing or business activities, they always think beyond their life span. They want it to pass from generation to generation. Therefore the duration of the lease is a disappointment for investors in the housing sector.

Institutional constraints

- Aggravates corruption: people applying for a plot between the minimum (73m²) and the maximum (175m²) are to be selected by casting lots. A committee which will be responsible for selecting those which qualify for a plot will be formed. This is not any different from the bureaucratic and corrupted socialist government land administration department which for lack of financial capacity to bribe the municipal government staff deprived the low income groups and the poor from access to land.

- The public sector inefficiency to satisfy the demand and the need: The public sector, being the only owner of urban land in the country, as its past experience shows, especially in Addis Ababa, is inefficient to allocate residential plots to meet the required demand. The public sector should learn from the past and get out of the land ownership and allocation process or should decentralize this responsibility to the lowest level of government.

4.2 Financial Institutions opinion

Financial capital is one of the most important strategic inputs in land and land related development activities. Banks and other financial institutions being the most important loan providers to private and public investment activities, the implementation of the policy has been directly influenced by the type and efficiency of the credit system. Hence, it seems reasonable to get the feed back and opinions of these institutions about the current urban land lease policy of Ethiopia.

Higher officials from private and publicly owned financial institutions in Addis Ababa and in the lease towns of ANRS have been interviewed by the researcher about their opinion concerning the efficiency and the problems of the policy during its implementation. A summary of the different opinions forwarded by (high level officials of both private and public financial institutions) is given. The main focus is whether the policy in their opinion is conducive in the promotion and expansion of investment through making secure credit mechanism or not.⁸⁵

Efficiency arguments

Problems of security for credit: Certainty of user rights and knowledge of all the rights that exist in the land should provide confidence for banks and financial organizations to give funds so those land users can invest in their land. Mortgaging land is one way to acquire capital for investing in improvements. However, due to the absence of land use and land administration policies, lack of detailed guidelines for the implementation of land related legislations and absence of proper title and land rights registration system, banks are not confident enough to provide loans to finance demanders in Ethiopia.

Land transfer problems

A cheap and secure way of transferring land rights means that those who wish to transfer land can do so with speed and certainty. When land is transferred all the right of use registered and the registers should be public so that at any time a land user can confirm his or her rights. Since registers contain information on current land value, banks and other financial institutions can get full information about the value of land to be pledged as collateral. However in Ethiopia, it takes a long period of time to transfer land use rights from the lessor to the lessee even after paying the lease price. Further more, there is not a register system that registers the important information to secure both the lessee and the lesser. Lengthy land acquisition process is the result of all these problems related to land transfer.

The lease price discourages investment

City administrations and municipalities have been trying to use lease sales as the main source of income to cover their infrastructure and service provision expenses. In order to get high

⁸⁵ Municipality managers, mayors, and work and urban development bureau officials were interviewed.

income from lease sale, land is supplied through auction for those who can afford to pay exceptionally high prices. Hence, the lease price does not show the market value of land. Large part of the investors' capital is used in land acquisition rather than being used to run their investment. In addition to that, even those investors who acquired the land with the payment of high price can not pledged the undeveloped land as collateral to get additional capital to run their business. This is because; banks are not voluntary to accept such inflated land price as market value of land. As the result of all these, many investors will be out of the business investment.

Collateral problems

Most borrowers use the money not for the desired project but for other unplanned activities. Diversion of funds for unplanned activity is common. Hence, from the financial institution points of view it is very risky to provide loan to those borrowers (lessees) who have not yet started construction (development). So that, in Ethiopia, taking undeveloped land as collateral is really risky. In addition to that, since the lease price is over and above of the market value of land, and does not show the market value, the borrower (lessee) is expected to develop the land in order to pledge the land as collateral for loan provision.

Some lessees take the land through paying higher prices not to undertake development activities but to sale with higher prices for other land demanders. This makes the land price over and above the market value. In such type of lease price, bankers are not confident to take undeveloped land as collateral unless the lessee develops the land.

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Regulation problems

According to the cities' regulations, any person to whom leasehold of urban land is permitted must begin to use the land for the prescribed activity or service within six months. If the leasehold possessor has failed to start to use the land within six months, the lease contract will be terminated. In case if the lessee is not able to pay on time, banks can not return back the loan amount by selling the collateral because of the right to first mortgage principle. Therefore, banks are not voluntary to provide loan to lessees who want to pledge undeveloped land as collateral. According to the financial institutions opinion, to facilitate and secure the credit system, this regulation gap should be settled.

Interest rate problems

At present banks charge simple interest. Both in civil code and commercial code of Ethiopia, banks are not allowed to charge compound interest. The only thing that they can do on those borrowers who failed to pay on time is putting a penalty of 3% on the sum total of principal and interest. But from business point of view, it does not consider time value of money. According to their opinion, the reasonable rate to be charged should be the same rate as deposit interest rate.

4.3 General Problems of the policy

In the first part of this chapter we tried to see the opinion of the community and financial institutions. The following two sub chapters (5.3 & 5.4), by using different scenarios and assumptions, will try to show the general problems of the policy and institutional and other constraints that will affect the implementation of the policy. Some other important ones which are the outcomes of the field work will also be discussed.

Efficiency arguments

i) Financial consequences of the government intervention in existing possession

Problem of the double track system

One of the main problems which the new land policy attempts to solve is the difference between previous landholders and the new allottees. One of the solutions presented by the municipality is to create a transition period with double track system. While the “right to use” and “benefit from” land is given to the latter, (those who acquire land through the lease system), the former (people with previous possession) however are given only the “use right” of land. If they want to sell or transfer their property, before full transfer of ownership is made, the land on which the property is located should be put under the lease system by paying the value belonging to a similar piece of land auctioned in that area. This differential treatment is based on the belief that while the present lessees have paid the market price of land to the lessor (the government), previous land holders have acquired land for free.

According to the finding of the field work, out of the people who filled the questionnaire 50% have bought the plot they are occupying before the revolution. Half of the remaining 50% land holders who acquired land during the socialist period are not original allottees but second buyers (people who have bought it from the original allottees for very high and distorted prices) It is possible to drive a conclusion from this that 75% of the people in the city of Addis Ababa have one way or the other, paid for the land they occupy. Asked whether they are willing to sell their property under the new arrangements where they will have to pay a lease price for the land they occupy before selling it, 95% have shown their unwillingness to sell their property.

What will be the financial and economic consequence of people being unable and unwilling to sell their property under such a situation?

If people are unable and unwilling to sell their property under such a situation, the municipality and the tax collecting department of the city (Inland Revenue) have lost a huge amount of money generated from transfer of properties and related services. If the future tendency is to be according to the research outcome (people are not willing to sell their properties), this income is likely to be lost forever. The economic cost of this lack of

transaction is the opportunity cost resulting from not recycling existing possession to their better and optimum economic use.

The other alternative which was not considered is what advantages (economic and financial) could have been derived if present occupants were also given the right to benefit from their land by selling it or transferring it in any other form but paying a tax for the government.

ii) Discourages Investment:

According to statistical bulletin from 1991/92-2001/02 of the Amhara National regional state investment office has approved a total of 461 investment projects with a total estimated capital amount of birr 5.2 billion and employment potential of 92967. Looking at the status of the projects: according to the regional investment office, as of July 7, 2002, of the total 461 approved projects where as 40% have already started operation, 19% and 40% are at a stage of implementation and pre-implementation respectively. However, according to information obtained from the regional investment office, of the total approved investment projects 17 (13.7%) with aggregate investment capital of Birr 89 million are terminated due to various reasons.⁸⁶

Recognizing the contribution made by private investment projects under implementation towards socio-economic development of the region through making additional products, generating job opportunities and income, saving and generating foreign exchange as well as enhancing critical linkages between economic sectors, a study conducted by the regional investment office also notes the low private sector participation, its limited financial and economic efficiency as well as the generally insignificant development impact because of a host of policy-related, operational and other problems.⁸⁷ More of the problems that cause for the low level of investment expansion in the region are policy related problems. These include: Lack of a clear and transparent credit policy as well as a less prudent operation of banks, lack of a banking service in some areas with proven investment potential, inadequate incentive schemes provided at the regional level.

Further more, failure to timely approve or allocate land plot for expansion purposes, arbitrary and subjective taxes and fee assessment in the absence of reliable data or information as well as negative influences that affect the interest and attitude of private investors, absence of secure and rapid land transfer, high land price, lack of proper attitude and understanding on the part of government executives at all levels and particularly at the local level are also some of the major problems that resulted in low level of investment capacity in the region.

⁸⁶ *Investment office of Ethiopia..1994, pp.2-4*

⁸⁷ *WU consult 2004, p.25*

The problems that the lease towns of ANRS have faced are also problems of the country at large. Hence the over all investment expansion and the participation of both foreign and local investors are very low.

According to the quarterly report of the Investment office of Ethiopia concerning the impact of land on investment states:

In a country where private economic activities and initiatives were officially discouraged and the experience of promoting and creating an enabling environment for private investment has been non-existence for the last two decades, certain problems are expected to arise in implementing the investment code. Some of the problems are: Firstly, the slowness of allocating land for investment both in the urban and rural areas. The lease holding system adopted is not working as expected and it is hoped that this system will be improved and create an efficient allocation of land to investors which is basically determined by market forces. Furthermore, if measure regarding the present high price of land leased is taken, it will be come competitive and affordable so that it does not discourage essential investments.⁸⁸

Contrary to the expectation of the federal and regional investment offices, the present auction has proved two facts: a distorted land price which is unaffordable by many investors particularly those of the lower strata, and a very slow allocation process. At the present rate of allocation, it will take years to meet the needs of investors who are waiting for land. This will refrain the mobilization of private investment and creation of employment in a city.

iii) It affects the quality of buildings

When the lease contract expires no automatic contract renewal is guaranteed. Individuals are expected to leave the land as soon as possible with no compensation for the structure on the land. This undermines private investment in durable buildings and encourages the use of temporary building materials. According to the urban land lease holding proclamation No.80/1993, the lessee can renew the contract if it is not needed for public purpose. Upon termination of the lease agreement the lessee shall deliver the land to the town administration within six months by removing all the property installed on the land. The town administration may take the land with the property installed thereon if the lessee fails to remove his property from the land within the period specified.⁸⁹

(iv) Inappropriate lease payment

The urban land lease holding regulation no.3/1994 in article 14 allows for lease winners to pay periodically with compounded bank interest for industries and rental dwelling houses with in 30 years, business 15 years, culture and education 20 years, and private dwelling

⁸⁸ *Investment office of Ethiopia 1994, p.2*

⁸⁹ *Urban land lease holding proclamation No.80 / 1993.*

houses having an area in excess of 175m² in 10 years. However, priority was given for those who pay the total amount of the lease price at the signing of the lease contract. It is made clear that once the full payment is done, no other payment is expected from the lessee until the contract expires.

Although for initial investment, a huge amount of money is required, the problem of encouraging full payment of the lease price is that it contradicts with the objective of the retention of land in public ownership which is meant to have the increase in land value accrue to the community.

V) It does not allow present occupants to develop their land

As regulation No.4/ 1994, article 9 states that when land of previous possession is required for public uses, or to be redeveloped according to the master plan, compensation at market price is paid for the structure and the land holder is expected to leave the site as soon as possible. They are not allowed nor prioritized however, to take the initiative to develop the land individually or in joint venture according to the new land use.

The few interviews held with present occupants of prime lands in the city show that most of them are willing to develop the land themselves in accordance with the master plan if they are provided access to credit, and are allowed to use the land as collateral.

Institutional constraints

Vi) It does not solve corruption and speculation

The articles on both regulation and the proclamation concerning exceptional circumstances allow regional governments to grant urban land freely or with out public tendering for investors that the government wants to encourage. This situation creates a loophole for corruption. As long as the type of projects is not specifically mentioned, any private investment can be justified on this ground. If the lease price is the same, this will create a loophole for corruption, because only those who have power and money will have the best located sites in the city.

Concerning speculation, the lease policy allows individuals to own as much land as possible and transfers it whenever they want, with the only condition that they should at least build the foundation of the project approved in the land use plan. This will discourage speculation on undeveloped land, but people will speculate on developed land.

vii) The policy lacks understanding and participation by the public

Out of the total 100 residents interviewed 85% have only heard about the publication of the proclamation and regulation, and 13 (13%) did not have any idea about the policy. This shows that almost 99% of the participants did not have any detailed knowledge about the policy or the different regulations. The main cause for this lack of interest is, on the one hand,

the lack of confidence in and the hostility towards the public sector and its policies, and on the other hand, the impact of the unsuccessful and bad performance of the experts groups who for the first time defended the benefit of the lease system against the freehold system in front of the private sector and community representatives.. There is lack of public awareness on land policy and negative consequences of informal development.

Social (equity) argument

viii) Subsidize the wrong target group

The urban land lease holding regulation no.3/1994 in its article 6 states that those who prove to be capable of building houses are entitled to get a subsidized plot of land for 0.50 Birr / m²/ year if the plot they demand is between 73 m² and 175 m² and for free if it is less than 73 m² in case of Addis Ababa. The allocation for these groups will be without tender by casting lots.

The first problem with this arrangement is that although it is desirable to subsidize the low income group and the poor, it is, however, unfair to subsidize those who are financially strong to pay the full cost of the land and build a house. In addition, it will be very difficult for the municipality to satisfy the whole demand at a subsidized rate. If people are willing to cover the cost of the serviced land, they should not either compete on a casting lot bases with those who pay nothing but automatically qualify for a plot.

ix) The policy treats the poor inequitably

Article 19 of the urban land lease holding regulation no.3/1994 concerning compensation makes clear that when residential land with an area of less than 175m² is required for public purposes or to be redeveloped according to the master plan, the compensation to be paid will be only the current market value of property on the land.

The leasehold is said to be a system which allows land tenure terms long enough to enable people to plan their activities in advance, to recover their capital expenditure and enjoy secured land holding. However, if lessees are to be evicted with only compensation for the property on the land, this deprives them of security in land holding and on their investment on the land. When people are evicted from the place they were living, family and friendly relations break down, work will be lost, transportation and other costs will increase. All these and other costs which affect mainly the low income group and the poor are not taken into consideration. However, those who acquire land by tender (the rich people) have the right to sell the land, transfer it, or use it for collateral purposes and when the land they occupy is required for public purpose, they are compensated for it.

4.4 Institutional and other constraints to implement the policy

- **The lack of qualified man power**

Qualified manpower is very crucial to achieve the policy objectives. As the information obtained from municipalities of the lease towns of Amhara national regional state and the lease office of Addis Ababa, out of the total employees more than 50% are secondary levels (grade 12) complete. MSC and PhD holders are less than 3 percent. This very high level of educational gap between people and the lack of adequately qualified man power in urban land and other matters on the one hand affect flexibility and efficiency in performance and on the other hand put the municipality (from the point of view as a sole owner of urban land in the city) in a difficult position to tackle the fast increasing demand for land.

The weakest part of the institutional arrangements is that in the lease towns of the Amhara national regional state there is not a separate department that is responsible to lease land. It has been implemented by the departments that are responsible also for other activities. The department which is supposed to lease land in the city of Addis Ababa had very small number of employees as compared to the total population.

Clarke and Dowall (1991) explaining the experience of other countries show that even the largest public land development agency in the world, the Indonesia's perumnas, with more than 4000 employees has only managed to develop plots for 17,000 housing units/year.⁹⁰ Then to expect the city of Addis Ababa municipality and the lease towns of ANRS to accomplish this task at the present level of man power is unrealistic.

- **Lack of cadastral map**

The existing cadastral map which was prepared in 1978 covers only a small part of the city of Addis Ababa. Similarly a cadastral survey was started few years ago in the city of Bahir Dar but at the moment the survey was not working in Bahir Dar. Due to this problem, it has been very difficult to identify the allotted and the vacant, and the public from the privately occupied land. Under such conditions where there is not a proper land auditing system, it is difficult to undertake leasing of urban land.

- **Absence of financial institutions' participation in policy formulation**

Financial institutions like Agricultural and Industrial development bank, mortgage bank, construction and business bank being the major financiers of business activities and housing (the part which takes the biggest part of the land use) respectively, these banks have a direct relation to land and the structure on it. However, in the design of the lease policy, these institutions did not have any part at all. On the one hand they were only ordered by the government to accept all land obtained through lease as collateral between the bank and individual lessee and reject the rest (previously hold land) and on the other hand they refused undeveloped land as collateral due to exaggerated price and insecure ownership of land. The effect of this imposition and rejection is that in a situation where

⁹⁰ Clarke, G. and Dowall, David E 1991, p. 29

the market does not give the real signal, they are obliged to accept leased land as collateral at the distorted price while rejecting a profitable centrally located previously possessed site which is attractive as a guarantee for borrowing. Further more rejecting the private lessee to collateral the leased land results a shortage of finance to run their investment activities.

- **Conflict between urban and rural boundary:**

As is the case with urban land, rural land also remains under the state ownership. While the urban government retains the right to lease urban land by auction, the peasants however, are not allowed to sell or lease their land for urban uses. When rural land is required for urban expansion, the peasants affected by the decision will be relocated. This on the one hand deprives the poor farmer of his right to his land and on the other hand, can result on illegal subdivision.

During the socialist government's period when land was also publicly owned and the peasants were put under the same condition, their association became one of the major actors in illegal subdivision and conversion of rural land into urban uses. This tendency is likely to continue even in the future as in the past.

- **Unreliability of Governments:**

Ethiopian experience has shown that no government has ruled the country for more than 40 years. Therefore, the fact that somebody has to sign an expensive contract of long duration (a lease of 99 years and so on) in a situation where governments have been unreliable and unstable has become by itself a big risk. If the change of government means the change of all previous major policies as is happening now and in the past, this creates an unsafe environment for investment.

Out of the total investors interviewed, all of them had strong doubts of this government to rule the country peacefully until the shortest lease period (which is 50 years for commercial undertakings.)

All the problems translated in to the four research questions can be summarized as follows.

Economic impact

- Monopoly ownership of urban land is major constraint to efficiency and competition;
- The “use right” given previous land holders affects transaction, efficient land use ; Improvement of the physical structure, and economic development in the city;
- It discourages investment by all sectors (formal and informal) and expansion of enterprises.
- It discourages competition;

- By depriving present land holders the right to develop their land according to the master plan; it discourages private initiatives in land improvement.
- By not guaranteeing contract renewal and proper compensation, it discourages the use of durable materials and buildings.

Financial impact

- For projects which require huge initial investment and to save money against inflation and for emergency, the freeholder or long lease hold is a better option.
- The double track system and the subsequent ban on transaction affect the financial position of the local government and the inhabitants.
- Inappropriate utilization of income for housing results in lack of finance for the provision of services and infrastructures.
- Inappropriate lease payment affects the municipal finance in the short and long run.

Social impact

- It discourages new entrepreneurs and the informal sector.
- Treats the poor (urban and rural) inequitably concerning compensation, use, and transfer of the land they presently holding and new land allocation.
- Subsidizes the wrong target group by neglecting the poor.

Institutional impact

- Public monopoly ownership of land and centralization of power and its inherent characteristics: bureaucracy, lack of transparency, corruption and inefficiency are the main bottlenecks to efficient land allocation.
- Does not address speculation and corruption.
- Lack of cadastral map.
- The lack of qualified man power.
- Lack of participation by the population and financial institution.
- Conflict between urban and rural boundary.

V. Pros and cons of the current urban land lease policy of Ethiopia

The pros and cons of Ethiopian lease system can be seen from both lessee's and lessors's perspectives. The foremost advantage of public leasehold for lessees is that the initial investment capital needed for land development is smaller if private individuals lease rather than buy land⁹¹. Since Ethiopia is the least developed country, most domestic investors are not capable enough to pay the whole land value at the beginning of the lease period. Investment loans granted by the financial institutions cover only some part of the transacting price of the property. Potential investors must cover the remaining part as down payment for their

⁹¹ Pekka V. Virtanen 2003, p.109

investment. However, many investors in Ethiopia may not have sufficient money to make the down payment. Leasing the land allows investors to lower their initial down payment. More important, if a government lessor uses a discounted market value of land to set annual land rents, leasing could give lessees a real saving in the total costs of land and investment development.

Leases often include a clause that requires lessees to complete land development within a specific period. Lessors may cancel the land contracts or impose a penalty on lessees, if land is left idle. This reduces land speculation, In well experienced countries, the state and local governments have taken important steps to minimize problems associated with tenure insecurity .Both lessees and lessors in many municipalities appear to be satisfied with public leasehold .AS stated earlier, some municipalities in Finland, have offered lessees the option to convert their leasehold rights into freehold; however, few lessees have accepted the offer.

Some of the major pros and cons of the current urban land lease system of Ethiopia are summarized below in Table 12

Table: 11 some of the major pros and cons of the current urban land lease system of Ethiopia

Pros	Cons
<ol style="list-style-type: none"> 1. Government creates a source of revenue to construct infrastructure, low cost houses, and other community facilities. 2. Encourages investors in the house construction sector and alleviates the housing problems of urban centers. 3. Controls loopholes, corruption and unjustified gains from transfer of right to use urban land. 4. Controls the horizontal expansion of urban centers and reduces cost on infrastructure. 5. By manipulating the rate of lease payment it encourages investment in lower level urban centers. 6. In accordance with the principles of free market economy, the investor feels secure as long as his legal right on urban land is recognized for the duration of the lease. 7. Implements the free market principles of Ethiopia by creating conditions where by the right to use urban land can have market value. 	<ol style="list-style-type: none"> 1. Through efficient tax policy and service fees, the revenue of the government can be improved. 2. High rate of payment of lease discourages investors and raises house rent. 3. Through application of fines and special taxes, mechanisms for controlling illegal speculators can be designed. 4. Legal recognition of the Master plans and preparation of Master Plans for those urban centers that don't have one could control the land use pattern of Urban centers. 5. Lease payment determined by public bid will be beyond the reach of most middle and low investors. 6. Lease creates insecurity and erodes the right to private ownership of urban Landownership. 7. Does not conform with the economic policy of Ethiopia where the right to security of ownership of urban house

<p>8. Developers may not need to raise huge initial investment capital to lease land for their investment.</p> <p>9. Leasing may allow the government to repossess land for redevelopment after lease expires.</p> <ul style="list-style-type: none"> • Municipalities may be able to recapture a portion of the unearned land value increments by adjusting land rents regularly <p>11. Public lease hold may discourage land speculation</p> <p>12. Leasing may generate a stable stream of rental revenues for municipalities</p>	<p>is recognized.</p> <p>8. Credit worthiness of leasehold rights may be less than free hold contract may include irk some condition.</p> <p>9. Lessees may lose their properties when leases expire.</p> <ul style="list-style-type: none"> • Lessees neglect the maintenance of leasehold improvements when the lease term is approaching its expiration. Lessees may not profit from increments in land value. <p>11. Administering public leasehold requires government lessors to have a high level of integrity and land management experts.</p> <p>12. Income accumulation is slow if the prepayment of annual land rent is not used.</p>
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VI. Conclusions and Recommendations

6.1 Conclusion

As shown in sub-chapter 3.2.1, the new land lease policy was aiming at achieving the following five socio-economic and administrative objectives:

- Give the market value to urban land;
- Encourage investment;
- Control the expansion of the city;
- Provide housing and infrastructure to the low income people;
- Do away with speculation and non transparency.

With the implementation of the new land lease policy, the first and most important step towards a market oriented land management has been made. However, the modality of implementing this policy by using “the double track system” makes the policy too rigid and unable to respond to the fast increasing demand of the population and the business community for land in the city of Addis Ababa. As a result of the ban on transaction in previous possession, the supply of serviced and accessible land will be reduced, transaction costs and land prices will increase and investment will be discouraged. The most feared

undesired expansion of the cities which required enormous financial and man power resources for the conversion of rural land to urban uses is also a result of this inefficient use of the available land within the existing boundary of the city and the lack of investment in vertical development.

Administrative constraints

For a cities whose housing demand and need is growing rapidly, especially Addis Ababa, the existing very centralized institutional set-up, available financial resources, and skilled manpower is likely to be inadequate to allocate land and build low cost housing efficiently and equitably. It is also unlikely that the new policy changes the already developed technocratic behavior for which the previous secretive and inefficient arbitrary systems provide opportunities for illegal gains and political influence.

To conclude, due to the way the policy is formulated and is to be implemented, the lack of qualified manpower and adequate institutions, the lease policy however advantageous and good it seems in the long run, is likely to face a lot of obstacles in order to address the different socio-economic objectives.

The current leasing system there fore, needs improvements along several lines. First, it should be made more attractive to the public .Second existing disincentives for leasing should be removed or at least reduced. Third, the leasing system can and should be simplified in order to become easier and cheaper to operate. Fourth, quality of lease contracts should be improved. Finally, release of new land should flexibly reflect demand and be based on monitoring this demand.

Further, real progress in this area cannot be achieved by the government alone. Direct constructive cooperation with the private sector and non-governmental experts is also In sum, further progress in introducing the leasing model will depend not only on which changes will by made but also on how the process of their elaborations will be organized.

6.2 Recommendations

Public intervention in the land market is justified on the ground of efficiency, equity, safety and health of the society. Although it is indisputable that the public sector holds a certain amount of land for future growth for the development of services, infrastructure, protects the undesired expansion of the city, and facilitates serviced land at affordable prices to all income groups and as a result discourage speculation, all this does not however justify the monopoly ownership of urban land by the public sector. Since, there are markets failures there are also government failures. “Public monopolies of land ownership reduce supply and increase costs.

There is excessive bureaucracy; inadequate institutional arrangements and a lack of honesty (probity) and transparency in land allocation procedures”⁹² Experience of many countries has shown the advantage of letting the private sector into the land market so that both the public and private sectors together provide land efficiently and equitably and the option of getting land become wider than if it is allocated only by the government.

Despite the fact that the majority of the investment community and the population favor the freehold system and the government the leasehold, it is still possible to reconcile this two different attitudes and achieve an efficient and equitable land use if the following recommendations are paid due attention.

i. Provide proper legal frame works

In Ethiopia legal gaps exist for the transfer of land: no clear regulations for expropriation, compensation, rehabilitation and informal settlements. Moreover, institutions are not empowered properly (legal, financial, equipment, manpower).⁹³ The legal framework for urban land development and management shall be clear, fair and transparent. Legal provisions shall be developed that address manners of land acquisition, expropriation, compensation, rehabilitation, informal settlements and land evaluation.

ii. Provision of a grace period and the “benefit right” to previous land holders

The adaptation of this step will have the following two advantages:

- A) solve the problem of the double track system;
- B) solve the differential treatment between people and increase the efficiency

A) Solves the problem of the double track system

The main consequence of the double track system that provides only the “use right” to previous landholders affects the existing built up area and the housing stock when all state owned houses are fully privatized. This, in addition to encouraging transaction costs in the city, also results in shortage of land supply, inefficiency of land use and illegal activities. At least in the short run, land in a city is a fixed and inelastic commodity. If previous land holders are not allowed to transfer their possession, and the major part of the city is literally “dead land” (idle land which is only used for the present function and does not respond to the dynamics of city development), only the new supply by the public sector cannot respond to the ever increasing demand.

Even in china, where it has been tried for the first time, it has faced many difficulties.

On the supply side, many of China’s current policies (such as those that limit transfer of land use rights) have resulted in the effects of discouraging land users to put their idle and under-utilized land on the land market....The experience of other countries and china all show that tight government control only encourages the expansion of

⁹² *McAuslan, P. 1994, p. 57*

⁹³ *WUB Consult 2004, p. 83*

black markets, and this is injurious to efficiency as well as social equity. Meanwhile, policies restricting land transactions should be eliminated or revised⁹⁴

Concerning whether it is recommendable to charge those who are believed to have acquired urban land for free if they want to have the “benefit right” from their possession, the same report states:

As long as it is permitted by city planning, urban land users should be encouraged to transfer land that they acquired with out many restrictions. At present, the major factor that obstructs normal land transfers is the requirement of providing make-up payments for land acquired previously through administrative appropriation. Based on the above analysis, the rationality of this requirement is questionable. The result of its implementation has proved to be harmful.⁹⁵

B) Solve the differential treatment between people and increase the efficiency of land Use

As has been analyzed in the previous chapters (5.1.1), the existing differential treatment between new allottees and previous land holders has created inefficient land utilization and a bad atmosphere for competition and investment. This mainly because while the former pay the market value of the land, the latter pay a negligible land rent.

iii. Land price increases and the question of appropriation of benefits:

It is commonly argued that urban land can only be “produced” by the decisions and investments of the public authorities. The value of urban land produced from raw land should therefore be a good belonging to society as a whole. It is also a common understanding that land price appreciation due to the effect of urbanization and public sector investment should be appropriated by the community.

The regulation No.3/1994 on land lease holding of Addis Ababa, approved on article 15 sub article 4 the necessity to provide 60% of the profit on transaction of land to individuals .The Federal government’s land lease proclamation however, contradicts the above point by putting in article 10 sub article 5 the necessity of appropriating all land price increases in the city. If land users are not encouraged to appropriate some of the benefits, they will not dispose their excess possession to the market or invest on land improvements as the opportunity cost of saving their money in bank or investing it in other profitable business becomes more attractive.

The basic way to improve urban land distribution efficiencies is to encourage land users to adjust land use structure with the goal maximizing land profit. Therefore,

⁹⁴ *IFTE, CASS, IPA, 1992, p.165*

⁹⁵ *Ibid, p.201*

given the objective of improving land allocation efficiency, the rational policies should allow land users to obtain part of the profit from increased land value⁹⁶

Although appropriating 60% of the profit in land transaction by individuals (particularly when the increase is due to public sector interventions) is enormous, it is however recommendable to make amendments in the proclamation and allow individuals to have such incentives so that they can invest in the improvements of land. This will alleviate the financial burden to the municipality in developing land for urban use.

iV. Lease payments

As has been practiced in Addis Ababa and lease towns of ANRS, those who pay the full price at once are prioritized among the possible bidders to win a plot by auction. It is also decided that once the winners pay the total lease price, no additional payment in a tax or any other form is expected until the contract expires.

The future is always unpredictable. Due to the socio-economic and political importance of Addis Ababa as a city of the Federal government and the African continent and the transition to a market oriented economy, investment is likely to boom and land prices to increase at an unexpected rate. Unless a mechanism which can help to appropriate or at least share this profit is designed at present, this system of payment will therefore allow individuals to capture land price increase in the future and deprive the right from the community.

One of the ways to do so is through periodic assessment of land value in and around the cities, determination of the appreciation of land and appropriation this benefit through all sort of land related taxes. This means that whether the lease price paid at once or by installment, appreciation considerations and awareness for such measures in the future by lessees is necessary.

V. Encourage investments in maintenance and long lasting buildings

The consequence of lack of security on contract renewal is that when the lease contract is approaching to expire, landholders will stop investing in the maintenance and improvement of the land and the structure on it so that the price of the land falls down. Other countries such as the Netherlands have solved this problem in the following way:

After provision of infrastructure, parcels are typically leased rather than sold. The original leasehold system, dating from 1896, provided for leases of up to 75 years, after which the property would revert to state ownership. It was soon discovered that this system tended to discourage tenants from improving their plots, and would undoubtedly lead to neglect of maintenance and repair as leases began to expire.

⁹⁶ *Ibid*, p.167

Consequently, in 1915, the present structure of leases in perpetuity was begun. Ground rents of from 4 to 6 percent of the purchase price of plots are paid annually and revised every five years to account for increases in the general price level.⁹⁷

The other solution which is also successful in this country is the payment of the market value of the structure when lease contracts expire. In this case, individuals will not have any motives to disincentives in the improvement and maintenance of buildings.

Although neither the policy makers nor the government of Ethiopia agree on the idea of perpetual leasing (leases that last very long or for ever), this solution adapted in the Netherlands is still ideal and worth considering for the problem we are facing.

Vi. Social versus economic function of land

Land is the gift of god and the wealth of a nation which belongs to people. It has a dual function. With its social function, it expresses the social relations between people and society. With economic function, it is treated as a commodity which can be freely bought and sold in the market.

The present tendency and excitement of generating all the required resources from land leasing seems to focus more on the commodity nature of land (as land expressing the economic relation between people) and the social function which should take precedence is likely to be forgotten .The greatest problem with this approach is that unless care is taken not to neglect the social aspect of land, prime lands reserved for social functions (schools, residential development, health, social housing, parks etc.), and those sites occupied presently by very low income people and the poor are going to be leased without proper compensation for the dislocated.

In the case of rural land which is required for urban function, it is also stated that the farmers will be relocated to other sites. If this is allowed to happen, proper compensation that covers the cost and consequences of resettlement should be paid. When people are evicted from the place they are living, family and friendly relations break down, work will be lost, transportation and other costs will increase, and in the case of farmers, virgin land is likely to be hard and time consuming to develop etc. All these and other costs that can not be easily estimated should be considered during compensation.

Vii.Solve the cultural conflict and the fear of the unknown

In designing and trying to implement a completely new policy, there is always the fear of the unknown. Past experience and culture are important in considering a new policy. In Ethiopia, the dominant way of urban land ownership throughout its history has been freehold and this tradition affects the successful implementation of the new policy.

⁹⁷ *International Bank for reconstruction and development,1974,p.33*

Feelings about tenure are important and governments ignore them at their peril.....where feelings are strong about freehold, then it would be best to stay with it or move to it; where feelings appear neutral, there is some merit in basing a modern land tenure system on leasehold, with the state holding the free hold reversion and exercising management power via that interest in the land⁹⁸

In the case of Addis Ababa, people have shown their resentment for what is thought to be short lease (from 50 to 99 years) and their indifference for a freehold or a long lease which can last 200 years or more. Therefore, it is worth considering the provision of along lease hold which is similar to a freehold to encourage investment in the city.

Viii. Payment of proper compensation to lease holders

If the leased land is needed for public purposes or to be developed according to the master plan, compensation at market price for the structure and the land should be given if evicted. Priority to develop should also be given to the present land holders.

iX. Discourage speculations

Some land specialists believe that in a situation of high demand where the private market tends to “hold out” urban land; land speculations are economically productive and an efficient allocation mechanism in the long run. However, from financial point of view, when land is hold for speculative purposes, the municipality will have to spend the already scarce resources in serving other areas while the already developed sites remain idle. From an economic point of view, this “leapfrog” development and the holding of unutilized vacant land which otherwise would have been used for productive purposes, is a loss to society’s welfare.

The best way of discouraging speculation is not to tax more those who sell undeveloped land and encourage those who developed land as has been proposed by the policy makers. Although this measure of encouraging people to develop land before selling would increase the amount of developed land in the city, it is difficult to stop speculation because people will still speculate with developed land. One way or another (whether developed or undeveloped), land remains unused. Despite administrative constraints and possible resistance by possible powerful groups, one of the solutions for this problem is the utilization of taxes on vacant land. Taxes on vacant or under utilized land are a potentially strong and direct instrument to punish hoarding and speculation, especially if rated according to the date of acquisition and the degree of underutilization⁹⁹

⁹⁸ *Farvacque and McAuslan 1991, p. 50*

⁹⁹ *Baken .and Linden 1992 ,p. 47*

Another method which has proved to be successful in controlling speculation in the Netherlands, Sweden and some other countries is public sector land banking and the timely release to the market at affordable prices. This solution can not be successful in the Ethiopian context as long as there is absolute public monopoly of ownership and allocation. Unless there is ease of entry into the system particularly by previous land holders with their stock, the government alone cannot achieve efficient and equitable land distribution and overcome speculation.

X. Develop a proper cadastral and land register system

With out a proper updated cadastral maps and land registry system, it is difficult to have a clear picture of the land tenure and a land auditing system in Addis Ababa and the lease towns of the Amhara region in particular and the country as a whole. The government priority should therefore be to assess the existing system, improve the institutional set up to carry out land registration, and in collaboration with the community, develop an efficient land registration system. For successful transaction to take place and to impose an adequate property tax, it is necessary to develop an inventory of all publicly and privately owned land in the leased cities.

Land markets require a clear identification and delineation of land parcels. Cadastral information is necessary because land appraisal must be based on current, complete, and accurate cadastral maps that show boundaries, areas, and legal constraints, along with identification data. Thus a public, accessible cadastre serves several purposes: providing information about the functioning of the land market, facilitating collection of a land use tax, and providing information of land use planning.¹⁰⁰

Develop clear, simple and transparent instructional operations, procedures and legal formalities in the registration and titling of land holding.

Xi. Facilitate training to local staff

Training of the local government staff, particularly those sections which have direct relation to land management should be the first priority. Land leasing and upgrading of rents needs updated information about the functioning of the current land market. This is a difficult task unless there is sufficient qualified manpower that can assess and updated information.

Xii.Allow participation

One of the major problems to be addressed for the successful implementation of the new policy in the country as a whole is the lack of awareness and understanding of the privileges

¹⁰⁰ *Bertaud. and Renaud 1994, p.30*

and advantages the new lease system provides. As long as people, for whom a policy is designed are not part of the policy making group during the design period, implementation is expected to be unsuccessful. As shown in 5.2, close to 75% the interviews did not have enough understanding about the policy and its different components.

Although the major mistake is already done by not allowing public participation in the preparation of the federal government's land lease policy, it is however, possible to overcome some of the problems if National / Regional governments allow the public and the different actors that are affected by the policy to participate in the preparation of the different regulations that enables to implement the policy at the lowest level.

Xiii.advance planning to acquire land for urban expansion and redevelopment

Although land is considered public property, it has current holders; therefore it requires advance planning to acquire land for development. Therefore:

- Identify and demarcate development land ahead of time and acquire through proper legal means by paying compensation.
- Ensure the development of an acquired land within a specific period of time.
- Ensure rural-urban conflict is kept at minimum by enacting clear compensation regulation.
- Strengthen the capacity of municipal administrations to mitigate problems of displacement at times of urban expansion and redevelopment of urban centers.

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CONTACT

Belachew Yirsaw
Institute of Land Administration
Bahir Dar University
Bahir Dar 1097
Amhara
ETHIOPIA
Tel.: + 251 9769755
Fax: + 251 582202025
Email: Belachew02@yahoo.com

Appendix: 1 Comparison of provisions of leasehold policies of Addis Ababa & Oromia and ANRS

Criteria	Reg. No. 29/2004 A.A	Oromia Reg. No 1/2002	ANRS Reg .No .2/1995	ANRS Reg. No.6/2002
Fixing Lease rate	-Minimum lease rate to be fixed by the administration, - Lease rate to be set by public tender,	-Minimum rate defined based on land rent and house tax and cost of infrastructure, -Public tender for city centre land,	-Minimum lease rate defined by public tender -Lease rate to be flat rate for the lease period	-Minimum to be set, or negotiated rate -Former land rent will be lease rate for longstanding tenure transferred to lease
Subsidy for housing	-Lease rate for 105-175 m ² =0.50 cents/year/m ² - Above 175 m ² by tender	Up to 200 m ² through rent system, above 200 m ² leasehold and rate defined by tender	-100-250 m ² similar land rent for existing housing areas -Above 250 m ² lease rate defined by public tender	-100-250m ² by casting lots above 250 m ² lease by tender price payable per year for 99 years
Land allocation mechanisms	-Auction, -Negotiation -Allocation/or awarding	-Up to 200 m ² through rent system, above 200 m ² leasehold and rate defined by tender	-Auction -Allocation	-Auction -Negotiation -Administrative fiat
Period for launching construction	18 months for housing; and 18-30 months for all other class of uses	One year for all classes of uses	-6 months for residences -9 months for all other uses	-18 months irrespective of use classes -Detailed directive to be set by To TIUD
Grace period for completion of project	No limitation for housing, -2-5 years for investors	Not specified	-Not specified	-To be specified by other regulation grace period not applicable to housing land allocated by lot system
Size of holding in m ²	-Fixed for housing with minimum lease rate no maximum for other uses	Fixed for housing in rental administration (200 m ²) no maximum for other uses	-Fixed for housing with minimum rent -No limitation for land	-Fixed for housing allocated through lot system No maximum for leased land

			held by tender	
Scope of application	-All new developments -Existing possession upon request for transfer to leasehold. -Request for expansion (on part or whole of existing holding)	Urban centre of level one and two only; commercial holdings not covered by rent, new developments existing possessions by application for transfer to leasehold system, or when they request for expansion	-All urban centers, but application to be progressive, in lease towns all new land developments	-All urban centers. -All functions -Applicability (time and conditions) to be set by the Regional Administrative Council
Title transfer	-Conditions for estates developed for sale not clear -Capital gains tax repealed	-Land title and possession right over house clarified for real estate housing development	-Land under leasehold can be transferred wholly or partially for the lease period,	-Does not state any provision

Source: Reg.No.29/2002 for A.A, consolidated Reg.No.1/1995 for Oromia, ANRS Reg.No.6/2002, and Wubshet (2000)