

# Protection of Tenure Security in Private Renting under Ethiopian Residential Lease Law: A Comparative Study

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## *Abstract*

*Rental tenure or residential lease is the most common residential tenure in urban centers in Ethiopia. Despite its dynamic nature, the sector is still regulated by the Civil Code, enacted six decades ago. This article aims to review the protection of tenure security of lessees in private rental housing in the Ethiopian residential lease law. The experience of some jurisdictions in the protection of tenure security is also reviewed. The article finds that Ethiopian law lacks minimum rules on a number of factors that safeguard security of tenure including minimum lease term, rent increment, lease renewal, notice period and forced eviction. Accordingly, the lessor can give short-term leases and then terminate it upon expiration, increase rent anytime and by any percentage, terminate the lease and evict the lessee at any time for no cause. The lessor is also not required to give notice regarding the various measures he/she takes. Thus, safeguards that are necessary to protect tenure security are either non-existent or poorly utilized. Hence, lessees are left largely unprotected, which makes life in rental units insecure and unstable. The study recommends urgent revision of the residential lease law to incorporate minimum rules that are necessary to protect security of tenure and bring security and stability to millions of lessees in the country, and thereby meet the country's human rights obligations in relation to the right to adequate housing.*

**Key Terms:** Security of tenure, residential lease/tenancy agreement, lease term, rent, termination, eviction, lessee/tenant, lessor/landlord

## **Introduction**

The Ethiopian residential housing sector has seen important developments since the introduction of the free market economy in the 1990s. The intermittent allocation of plots of land for residents in cities to build houses, the permission of ownership of extra houses and the introduction of condominium housing scheme at the beginning of the new millennium have

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contributed to the revitalization of the residential housing sector.<sup>1</sup> Despite these developments, a large portion of city dwellers live in rental housing. According to the 2016 Central Statistical Authority Welfare Monitoring Survey, 53.77% of the urban population lives in private rental units and a further 6.58% lives in subsidized or free-of-charge units while homeowners account for just 38.96%.<sup>2</sup> The data shows that renting is the most common tenure in Ethiopian urban centers, with private renting having the majority and public houses accounting for a small percentage.

However, renting in the private rental sector is not seen as a long term and stable alternative to home ownership; it does not enable to lead a stable and secure life. Lessors behave in an exploitative and unfair way towards renters including arbitrary expulsion, frequent or high rent increment, etc. Renters' plight in this regard cannot be underestimated. These practical problems have motivated the writer to assess the rules in the existing law on the subject and examine the gaps in the law that may have contributed to these problems.

The unfair and opportunistic behavior of lessors is driven mainly by the acute housing shortage in cities. For instance, in the capital Addis Ababa, the housing shortage by the year 2017 was estimated to be 1.2 million units, increasing by 100,000 units each year.<sup>3</sup> Nevertheless, the government does not seem to tackle the problem in a systematic and concerted manner. Still, the government does not have comprehensive housing policy. There are intermittent policy statements in some documents and legislations like the Growth and Transformation Plan,<sup>4</sup> the Urban Development Policy,<sup>5</sup> the

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<sup>1</sup> That is not to say that the housing shortage is resolved or eased; it is indeed to the contrary. See Samson Berhane, The Politics of Urban Land Policy, Affordable Housing, *Ethiopian Business Review*, (16 May-15 June 2018), No.61. [<https://www.ethiopianbusinessreview.net/index.php/topic/item/5889-the-politics-of-urban-land-policy-affordable-housing>.] (Consulted 24 May 2019).. See *infra* p. 2 .

<sup>2</sup> Central Statistical Authority (CSA), Welfare Monitoring Survey 2016 Statistical Report, Volume II, p. 88 (Table 8.14 (c)). The actual number of renters in cities is 2,506,811 and the number of people who lives in subsidized or free of charge housing is 306,701. Whereas the number of homeowners is 1,816,327, which is lower by about 20%.

<sup>3</sup> Ministry of Urban Development and Housing, National Report, (2017). See also Samson Berhane, *supra* note 1.

<sup>4</sup> National Planning Commission, Growth and Transformation Plan II (2015/16-2019/20), (2016), pp.157-161.

<sup>5</sup> Ministry of Urban Development and Construction, Resilient, Green and Accessible Urban Development Policy, 3<sup>rd</sup> ed., (2012). See also *Elleni Araya*, Gov't Unfold Draft Housing Policy, *Addis Fortune*, (04 Nov 2012), Vol. 13, no. 653.

housing programs<sup>6</sup>, the land lease law<sup>7</sup> and condominium laws. The focus of these policy statements is the provision of low-cost housing by the government. The government has been the principal actor in the supply of housing. Yet, it repeatedly has fallen short of its plan to build an adequate number of housing units.<sup>8</sup> The policy orientation is also skewed towards ownership and it hardly touches the rental market. The Urban Development Policy, which contains better policy statements on housing as it makes housing one of its pillars, stipulates, that the government will adopt regulations and directives to regulate the rights and duties of lessors<sup>9</sup> and lessees,<sup>10</sup> and the standard of housing.<sup>11</sup> Yet, no such standard or regulation is enacted. Detailed discussion of housing policy issues will not be made as the purpose is to assess security of tenure in private renting in the existing law on the lease of houses.

The private rental sector is regulated by the Civil Code,<sup>12</sup> which has withstood various changes in politics, ideology and government. Laws with some relevance to the rental sector were enacted after it. One such law is Government Ownership of Urban Lands and Extra Houses Proclamation No. 47/1975, which nationalized extra houses and urban land.<sup>13</sup> It prohibited ownership of extra houses and renting of houses by individuals.<sup>14</sup> Consequently, the government became the sole renter.<sup>15</sup> With the adoption

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<sup>6</sup> Ministry of Urban Development and Construction, Integrated Housing Development Program (2005-2010), (2004).

<sup>7</sup> Since the adoption of Proclamation No. 80/1993, urban land tenure has been leasehold. See Urban Lands Lease Holding Proclamation, Proc. No. 80/1993, *Negarit Gazeta*, Year 53, No. 40, (1993). Under the current urban land law, acquiring land other than leasehold through allotment or tender is prohibited. See Urban Lands Lease Holding Proclamation, Proc. No. 721/2011, *Federal Negarit. Gazeta*, Year 18, No. 4, (2011), Art. 5(1). The leasehold system has been considered as a huge entrance barrier causing housing shortage and making houses unaffordable.

<sup>8</sup> For e.g., during the Integrated Housing Development Program period (2005-2010), only 142,802 condominium housing units were constructed out of the planned 400, 000 units. See FDRE Ministry of Urban Development, Housing and Construction, National Report on Housing and Sustainable Urban Development, (2014), p. 58.

<sup>9</sup> The terms lessor and landlord are used alternatively to refer to the owner of a housing unit who lets it for others.

<sup>10</sup> The terms lessee and tenant are used alternatively to refer to the person who rents a housing unit for residence.

<sup>11</sup> Urban Development Policy, *supra* note 5, p.22.

<sup>12</sup> Civil Code of the Empire of Ethiopia, Proc. no. 165/1960, *Negarit. Gazeta.*, Extraordinary Issue, year 6, no. 1, (1960). [Hereinafter Civil Code].

<sup>13</sup> Government Ownership of Urban Lands and Extra Houses Proclamation, Proc. no. 47/1975, *Negarit. Gazeta*, no. 41, (1975).

<sup>14</sup> *Id.*, Art. 11(1) cum. Art. 13(1) cum Art. 20(1).

<sup>15</sup> *Ibid.*

of market led economic policy by the EPRDF government following the fall of the socialist Derg regime in 1991, owning extra houses and private renting was allowed. The Government still owns houses expropriated by Proclamation No. 47/1975<sup>16</sup>

There are also recent laws like the Condominium Proclamation No.370/2003 that deals with management of condominiums,<sup>17</sup> ownership,<sup>18</sup> sale and lease<sup>19</sup> of units in a condominium in federal jurisdictions. Its importance on regulation of residential leases in condominium housing is however very scant. The relevant provision on lease of a condominium-housing unit, Article 22, is concerned with procedural formalities to be followed when a unit is leased or a lease is terminated. Regional States have adopted comparable condominium proclamations.<sup>20</sup>

Thus, the Civil Code, specifically Title XVIII Chapter 2 Section 2 (Articles 2945-74), which deals with residential leases<sup>21</sup> remains to be the principal law regarding renting in the private rental sector. The rules apply to various types of housing units: furnished or unfurnished houses, a flat, a room or some other building, or a part of a building.<sup>22</sup> Apartment flats, service quarters, compounds and a part of it or a building are thus covered.<sup>23</sup> Moreover, lodging service provided in a hotel room that exceeds a month is also considered as a residential lease.<sup>24</sup> The provisions of the Civil Code thus cover the vast majority of shelters. However, owing to the duration it has been in place, the changes in policy and urbanization that have taken place in the country, the law may be expected to fall short in the protection of lessees

<sup>16</sup> For an explanation why the government still owns those houses, see Yohannes W/gebriel, *Rent Fixation Capitalist, Mode of Ownership Communist*, *The Reporter*, (19 January 2019).

<sup>17</sup> Condominium Proclamation, Proc. No.370/2003, *Federal Negarit. Gazeta.*, Year 9, No. 95, (2003), Arts. 10-20.

<sup>18</sup> *Ibid.* Arts. 8 & 9.

<sup>19</sup> *Ibid.* Arts. 21-23.

<sup>20</sup> See for instance, The Amhara National Regional State Condominium Proclamation, Proc. No. 144/2006, *Zikre Hige*, (2006).

<sup>21</sup> Civil Code, Arts. 2945 (2) cum. 2653 (2). In addition, the rules relating to 'Lease in General' (Arts. 2896-2944) are also applicable when the rules in the special section are not enough.

<sup>22</sup> *Ibid.* Art. 2945 (1).

<sup>23</sup> The terms used in Article 2945(1): 'house', 'flat', 'room', 'building' and in Proc. No. 370/2003 Article 22: 'condominium unit' refers to fixed structures and do not seem to refer to unconventional types of housing like mobile homes, shelters by the railway station, etc. In some jurisdictions 'everything covered' with walls and a roof is considered as a house for the purpose of rental laws and enjoy the same rights as tenants.

<sup>24</sup> As per Art. 2653 of the Civil Code, lodging service provided in a hotel for less than a month is considered as innkeepers' service.

in the private rental sector. Realizing this fact the government has recently outlined its plan to introduce new regulations in the rental sector. A concerted step in the form of legislation is yet to be taken.

The purpose of this piece is not to assess the residential lease law as such; nor does it cover renting in public houses.<sup>25</sup> The assessment is limited to the security of tenure aspect of the law in private residential leases. It assesses the safeguards available for renters in the private rental-housing sector and examines their sufficiency to enable renters to lead a stable and secure life thereby meeting the country's obligation to ensure the right to adequate housing. Title XVIII Chapter 2 Section 2 of the Code is analyzed and the laws of some jurisdictions with better experience are reviewed to draw lessons.

The article is organized as follows: the first section briefly introduces the concept of security of tenure. The second and major section deals with the major factors that affect tenure security. It discusses the legal provisions on lease term and renewal, rent increment, the grounds and process of termination and eviction. In doing so, it assesses the position of Ethiopian law and compares it with other jurisdictions on protection of tenure security using comparative approach. Finally, the article forwards concluding remarks and recommendations.

## **1. The Concept of Security of Tenure**

Security of tenure is an important element of the right to housing, which is recognized in various international human rights instruments. These instruments include the UDHR Art. 25(1), the International Covenant on Economic, Social and Cultural Rights (ICESCR) Art. 11(1), the International Convention on the Elimination of All Forms of Racial Discrimination (CERD) Art. 5(e)(iii), the Convention on the Elimination of All Forms of

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<sup>25</sup> There are different types of government owned houses hold for rent. The major ones include Kebele houses, most of which are confiscated pursuant to Proclamation No. 47/1975 and inherited by the present government and are rented mostly for the poorest of the poor, and houses administered by the government houses agencies at federal and regional levels, rented primarily for government officials. The purpose of these houses is different from private ones and decision on major aspects of those houses is made by the respective kebeles and agencies or corporations. At Federal level, the former Agency for Rented Houses was re-established in 2007 as Agency for Government Houses; it was then dissolved and its rights transferred to the newly established Federal Housing Corporation by Agency for Government Houses Dissolution Proclamation No. 1022/2017 and Federal Housing Corporation Establishment Council of Ministers Regulation No. 398/2017. Market level rent is not paid for these houses.

Discrimination against Women (CEDAW) Art. 14(2) and the Convention on the Rights of the Child (CRC) Art. 27(3). Some instruments like the UDHR and the ICESCR address the issue of the right to housing in general while others address the issue from the perspective of special groups they aim to protect.

At the regional level, both the European and Inter-American human rights instruments have recognized the right to housing. In Africa, although the African Charter on Human and Peoples Rights (ACHPR) has not expressly recognized the right to housing, the African Commission on Human and Peoples Rights has derived the right to housing from other expressly recognized rights such as the right to health, property and protection of one's family in the SERAC Case.<sup>26</sup>

Ethiopia is a party to many of these instruments: it acceded to the ICESCR on June 1993,<sup>27</sup> the CERD on June 1976<sup>28</sup> and the ACHPR on May 1998,<sup>29</sup> and ratified the CRC on May 1991<sup>30</sup> and the CEDAW on September 1981.<sup>31</sup> Hence, Ethiopia has the duty to guarantee legal protection to security of tenure of housing. Despite this, the Constitution followed similar approach to the ACHPR in not expressly recognizing the right to housing. The closest is Art. 41(4), which states: "[t]he State has the obligation to allocate ever increasing resources to provide to the public health, education and other social services." Nevertheless, the term 'other social services' could be interpreted to include housing pursuant to Arts. 9(4) and 13(2) of the Constitution.

<sup>26</sup> See *The Social and Economic Rights Action Center (SERAC) and the Center for Economic and Social Rights (CESR) vs. Nigeria*, Communication 155/96, African Commission on Human and Peoples Rights (ACHPR), ACHPR/COMM/A044/1, (27 May 2002) para 60. [<http://www.achpr.org/communications/decision/155.96/>] (Consulted 28 June 2018).

<sup>27</sup> See United Nations Treaty Collection Depository [[https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtmsg\\_no=IV-3&chapter=4&clang=\\_en](https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtmsg_no=IV-3&chapter=4&clang=_en)] (Consulted 18 June 2018).

<sup>28</sup> See United Nations Treaty Collection Depository [[https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtmsg\\_no=IV-2&chapter=4&clang=\\_en](https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtmsg_no=IV-2&chapter=4&clang=_en)] (Consulted 28 June 2019).

<sup>29</sup> See AU Treaty Ratification Status List. [[https://au.int/sites/default/files/treaties/36390-sl-african\\_charter\\_on\\_human\\_and\\_peoples\\_rights\\_2.pdf](https://au.int/sites/default/files/treaties/36390-sl-african_charter_on_human_and_peoples_rights_2.pdf)] (Consulted 18 October 2019).

<sup>30</sup> See United Nations Treaty Collection Depository. [[https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtmsg\\_no=IV-11&chapter=4&clang=\\_en](https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtmsg_no=IV-11&chapter=4&clang=_en)] (Consulted 18 October 2019).

<sup>31</sup> See United Nations Treaty Collection Depository. [[https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtmsg\\_no=IV-8&chapter=4&clang=\\_en](https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtmsg_no=IV-8&chapter=4&clang=_en)] (Consulted 18 October 2019).

Perhaps, the most important instrument in relation to the right to housing is the Covenant on Economic, Social and Cultural Rights due to its binding nature, wider application and elaborate provision on the subject. Art. 11(1) states: “[e]veryone has the right to an adequate standard of living for himself and his family, including *adequate ... housing*.” [Emphasis added]. The right to adequate housing is recognized as an element of the right to an adequate standard of living.

The right to housing, among others, entails legal security of tenure.<sup>32</sup> Pursuant to the Economic, Social and Cultural Rights Committee General Comment No.4, legal security of tenure is one of the elements of the right to housing which "guarantees legal protection against forced eviction, harassment and other threats."<sup>33</sup> The guarantee is extended irrespective of the type of tenure- home ownership or rental.<sup>34</sup> In other words, security of tenure is "the degree of certainty a person has about their residential accommodation: the choice to stay or leave; the legal protections they have over their tenancy; and the sustainability of their tenancy in terms of cost and amenity."<sup>35</sup> Security of tenure thus means security from being forced to leave due to the landlord's threats, an unaffordable rent increase, intolerable living conditions or the expiry of the lease.<sup>36</sup> In short, security of tenure is the extent to which a tenant who complies with his or her obligations under the tenancy agreement can continue to live in the property for as long as he wishes.<sup>37</sup>

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<sup>32</sup> The other elements of the right to housing include availability of services, materials, facilities and infrastructure, affordability; habitability; accessibility; location; and cultural adequacy. See CESCR General Comment No. 4: The Right to Adequate Housing (Art. 11(1) of the Covenant), Adopted at the Sixth Session of the Committee on Economic, Social and Cultural Rights, on 13 December 1991 (E/1992/23), para. 8 (b-g).

<sup>33</sup> *Id.*, para. 8 (a).

<sup>34</sup> *Ibid.*

<sup>35</sup> Victoria State Government, Security of Tenure – Issues Paper: Residential Tenancies Act 1997 Review – Fairer Safer Housing, November 2015, p. 7. [[https://www.westjustice.org.au/cms\\_uploads/docs/westjustice-rta-review-security-of-tenure-submission.pdf](https://www.westjustice.org.au/cms_uploads/docs/westjustice-rta-review-security-of-tenure-submission.pdf)] (Consulted 18 June 2018).

<sup>36</sup> *Ibid.* See also Yee, Gary, Rationales for Tenant Protection and Security of Tenure, *Journal of Law and Social Policy* 5, 1989: 35-60, p.48. [<https://digitalcommons.osgoode.yorku.ca/jlsp/vol5/iss1/3>] (Consulted 27 February 2019).

<sup>37</sup> Age UK, *Tenancy rights, Security of Tenure, Factsheet* 68, June 2017, p.1. [[https://www.ageuk.org.uk/globalassets/age-cymru/documents/factsheets/fs68\\_tenancy\\_rights\\_security\\_of\\_tenure\\_fcs.pdf](https://www.ageuk.org.uk/globalassets/age-cymru/documents/factsheets/fs68_tenancy_rights_security_of_tenure_fcs.pdf)] (Consulted 21 February 2019).

Besides the human rights grounds for the protection of security of tenure discussed above, there are also economical and ethical justifications for its protection. On economic basis, government intervention in the rental housing market (to regulate both tenure security and rent though the latter is beyond the scope of this paper) is justified to correct market failure, which is an inherent feature of the sector.<sup>38</sup> The failure of the market is attributable to the high transaction costs and a weaker bargaining position for tenants.<sup>39</sup> The tenant incurs high economic costs associated with searching for housing and moving out, especially when the vacancy rate is low. Though difficult to quantify, there is a loss associated with losing one's familiar home, having to adapt to a new neighborhood, changing transportation routes to work, etc.<sup>40</sup> Further, the housing market is heterogeneous with differing tastes, locality, type, specification, quality, price, etc., leaving the tenant with few choices, unlike that of the landlord.<sup>41</sup> Tenants also lack sufficient information and are uncertain about market rents, rental houses available and condition of rental houses. The supply side is inelastic due to the high capital cost involved in building, the long and expensive process of building and the immobility or fixed location of the product. This weakens the position of the tenant to bargain on an equal basis with the landlord creating a monopoly for the landlord and thereby justifying intervention.<sup>42</sup>

On ethical grounds, government intervention is justified on a combination of rationales of protecting vital interests, weaker parties and reasonable expectations of tenants.<sup>43</sup> The first rationale is that housing constitutes basic needs or vital interests. As unregulated market may not meet the basic needs of people, the government is justified to take action to secure the basic need of secure housing. The second ethical rationale is that the tenant is the weaker party in the tenant-landlord relationship and many likely would not be able to secure the basic attributes of good accommodations through negotiation.

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<sup>38</sup> Yee, *supra* note 36, pp. 39-43.

<sup>39</sup> *Ibid.*

<sup>40</sup> *Ibid.*

<sup>41</sup> *Ibid.*

<sup>42</sup> *Ibid.* See also Haffner, Marietta; Elsinga, Marja & Hoekstra, Joris, Rent Regulation: The Balance between Private Landlords and Tenants in Six European Countries, *International Journal of Housing Policy*, Vol. 8, No. 2, 217-233, (June 2008), p. 220.  
[[https://www.researchgate.net/publication/263652684\\_Balance\\_between\\_landlord\\_and\\_tenant\\_A\\_comparison\\_of\\_the\\_rent\\_regulation\\_in\\_the\\_private\\_rental\\_sector\\_in\\_five\\_countries/download](https://www.researchgate.net/publication/263652684_Balance_between_landlord_and_tenant_A_comparison_of_the_rent_regulation_in_the_private_rental_sector_in_five_countries/download)] (Consulted 19 November 2018), p.20.

<sup>43</sup> *Id.*, pp. 43-47.



Hence, the government needs to protect the weaker party from undue exploitation and influence by the stronger party, the landlord. The third ethical rationale is that the government should protect reasonable expectations and reliance in contractual and other relationships. This rationale would justify having statutorily implied terms of protection without prohibiting waiving or contracting out of these terms.

Generally, proper policy and regulatory framework on rental housing is necessary to create a sense of autonomy and stability associated with the concept of home for many individuals who cannot become homeowners.<sup>44</sup>

## **2. Factors Affecting Security of Tenure**

As discussed above, security of tenure is an essential component of the right to adequate housing. However, the realization of security of tenure is affected by numerous factors. The major factors include legal provisions regarding lease term and renewal, rent increment, the grounds and process of termination and eviction.<sup>45</sup> The nature of legal provisions on the above issues determines the level of protection to tenure security. In the following sections, an attempt is made to thoroughly analyze the Ethiopian residential lease law in light of the above factors and the extent of protection of security of tenure afforded to lessees. For better understanding, extensive reference is made to protections afforded to tenants in other jurisdictions.

### **2.1 Lease Term**

Lease term is the duration of the lease/tenancy agreement. The duration of the lease impacts, positively or negatively, the security of tenure. Long-term leases enable tenants to plan about their future life (form a family, raise children, schooling, etc.). It affords renters with much needed certainty and stability regarding their housing, and hence higher security of tenure. On the other hand, short-term tenancies leave renters with a lot of uncertainty about their housing, as they have to wonder whether they will find a suitable home in desirable areas at an affordable price and how soon will they get it and for

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<sup>44</sup> Bell, Deborah, H., Providing Security of Tenure for Residential Tenants: Good Faith as a Limitation on the Landlord's Right to Terminate, 19 *GA. L. REV.* 483, 532 (1985), p. 541.

<sup>45</sup> See Victoria State Government, *supra* note 35, p.7. The legal protections over the security of tenancy include rules governing: lease terms, terminations, rent increases, and repairs, maintenance and modifications. *Ibid.*

how long they may live in their new home, etc. In effect, when leases are shorter in duration renters become uncertain, insecure and instable.

Under Ethiopian law, a lease can be for a determinate or indeterminate period.<sup>46</sup> A determinate period lease is a lease agreed for a fixed period, with specified start and end dates. However, the duration of the lease depends on the agreement of the parties. The lessor and the lessee can agree for a lease period of, say, 3 months or 3 years with specific dates for starting and ending. An indeterminate lease, on the other hand, is a lease agreed with no period fixed in the lease, with no specified end date. In addition, when the lessee continues to enjoy the leased unit unopposed by the lessor after the expiry of the fixed term lease the law considers the lease tacitly renewed and the lease becomes an indeterminate period lease.<sup>47</sup> Thus, both the duration and the choice of the type of lease are left for the parties to determine in their lease agreement. In other words, the law does not prescribe a mandatory minimum lease term though it was enacted at a time where tenant protection was the fashion of the day.<sup>48</sup>

Unlike Ethiopian law, tenancy laws in many jurisdictions provide mandatory minimum lease terms.<sup>49</sup> For instance, in the UK, the minimum duration is six months.<sup>50</sup> In Ghana, the minimum duration is one year.<sup>51</sup> In Spain and

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<sup>46</sup> Civil Code, Art. 2927 (1) cum. Arts. 2965 and 2966.

<sup>47</sup> *Id.*, Art. 2968 (1).

<sup>48</sup> Many jurisdictions practiced strict forms of rent control to curb the effects of housing shortage caused by the two world wars and variants of rent control regimes resumed in many of those jurisdictions to date. See Arnott, Richard, *Rent Control*, Boston College Working Papers in Economics, (1997), p. 4. [<http://ideas.repec.org/p/boc/bococ/391.html>] (Consulted 20 April 2019).

<sup>49</sup> In Europe, only Luxemburg, Switzerland, Slovenia, Hungary and Slovakia do not provide minimum lease term in their laws. Portugal's law does not require minimum lease term, but if the parties did not fix the lease duration in the lease agreement, the lease term is deemed to be for 2 years. See Shelter UK, *Time for Reform: How Our Neighbours with Mature Private Renting Markets Guarantee Stability for Renters*, (Oct 2016), pp. 8-9.

[[https://england.shelter.org.uk/\\_data/assets/pdf\\_file/0005/1289615/Time\\_for\\_reform\\_FINAL.pdf](https://england.shelter.org.uk/_data/assets/pdf_file/0005/1289615/Time_for_reform_FINAL.pdf)] (Consulted 10 September 2019). See also Sottomayor, Francisco, *Reform of the Urban Lease Law: Will the Rental Gordian knot Be Cut?* (2012), p. 5. See Santos, Nelson & Garcia, Maria, O., *Tenant's Rights Brochure in Portugal*, in Schmid, Christoph. U., and Dinse, Jason, R., (eds.), *My Rights as Tenant in Europe: Tenancy Law and Housing Policy in Multi-level Europe*, (2014), p. 624. [<https://www.tenlaw.uni-bremen.de/My%20Rights%20as%20Tenant%20in%20Europe.pdf>] (Consulted 25 July 2019).

<sup>50</sup> England provides one of the lowest minimum lease periods in Europe. See Davies, Bill, *et al*, *Lessons from Germany: Tenant Power in the Rental Market*, Institute for Public Policy Research (IPPR) Report, (2017), p.13. [<https://www.ippr.org/files/publications/pdf/lessons-from-germany-jan17.pdf>] (Consulted 22 August 2018).

<sup>51</sup> Malpezzi, Stephen; Tipple, A. Graham & Willis, Kenneth, G., *Cost and Benefits of Rent Control: A Case Study in Kumasi, Ghana*, World Bank Discussion Paper, The World Bank, (1990), p.35.

Romania, the minimum lease period is three years.<sup>52</sup> In the Republic of Ireland, the minimum lease duration is four to six years.<sup>53</sup> In France, the minimum tenancy duration is three years for unfurnished lettings and one year for furnished lettings. However, in France the minimum lease term is three years if the landlord is a natural person and six years if the landlord is a corporate body.<sup>54</sup> In countries like Germany, Norway, Sweden, Denmark and the Netherlands leases are signed normally for an indefinite period.<sup>55</sup> In many of those jurisdictions, even express agreement to the contrary does not have a legal effect. The parties have the freedom only to negotiate terms above the minimum duration. In other words, freedom of contract is limited to ensure security of tenure to tenants.

The advantage of mandatory minimum lease term is that it protects the tenant from termination of the lease without just cause, usually attributable to the default of the obligations of the tenant, before the expiry of the lease term. When this is the case, the renter is certain to live in the rented home for the duration of the lease as long as the renter performs the obligations. This affords greater certainty and stability, and hence, security of tenure to the tenant.

Some jurisdictions do not provide minimum lease periods. These jurisdictions include Japan,<sup>56</sup> China,<sup>57</sup> Hong Kong,<sup>58</sup> South Africa,<sup>59</sup> the

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<sup>52</sup> Shelter UK, *supra* note 49, p. 7.

<sup>53</sup> In Ireland the minimum lease duration for Part 4 tenants (tenants who are not given valid notice of termination for six months) is 4 years for tenancies started on or before 24 December 2016 and 6 years for tenancies started after 24 December 2016 under the Residential Tenancies Act 2004 and the Residential Tenancies (Amendment) Act 2015 and Planning and Development (Housing) and Residential Tenancies Act 2016.

<sup>54</sup> Cornette, Fanny, Tenant's Rights Brochure in France, in Schmid, Christoph. U., & Dinse, Jason, R., (eds.), *My Rights as Tenant in Europe: Tenancy Law and Housing Policy in Multi-level Europe*, (2014), p. 278.

<sup>55</sup> See Shelter UK, *supra* note 49, p. 7.

<sup>56</sup> See Wakabayashi, Tsubasa, Tenant's Rights Brochure in Japan, in Schmid, Christoph. U., and Dinse, Jason, R., (eds.), *My Rights as Tenant in Europe: Tenancy Law and Housing Policy in Multi-level Europe*, (2014), p. 422. [<https://www.tenlaw.uni-bremen.de/My%20Rights%20as%20Tenant%20in%20Europe.pdf>] (Consulted 12 December 2018).

<sup>57</sup> Following reforms in 1998, Chinese rental market is unregulated and is led by the market. See Stein, G. M. (2010). Commercial leasing in China: An overview. *Cornell Real Estate Review*, 8, 26-33, p.7, 30.

<sup>58</sup> Research Office of the Legislative Council Secretariat, Tenancy Control in Selected Places, IN16/16-17, (2017), p. 2. [<https://www.legco.gov.hk/research-publications/english/1617in16-tenancy-control-in-selected-places-20170707-e.pdf>]. (Consulted 15 May 2018).

<sup>59</sup> Socio-Economic Rights Institute of South Africa, A Tenant's Guide to Rental Housing, (30 Sep 2013). [<https://www.wits.ac.za/media/wits-university/faculties-and-schools/-engineering-and-the-built-environment/research->

Province of Alberta in Canada,<sup>60</sup> and the State of Michigan in the U.S.A.<sup>61</sup> Like in Ethiopia, landlords and tenants in those jurisdictions are free to determine the duration of the lease in their agreement. It is thus up to the parties to agree either shorter or longer periods. This contractual freedom led even to the development of 'periodic tenancy', which can be 'month to month' or 'week to week' tenancy with no fixed end date; it is renewed automatically and can be terminated anytime by either party by giving notice.<sup>62</sup>

However, many of those jurisdictions have a well-functioning market economy where the supply side adequately responds to the demand side thereby meeting the demand for housing.<sup>63</sup> Further, many jurisdictions in this category practiced various forms of tenant protection which were scrapped when the market stabilized or protections were deemed no longer beneficial.<sup>64</sup> By contrast, Ethiopian economy seems to be inelastic and fails to adequately respond to demand due to inefficiency, policy constraints, etc.<sup>65</sup> As a result, there is a huge imbalance between demand and the housing

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entities/cubes/documents/A%20Tenants%20Guide%20to%20Rental%20Housing.pdf] (Consulted 02 March 2019).

<sup>60</sup> Alberta Government, Residential Tenancies Act Handbook for Landlords and Tenants, Residential Tenancies Act and Regulations, (2018), p. 27. [<https://open.alberta.ca/dataset/a2767396-099f-43d0-932e-1ec75bf458f3/resource/15cc7bf1-89c6-4baf-9393-ce82d28f3850/download/rtc-handbook-bw.pdf>] (Consulted 28 March 2019).

<sup>61</sup> The Michigan Truth in Renting Act (Act 454 of 1978, MCL 554.631 to 554.641) [<http://www.legislature.mi.gov/documents/mcl/pdf/mcl-act-454-of-1978.pdf>] (Consulted 29 March 2019).

<sup>62</sup> Some States in the USA like Michigan and provinces in Canada like Alberta as well as many countries in Europe have those types of tenancies recognized in their law. *Ibid.* See also Alberta Government, *supra* note 60, p.27. The rule is similar in England. See Sparkes Peter, Tenant's Rights Brochure in England, in Schmid, Christoph. U., and Dinse, Jason, R., (eds.), *My Rights as Tenant in Europe: Tenancy Law and Housing Policy in Multi-level Europe*, 2014, p. 217. [<https://www.tenlaw.uni-bremen.de/My%20Rights%20as%20Tenant%20in%20Europe.pdf>] (Consulted 12 January 2019).

<sup>63</sup> For instance, in Japan the supply of rental housing is greater than demand, i.e., there are more houses than renters. See Wakabayashi, *supra* note 56, p. 423. In China, real estate developers are efficiently quick to respond to the preferences and demands of Chinese citizens. For instance in 2010 urban vacancy rates in China were well above those required for a healthy housing market. See Stein, *supra* note 57, p.30. See also Man, Joyce, Y., Zheng, Siqu, & Ren, Rongrong, Housing Policy and Housing Markets: Trends, Patterns, and Affordability, in Man, Joyce, Y., (ed.), *China's Housing Reform and Outcomes*, Lincoln Institute of Land Policy, Cambridge Massachusetts, (2011), p. xi. Although some countries like England and Kenya do not have such excess in housing supply, the market is much robust compared to ours.

<sup>64</sup> See *infra* notes 84-87.

<sup>65</sup> See Samson Berhane, *supra* note 3. Among the policy constraints that affect rental housing supply is the prohibition on real estate developers to build and hold them for rent; Real estate developers are required to sale houses they built. Another is the limitation real estate developers' face to acquire land to build houses. Land can be acquired through competitive bidding process, which is becoming

stock,<sup>66</sup> which gives the lessor a huge bargaining power. The freedom in setting duration of rental contracts coupled with the ‘asymmetrical’ nature of the housing market, which provides monopolistic power to the lessor,<sup>67</sup> means lessees are not in a position to negotiate long-term leases. In fact, tenancies are shorter in duration, usually between six to twelve months. Thus, the approach followed in Ethiopian lease law in light of the reality on the ground affords lesser protection of tenure to lessees who may have to move in search of a residence frequently. Hence, security of tenure is poorly safeguarded under Ethiopian residential lease law.

## 2.2 Lease Renewal

Although rules on renewal of leases are crucial in ensuring security of tenure, the Civil Code does not have any special rule or provision on the issue. Renewal, for all practical purposes, is seen like the original lease and is regulated by the same provisions as the initial lease.<sup>68</sup> The parties are thus free to determine issues of renewal in the initial lease agreement or freely agree upon the expiry of the initial lease. If the lessee cannot negotiate better terms or agree with the terms of the lessor, the option is to leave the house.

The Civil Code, however, provides a rule on tacit agreement for renewal. This rule applies when the lessee continues to live in the rented unit after the expiry of the lease with the knowledge of and without opposition by the lessor.<sup>69</sup> In such cases, the law considers the lease as tacitly renewed for an indeterminate period.<sup>70</sup> When a lease is tacitly renewed, the relationship of the parties is governed by the terms of the previous or original lease.<sup>71</sup> Accordingly, rent amount, manner of payment, maintenance and utility

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increasingly difficult and expensive. Further, the difficulty of accessing finance in poor countries like ours is well documented. As a result, developers have difficulty to quickly respond to demand. For instance, in Addis Abeba, where the housing shortage is very acute, a 2016 study has shown that there are 361 houses per 1000 people, i.e., 63.9% of the housing need is unmet. Moreover, under the current government scheme and trend, it will take 60 years to satisfy the current demand. *Ibid.* See also the Ministry of Urban Development and Housing National Report, *supra* note 3; Urban Lands Lease Holding Proclamation No.721/2011, Art. 5. ,

<sup>66</sup> *Idid.*

<sup>67</sup> Scholars argue that the housing market is monopolistic by its nature due to the difference in taste, type, location, etc. Hence, every landlord has a monopolistic power over a tenant to determine the terms of the contract mostly in his own terms. See Haffner *et al*, *supra* note 42, p.20.

<sup>68</sup> Civil Code, Art. 2968.

<sup>69</sup> *Id.*, Art. 2968 (1).

<sup>70</sup> *Ibid.* See Section 3.1 regarding the difference between leases for determinate and indeterminate period.

<sup>71</sup> *Id.*, Art. 2968 (2).

provision obligations, etc., which may have been stipulated in the initial lease agreement, are applicable for the new lease.<sup>72</sup> The Civil Code does not, thus, provide a special rule on renewal of the lease, let alone provide a right to an automatic or indefinite renewal of the lease as is common in many jurisdictions.

Tenancy laws in many jurisdictions contain mandatory rules on renewal that cannot be overridden by the agreement of the parties. For instance, in France, automatic renewal of tenancy is normally guaranteed for the tenant. In France, lease terms should be for a definite period of time (three or six years) but renewal for the same duration as the original term can be made indefinitely.<sup>73</sup> In jurisdictions like Italy, renewal for at least one term is mandatory.<sup>74</sup> In those jurisdictions, a tenant has a right to an automatic renewal of his tenancy agreement. The effect of a right to an automatic renewal is that the tenant has the right to continue to live in the same house for further duration(s) thereby ensuring security of tenure and stability.

In more pro-tenant jurisdictions like Germany, tenancies are generally signed for indefinite periods.<sup>75</sup> It is only in exceptional conditions with justification by the landlord that definite term tenancies can be signed with no right of renewal.<sup>76</sup> In all other cases, the tenant has a right to live in the unit for an indefinite period with no fixed time for the termination of his tenancy. Norway, Sweden, Denmark and the Netherlands have similar rules.<sup>77</sup> Security of tenure in those jurisdictions is thus highly protected.

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<sup>72</sup> This may be against the year on year inflation in the country that has normally been in double-digit numbers.

<sup>73</sup> Cornette, *supra* note 54, p. 278.

<sup>74</sup> Bianchi, Ranieri, Tenant's Rights Brochure in Italy, in Schmid, Christoph. U., and Dinse, Jason, R., (eds.), *My Rights as Tenant in Europe: Tenancy Law and Housing Policy in Multi-level Europe*, (2014), p. 403. [<https://www.tenlaw.uni-bremen.de/My%20Rights%20as%20Tenant%20in%20Europe.pdf>] (Consulted 12 November 2018).

<sup>75</sup> Cornelius, Julia, Tenant's Rights Brochure in Germany, in Schmid, Christoph. U., and Dinse, Jason, R., (eds.), *My Rights as Tenant in Europe: Tenancy Law and Housing Policy in Multi-level Europe*, 2014, p.306. [<https://www.tenlaw.uni-bremen.de/My%20Rights%20as%20Tenant%20in%20Europe.pdf>] (Consulted 30 March 2019).

<sup>76</sup> *Ibid*. The grounds that justify fixed-term tenancy are: (1) the landlord's wish to use the house for the dwelling of himself, members of his family or his household; (2) the landlord wishes to eliminate the premises or change or repair them so substantially that the measures would be significantly more difficult as a result of a continuation of the lease; (3) the landlord wishes to rent the premises to a person obliged to perform services, for example an employee of the landlord.

<sup>77</sup> See Shelter UK, *supra* note 49. p. 7.

By contrast, in jurisdictions that liberalized the rental market like the UK,<sup>78</sup> Japan<sup>79</sup> and China<sup>80</sup> renewal is freely negotiated between the parties just like the initial lease. Like the Ethiopian Lease law, automatic renewal right for tenants is not recognized in those jurisdictions. The effect of the absence of automatic renewal is that if the parties do not agree on the terms of the new lease, the lessee should have to leave at the end of the agreed period. This affords lesser protection to the lessee as one has to move out at the end of a tenancy and frequently so in shorter-term tenancies. However, the latter jurisdictions have well-functioning market that addresses housing issues by improving supply.<sup>81</sup> The effect of the absence of automatic renewal cannot thus be compared with that in Ethiopia. Hence, Ethiopian law provides lesser protection of tenure as the lessee has to move out at the end of the lease term if the lessor wants him too.

### 2.3 Rent Increase

Rent is the amount of money paid by the lessee to the lessor for the use of the house or flat let.<sup>82</sup> Rent increase is one of the factors that significantly affect tenure security. When rent is increased frequently or by a higher percentage, it makes the house unaffordable and forces the lessee to live in constant threat of being evicted due to lack of capacity to pay. Thus, frequent or high rent increases threaten tenure security and hence stability of the tenant in the rented home.

The pertinent provision of Ethiopian residential lease law on rent setting is Art. 2950. Art. 2950(1) states: “[t]he amount of the rent shall be fixed freely by agreement between the parties.” The provision does not make any

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<sup>78</sup> Davies, *supra* note 50, p. 14.

<sup>79</sup> In Japan, there are 3 types of lease contracts: (1) rental contract unlimited in time, (2) rental contract limited in time, and (3) fixed term rental contract. Under the law, it is only the second type that affords the tenant the right to renew the lease contract. Obviously, the landlord is entitled to give the other two types of lease agreement and avoid the obligation to renew. See Wakabayashi, *supra* note 56, p. 431.

<sup>80</sup> Man, *supra* note 63, p. xi. See also Stein, *supra* note 57, p. 30.

<sup>81</sup> See *supra* note 63 and accompanying text.

<sup>82</sup> The Civil Code does not provide a definition for the term rent; we can only deduce its meaning from arts. 2950-53. The Province of Alberta’s Residential Tenancies Act 2004, Chapter R-17.1, Sec. 1(1) (K), states: “‘rent’ means the consideration to be paid by a tenant to a landlord under a residential tenancy agreement, but does not include a security deposit.” [http://www.servicealberta.gov.ab.ca/pdf/tipsheets/RTA\_Handbook\_BW.pdf] (Consulted 10 July 2018). See also Kenyan Landlord and Tenant Bill 2007 (Draft), Art. 2(1). [http://kenyalaw.org/kl/fileadmin/pdfdownloads/bills/Unpublished/200704.pdf] (Consulted 20 June 2018).

distinction regarding rent setting for the initial lease, increases within a tenancy and up on renewal; rent in all cases is agreed freely between the lessee and the lessor. Art. 2950(2) of the Code seem to provide another means of determining rent amount. It states: “[i]n case of doubt, it shall be fixed in conformity with the tariffs established by the municipal authorities or, failing such tariffs, in conformity with the custom of the place.” The mechanism of determining rent as per municipal or customary tariffs does not however provide solution for the problems lessees face due to the following reasons: First, a plain reading of the provision tells that it is applicable when there is ‘doubt’ (the Amharic version uses the term *በሚያጠራጥር ጊዜ*) as to the agreed amount of rent. This is so when the parties disagree on the agreed amount of rent or when the amount of rent is not fixed in the contract. If the contract fixes the amount, the provision is not applicable. Second, and most importantly, the provision is not applicable when the parties disagree on the level of rent increase within a tenancy or upon renewal. This is because the disagreement here is on the level of rent increase proposed by the lessor and not on the agreed amount. Finally, as the terms ‘failing such tariffs’ indicate the provision does not impose obligation on municipalities to establish rent tariffs; hence, municipalities may not and actually do not feel obliged to establish one to be used by lessees.<sup>83</sup> Therefore, under Ethiopian lease law, a rent increase is to be freely agreed between the parties.

This approach is not of course unique. Some countries that abolished rent control laws like England,<sup>84</sup> Japan,<sup>85</sup> China,<sup>86</sup> Malaysia,<sup>87</sup> Singapore,<sup>88</sup> the

<sup>83</sup> Municipalities in the country do not have rent tariffs for private residential rental houses.

<sup>84</sup> In England, rent regulation- limits on the initial rent and any subsequent increases that landlords could charge- ended for most new lettings after 15 January 1989. Landlords are thus free to charge market rents. See Wilson, Wendy, *Private Rented Housing: The Rent Control Debate*, House of Commons Briefing Paper Number 6760, (3 Apr 2017), pp. 4-5. [<http://researchbriefings.files.parliament.uk/documents/SN06760/SN06760.pdf>] (Consulted 05 December 2018). See also Sparkes, *supra* note 62 p. 194; Shelter UK, *supra* note 49, p.10.

<sup>85</sup> Japan used to practice rent control until it abolished its rent control regime. Now, the principle of freedom of contract is the basis of rental contract in general, and rent setting and rent increases in particular. See Wakabayashi, *supra* note 56, p.443.

<sup>86</sup> Following reforms in 1998, Chinese rental market is unregulated and is led by the market. See Man, *supra* note 63, p. xi.

<sup>87</sup> Malaysia exercised rent control for over three decades with the adoption of The Control of Rent Act 1966 and scrapped rent control with the adoption of Control of Rent (Repeal) Act 1997 (Act 572) (1997). See Atumi, Saeko. (2003), The Repeal of Rent Control in Malaysia, *Cornell Real Estate Review*, 2, 29-38, pp.29-31. [<https://scholarship.sha.cornell.edu/cgi/viewcontent.cgi?article=1095&context=crer>] (Consulted 09 March 2019).



Province of Alberta<sup>89</sup> and South Africa<sup>90</sup> follow similar approaches. Again, the difference is that those countries have a well-functioning market economy where the supply side adequately responds to the demand side thereby adequately meeting the demand for housing.<sup>91</sup> In contrast, the Ethiopian economy seems to be inelastic and fails to adequately respond to demand due to inefficiency, policy constraints, etc.<sup>92</sup> As a result, there is a huge imbalance between demand and the housing stock,<sup>93</sup> which leaves the lessor with a huge bargaining power against the lessee. Lessees thus have very limited options: agree, after limited bargain, to the proposed rent increase or leave the house. Lessees are thus unprotected even against rent profiteering like spikes in rent or consequent eviction.

Many jurisdictions provide rules for an orderly increase of rent because of its dire effect on stability of renters. Accordingly, a rent increase either at renewals or within the same tenancy is strictly regulated. In some jurisdictions, a rent increase within a certain period after the initial lease agreement is prohibited. The prohibition against rent increases ranges from six to twelve months from the initial lease agreement. In the UK, which affords lesser protection to tenants after the abolition of the rent control regime in 1988, the prohibition on rent increases is for six months.<sup>94</sup> Sweden has similar rules.<sup>95</sup> In many European countries with a mature rental market like Germany,<sup>96</sup> Netherlands,<sup>97</sup> Austria<sup>98</sup> and France<sup>99</sup> rent increases within a

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<sup>88</sup> See Kowuor, Collins, *Controlled Tenancy: A Curse or Blessing to Property Investment in Kenya*, FIG Working Week 2012, Rome, Italy, (6-10 May 2012), p. 2.

<sup>89</sup> Alberta Government, *supra* note 60, p. 47.

<sup>90</sup> Socio-Economic Rights Institute of South Africa, *supra* note 59, p.9.

<sup>91</sup> See *supra* note 63 and accompanying text.

<sup>92</sup> See *supra* notes 53 & 3 and accompanying texts.

<sup>93</sup> *Ibid.*

<sup>94</sup> New Zealand and some jurisdictions in Australia have similar rules like England. See Davies, *supra* note 50, p. 19. Six months is considered to be very short and affords lesser protection of security to renters. See Shelter UK, *supra* note 49.

<sup>95</sup> In Sweden, rent can be increased if there is mention in the lease agreement and after negotiating with the Swedish Union of Tenants. See Bääth, Olivia, *Tenant's Rights Brochure in Sweden*, in Schmid, Christoph. U., and Dinse, Jason, R., (eds.), *My Rights as Tenant in Europe: Tenancy Law and Housing Policy in Multi-level Europe*, (2014), p. 814. [<https://www.tenlaw.uni-bremen.de/My%20Rights%20as%20Tenant%20in%20Europe.pdf>] (Consulted 06 August 2018).

<sup>96</sup> In Germany, a tenant has also a period of one month to consider accepting the rent increase and a further two months' notice to move out. In total, a tenant can live for 15 months at the same rent level. Together with the 20% rent cap over three years, the rule has made rent affordable for sitting tenants in Germany. See Davies, *supra* note 50, p.19. See also Cornelius, *supra* note 75, pp. 319-320.

<sup>97</sup> In the Netherlands, a large portion of the rental sector is still under rent control. See Hafida, Bounjouh & van Veen, Menno, *Tenant's Rights Brochure in the Netherlands*, in Schmid, Christoph. U., and

year are prohibited. In the Province of Alberta Canada, rent increases within a year are also not allowed.<sup>100</sup> In Kenya, rent increments can only be made under strict conditions, based on standard rent and cost pass method.<sup>101</sup> Obviously, the rules on rent increases prevent frequent rent increases thereby making rent affordable and ensuring security of tenure to the tenant.

In many of those jurisdictions, rent increases can only be made after serving notice to the tenant. Notice serves many purposes: it helps the tenant to adjust his finances to pay for the additional cost and gives him the chance to challenge the proposed rent increase if it is deemed excessive, illegal, etc.<sup>102</sup> The duration however varies ranging usually from one to three months.<sup>103</sup>

In some other jurisdictions, there is a limit on the amount of rent increase a lessor can make ,i.e., the lessor is not free to increase the rent amount and can make only a certain percentage of the previous rent amount. In Germany, a landlord cannot increase rent by more than 20% over a period of three years.<sup>104</sup> Germany has replaced its ‘second generation’ rent control regime with ‘the rent brake’ regime in 2015 and new tenancies are regulated by the recent regime. Accordingly, state governments can introduce a maximum local rent ceiling thereby prohibiting landlords from charging rents for similar properties in excess of 10 per cent above a given local

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Dinse, Jason, R., (eds.), *My Rights as Tenant in Europe: Tenancy Law and Housing Policy in Multi-level Europe*, (2014), pp. 570, 585-586. [<https://www.tenlaw.uni-bremen.de/My%20Rights%20as%20Tenant%20in%20Europe.pdf>] (Consulted 01 July 2018).

<sup>98</sup> In Austria too, a large portion of the rental sector is still under rent control. See Hofmann, Raimund, Tenant’s Rights Brochure in Auatria, in Schmid, Christoph. U., and Dinse, Jason, R., (eds.), *My Rights as Tenant in Europe: Tenancy Law and Housing Policy in Multi-level Europe*, (2014), pp. 12-13, 29-30, [<https://www.tenlaw.uni-bremen.de/My%20Rights%20as%20Tenant%20in%20Europe.pdf>] (Consulted 16 November 2019).

<sup>99</sup> In France, rent review can be made only once in a year and if there is mention about it in the tenancy agreement. The law also limits the annual rent review to the level of the benchmark index. See Cornette, *supra* note 54, p. 276.

<sup>100</sup> Alberta Government, *supra* note 60, p. 48.

<sup>101</sup> The Rent Restriction Act of the Republic of Kenya, Chapter 296, Revised Edition 2015, Sec. 9-11. The Act commenced in 1959 but has been revised several times the latest being in 2015 by Act No. 25 of 2015. However, it is considered inadequate and the Landlord and Tenant Bill 2007 was drafted to replace it. See also Kowuor, *supra* note 87, p.1.

<sup>102</sup> See Hofmann, *supra* note 98, p 30; Hafida & van Veen, *supra* note 97, p. 587; Bååth, *supra* note 95, 815.

<sup>103</sup> In the Netherlands and Germany, the minimum notice period for rent rise is two months. See Hafida & van Veen, *supra* note 97, p. 587; and Cornelius, *supra* note 75, p. 320. In England, the minimum notice period differs based on the type of tenancy: one month for monthly tenancies, three months for quarterly tenancies, and six months for yearly tenancies. See Sparkes, *supra* note 62, p. 215. See also Housing Act 1988 Sec.13(2), as amended by the Regulatory Reform Order 2003.

<sup>104</sup> Davies, *supra* note 50, p.19.

average, except where the previous tenant had paid above that level.<sup>105</sup> In France, the law limits the annual rent review to the level of the benchmark index.<sup>106</sup> In Sweden, rent shall be established at a reasonable amount and rent will be considered unreasonable if it is ‘palpably higher than the rent for units of equivalent utility value’, which is approximately 2-5%.<sup>107</sup> In the Netherlands, the maximum increase-percentage is yearly set by the Minister of Housing in the regulated sector, and in the liberalized sector, rent should not be unreasonable, i.e., there should not be a major difference between the rent and what is generally paid for comparable houses; and generally, indexation clauses are common practice in the latter sector.<sup>108</sup>

Many jurisdictions considered here provide, albeit with some variations, combinations of the above protections to tenants. Thus, rents cannot be increased within the minimum period, notice should be served when a rent increase is proposed, and rent increases can only be made by a certain percentage point or based on a price index, especially within a tenancy. In other words, the threat of eviction through rent hikes (economic or constructive eviction) is minimized, if not extinguished, in those jurisdictions. These measures ensure protection from constructive eviction and hence, ensure greater security of tenure and stability to tenants in their rented home.

In addition, many jurisdictions provide specialized tenancy tribunals or courts to efficiently handle rent related disputes. If the landlord proposes to increase rent during the minimum period, if the rent proposed exceeds the permissible amount, if the landlord gives an illegal notice to quit, etc., the tenant has the right to challenge the landlord before those tribunals.<sup>109</sup>

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<sup>105</sup> *Ibid.*

<sup>106</sup> Cornette, *supra* note 54, p. 291.

<sup>107</sup> Bååth, *supra* note 95, p. 815.

<sup>108</sup> Hafida, & van Veen, *supra* note 97, p. 586.

<sup>109</sup> In the Netherlands there is Rental Committee. See Hafida, & van Veen, *supra* note 97, p. 593. In France there is a Reconciliation Commission. See Cornette, *supra* note 54, p. 296. In Sweden there is Rent Tribunal. See Bååth, *supra* note 95, p. 818. In Austria, although ordinary courts are entrusted to adjudicate tenancy disputes, the law provides an accelerated form of procedure for the adjudication of tenancy cases. See Hofmann, *supra* note 98, p 35. In Germany, there is no special tenancy tribunal; however, the law recognizes Conciliation Boards established by tenants and landlords associations as conciliation authorities. Plus, courts first try to conciliate the parties before other procedures and they allocate a judge for this purpose. See Cornelius, *supra* note 75, pp. 327-328.

The Ethiopian residential lease law does not have any rule on rent review nor does it afford lessees any of the protections discussed above. As it stands, rent can be increased by any percentage and at any time. The possibility of high or frequent rent increases forces lessees to live under constant threat that rents may become beyond their earnings and may be forced to vacate their rented home. If a lessee is unable or unwilling to pay the increased rent, the option is to leave the house and search for another unit in a cheap locality, or become homeless in extreme circumstances.<sup>110</sup> There are no avenues to challenge even rent-profiteering-like increments and consequent eviction; there is no specific organ to handle rent related disputes. The ordinary courts, with their protracted procedures and caseload, are not efficient to handle such disputes.

The same holds true regarding the requirement of notice; the lessor in Ethiopia is not legally required to give advance notice to the lessee to increase rent. For instance, the lessor can tell the lessee orally a week before the due date for the next rent that rent is increased, which may be difficult for many lessees to adjust their finances to pay the increased rent in such a short time. The lessee would thus be squeezed to pay a hefty amount of rent by incessant high rate increments in a short notice, or forced to leave the unit if she/he is unable to pay the rent hike (constructive eviction) thereby affecting the security of tenure of the lessee. Therefore, lessees in Ethiopia have poor or no protection of security of tenure.

## 2.4 The Grounds and Process of Termination

As stated above, a lease is an agreement between the lessee and the lessor for the use of a house for a certain period in exchange for a defined amount of rent. A lease is thus not made forever and continues if the parties keep performing their duties and for the term agreed or allowed by the law. The

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<sup>110</sup> Eviction is one of the major causes of homelessness. See Porter, Bruce, *The Right to Adequate Housing in Canada*, in Leckie, Scott (ed.), *National Perspectives on Housing Rights*, International Studies in Human Rights, Vol. 78, (2003), p.13. The Committee on ESCR has recommended Ethiopia "to take urgent measures to ensure access to adequate and affordable housing with legal security of tenure for everyone.... and take priority measures for homeless persons....". See Committee on Economic, Social and Cultural Rights, *Concluding observations of the Committee on Economic, Social and Cultural Rights: Ethiopia*, Forty-eighth session, (30 Apr-18 May 2012), E/C.12/ETH/CO/1-3, *Para. 20*.  
[[https://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=E/C.12/ETH/CO/1-3&Lang=En](https://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=E/C.12/ETH/CO/1-3&Lang=En)] (Consulted 22 December 2018).

law thus provides grounds that constitute justifiable grounds for its discontinuation.

Provisions of the law on lease termination are essential to tenure security as it determines the level of certainty and the choices tenants have for their home. If the law affords lessors too much flexibility to terminate the lease, lessees become uncertain and insecure about their accommodation. However, the law should not be too rigid for the lessor to terminate the lease. Ideally, provisions for termination should balance the interests of the lessee to peacefully enjoy the rented home while also allowing the lessor to regain possession of the house when the lessee is not abiding by the lease agreement or for other just causes.<sup>111</sup> In this section, we will examine the various legal grounds provided for termination of the lease by the lessor and the extent of protection of tenure afforded by the Ethiopian lease law.

#### 2.4.1 Expiration of the Lease Term

Pursuant to Art. 2965 of the Code, a lease made for a determinate (fixed) period terminates at the end of the fixed period. If the lease is made for a year it terminates at the end of that particular year without the need to serve notice. However, if the lessee continues to enjoy the leased unit unopposed by the lessor after the expiry of the fixed term, the law considers the lease tacitly renewed for an indeterminate period.<sup>112</sup> In such cases, termination follows the same procedure as leases for indeterminate period under Art. 2966 of the Code discussed below.

Fixed-term leases are rare in many jurisdictions and do not terminate at the expiry of the term without serving of notice. Jurisdictions like Italy,<sup>113</sup> Japan,<sup>114</sup> the Netherlands<sup>115</sup> and England<sup>116</sup> require the landlord to give

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<sup>111</sup> Victoria State Government, *supra* note 35.

<sup>112</sup> *Id.*, Art. 2968 (1).

<sup>113</sup> Bianchi, *supra* note 74, p. 417. In Italy, the landlord can terminate the lease only after it is renewed once and only after giving a six months' notice after the end of the tenancy.

<sup>114</sup> In Japan, three months' notice is required to terminate time limited contracts if only it is not renewal protection type, in the later case termination is very difficult for the landlord. See Wakabayashi, *supra* note 56, p. 446.

<sup>115</sup> In the Netherlands fixed term tenancies do not end on the due date unless the landlord has a just cause to terminate the lease as open-ended contracts are the rule. See Hafida, & van Veen, *supra* note 97, pp. 589, 576.

<sup>116</sup> In England, landlords are required to give a statutory notice of two months' notice to end assured short hold tenancies of six or more months in duration. In England, if two month's notice is given in

notice to terminate fixed term leases. The advantage of notice period is that the lessee can continue to live in the rented house, beyond the end of the agreed period, for the duration of the notice period which can be as long as six months as is in Japan and Italy. This affords security of tenure to the lessee as it enables to live for an extended period in the rented home even if the lessor does not agree to an extension of the lease.

Unlike leases for a determinate period, leases made for an indeterminate period do not have a fixed period at the end of which leases expire. However, the law provides ways in which leases for indeterminate period terminates. Accordingly, the lessee or the lessor can terminate leases for an indeterminate period by serving notice to the other party.<sup>117</sup> Termination by notice can be made at any time irrespective of the time the lease has been in place (short or long). However, the duration of the notice period is determined by the law to be equivalent to the duration of the rent due date.<sup>118</sup> In other words, termination is effective when the next rent is due. If rent is paid monthly, the duration of the notice is 30 days and the lease terminates at the end of the month.

Aligning the duration of notice to the duration of the rent due date can be disadvantageous to the lessee as it may lead the lessee to move out on a short notice shortly after renting the house. A greedy lessor can exploit the scenario by providing indeterminate period leases and terminating the lease by giving short-term notice thereby affecting security of tenure. To increase security of tenure for tenants, jurisdictions like Japan and the Netherlands require a notice period of three to six months to terminate open-ended leases.<sup>119</sup> In many European countries, the landlord cannot terminate open-

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advance, it is possible for short hold tenancy to terminate on the due date. See Sparkes, *supra* note 62, p. 217.

<sup>117</sup> Civil Code, Art. 2966 (1). In *Agency for Rented Houses vs. W/t Debitu Woldehana*, the Federal Supreme Court Cassation Division maintained that indeterminate lease can be terminated at any time by serving notice by either party. See የኪራይ ቤቶች ኤጀንሲ እና ወ/ጉ ደብራቱ ወለደሃና፣ የፌዴራል ጠቅላይ ፍርድ ቤት ሰበር ሰሜ ንሱት ውሳኔዎች፣ ቅፅ 7፣ ሠ.ቁ. 34456፣2001. ዓ.ም:: However, regarding the nature of the requirement of notice, the Court held a strange position in *Agency for Rented Houses vs Ato Tadele Abebe*. See *infra* p.27 for a detailed discussion of the issue.

<sup>118</sup> *Id.*, Art. 2966 (2).

<sup>119</sup> In Japan, the landlord can terminate open-ended leases anytime by giving six months' notice. See *Wakabayashi*, *supra* note 56, p. 446. In the Netherlands, the landlord can terminate open ended leases by giving three to six months' notice. See *Hafida, & van Veen*, *supra* note 97, p. 589.

ended leases unless there is just cause for termination.<sup>120</sup> By contrast, Ethiopian residential lease law, which allows the lessor to terminate open-ended leases at any time by giving notice equal in duration to rent payment, which can be as short as a month or less, without being required to show a reason, provides lesser protection to tenants.

#### 2.4.2 Anti-Social Behavior

Anti-social behavior is the first ground where the lessor is entitled to terminate fixed term leases before expiry of the term. The anti-social behavior displayed may be attributable to the lessee, those living with him and those admitted to the rental unit by him. If any of the above persons “behave in such a manner that they disturb the other lessees in the enjoyment of the immovable,” the lessor can require termination of the lease.<sup>121</sup> Anti-social behavior is a disturbance caused by the behavior or life style of the lessee, the lessee’s dependents or associates.<sup>122</sup>

There are some issues not addressed by the law in case of termination due to anti-social behavior. The first one is whether notice should be given or not by the lessor to the lessee. The second issue is whether termination has an immediate effect or not. The third is whether courts are involved in the process of removing the lessee from the leased premises.

In England,<sup>123</sup> the Netherlands,<sup>124</sup> and Japan<sup>125</sup> termination of a tenancy due to anti-social behavior should be done by serving notice to the tenant. The tenant is entitled to object. Thus, the landlord is not entitled to terminate the lease immediately. Further, termination and eviction necessarily involve

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<sup>120</sup> Germany and Austria follow this approach while in France and Italy there is no open-ended lease. See Cornelius, *supra* note 75, p. 306; Hofmann, *supra* note 98, p. 19; Cornette, *supra* note 54, p. 278; Bianchi, *supra* note 74, pp. 403-404.

<sup>121</sup> Civil Code, Art. 2948 (2).

<sup>122</sup> The English version of art. 2948(2) is not clear as to the incidence or nature of disturbance. The Amharic version makes it clear that anti-social behavior is disturbance caused due to the behavior or life style of the lessee, his dependents or associates. In England, anti-social behavior constitutes conduct causing or likely to cause a nuisance or annoyance to a person residing, visiting or otherwise engaging in a lawful activity in the locality, or conviction for using the dwelling-house or allowing it to be used for immoral or illegal purposes or an indictable offence committed in, or in the locality of, the dwelling-house. See Accreditation Network UK (ANUK), *The Landlord Handbook*, Revised 2012, p.83. In the Netherlands anti-social behavior constitutes acts that cause severe nuisance either related to drugs or criminal behavior. See Hafida, & van Veen, *supra* note 97, p. 590.

<sup>123</sup> Sparkes, *supra* note 62, pp. 217-18. See also ANUK, *supra* note 122, p.85.

<sup>124</sup> Hafida, & van Veen, *supra* note 97, pp. 589-590,

<sup>125</sup> Wakabayashi, *supra* note 56, pp. 447-448.

tenancy tribunals or ordinary courts and the police (or ‘bailiff’). In such jurisdictions, several weeks pass before the tenant is evicted, although the tenant is required to pay rent for the time he lived in the premises.<sup>126</sup> The purpose of the procedures instituted, the time afforded to the tenant and the institutions involved to remove the tenant is to protect security of tenure by curtailing abuse of power by the landlord. In contrast, Ethiopian lease law does not contain any of the above safeguards, and hence affords poor protection to lessees.

### 2.4.3 Failure to Pay Rent

Failure of the lessee to pay rent is the second ground for termination of the lease by the lessor before expiry of the lease. If the lessee fails to pay rent, which has fallen due, the lessor has the right to terminate the lease.<sup>127</sup> The law provides strict rules regarding the process of termination owing to failure to pay rent, i.e., a lease can be terminated only after serving notice of default to the lessee and the lessee fails to pay within the notice period. Notice serves two principal purposes: (1) to warn the lessee that he has not fulfilled his obligation as per the agreement and he should do so within the period of notice, and (2) to communicate the lessee that if payment is not effected within the notice period, the lease terminates at the end of it. The duration of the notice period varies depending on the duration of the lease. The shorter notice period is 15 days for leases that are shorter than a year and the maximum notice period is 30 days for leases of one year and above. The notice period runs not from the rent due date but from the day the lessee received the notice.<sup>128</sup> The notice period is mandatory and cannot be circumvented in any case.

The requirement of notice in case of default of the lessee to pay rent is one of the strongest protections the law affords to lessees in Ethiopia. It means the lessor cannot terminate the lease forthwith and force the lessee to leave. Instead, the lessee has a period of 15-30 days after notice is served to fulfill the obligation and continue to live in the same unit. Nonetheless, the notice

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<sup>126</sup> Sparkes, *supra* note 62, pp. 217-18; Hafida, & van Veen, *supra* note 97, pp. 589-590; ANUK, *supra* note 122, p. 85. In Germany, in compelling cases like severe insults, criminal acts, threats or false offences willfully reported against him, the landlord is entitled to terminate determinate leases without serving notice. However, even in such cases, the tenant has a period of one to two weeks to vacate the dwelling. See Cornelius, *supra* note 75, pp.324-325.

<sup>127</sup> Civil Code, Art. 2952.

<sup>128</sup> *Id.*, Art. 2952 (2).



period is shorter when compared with other jurisdictions. In England, a notice period of two months if the rent is payable weekly or monthly and three months if paid quarterly or yearly is required to terminate the lease due to failure to pay rent.<sup>129</sup> In France, the defaulting tenant has a period of two months to pay the rent that has fallen due.<sup>130</sup>

In contrast, in Germany, default in paying rent with an amount of at least one-month rent entitles the landlord to terminate the lease without giving notice.<sup>131</sup> Similarly, in Italy<sup>132</sup> and Japan,<sup>133</sup> failure to pay rent entitles the landlord to terminate the lease without serving notice. However, in those jurisdictions, when failure to pay rent is due to economic difficulties, unemployment, illness, old age, etc., tenancy may not be terminated and a grace period of up to four months may be granted by the court to the tenant to pay the arrears and continue to live in the same dwelling.<sup>134</sup> This measure affords tenants better protection of tenure in times of difficulty.

In Ethiopian lease law, there are other outstanding issues: is the lessor required to give notice every time the lessee delays to pay rent? What remedies are available for the lessor when the lessee frequently defaults? How the lessor is going to remove an unwilling defaulting lessee at the end of the notice period? Can the lessor use self-help to regain possession of his house by removing the lessee physically, locking him out, threatening him to leave, etc. or should the lessor resort to court? Arts. 2952 and 2965-66 don't address such issues. The failure of the law to address these issues certainly affects the interest of the lessee as well as the lessor.

By contrast, jurisdictions like Germany carefully regulate the above issues. In Germany, the landlord is entitled to terminate the lease when the tenant defaults, on two successive dates, to pay rent or a significant portion of it, or in a period of time spanning more than two dates is in default of payment of the rent which is as much as the amount of rent for two months. The lease

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<sup>129</sup> Sparkes, *supra* note 62, p. 218.

<sup>130</sup> Cornette, *supra* note 54, p. 294.

<sup>131</sup> Cornelius, *supra* note 75, p. 323.

<sup>132</sup> Wakabayashi, *supra* note 56, p. 447.

<sup>133</sup> Bianchi, *supra* note 74, p. 418. In Italy, there must be a delay in rent payment for more than 20 days to constitute a sufficient reason to terminate the contract.

<sup>134</sup> See Bianchi, *supra* note 74, p. 418; Cornelius, *supra* note 75, p. 323 and Wakabayashi, *supra* note 56, p. 447. However, there are restrictions as to the number of times economic difficulties, etc., may be mentioned as a reason for default. For instance, in Italy, it should not be used more than four times.

will not be terminated if the demand is satisfied or a public authority agrees to satisfy him, at the latest by the end of two months after the eviction claim is pending. However, this will not apply if a previous termination was rendered ineffective for this reason within the last two years.<sup>135</sup>

Ethiopian law does not require involvement of courts in the termination of the lease. Once the notice period expires, the lease terminates outright. This does not solve all the problems. If the lessee refuses to leave, can the lessor force, threaten or lock out the lessee to move out? The law is not clear on such issues. Obviously, allowing the lessor to lock out, threaten or force the lessee to move out, etc. would have undesired consequences like violence and its impending outcomes besides creating insecurity. In other jurisdictions, evicting an unwilling tenant necessarily involves the police and tenancy tribunals or the courts. For instance, in England, France and Kenya threatening or forcing the tenant or locking him out by the landlord is a criminal action.<sup>136</sup> Removal of the tenant should be made by the police or bailiff under court order. Involvement of the justice organs avoids unnecessary consequences. By contrast, the failure of Ethiopian lease law to require involvement of the courts and the police in the process of removing a lessee exposes lessees to abuse and harassment by the lessor thereby making tenure insecure.

#### 2.4.4 Own Occupancy

The default rule regarding own occupancy under Ethiopian residential lease law is that own occupancy is not a sufficient ground to terminate the lease.<sup>137</sup> However, the law allows an agreement to be reached in the lease contract on own occupancy, i.e., the lease may contain terms which may permit the lessor to terminate the lease if the lessor wants to occupy the leased unit. In such cases, the lessor can terminate the lease before the expiry of the agreed term. However, the lessor is obliged to give notice of termination to the lessee.<sup>138</sup> The duration of the notice period is similar to that which the law requires for termination of leases for an indeterminate period; i.e., notice

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<sup>135</sup> Cornelius, *supra* note 75, pp. 325-326.

<sup>136</sup> See *infra* pp. 27-28.

<sup>137</sup> Civil Code, Art. 2969 (1).

<sup>138</sup> *Id.*, Art. 2969 (1).

period equivalent in duration to that of the rent due date. The requirement of notice cannot be waived or shortened by agreement of the parties.<sup>139</sup>

From the nature of lease term types and the reading of Article 2969, it is possible to infer that the rule on own occupancy is relevant only in relation to fixed term leases. In indeterminate leases, the lessor is required to only give notice equivalent to the rent due date to terminate the lease. As the law allows no-just-cause termination for indeterminate leases, the lessor can terminate the lease at ease, for any reason including own occupancy or for no reason, by simply giving the required notice. Thus, own occupancy becomes a relevant ground to terminate fixed term leases when there is such an agreement in the lease. Further, the rule on own occupancy seems to be narrow in scope. Unlike other jurisdictions, the Ethiopian lease law allows the lessor to retake the leased unit only for his/her own occupancy. Termination of the lease for occupancy of close family members (spouse, parents of spouses, and children) which is common in other jurisdictions does not seem to be allowed under Ethiopian law.<sup>140</sup> Though it may be unfair to the lessor, the rule on own occupancy protects lessees from being forced to leave for occupancy of close family members and hence affords security in their rented home.

#### 2.4.5 Ownership Change

The default rule here again is that sale does not result in termination of lease and the lessee continues to enjoy the leased unit with the same terms irrespective of the change in ownership.<sup>141</sup> There is exception to this rule that where the right to terminate the lease contract is reserved for the new owner, then change of ownership becomes a ground for termination of a lease. However, the lessor is obliged to give notice to terminate the lease.<sup>142</sup> The question here is who reserves the right to terminate the lease to the new

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<sup>139</sup> *Id.*, Art. 2969 (2).

<sup>140</sup> For e.g., in Germany, termination for use of family or household members which include parents, children, brothers and sisters, grandchildren, parents-in-law as well as sons- or daughters-in-law and nieces and nephews is allowed. See Cornelius, *supra* note 75, pp. 323-324. In France, lease may be terminated if the landlord is to use the dwelling as his main residence or to have one of his relatives, the spouse, the person with whom he cohabits for over a year, the person he lived in partnership with if the pact was signed at least one year before the date of termination, and their respective ancestors and descendants live in the dwelling. See Cornette, *supra* note 54, p. 293.

<sup>141</sup> Art. 2967 (1) of the Civil Code expressly provides the exception regarding termination of lease due to change of ownership. The main rule is implied.

<sup>142</sup> Civil Code, Art. 2967 (1).

owner? Could it be the contract transferring ownership or the lease agreement that reserves this right for the new owner? The law is not clear on the issue and addressing it requires examination of the purpose of the rule. The main purpose of the rule 'sale does not extinguish lease' is protection of lessees, to ensure security of tenure and stability. Hence, the right to decide on the continuation or otherwise of the lease should be reserved to the new owner not by the contract of sell but by the lease agreement between the lessee and the former owner. The lessee is thus notified in advance about the possibility of sale of the unit and consented for the fate of the lease to be determined by the new owner.

The notice required to terminate a lease due to change of ownership is similar to what the law requires for termination of leases for indeterminate period; i.e., notice period equivalent in duration to the rent due date.<sup>143</sup> The rule is very strict that otherwise agreement on who, when and how to terminate the lease in case of change of ownership is of no effect.<sup>144</sup> The rule on the effect of change of ownership is more or less on par with those of other jurisdictions.<sup>145</sup>

#### 2.4.6 The Requirement of Notice

Notice serves an important purpose of informing the parties to ready themselves about eventualities. It is especially important for the tenant to adjust the finance, to find a suitable new home or to challenge termination or eviction demand of the lessor. Hence, notice should be appropriate in duration to serve its purpose. If it is too short, it may have an undesired consequence of leaving the lessee without a home and if it is too long, though it may increase tenure security, it may frustrate the lessor to regain possession of his property and adversely affect incentives of landlords to stay in the rental market.<sup>146</sup> The requirement of notice should thus balance the interests of the tenant and the landlord.

In many jurisdictions, the duration of notice varies depending on who gives it, the type of tenancy and the grounds of termination. Generally, landlords

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<sup>143</sup> *Ibid.*

<sup>144</sup> *Id.*, Art. 2967 (2).

<sup>145</sup> For instance in France, the owner may sale the house, even without informing the tenant, but the lease terms stay the same and the new owner cannot evict the tenant. See Cornette, *supra* note 54, p. 324.

<sup>146</sup> Victoria State Government, *supra* note 35, p. 16.

are required to give a longer notice period than the tenants who are deemed as the weaker party. The tenant is the one who moves out and has to find a house suitable to his needs, and hence needs adequate time. It is also true that short-term tenancies can generally be terminated with relatively short notice than long-term tenancies.<sup>147</sup> Again, notice to quit for no-just-cause termination requires longer notice to deter landlords from terminating leases even if the tenant acts admirably.<sup>148</sup> Similarly, a rent increase requires longer notice to enable the tenant to adjust the finances to cover the increased cost.<sup>149</sup>

In Ethiopian residential lease law, the importance of notice as a means of safeguarding security of tenure is undermined. The lessor is required to give notice only in limited circumstances. First, the lessor is required to serve notice to demand payment of rent when the lessee defaults. The lessor should give 15-30 day notice, depending on the duration of the lease, to the lessee warning him to pay in the notice period or else the lease terminates at the end of it. Although the notice period is short, it is one of the better protections the law affords to lessees. Second either party can terminate indeterminate leases anytime by serving notice equal in duration to the rent due date. There are some issues worth discussing regarding this kind of notice. First, there is no distinction as to the notice to be given by the lessor and the lessee to terminate indeterminate lease; both are required to give notice equal in duration to the rent due date which may be two weeks, a month, etc. Requiring the lessor and the lessee to give equal notice fails to recognize the unequal position of the parties. It is widely held that the landlord has a 'monopolistic power' in the rental market. Hence, protection to the weaker party, the lessee, should have been given by requiring the lessor to give longer notice. Second, allowing the lessor to terminate the lease by giving such short notice is unfair as this may create a lot of

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<sup>147</sup> For e.g. in Germany, the notice to terminate long term leases can be extended to nine months and when the landlord lives in the same premises as the tenant, notice period becomes twelve months. See Wurmnest, Wolfgang, *Tenancy Law in Germany*, p. 34. [<https://www.eui.eu/Documents/DepartmentsCentres/Law/ResearchTeaching/ResearchThemes/EuropeanPrivateLaw/TenancyLawProject/TenancyLawGermany.pdf>]

<sup>148</sup> For instance, in the State of Victoria Australia, the notice required to terminate lease for no specified reason was increased from 90 days to 120 days by a 2002 amendment to deter landlords from resorting to this kind of termination of lease. See Victoria State Government, *supra* note 35, p. 17.

<sup>149</sup> For e.g. in England, for periodic tenancies of a month or less, notice to increase rent is one month and for longer tenancies three to six months' notice is required. In Germany, notice period of two months is necessary to increase rent. See *supra* note 103.

uncertainty as to whether the lessee would live in his rented home beyond a few weeks and whether he would find a suitable home in his preferred area at an affordable price. Thus, the short or week notice requirement under Ethiopian residential lease law affords weaker protection to tenure security of the lessee.

Another issue is whether serving of notice is a mandatory requirement to terminate an indeterminate lease by the lessor. The issue of whether notice is optional or mandatory arises due to the phrase used in Art. 2966(1), which reads: '... notice *may be given* by the lessor...' The phrase seems to make the requirement of notice optional. If it is optional, it is up to the lessor either to give notice or not to terminate indeterminate lease. Hence, indeterminate lease can be terminated anytime without serving advance notice, as it is not a precondition. The Federal Supreme Court Cassation Division adopted this line of interpretation of Art. 2966(1) in *Agency for Rented Houses vs. Ato Tadele Abebe*.<sup>150</sup> The Court held that even if an indeterminate lease can be terminated by the lessor anytime by serving notice, serving notice is not a precondition to terminate the lease. It maintained that the lessee who suffers damage as a result of termination of an indeterminate lease without being served notice can only claim damage and cannot oppose the termination of the lease. Although the interpretation makes little sense and exposes lessees to abuse by lessors, the interpretation of the Court is binding.<sup>151</sup> Hence, serving of advance notice is not a mandatory requirement to terminate indeterminate lease.

In other important issues like rent increase, lease termination and eviction the lessor is not legally required to serve advance notice to the lessee. Thus, rent can be increased anytime without serving notice, a fixed term lease terminates at the end of the agreed term without the need to serve notice and the lessee may be told to leave the house in a week's time.<sup>152</sup> The absence of the requirement of notice denies the lessee the advantage of having to know in advance and prepare for the effects of rent increase, lease termination and eviction, leaving the lessee to lead an uncertain and unstable life. In effect, security of tenure is not protected in the residential law.

<sup>150</sup> የኪራይ ቤቶች ኤጀንሲ እና አቶ ታደሰ አበበ፣ የፌዴራል ጠቅላይ ፍርድ ቤት ሰበር ሰሚ ችሎት ውሳኔዎች፣ ቅፅ 7፣ ሙ.ቁ. 28025፣ 2001. ዓ.ም.።

<sup>151</sup> See Federal Courts Proc. No. 25/1996 as re-amended by Proc. No 454/2005, *Federal Negarit Gazeta*, Year 11, no. 42, (2005), Art. 10(4),.

<sup>152</sup> See Civil Code, Art. 2965. See also sections 2.3 and 2.4.1.

### 2.4.7 Forced Eviction

Perhaps one of the most threatening factors to tenure security is forced or illegal eviction.<sup>153</sup> It severely threatens tenure security as it forces the lessee to move out preventing him to enjoy his rented home. Forced eviction may also lead to homelessness. Forced evictions is defined by the ESCR Committee as: "[t]he permanent or temporary removal against their will of the individuals, families and/or communities from the home and/or land which they occupy, without the provision of, and access to, appropriate forms of legal or other protection."<sup>154</sup> Eviction undertaken in the absence of legal protection is illegal eviction and is prohibited by major international human rights norms. Therefore, states have the duty to afford substantive and procedural protections to tenants against illegal eviction. The focus in this section is to examine the process of eviction and assess the procedural guarantees, if any, under Ethiopian residential lease law followed by a brief discussion on the procedure of eviction in other jurisdictions.

Despite the importance of legal protection against forced eviction and the duty of the state to protect individuals from forced eviction, Ethiopian residential lease law does not have any provision that directly addresses the issue of eviction and harassment by the lessor. Not just that, the law does not provide for the procedure to be followed by the lessor to evict the lessee. In other words, the law does not require involvement of the courts and the police in the process of eviction. It seems the lessor can evict the lessee by himself or through helpers, by locking him out, by disrupting services like water, lighting, etc.

Many jurisdictions carefully regulate the process and the effects of eviction as it has serious consequence on the tenant. For instance in France, eviction of the tenant has to pass through strict procedures. The general principle is that termination of the contract and expulsion of the tenant has to be made by the decision of the judge and eviction of a tenant necessarily requires intervention of the bailiff.<sup>155</sup> Eviction of a tenant during the winter period is not also allowed.<sup>156</sup> Further, delay of eviction order may be requested by the

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<sup>153</sup> Committee on Economic, Social and Cultural Rights, General Comment No. 7, Forced evictions and the right to adequate housing (16th session, 1997) UN Doc E/1998/22, annex IV 113 (1997).

<sup>154</sup> *Ibid.*

<sup>155</sup> Cornette, *supra* note 54, pp. 293-295.

<sup>156</sup> *Ibid.* The winter season in France is from 1 November to 31 March.

tenant for up to a year for reasons of age, health and family situation.<sup>157</sup> The protection of tenants is higher in France.

In England, locking the tenant out of the house, physically removing the tenant, harassment, turning off utilities, etc., is a criminal act.<sup>158</sup> The lessor must first file in court for an eviction order to evict a tenant and the order must be enforced by the bailiff.<sup>159</sup> This is an assurance to the lessee that lease is protected by law against abuse by the lessor. In Kenya too, eviction of a tenant by the landlord without the authority of a tribunal or willfully subjecting a tenant to annoyance with the intention of compelling the tenant to vacate the premises is a criminal offence.<sup>160</sup> Similarly, depriving a tenant of water, light, and other services is a criminal act.<sup>161</sup>

Generally, eviction in many jurisdictions is not left for the discretion of the landlord; it is rather assessed by a neutral body (court or tribunal) and approved or rejected based on the reason and evidence presented and the order enforced by police or bailiff. The involvement of the justice organs in the process of termination of a lease and eviction of a tenant prevents harassment and abuse by a landlord and consequently safeguards a tenant from arbitrary or forced removal from the rented home. As a result, security of tenure is better protected in those jurisdictions. By contrast, Ethiopian residential lease law provides no procedural guarantee against harassment and forced eviction. Hence, the protection of security of tenure in Ethiopia is poor. The Committee on ESCR has also concluded that there are threats to security of tenure in Ethiopia.<sup>162</sup>

## Concluding Remarks

Security of tenure is an essential component of the right to adequate housing recognized in major international human rights instruments to which Ethiopia is a party. States have the obligation to ensure legal security of tenure to housing including rental housing. In relation to rental housing, the

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<sup>157</sup> *Ibid.*

<sup>158</sup> Sparkes, *supra* note 62, p. 217.

<sup>159</sup> ANUK, *supra* note 122, pp. 84-85.

<sup>160</sup> The Rent Restriction Act, *supra* note 101, Sec. 29.

<sup>161</sup> *Id.*, Art. 23.

<sup>162</sup> Committee on ESCR, *supra* note 110, para. 20. The Committee requested Ethiopia to address threats to tenure security in its next report which was due on 18 May 2017; however, the report was not submitted.



obligation of states includes affording legal protection to tenants to stay in and enjoy their rented home, i.e., ensure security of tenure.

The Civil Code, which governs renting, contains only limited rules aimed at protecting the tenure of lessees in the private rental sector. Those limited rules restrict the grounds that justify termination by the lessor. First, as a rule, the lessor cannot terminate fixed term leases for own occupancy or for selling the rental unit; termination is possible only when there is contrary agreement in the lease agreement. Second, the lessor cannot terminate the lease immediately when the lessee delays to pay rent; termination is allowed after serving advance notice of 15 to 30 days, depending on the duration of the lease, and when the lessee fails to pay rent in the notice period. These are the only rules in Ethiopian residential lease law aimed at protection of tenure. The law thus lacks minimum rules on a number of issues that safeguard security of tenure including on minimum lease term, rent increment, lease renewal, notice period and eviction.

The law does not prescribe minimum lease term during which the lessor cannot terminate the lease without good cause nor increase rent. Thus, the lessor can give an opened-ended lease and terminate it anytime by giving short-term notice or increase rent anytime and by any percentage, which may also force the lessee to leave. The lessor may also give fixed term leases, which can be as short as three months and terminate it or increase rent upon its expiry. The law does not have any rule on rent increment and the lessor can increase rent at any time by any percentage point, which may make the rent unaffordable and result in the eviction of the lessee. There is also no rule on renewal of lease upon expiry of the agreed term, and hence the lessee may have to wonder frequently about his next residence after expiry of the short-term lease.

The requirement of notice as a means of increasing tenure security is also poorly utilized. Serving notice is not required to increase rent or to terminate a lease. This affords no protection of tenure as the lessee will be required to increase rent or leave the rental unit in a short period without being given adequate time to prepare for the eventualities of rent increment or eviction. Moreover, the law does not provide procedures to be followed to terminate a lease or evict lessees. The courts and the police are not required to be involved in the process and hence, the lessor may use various means to remove the lessee, which may also result in creating insecurity.

Generally, the absence of rules on many factors that safeguard tenure security in Ethiopian residential lease law makes life in private rental units insecure and unstable for the majority of the urban population. This is so despite the fact that protection of tenure is one of the obligations Ethiopia assumed under human rights instruments. Thus, urgent reform of the residential lease law to incorporate minimum rules on minimum lease term, rent increment, lease renewal, notice period, and eviction is necessary to make the lives of renters safe and secure and thereby satisfy the country's human rights obligations in relation to the right to adequate housing.