HAWASSA UNIVERSITY COLLEGE OF LAW AND GOVERNANCE

SCHOOL OF LAW

LAND AND ENVIRONMENT PROGRAM

# THE CHALLENGES OF CONVERTING PERMIT LAND TO LEASE TENURE: THE CASE OF GURAGE ZONE

*A RESEARCH SUBMITTED TO HAWASSA UNIVERSITY COLLEGE OF LAW AND GOVERNANCE PARTIAL FULFILLMENT OF THE AWARD OF MASTERS OF LAW (LLM)*

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MAR 25 / 2024

HAWASSA

DECLARATION

I, the under signed, hereby declare that this thesis entitled “Challenges of Converting Permit Land to Lease Tenure in the case of Gurage Zone  “is my own work and that it has not been submitted anywhere for any Degree award. Where other sources of information have been used, they have been acknowledged.

Name: Kebede Kassa

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This is to certify that the thesis entitled “Challenges of Converting Permit Land to Lease Tenure in Guragae Zone” is submitted in partial fulfillment of the requirements for the degree of Master of Science in law with specialization in Land and environmental law, has been carried out by student Kebede Kassa, Id, No.GPEnLLk/014/11, under my/our supervision. Therefore, I/ we recommend that the student has fulfilled the requirements and hence, hereby, can submit the thesis to the department.

Dr. Addiswork Tilahun

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We, the undersigned, members of the Board of Examiners of the final Master's degree open defense by Kebede Kassa have read and evaluated his thesis entitled " Challenges of Converting Permit Land to Lease Tenure in the case of Gurage Zone" and examined the candidate. This is, therefore, to certify that the thesis has been accepted in partial fulfillment of the requirements for the Master's degree law department specialization in land and environment.

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## ACRONYMS AND ABBREVIATION

| | |
|---|---|
| **CM** | Council of Minister |
| **CoOP** | Conversion of Old Possession |
| **FDMR** | Federal Draft Model Regulation |
| **FDRE** | Federal Democratic Republic Of Ethiopia. |
| **HPR** | House of People Representative |
| **MP** | Parliament Member |
| **NGOs** | Non-Governmental Organizations |
| **SNNPR** | Southern Nation, Nationality and people of Ethiopia |
| **UN** | United Nation |

# Contents

## ABSTRACT

The current lease proclamation has emphasized that any urban land which has not been under lease hold system shall be permitted to be held only by lease system. Regional cabinets may specify urban centers to which the proclamation remains inapplicable for a certain period not more than five years starting from the date of the coming in to force of the lease proclamation. The urban centers referred to in sub article (4) of Article 5 of the lease proclamation may, within the transitional period, permit urban land holding through tender. The bid bench mark shall be the annual land use rent of the locality. The modality of converting permit holding in to lease shall be determined by the CM on the basis of a detailed study. Where a property attached on an permit holdings is transferred to a third party through any modality other than inheritance, the person to whom the property is transferred becomes the possessor through lease holding. This study investigates the multi-dimensional challenges regard with conversion of permit land to lease system when there is transfer of permit land to third party other than inheritance. The research has adopted qualitative research approach to in-depth investigate the issue. Failure of the council to begin a detailed study, the existence of Bureaucracy, the cost of converting or transferring fees are among the major challenges identified by the research. Accordingly, the researcher provides recommendation that CM should enact a comprehensive and detailed study to assess the current land management system.



Key Words: Permit holding, Conversion, Lease Holdings, challenges, Urban Land.

# CHAPTER 1: INTRODUCTION

## 1.1. BACKGROUND OF THE STUDY

In Africa due to high population growth and market developments, there is mounting competition for land resource, especially in towns and cities, and in productive high value areas customary land management is under pressure, and the coverage of formal land institutions is generally very limited. [1]. As a result land tenure and shelter are insecure for many ordinary Africans in both urban and rural areas. [2] Obviously, for rural residents of most developing countries, land is the primary means of production used to generate a livelihood for a family. It is also the main asset that farmers have to accumulate wealth and, equally important, is why they can transfer in the form of wealth to future generations.

In Ethiopia land is a major socio-economic asset. The way land rights are defined influenced how land resources are used and, hence, economic growth of the country.[3] In Ethiopia, there is a great concern over the country's socio-economic backwardness, poverty and food insecurity and for some, the prevailing land policy is one of the root causes.[4] The FDRE constitution declared that both urban and rural land and other natural resources are owned by the state and peoples of Ethiopia and thus cannot be owned privately[5].

Following the land reform of 1974, all urban land and extra houses became state property. Urban dwellers and enterprises had the right to rent the property from the government. At the beginning of the 1990s, prompted by consideration of a free market philosophy, a clear demarcation between public ownership of the land and individual land use right appeared and for the first time urban lease hold system was introduced in Ethiopia.

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[1] International Journal of Scientific & Engineering Research Volume 11, Issue 8, Augest-2020/ Urban land management practices and challenges: the case of Injibara town, North west Ethiopia / Dereje Tessema Adigeh, Belew Dagnaw/ college of urban development and engineering, Ethiopian Civil Service University, Ethiopia.

[2] Ali Issa, "challenges and prospects of urban land management in Semera Town ." Thesis, ECSU,2009.

[3] https:// www.jstor.com/stable/resrep/18054.7 accessed on 15 AUGUST 2022 at 3:40 A.M

[4]. Ibid.

[5] Constitution of the Federal Democratic Republic of Ethiopia Proclamation No. 1/1995 , Article 40/3/

In 1993, the Ethiopian government enacted the first urban leasehold proclamation.[6] Ethiopia witnessed two other urban land lease hold proclamations that came one after the other : proclamations, 272/2002, and 721/2011.[7] The newly enacted proclamation has emphasized that any urban land which has not been under lease hold system shall be permitted to be held only by lease system[8].

In the present land tenure arrangement of the country, for urban lands, a leasehold system is introduced and for rural lands, a holding type of land for unlimited time is applied. This indicates that the rural and urban lands are independently administered and governed by different institutions.

Urban centers may, within the transitional period, permit urban land holding through tender.[9] Regional cabinets may specify urban centers to which the proclamation remains inapplicable for a certain period not more than five years starting from the date of the coming in to force of the lease proclamation. The urban centers referred to in sub article (4) of Article 5 of the lease proclamation may, within the transitional period, permit urban land holding through tender. The bid bench mark shall be the annual land use rent of the locality. The certificate of possession prepared for the land transferred by auction, with in the transitional period, shall be made like as certificate of old possession.[10] The modality of converting permit holding in to lease shall be determined by the Council of Ministers on the basis of a detailed study. Where a property attached on an old possession is transferred to a third party through any modality other than inheritance, the person to whom the property is transferred becomes the possessor through lease holding.[11]

The proclamation, in the meantime, requires the conversion of old possessions in to the lease system in one of the following events whether there is total conversion or not.

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[6]Urban Lands Lease Holding Proclamation No. 80/1993. NEGARIT GAZETA No. 40, 53rd Year, 23 December 1993, Addis Ababa.

[7] Zelalem Yrga Adamu, USA, Critical Analysis of Ethiopian Urban Land Lease Policy Reform since Early 1990s.FIG Congress 2014.

[8] Ethiopia, Urban Lands Lease Holding Proclamation No. 721 /2011. FEDERAL NEGARIT GAZETA, 18th Year No. 4, 28th November 2011, Addis Ababa , Article 5/1/ <…no person may acquire urban land other than the lease holding system provided under this proclamation>

[9] Ibid Art. 5/5

[10] Urban Lands Lease Holding Proclamation 721/2011, Article 5(3), Southern Region Land Lease Regulation No. 123/2011, Article 5(3), Southern Region Land Lease Regulation Manual No. 103/ 2011, Article 5(3)

[11] Ibid, Article 6.

The first is where a property attached on an old possession is transferred to a third party through any modality except inheritance.[12] Second, informal settlement's that have been regularized pursuant to the regulations of regions and urban administration;[13] and the third where there is application to merge an old possession with a lease hold is permitted.[14] In addition to the above two ways of converting old possession to lease system, when there is an application to merge an old possession to lease system is permitted the holding become lease system.

The permit holdings of land are converted to a lease when the permit land holder has decided to change the terms of access to the land from a permit based arrangement to a formal lease arrangement. This typically involves a more structured and long term commitment between the landholder and the party seeking access to the land. The lease may outline specific terms and conditions, such as the duration of the lease, rental payments, permitted land use, and any other relevant provisions. This conversion to a lease can provide more security and stability for both the land holder and the lease. The challenges may be faced when permit holding are converted to lease system. Therefore, the main purpose of the research is to identify the challenges of converting permit land to leasehold system the case of Guragae Zone.

## 1.2. STATEMENT OF THE PROBLEM

The conversion of permit tenure to lease tenure in Ethiopia presents several practical challenges that hinder the effective implementation of land tenure reform. The conversion of permit tenure to lease tenure poses several challenges in both law and practice. Firstly, the legal framework governing the conversion process may be ambiguous or incomplete, leading to uncertainty and potential disputes between permit holders and regulatory authorities. Secondly, the practical implications of the conversion process, such as the valuation of the land and negotiation of lease terms, can be complex and time consuming, leading to delays and inefficiencies. Additionally, there may be challenges related to the financial implications for permit holders, including potential increases in rental payments and compliance with new lease conditions. According to the current

[12] Ibid. article 6/3/.
[13] Ibid. article 6/4/
[14] Ibid. article 6/6/

lease proclamation of Ethiopia, except old possession of land from inheritance, all permit holdings of land should be converted to the lease system. The modality of converting permit holding in to lease hold shall be determined by the Council of Ministers on the basis of a detailed study to be submitted by the Ministry; provided however, that the process of such study may not preclude a revision of the existing rental rate applicable to permit holdings.[15]. The SNNPR regulation. No.123/2014 provides about the fate of permit holdings under article 5 (3) and Article 6 of the proclamation and set out all permit holdings in the region are going to be converted to lease system after the promised law comes, after a detailed study, by the Council of Ministers; and for the time being permit holding will be changed to lease hold system providing there is transfer made by any means saving inheritance[16]. In Ethiopia, the Ministry of Works and Urban Development in collaboration with regional and cities land administrations is vested with the power of conducting a study in order to make a determination on how old possessions shall be converted to lease by the Ministry.[17] The Federal Draft Model Regulation says that permit holdings will be converted in its entirety within five years' time period.[18]

Currently there is no law to regulate the issue. Some writers have been written their concerns regarding the issue of Conversion of permit land to lease system. There are many challenges when permit holdings are converted to lease system. Addressing these challenges is crucial for the successful implementation of land tenure reform and ensuring that landholders can effectively convert their permit tenure to lease tenure.

## 1.3. OBJECTIVES OF THE STUDY

### 1.3.1. The General Objective of The Research :

The general objective of the research is to synthesis the challenges of converting permit holding of land to lease system in the case of Guragae Zone in law and practice.

[15] Ibid Article 6(1)

[16] Southern Nation Nationality And People Region Urban Lands Lease Holding Regulation No 123/2014, Article 6 and 7

[17] ZeleAlem Yirga (n 2) 9.

[18] Council of Ministers Model Urban Land Lease Holding Regulation, article 5 (Draft, 2011)

### 1.3.2. Specific Objectives of the Research:-

The specific objectives of the study are:

- ✓ To examine how the permit land is converted to lease hold system in the case of Guragae Zone.
- ✓ To investigate the overall treatment given to the permit holder during the conversion.
- ✓ To investigate legal as well as practical gaps in conversion of permit land to leasehold system in the case of Guragae Zone.
- ✓ To examine the kind of legal reforms need to introduce to curb the difficulties.

## 1.4. RESEARCH QUESTION

The research has answered the following question

- ✓ How is the conversion taking place?
- ✓ What are the rights of permit holder under the law during the conversion and how it practically applied?
- ✓ What are the legal as well as practical challenges with regard to the conversion of the land?
- ✓ What kind of legal reforms need to introduce to curb the difficulties?

## 1.5. RESEARCH METHODOLOGY AND METHODS:

This research has adopt qualitative approach because it relies on data obtained by the researcher from first-hand observation, interviews, focus groups, participants-observation, recording made in natural settings, documents and case studies. The researcher has also make deep and open ended interviews to get a data that are not easily quantified; then the researcher analyze them qualitatively to come up with a detailed understanding of the problems during conversion of permit land to lease system. The research does adopt both doctrinal and non-doctrinal legal research because the nature of the research requires analyzing provisions of the laws and policy documents to see all from the point view of the

potential and actual social problems specifically from the angle of societies in the research area. Hence, the deep analysis in to the legal provisions, policy documents and the link made with the practical challenges encountered in the above mentioned research area make the study to be non-doctrinal research. The researcher also adopts both primary and secondary sources of data collection methods. Primary data include interview, focus group discussion, observation, laws, and decision of courts or/ and administrative decisions.

In Central Ethiopia Region, Gurage Zone is divided into West and East and in West there are ten districts and five city administration. Among the five city administrations Wolkite City Administration is a category two whereas the remaining four Cities are category three Cities. All the other ten districts are a category four Cities. Among them the researcher takes the two City Administration that are Arekite and Agena as a sample. Regarding the problems encountered when converting permit land to lease, the Zone municipality was asked to provide the cities representing Gurage Zone for the research. They told me that it would be good if you worked on Agena and Arekit City Administration, so I was able to choose the right one. Since the problem surrounding challenges of converting permit land to lease is similar, I believe that if four people from each city are selected and interview and discussed, it will be possible to find out the actual problem.

## 1.6. SIGNIFICANCE OF THE STUDY:

This study may be important for the research filed which the researcher conduct similar field as a reference. It may have also significance for those people who are adversely affected by the challenges which take place during the conversion via indicating solution for the problem. It also helps to the executive organ to enact better law to regarding the issue. It may also indicate the gap of the law and policy regarding conversion of permit land to lease system to enact better law and to have better policy framework both for the government and the permit holder of land.

## 1.7. SCOPE AND DELIMITATION OF THE STUDY:

The area of the study is geographically limited to Guragae Zone, Central Ethiopia. Conceptually the scope of the research is limited to describing the socio economic, historical background of lease system and permit land, jurisprudential issues that emanate from the right of the occupiers of the permit lands, in relation to the lease system that are relevant to the issue of converting permit land to lease.

## 1.8. LIMITATIONS OF THE STUDY:-

Regarding the limitation, since the researcher's methodology of study is qualitative approach it is done at the risk of subjectivity. The other thing that might be put as a limitation is related to the bureaucracy of urban land officials. To avert or at least minimize these limitations this research employs different techniques of data collection so that they will be triangulated with one another to come up with dependable findings.

## 1.9. RULES OF CITATION

The researcher uses citation rule in accordance with recommended by the GUIDELINE FOR WRITING GRADUATE THESIS AND PHD DISSERTATION FOR THE COLLEGE OF LAW AND GOVERNANCE, HAWASSA UNIVERSITY ETHIOPIA.

## 1.10. ORGANIZATION OF A RESEARCH

This study has four chapters. Chapter one has discussed about the proposal element of the research. The second chapter of the research discuss about literature review regard with challenges of converting permit holding to lease tenure and discuss about the current lease proclamation.

Chapter three of the research discusses about the legal and practical aspects of conversion of permit holding in to lease system. It also discuss about the challenges of converting permit land to lease system in the case of Guragae Zone. The practice of conversion of permit land and the problems there and its general implication is examined.

The last chapter has provided conclusion and recommendation. The researcher has concluded after analyzing the literature review with the findings on the ground, finally give recommendation.

# CHAPTER 2: LITERATURE REVIEW

## 2.1. INTRODUCTION

Land plays a significance role in the socio-economic and political life of Ethiopians. We cannot listing exhaustively about the importance of land how it is very essential for our life. So many scholars conduct a research regarding with the advantage of land for the whole life of human being. Yusuf (2015) discuss that when we look the importance of land regard with economical side, land has been a source of wealth, economic growth, employment and a source of basic survival for an overwhelming majority of the population of the country and it will remain so, at least, for foreseeable future.[19]

Some scholars conducted research regarding the issue of conversion of permit holding to lease system. Under the current urban land tenure system the law opts to convert permit holdings to lease tenure system. Among the scholar who conduct a research on the issue of conversion of permit holding to lease tenure system Gebremichael (2017), he discuss that under the current urban land tenure system permit holdings are mandatorily required to be converted in to a lease holding system.[20] Nevertheless, this can happen based on the modality of conversions that will be determined by the council of ministers on the basis of detailed study.[21] Yet, the Council has determined the modality and this situation puts the permit holdings in a suspended status. Thus, it is not clear what types of land rights permit holders have on their urban parcel until the conversion.[22]

On the other hand, Woldegebriel (2012) puts the concern of the public like 'could the old possessor be surprised by a load of debt of lease price without any activity of the above sort?' and he added 'at least it is not a concern for now' because no law has been enacted

[19] Bacry Yusuf et al, Land Lease Policy in Addis Ababa, 2009, p. 14, in Yared Berhe, Conversion of Old Possessions to Leasehold and Its Implication on Tenure Security of Holders of Old Possessions, Mekelle University Law Journal, Vol.3 No. 1, 2015, p. 91

[20] Brightman Gebremichael, Heartrending or Uplifting : The Ethiopian Urban Land Tenure system Reform and Its Reflection on Tenure Security of Permit Holders, Page 8.

[21] Ibid

[22] Ibid

yet.[23] Tigabu (2015) also state that the Council of Minister has to come up with a detailed, well thought and flexible laws that can change all old possessions to lease system and prevent the social injustice and discrimination that exist between the lease holder and permit holders. He also criticized the current standards of changing old possessions to lease system as 'disorganized and less convincing, and deserve scientific approach'.

Another writer, Berhe on his work titled "Conversion Of Old Possessions to Leasehold and its Implication on Tenure Security of Holders of Old Possessions" discussed the new land lease law adversely affects tenure security of holders of old possession first as it expropriates rights without compensation, second conversion causes tenure insecurity as evidences unveiled from holders of old possession many of the urban landholders expressed their discontent and insecurity when series of public discussions were held in the presence of senior government officials throughout the country and lastly conversion violates rule of law and constitutionalism which are important for tenure security as the law is going to apply retroactively to the detriment of legally established property.[24] The last reason is in direct conflict with the former writer, Tigabu claimed that law has to retroactively apply even in civil matters if it is necessary for uniform urban land administration in a way to bring social justice in urban centers.

ZeleAlem also put concern of the public in relation to the possible payment of minimum lease price[25] when an old possession is converted to lease hold system. The concern is why

[23] Daniel Woldegebriel Ambaye, Land Rights in Ethiopia: Ownership, Equity, and Liberty in Land Use Rights (2012)

[24] Yared Berhe (2015) 'Conversion of Old Possessions to Leasehold and its Implications on Tenure Security of Holders of Old Possessions' 3 Mekelle U. L .J, 88, 109 and 117.

[25] Ibid Supra Note 8, Art. 2(11) '"lease benchmark price" means the threshold price determined by taking into account the cost of infrastructural development, demolition cost as well as compensation to be paid to displaced persons in case of built up areas, and other relevant factors"

they should pay for their holdings the other debatable issue raised by the writer is the rationality of limiting the duration of urban land use right of their holdings.[26]

Fikerabinet Fikadu's work titled, "Ethiopian Urban Land Policy and Laws; Constitutionality of Access and Land Rights" has also discussed issues like the size of old possessions; expansion of old possessions; limitations and restrictions on transactions and mortgaging properties attached with old possessions and the manner of conversion of old possessions to the lease system. The work of Taye Minale Bleaches and Habtamu Sitotaw titled "Converting Old Possessions (CoOP) into Lease System in Ethiopia: Decades of Unsuccessful Endeavors" has discussed the challenges of conversion of old possessions to the lease system; how the conversion is treated under subsidiary legislation; the possible benefits that may result from conversion and Strategies to be adopted during conversion of old possessions to the lease system.

Even though, the researcher feels that there are still rooms that needs a research focusing on the challenges of converting permit land tenure to lease tenure in the law and the practice. This study will also analyze the negative and positive impact of converting permit holding to lease system on the permit holders. What all related studies make known the concerns and implications that can result from the conversion of permit holdings to lease system on the holders of permit holdings; one fearing possible coming of the so- called detailed promised law to be issued by the council of ministers and the other calling for the same law to come soon.

## 2.2. URBAN LAND LEASE SYSTEM IN ETHIOPIA

Defining lease

Leasing is a method of land holding where the right to use the land is obtained through a contract for a specific duration. According to the urban land lease holding proclamation No

[26] Zelalem Yrga Adamu, USA, Critical Analysis of Ethiopian Urban Land Lease Policy Reform since Early 1990s.FIG Congress 2014

721/2011 under Article 2(1) gives a meaning to lease as "lease means a system of land tenure by which the right of use of urban land is acquired under a contract of a definite period. The proclamation also gives the meaning to urban land as a land located within an administrative of un urban center. Urban center means any locality having a municipal administration or a population size of 2000 or more inhabitants of which at least 50% of its labor force is engaged in non-agricultural activities.[27]

### 2.2.1. Fundamental Principles of Lease

**General principle of lease**

The leasing of urban land for the purpose of serving the public interest is allowed to ensure the well-being of the community. The urban land lease proclamation states that the right to use of urban land by lease shall be permitted in order to realize the common interest and development.[28] From this we can understand that permitting urban land by lease should prior be considered the public interest. The proclamation gives meaning to the public interest as the use of land defined as such by the decision of the appropriate body in conformity with urban plan in order to ensure the interest of the people to acquire direct or indirect benefits from the use of the land and to consolidate sustainable socio economic development.[29]

The lease tender and delivery system must follow transparency and accountability principles to prevent corruption and abuse, ensuring fairness in the process. The lease proclamation states that the offer of lease tender and land delivery system shall adhere to the principles of transparency and accountability and thereby preventing corrupt practices and abuses to ensure impartiality in the process.[30] The tender should align with the current market value of the land.[31] The proclamation gives meaning to the word tender as a modality of transferring lease of urban land to a bid a winner fulfilling the competition requirements issued based on the rule of market competition of urban land tenure. The other general principles which the

[27] Article 2(3) of lease proclamation No 721/2011
[28] Ibid Article 4(1)
[29] Ibid Article 2(7)
[30] Ibid Article 4()
[31] Ibid Article 4(3)

lease proclamation proclaims that urban land delivery system shall give priority to the interests of the public and urban centers to ensure rapid urban development and equitable benefits of citizens and thereby ensure the sustainability of the countries development.[32]

## Prohibition of land possession and permission other than lease holding

Subject to the regulation of Article 6 of the lease proclamation, individuals are not permitted to obtain urban land through any means other than the lease holding system outlined in this proclamation.[33] From this we understand that according to the rules set out in Article 6 of the proclamation, individuals are only allowed to acquire urban land through the lease holding system specified in the proclamation. This implies that other methods of obtaining urban land are not permitted and individuals must adhere to the regulations outlined in the proclamation regarding land acquisition.

Individuals are not allowed to fence off or use any piece of land next to their legally owned property without obtaining permission the relevant authority or government body. The proclamation under Article 5(2) promulgate that no person may enclose and use any plot of land adjacent to this lawful possession without the permission of the appropriate body. From this we infer that individuals must seek approval before enclosing or utilizing any land that is adjacent to their own lawful possession. Failure to obtain permission may result in legal consequences or punishments.

No regional or city government authority is allowed to authorize or allocate urban land in a way that contradicts the regulations outlined in the proclamation. The proclamation under Article 5(3) proclaims that no region or city administration may permit or transfer urban land in a manner contrary to the provisions of this proclamation. This implies that no regional or city government authority is allowed to authorize or allocate urban land in a way that goes against the regulations set out in this law or proclamation. In other words, any decisions related to the allocation or transfer of urban land must comply with the rules and guidelines

[32] Ibid Article 4(4)
[33] Ibid Article 5(1)

established in this particular proclamation. Violating this these provisions could result in legal consequences.

Regional cabinets have the authority to designate specific urban centers where this proclamation will not apply. However, the transitional period during which the proclamation is not applicable in any urban center cannot exceed five years from the date this proclamation comes into effect.[34] This sentence is stating that Regional cabinets have the power to select certain urban centers where this proclamation will still be in effect. However, there is a limit to how long this exemption can last. The transitional period during which the proclamation does not apply in any urban center cannot exceed five years from the date the proclamation takes effect. This means that after five years, all urban centers must comply with the proclamation.

According to article 5(5) of the proclamation, urban centers referred to in sub article (4) of this article, permit urban land holding through tender. The bid bench mark shall be the annual land use rent of the society. This sentence is explaining that during the transitional period mentioned in sub article (4) of the article, urban centers have the option to allow the holdings of urban land through a tender process. The benchmark for determining the winning bid in this tender process will be based on the annual land use rent of the specific locality where the urban land is located. In other words, the amount that individuals or entities bid for the land must be at least equal to or higher than the annual land use rent in that area in order to be considered a valid bid. The sentence is describing a specific provision or rule related to the holdings of urban land during a transitional period. It mentions that urban centers, which are likely local government entities or authorities, have the choice to use a tender process to determine who can own urban land.

In this tender process, the benchmark or standard for deciding the winning bid is the annual land use rent of the particular area where the urban land is situated. Land use rent refers to the amount of money that someone would typically pay annually to use or occupy a piece of

[34] Ibid Article 5(4)

land in that specific location. Therefore, when individuals or entities participate in the tender process to bid for holdings of urban land, their bid must be equal to or higher than the annual land use rent of that area. This means that the bid amount should be at least as much as what someone would pay annually to rent that land. If a bid meets or exceeds this bench mark, it will be considered as a valid bid in the tender process.

## Conversion of Old Possessions to Lease Holding

The Council of Ministers will decide how old possessions can be converted into leaseholds after reviewing a detailed study from the Ministry. However, this study may lead to a possible change in the current rental rates for old possessions.[35] This provisions outlines the process by which old possessions can be converted into leaseholds. It states that the Council of Ministers will make the decision on how this conversion will take place after reviewing a detailed study that will be presented by the Ministry. However, the provision also includes a sentence that explore that the study may lead to a revision of the current rental rates for old possessions. This means that the process of conducting the study and making decisions about converting old possessions into leaseholds may also involve reevaluating and potentially changing the rental rate that are currently in place for this property. This provision is describing a process related to converting old possessions into leaseholds. When we breakdown the key points :

Conversion process: the provision explains that old possessions can be converted into leaseholds. This means that individuals or entities that hold old possessions will have the opportunity to convert them into leaseholds, which typically involves leasing the property for a specific period instead of outright ownership.

Decision-Making Authority : it mentions that the Council of Ministers will be responsible for making the decision on how this conversion process will take place. This indicates that the highest decision-making body in this context will have the final say on the rules and regulations governing the conversion of old possessions into leaseholds.

[35] Ibid article 6(1)

Detailed Study: the Council of Ministers will base their decision on a detailed study that will be presented by the Ministry. This study is likely to provide information, analysis, and recommendations on how the conversion process should be carried out, including potential benefits, risks, and implications.

Rental Rates Revision: the provision also suggests that study may lead to a revision of the current rental rates for old possessions. This means that as part of the decision-making process, there may be a revaluation of the rental rates that individual or entity pay for this property. This revision could involve adjusting the rental rates to reflect market conditions, property value, or other relevant factors. Accordingly, this provision outlines the process where old possessions can be converted into leaseholds under the authority of the Council of Ministers, with decisions informed by a detailed study that may also lead to changes in rental rates for this property.

If the division of urban land plots aligning with national standards and urban plans leads to changes in plot sizes during the process of converting old possessions in to lease holds as outlined in sub-article(1) of this Article:[36]

a) "Compensation shall be paid in accordance with the appropriate law for any property to be removed from the land so reduced."[37] From this we can suggest that, during the process of dividing urban land plots according to national standards and urban plans, some existing properties need to be removed or relocated due to the changes in plot sizes, the owners of those properties are entitled to compensation. The compensation will be determined and paid out in accordance with the relevant laws and regulations governing property rights and compensation for land acquisition or removal. This ensures that the owners of the affected properties are fairly compensated for any losses they may incur as a result of the changes in land division.

[36] Ibid Article 6(2)
[37] Ibid Article 6(2)(a)

b) "The payment to be made for the additional land obtained shall be treated in conformity with the relevant lease proclamation."[38] This provision means that if, as a result of the process of dividing urban land plots according to national standards and urban plans, an individual or entity acquires beyond what they originally owned, they will need to pay for this additional land. The amount of payment for this additional land will be determined based on the principles and guidelines that govern lease agreements or rental arrangements for land. In other words, the payment for the additional land obtained will be calculated in a manner that is consistent with how land is typically leased or rented out in similar situation. This ensures that the payment made for the additional land is fair and in line with established practices for leasing or renting land. By referencing lease principles, this provisions aims to provide a clear and standardized method for determining the compensation owed for any extra land acquired during the process of dividing urban land plots.

Despite the content of subsection (1) of this article, if a property that was previously owned by someone else is transferred to a third party through means other than inheritance, the new owner of the property will be considered the possessor through a lease agreement.[39] From this we can understand that even if a property is attached to an old possession, if that property is transferred to a third party through any means other than inheritance, the new owner becomes the possessor of the property a lease hold arrangement. This means that the new possessor has the right to possess and use the property for a specific period of time, typically through a lease arrangement, even though the property was originally attached to an old possession. Accordingly, this sub provision outlines regard with the transfer of property that was previously attached to an old possession to a new possessor through means other than inheritance, establishing a lease hold arrangement that grants the new owner the right to possess and use the property for a specific period.

[38] Ibid Article 6(2)(b)
[39] Ibid Article 6 (3)

In order to regularize possessions held without the authorization of the appropriate body, the possessions which have found to be acceptable in accordance with urban plans and parceling standard following the regulations to be issued by regions and city administrations shall be administered by lease holding.[40] From this we can suggest that the process of legalizing or formalizing possessions that are currently held without the required authorization from the appropriate governing body. It aims to bring these possessions into compliance with the law. It also suggest that possessions that are deemed acceptable based on urban planning and parceling standards, as defined by regulations issued by regional and city administrations, will be considered for regularization. The specific rules and guidelines for regularizing possessions will be established and communicated by regional and city administrations. These regulations will outline the criteria, procedures, and requirements for the regularization process. Once a possession is found to meet the criteria set forth in the regulations, it will be administered through a lease holding arrangement. This means that the possessor will be granted the right to use and occupy the property for a specified period under the terms of a lease agreement. To sum up, this provision states a process where possessions held without proper authorization can be legalized if they comply with urban plans and parceling standards, as defined by regulations issued by regional and city administrations. These eligible possessions can then be administered through lease holding arrangements to bring them into compliance with the law.

"The regularization process to be undertaken by regions and city administration in accordance with sub article (4) of this article shall only be effective with in four years of the coming in to force of this proclamation."[41] This provision specifies that the regularization process, which involves legalizing possessions held without authorization based on urban plans and parceling standards, will be carried out by regional and city administrations. However, there is a time limit imposed on when this process can be completed. This provision indicates that the regularization process must be completed within four years from the date when the proclamation (law or regulation) comes into effect. This means that

[40] Ibid Article 6(4)
[41] Ibid article 6(5)

regional and city administrations have a maximum of four years from the enactment of the law to finalize the regularization of eligible possessions. After this four-year period, any possessions that have not been regularized in accordance with the regulations outlined in the law may not be eligible for legalization through this process. Therefore, it is crucial for regional and city administrations to adhere to this timeline to ensure that all eligible possessions are regularized within the specified timeframe. When an application to merge an old possession with a lease hold is permitted, the entire possession shall be administered as lease hold tenure.[42] This provision means that when an application is approved to merge an old possession with a lease hold, the entire possession will be treated and managed as a leasehold tenure. In practical terms, this means that once the merger is authorized, the old possession will be considered part of the leasehold property and subject to the terms and conditions of the lease agreement. This could involve paying rent, following leasehold regulations, and abiding by any restrictions or requirements associated with leasehold properties. By administering the entire possession as leasehold tenure after the merger, it ensures that the property is brought into compliance with leasehold laws and regulations, providing clarity and legal status to the previously informal or unauthorized possession.

The lease rates applicable to possessions converted into lease hold tenures pursuant to the provisions of this article shall be the lease bench mark price of the locality.[43] This provision indicates that the lease rates that apply to possessions that have been converted into leasehold tenures as per the provisions outlined in this article will be determined based on the lease benchmark price of the locality. From this we can infer that when an old possession is merged with a leasehold property and converted into a leasehold tenure, the rental rates for that property will be set according to the standard lease benchmark price in the specific area or locality where the property is located. This benchmark price serves as a reference point for determining fair and reasonable rental rates for properties in that particular area. From this we can understand that by using the lease benchmark price of the locality to determine the lease rates for converted possessions, it ensures that the rental amounts are in line with

[42] Ibid article 6(6)
[43] Ibid article 6(7)

prevailing market conditions and are fair to both landlords and tenants. This helps establish consistency and transparency in setting lease rates for properties that have undergone conversion into leasehold tenures.

## Lease hold permit of urban land

"As urban land shall be permitted to be held by leasehold, when it its use is in conformity with the urban plan guidelines, or, if the urban center does not have such guide lines, as per the regulations issued by the region or the city administration."[44] This provision suggests that the conditions under which urban land can be held under a leasehold tenure. It specifies that urban land can be held through a leasehold arrangement if its use aligns with the guidelines set out in the urban plan or, in cases where there are no specific guidelines for the urban center, based on the regulations established by the region or city administration. From this we can infer that urban land can be held under a leasehold tenure if its use complies with the guidelines outlined in the urban plan. Urban plans are documents that provide a framework for the development and use of land within urban areas. These guidelines typically cover aspects such as zoning, building regulations, infrastructure development, and environmental considerations. If the proposed use of the urban land aligns with these guidelines, it can be held through a leasehold arrangement. It also states that in situations where the urban center does not have specific urban plan guidelines in place, this provision allows for urban land to be held under a leasehold tenure based on regulations issued by the region or city administration. These regulations would serve as the governing framework for determining the permissible uses of urban land and the conditions under which leasehold arrangements can be established. By stipulating these conditions, the provision aims to ensure that the utilization of urban land through leasehold arrangements is in line with established planning and regulatory frameworks. This helps promote orderly and sustainable development within urban areas while also providing clarity and guidance for property owners and developers seeking to hold urban land under leasehold tenures.

[44] Ibid article 7 (1)

As urban land shall be permitted to be held by leasehold: through the modality of tender or allotment.[45] This provision indicates that urban land can be held under a leasehold tenure through two specific methods tender or allotment. Tender means a modality of transferring lease of urban land to a bid winner fulfilling the competition requirements issued based on the rule of market competition of urban land tenure.[46] From this we can infer that urban land through the modality of tender involves a competitive process where interested parties submit bids or proposals to lease the land for a specified period. The entity or individual offering the most favorable terms, such as rent amount, lease duration, and proposed land use, may be awarded the leasehold rights. Tender processes are typically transparent and aim to ensure that the best-suited party is selected to utilize the urban land efficiently and in accordance with regulations.

When we come to discuss the concept of allotment, it means that a modality applied for providing urban lands by lease to institutions that could not be accommodated by way of tender.[47] Therefore, holding urban land through allotment means that the land is allocated or assigned to a specific entity or individuals for leasehold purposes. The allocation process may be based on predetermined criteria, such as the intended land use, qualifications of the applicant, or other relevant factors. Allotment of urban land through this method allows for a more direct selection process by the authorities responsible for managing the land, ensuring that it is utilized in a manner that aligns with the overall development objectives of the urban area. There for , by specifying these two modalities, tender and allotment, for holding urban land under a leasehold tenure, the statement provides clarity on the mechanisms through which interested parties can secure leasehold rights to urban land. These processes help regulate the allocation of urban land, promote fair competition, and ensure that the land is utilized effectively and in line with the established guidelines and regulations governing urban development.

[45] Ibid article 7(2)
[46] Ibid article 2(9)
[47] Ibid article 2(10)

## Urban lands prepared for tender

The proclamation proclaims that appropriate body shall make certain that prior to publicizing urban lands prepared for tenders; are free from legal claims of any party.[48] From this we can understand that before urban lands are put up for tender, the appropriate governing body or authority must confirm that the lands do not have any legal claims or disputes attached to them by any party. This ensures that the land is legally clear and can be sold or leased without any potential legal complications or disputes arising in the future. It is a necessary step to protect the interests of both the government and potential bidders in the tender process.

The proclamation also proclaims that appropriate body shall make certain that prior to publicizing urban lands prepared for tenders, are prepared in conformity with the urban plan.[49] From this we can infer that the relevant governing body or authority must confirm that urban lands, which are going to be advertised for tenders have been prepared in accordance with the urban plan. Urban plan means structural plan, local development plan or basic plan of an urban center including annexed descriptive documents which are legally endorsed by the authorized body and have legally binding effect.[50] There for an urban plan is a document that outlines the development and land use regulations for a specific area, typically created by local government authorities to guide the growth and development of urban areas. By ensuring that the urban lands being put up for tender are prepared in conformity with the urban plan, the governing body is making sure that any development or use of these lands aligns with the overall vision and guidelines set out in the urban plan. This helps to maintain consistency and coherence in urban development, ensuring that new projects or developments fit within the broader context of the city or town's planning goals. In principle, this requirement helps to promote orderly and sustainable urban development by ensuring

[48] Ibid Article 8(1)(a)
[49] Ibid Article 8(1)(b
[50] Ibid Article 2(g)

that all proposed uses of urban lands through tenders are in line with the established urban planning framework.

The proclamation also proclaims that appropriate body shall make certain that prior to publicizing urban lands prepared for tenders; have access to basic infrastructure.[51] This means that the relevant governing body or authority must confirm that urban lands, which are going to be advertised for tenders have access to basic infrastructure before they are made available for development or sale. Basic infrastructure refers to essential services and facilities that are necessary for the proper functioning of an urban area. This can include things like roads, water supply, sewerage systems, electricity, telecommunications, and other amenities that support urban living and development.

By ensuring that urban lands have access to basic infrastructure before they are put up for tender, the governing body is making sure that potential developers or buyers are aware of the existing infrastructure conditions in the area. This helps to set realistic expectations for the development potential of the land and ensures that any proposed projects can be adequately supported by the necessary infrastructure. This requirement helps to promote sustainable and orderly urban development by ensuring that urban lands being advertised for tenders are equipped with the basic infrastructure needed to support future development and ensure the well-being of residents and businesses in the area.

The proclamation also states that appropriate body shall make certain that prior to publicizing urban lands prepared for tenders; are parceled, delineated, assigned with unique parcel identification numbers.[52] This statement means that the relevant governing body or authority must confirm that urban lands, which are going to be advertised for tenders (competitive bidding processes), have been properly divided into parcels, defined with boundaries, and assigned unique identification numbers before they are made available for development or

[51] Ibid Article 8(1)(c)
[52] Ibid Article 8(1)(d)

sale. Parceling refers to the process of dividing a piece of land into smaller sections or parcels. Delineation involves clearly marking the boundaries of each parcel to define its specific area and location. Assigning unique parcel identification numbers helps to differentiate and identify each parcel within the urban land area.

By ensuring that urban lands are parceled, delineated, and assigned with unique parcel identification numbers before being advertised for tenders, the governing body is establishing a clear and organized framework for potential developers or buyers to understand the layout and boundaries of the land. This helps to prevent confusion, disputes, or overlapping claims on the land during the tender process. Having clear parcel boundaries and unique identification numbers also facilitates efficient land management, property registration, and overall urban planning. It enables accurate record-keeping, monitoring, and tracking of land use and ownership, which is essential for sustainable and orderly urban development. To sum up this requirement ensures that urban lands being advertised for tenders are properly structured and identified, providing transparency, clarity, and legal certainty for all parties involved in the land acquisition and development process.

The proclamation also proclaims that appropriate body shall make certain that prior to publicizing urban lands prepared for tenders; have site plans and fulfill other necessary proclamations.[53] This sub provision refer that the relevant governing body or authority must confirm that urban lands, which are going to be advertised for tenders (competitive bidding processes), have detailed site plans and meet all other required preconditions before being made available for development or sale. Site plans are detailed drawings or maps that show the layout, boundaries, features, and proposed use of a piece of land. They provide a visual representation of how the land is divided into parcels, the location of infrastructure, access points, zoning regulations, and any other relevant information related to the development of the area. Fulfilling other necessary preconditions refers to meeting all the requirements, regulations, and criteria set by the governing body or local authorities before allowing the urban lands to be tendered. These preconditions may include obtaining necessary permits,

[53] Ibid Article 8(1) (e)

conducting environmental impact assessments, complying with zoning laws, ensuring infrastructure availability, and meeting any other legal or technical standards required for development. By ensuring that urban lands have detailed site plans and fulfill all necessary preconditions before being advertised for tenders, the appropriate body is ensuring that potential developers or buyers have access to essential information about the land and are aware of all the legal and technical requirements they need to meet for development. Having detailed site plans and meeting preconditions helps to streamline the tender process, reduce uncertainties for bidders, and ensure that developments on the urban lands are in compliance with regulations and standards. It also promotes transparency, accountability, and efficient urban planning by providing a clear framework for evaluating and selecting proposals for land development.

There for this requirement ensures that urban lands being advertised for tenders are well-prepared, compliant with regulations, and equipped with necessary information to facilitate a transparent and organized bidding process for their development or sale.

According to Article 8(2) of the lease proclamation the tender process is implemented in a manner that secures the appropriate price of the land following the rules of transparency and accountability.[54] From this we can clearly understand that the process of inviting bids or proposals for the development or sale of urban lands is conducted in a way that ensures that the land is sold or developed at a fair and reasonable price. This is achieved by following strict guidelines of transparency and accountability throughout the tender process.

Transparency in the tender process means that all relevant information, rules, criteria, and procedures related to the sale or development of the land are openly communicated and made available to all interested parties. This includes providing details about the land, site plans, preconditions, bidding requirements, evaluation criteria, and any other pertinent information that may impact the bidding process or the final price of the land. Accountability in the

[54] Ibid Article 8(2)

tender process refers to holding all parties involved in the process responsible for their actions and decisions. This includes ensuring that the evaluation of bids is fair and impartial, that conflicts of interest are avoided, and that decisions are made based on objective criteria rather than personal preferences or biases. Accountability also involves documenting and justifying decisions made during the tender process to ensure that they are transparent and can be reviewed if necessary. By implementing the tender process in a manner that secures the appropriate price of the land while adhering to principles of transparency and accountability, the governing body or authority overseeing the process aims to achieve several objectives. Fairness refers that ensuring all bidders have equal opportunities to participate in the process and compete on a level playing field. The other thing is Efficiency which means streamlining the process to minimize delays and uncertainties, thereby facilitating timely and effective decision-making. Public trust: Building confidence among stakeholders, including potential developers, investors, and the general public, by demonstrating that the process is conducted with integrity and in accordance with established rules and standards. Maximizing value: Obtaining the best possible price for the land by attracting competitive bids and selecting proposals that offer the highest value for the community.

To conclude, according to this provision we can understand that implementing the tender process with a focus on securing an appropriate price for urban lands through transparency and accountability helps to promote good governance, prevent corruption, and ensure that public resources are managed effectively for the benefit of the community.

## 2.3. LAND POLICY

The present government came to power after it ousted the previous military government in May, 1991. It was hoped that it would introduce some major changes in the land holding system. When the present constitution came into the picture in 1995, however, it was confirmed that no major changes were to be made to the previous land tenure system. There are no fundamental differences between the legal framework of the Derg and the present

government on rural land issues. In practical terms, there are more similarities in land administration between the two regimes than differences. Even though the new government adopted a free market economic policy, it has decided to maintain all rural and urban land under public ownership. According to the 1995 Federal Democratic Republic of Ethiopia (FDRE) Constitution, all urban and rural land is the property of the state and the Ethiopian people. As one writer (Gebresellasie) says: "by inserting the land policy in the constitution, the current government has effectively eliminated the possibility of flexible application of policy." The argument forwarded by the ruling party for the continuation of land as public/state property rests solely on the issue of security. In particular, it has been said that private ownership of rural land would lead to massive eviction or migration of the farming population, as poor farmers are forced to sell their plots to unscrupulous urban speculators, particularly during periods of hardship. Some studies show otherwise, however. The economist Berhanu Nega and et.al conclude that farmers would not sell their land wholly or partially if given the right to own their plots. Another study, conducted by the World Bank, reveals that most farmers would rather rent their land during stressful periods compared with any other alternative, such as selling it. In other words, in addition to all the other benefits of rental markets suggested in the literature, the availability of formal land rental markets will serve as a caution to enable farmers to withstand unfavorable circumstances by temporarily renting their land rather than selling it.

The usual argument against the state/public ownership of land is an opposite argument to the argument given by the state, which is lack of security. Government critics on land policy argue that absence of tenure security for land users provides little or no incentive to improve land productivity through investment in long-term land improvement measures. It may aggravate land degradation through soil mining and problems of common resource use. The fear of the critics and supporters of private ownership of land is, among other things, that government may use land as political weapon by giving and taking it away as the case may be. However, supporters of the public ownership of land reject such fears as groundless; on the contrary claim that government provides more security as is now taken by regional

governments. A good example is the land registration and certification processes which are being conducted in Tigray, Amhara, Oromiya, and the Southern regions which enable farmers to have a land certificate for their holdings. This gives protection and security to the holder.

## 2.4. URBAN LAND TENURE

Modern urbanization in Ethiopia started with establishment of the capital of Addis Ababa, a third most important capital city in Ethiopia after Axum and Gonder, during the Minelik era. The earliest settlements in the city developed haphazardly around the king's palace and the residences of his generals and other dignitaries. The emperor granted large tracts of land to the nobility, important personalities of the state, the church, and foreign legations. This land holding system was perpetuated for long time, and as a result, although most land areas in urban areas were private property, most of it was owned by few landlords. As stipulated in the proclamation 47/1975, at that time extensive area of urban land and numerous houses were in the hands of an insignificant number of individual land lords, aristocrats, and high government officials. The land mark legislation that recognizes private ownership of urban land was decreed in 1907 with 32 articles. The decree allowed Ethiopians and foreigners to purchase and own private land. However, government was allowed to take back the land holding for public interest purpose against payment of compensation. During the reign of Haileselassie, private ownership of urban land was reemphasized by the subsequent Constitutions of the 1931 and 1955 as well as the 1960 civil code. All recognize the private ownership right of land in urban areas. Up to the coming of the 1974 Ethiopian Revolution land lords in different urban areas invest much in the development of housing for rental.

As it is conventional to start with the definition of the term under consideration prior to discussing its merits the researcher will try to define the term lease from various sources. The new urban land lease holding proclamation defines lease as a system of land tenure by which

the right of use of urban land is acquired under a contract of a definite period.[55] Lease is system of land tenure by which the right of use and transfer of urban land is acquired. Land tenure could be expressed as the possession and use of land by individuals or groups for limited or unlimited period of time.[56] According to Oxford dictionary (1998), tenure is defined as the condition or form of right or title under which real property is held. Therefore, Land tenure refers to the way in which land is held and the rights and responsibilities that come with that holding. It encompasses the legal and customary rights and obligations that individuals or groups have in relation to land. Land tenure can take various forms, including ownership, leasehold, tenancy, and communal land ownership. The concept of land tenure is important as it determines who has the right to use and benefit from the land, and it can have significant implications for land use, development, and resource management. Under the proclamation, lease is defined as a system from which the right to use of urban land for a limited duration is derived by way of a contract. The contracting parties are of course the lease and the lesser i.e. the state represented by the government and the lessee. As per Black's law dictionary, 'lease' means to grant the possession and use of land (building, rooms, movable property, etc), to another inter for rent or other consideration.[57] In this case in addition to the fact that the time limit is no indicated, the government letting of movable properties also. Leong man dictionary of Contemporary English also defines 'lease' as a written agreement, made according to the law, by which the use of a building or a piece of land is given by its owner to somebody for a certain time in return for rent for length of time such as agreement is last.[58] In this case the agreement which relates to the use of land and building in consideration for rent should be written and it is made for a limited time according to the law of the land. From all the above concept, we can understand that, a land lease is a legal agreement in which the owner of land (the lesser) grants the right to use the land to another party (the lessee) for a specific period of time, in exchange for rent or other

[55] Article 2(1) of 721/2004

[56] Daniel W/gebriel and Melkamu Belachu, land law teaching material, 2008 Justice and legal research institute. P. 76

[57] Bryana A. Garner, Black's law dictionary, (2009, 9th ed), West A. Thomson Reuters Business, U.S. p. 972

[58] Longman's dictionary of contemporary English (1986), Long man group Ltd.UK, p. 623

forms of compensation. Land lease can be short term or long term, and they can be used for various purposes such as residential, commercial or industrial use. In land lease agreement, the rights and responsibilities of both the lesser and the lessee are clearly defined, including the duration of the lease, the amount of rent to be paid, maintenance, and repair obligations and any restrictions on land use. The lessee may have the right to make improvements to the land during the lease term, but the improvements usually become the property of the lesser at the end of the lease.

In Ethiopia, land is constitutionally state owned. The Constitution provides that the right of ownership of all rural and urban land is exclusively vested in the State and in the peoples of Ethiopia.[59] As a result, land can be accessed via lease hold system. There are a variety of arguments for adopting land lease system. Some of the key advantages of this system consists it is beneficial to have an efficient land use planning; and also promotes investors and investment since when the price of land is to be paid in a form of a lease rent, the initial investment will be small and it gives the investor additional capital to invest on construction. It is also advantageous since it gives the possibility to reclaim land from leaseholders when it is required for other purposes. In the leasehold system, it is better and easy to take land back than when it is in private ownership. In addition, appropriation of future land price increases by the public and distributing it to society is easier under lease hold system. One of the importance's of retaining land in public ownership is to have the increase in land values accrue to the community at large and make it easier to allocate land to other uses at some time in the future. Weldesilassie and Gebrehiwot (2017) states that when a municipality promotes access land under a leasehold system, it reserves the right to claim substantial proportion of future increments in the capital value of land at the end or in the middle of the contract.[60] A number of proclamations and regulations have been regulated that determines the value of urban land and to promote investment in business, residential and other uses. A number of research have been conducted regard with land lease policy in Ethiopia (Zelalem

[59] Ibid Supra Note 5, Art 40 (3).

[60] A Critical Assessment of Urban Land Leasehold System in Ethiopia Alebel B. Weldesilassie, and Berihu Assefa Gebrehiwot Ethiopian Development Research Institute, 2017

Yirga (2014); Zemen (2013); Belachew (2010); Bacry Yusuf (2009); Alebel and Genanew (2007a; 2007b). Zelalem (2014) conducted a review of the various proclamations related to urban land lease policy in Ethiopia. As per a review of the different land lease regulations, Gebrehiwot (2017) tried to identify gaps, inconsistencies and ambiguities in the urban land lease regulations as well as the constraints and challenges that impede their effective implementations. Yusuf (2009) conducted a study on the land lease policy in Addis Ababa, the study by Belachew focuses on urban land policy in Addis Ababa and Amhara regional state.[61] The study by Bacry Yusuf et al (2009) qualitatively evaluates the performance of the urban land management system and identifying issues and problems underlying the gap between supply and demand. The study is made based on review of concepts and policy documents. Similar study is also conducted by Zemen (2013) focuses on the land transaction aspect of the land tenure system in Ethiopia based on review of documents. A more rigorous quantitative study on the urban land lease system in Ethiopia is made by Alebel and Genanew (2007a; 2007b). They used the land lease auction data to analyze investors' willingness to pay for a plot of land in Addis Ababa for the period 1994/95 – 2002/03.[62]

In order to realize the constitutional article, the government of Ethiopia formulated various proclamations related to urban land use. Proclamation No. 80/1993 is the first proclamation related to urban land lease system enacted in Ethiopia since the reform 1991. Following this, the country has enacted Proclamations 271/2002; and 721/2011 in 2002 and 2011, respectively. These proclamations can be cited as the Urban Lands Lease Holding Proclamation No. 80/1993, 271/2002; and 721/2011, respectively. These different proclamations are not only constitutionally founded; they have also social and economic goals that are expected to be achieved through their effective implementation.[63] At the heart of these proclamations sustainable rapid economic growth through appropriate land administration that is efficient and responsive to the growing demand for land resource as well as good governance that requires efficient, effective, equitable and well-functioning land

[61] Ibid
[62] Ibid
[63] Ibid.

and land property markets are key concepts. The proclamations aim to realize robust free market economy and building of transparent and accountable land administration system that ensures the rights and obligations of the lessor and the lessee. These objectives are expected to be realized through the role of the proclamations in enhancing investment (economic growth), improvement in housing and infrastructure (equity) through revenue collection (capital mobilization), regulated expansion and/or restrict the informal expansion of cities (social objective).

Accordingly, the lease policy states that the right to use urban land by lease is permitted to realize the common interest and development of the people. In this regard, the lease policy is expected to address the development challenges in urban Ethiopia. Evidences revealed that the key challenges in urban Ethiopia include, among others, lack of affordable and decent houses, unemployment, infrastructure such as water supply and sanitation, and poor waste management. According to the World Bank study, the fundamental causes for these development problems in urban areas of Ethiopia are land management, governance and municipal finance (World Bank, 2015).[64]

The lease system is expected to be implemented via adherence to transparency and accountability so as to address the prevailing problems of corruption and ensure impartiality in the lease tender and land delivery system. One of the most important aspects of the lease policy is that priority should be given to the interest of public and urban centers in the urban land delivery system so as to ensure rapid urban development and equitable benefits of citizens.[65]

The effective implementation of the regulations is directly related to the key features of these regulations which can be explained from the contents of the regulations. Each regulation explicitly defines the scope of application, property rights related to transfer, mortgaging, compensation, and associated duties, ways of acquiring new development land, manner of fixing rates and modalities of lease fee payment, and duration of lease period. As stated in the

[64] Ibid
[65] Ibid

proclamation 721/2011, grace period is determined based on the type of development or service of plot of land as well as the conclusion of the lease contract and completion of construction period. The same regulation also clearly indicated that a lessee may transfer his leasehold right or use it as collateral or capital contribution to the extent of the lease amount already paid. He can transfer prior to commencement or half completion of construction. However, the period of urban land lease shall vary depending on the level of urban development and sector of development activity or the type of service. For instance, residential plots have 99 years of lease period, 70 years for industry, 60 years for commercial use but business like urban agriculture has only 15 years of lease period.[66] However, the lease period may be renewed upon expiry on the bases of the prevailing benchmark lease price and other requirements. Once the developer wines, he/she is expected to pay a down payment not less than 5% and the remaining balance during the lease payment period which takes into consideration the payback period of the investment. [67] The remaining balance of the lease amount shall be paid on the bases of equal annual installment during the payment term. Interest shall be paid on the remaining balance as per the prevailing interest rate on loan offered by commercial bank of Ethiopia. Penalty fee will be imposed for failure to pay the annual payment based on the Bank's defaulting debtor.

While the rational for adopting the different proclamations is constitutionally founded, and has common social and economic objectives, each regulation has its own specific problems the regulation intends to address. Review of the Proclamation No. 80/1993, indicates that the regulation is being applied only to urban land permitted to be held by lease. Since the proclamation was not applicable to an urban land held by other means prior thereto, it created ambiguity. Because it allowed the co-existence of the land acquired by permit or informally prior to the proclamation, on the one hand, and formally acquired through leasehold systems. This problem has been addressed by proclamation No. 272/2002, which declared that any urban land held by the permit system, the lease-hold system, or by any other means prior thereto should be under lease system. Besides, the proclamation is also intended to meet the

[66] Ibid
[67] Ibid

ever increasing demand for land, reduce unfair allocation of land and control illegal settlements that have been prevailed in urban areas of the country.

Proclamation No. 721/2011 has emphasized that any urban land which has not been under leasehold system shall be permitted to be held only by lease system. The proclamation also addressed issues that are not covered in the previous two land lease regulations. These issues include failure to push permit holders to make annual rent payments for use rights, the absence of formalizing informal tenure, and consolidation of the permit and leasehold tenure systems. The intent is to create uniformity of the informal settlement of the old possessions with the new, consolidated leasehold system.

Accordingly, a critical examination of the policy and institutional arrangement of the land acquisition system for investment revealed that at least three main modes of access to land for business purposes are practiced in urban Ethiopia.[68] These include rent from private source, lease hold and public allotment. There are both advantages and shortcomings of each option.[69] For instance, while the land rental market is characterized by very expensive prices and uncertain contracts, the main problem with lease hold arrangement is that the land supplied for bid is very limited, and hence is quite competitive and expensive for investors. There are also implementation problems in transferring to lessees. Even if public allotment has an advantage of being quite cheap, cities have quite limited land that they can allot. It is thus uncertain as it takes a long time to decide whether an applicant gets land or not, usually up to 2 years.[70]

The limited land supply coupled with discretionary power of government officials to restrict, tighten or widen access to land creates a large rent; thus, attract more speculators into the bid. The administration is not able to differentiate the speculators from the genuine investors.[71] The bid process is largely dominated by the speculators, which tend to increasingly bid with

[68]Proclamation No 721/2011; Regulation No.14/2004; Regulation No.4/1994; Regulation No.3/1994
[69]Ibid
[70]Ibid
[71] Ibid

high prices, which crowds out the genuine investors. The speculators retain the land for some time and resell the use right of the land at even higher prices. This has proven to be discouraging to the genuine investors and the productive sectors. According to World Bank (2012) study land allocation is the second most area of corruption in Ethiopia following customs services. The most corrupt activity in the land sector occurs at the implementation stage suggesting that the level of corruption is influenced by the way policy and legislation are formulated and enforced.[72]

## 2.5. HISTORY OF TENURE SYSTEM IN ETHIOPIA

Introduction

Understanding the Ethiopian land tenure system is important to student of land law for it gives students general historical and factual ideas about the land holding system in the country. The Ethiopian land tenure system is also the concern of history, sociology, agriculture, and economics and as a result different writers from all these disciplines have written a lot of materials. In here we shall briefly discuss the types of land holding system in three broad historical periods and the content of the laws used for such systems: before the 1974 revolution, during the Derg Era, and the present system. The pre-evolution period is treated in one section because the land tenure system was basically the same for long period. Only the coming of the revolution fundamentally changed the millennia based land holding system.

### 2.5.1. Before the 1974 Revolution

### Northern Ethiopia

Ethiopia was governed by kings and emperors for over two thousand years. The land holding system was generally a customary one in that there are no written laws which govern the holding system. A historical review of the land holding system of the feudalistic Ethiopia reveals that all land was owned by the king. Other private people, family or the church

[72] Ibid

derived their claim to the land from imperial land grants, otherwise known guilts. Hence, land was predominantly owned or possessed by a few landlords, the Church, and sometimes individuals, especially in the north. Based on historical and political factors, the land tenure system in the northern and southern parts of the country were different. In the north, from time immemorial land had been owned based on a lineage system. This land once entered in to the hand of individuals by way of grant, or inheritance etc. continues to remain within the family. This was called rist. It signified the usufructuary rights enjoyed under the kinship system. All land so held was considered to be held by hereditary right, because the holder was ipso facto a descendant of the ancestral first holder. In the north, thanks to this kind of land-holding system, a peasant could claim a plot of land as long as he could trace his descent. Hence, individual's rights over rist-land holding were decided essentially on the bases of his or her membership to the lineage. These rights, as described by Markakis, "were inherent and hereditary, which could neither be abridged nor abrogated under different pretexts, such as absence of an individual from the locality." The same social customs prohibited an individual from alienating or selling the land. The holder of the rist land, called ristgna, had unchallengeable control, use and inheritance rights over his or her possession. When a person died, his/her land was divided equally among all his/her children regardless of sex or birth order. Some argue that the use right was secured in the sense that political authorities, including the Emperor, or landlords were refrained from interventions. As a result, "there was less tenure insecurity or fear of being evicted from the rist land." As discussed above gult lands were lands derived by imperial grants and unlike rist lands, which were not subject to sale and exchange, gult lands were sold and donated freely. Donald Crummy, in his book, Land and Society in the Christian kingdom of Ethiopia, has recorded the sale, inheritance, and donation of gult land especially during the Gonderian period of the 16th and 17th century of Ethiopia.

The land grant condition reached its apex during the twentieth century. During Menelik's period, the emperor had been giving a vast amount of gult land to the ruling elite as a reward for loyal service to the régime, and to religious institutions as endowments. The individual or

institution that held such land had the right to collect taxes from those who farmed it, and also exercised judicial and administrative authority over those who lived on it. Thus, a single estate of guilt land, comprising perhaps one or two square miles, often included within its boundaries strip-fields, held as rist by scores (50-150) of farmers

## Southern Ethiopia

The pattern of land allocation in the southern territories incorporated into the empire by Emperor Menelik II, differed in important ways from the pattern in the north. The gult system was introduced in the southern part of the country in the 19th century, following Menelik's expansion to the region. From the 1870's under Menelik to the 1970's under Haile Selassie, the crown alienated land which was occupied by local tribes in common. It was distributed to members of the imperial family, the clergy, and members of the nobility, Menelik's generals, soldiers, and local agents of the state. Unlike the condition in the north, here most of the land was occupied not by peasants, but by the people of the upper ruling class. These people, by means of land grants, became absolute land owners. This kind of land ownership system was called gult. Peasants on such land became tenants (gabar) of the grantee and paid rent in addition to the usual taxes and fees. As explained by J:M Cohen: "those who received government land grant need not farm it themselves but could rent it under quite profitable arrangements to tenant farmers or lease it out to large-scale mechanized producers." After the Second World War and the expulsion of the Italian forces from Ethiopia, Emperor Haileselassie also continued this process. According to one study conducted by Gebru Mersha and et.al, of the nearly 5 million hectares allotted after 1941, only a few thousands reached the landless and the unemployed.

In the south, land measurement and property registration for tax purposes was introduced. This promoted private ownership and land sale. In northern Ethiopia, traditional land tenure had had a communal character, with peasants enjoying only usufructuary rights over the land rist land. In the southern part, especially, in the twentieth century, the steady process of privatization set in, with its implication of sale and mortgage. Some land lords even forced

their peasants to buy the land. The historian Bahiru Zewde observes: The privatization process had a number of consequences. At the conceptual level, it was attended with changes in the connotation of some important terms. Rist, in origin of the usufructuary rights enjoyed under the kinship system, now denoted absolute private property. Likewise, the term gabar lost its exploitive associations and assumed the more respectable connotation of taxpayer. Absolute private ownership rights to land above all entailed unrestricted freedom to dispose of it, most significantly through sale. This process was not without negative impact to the indigenous society, however. The renowned sociologist and expert on Ethiopian tenure system, Markakis, have concluded that the effects of the land grants and alienation were "eviction of a large number of peasants, the spread of tenancy, and emergence of absentee landlordism." Generally speaking, private tenure was recognized as the most dominant system during the final days of the Imperial regime, affecting some 60 percent of peasants and 65 percent of the country's population. Under this system, land was sold and exchanged; however, given that all the land was originally state property and that private holders had no absolute rights, this was different from the general concept of a freehold system. Serious land concentration, exploitative tenancy and insecurity have characterized the private tenure system.

The natures of rest and gult rights are fully encompassed by the definition that Hoben gives to the terms in his widely read book.[73] Hoben writes that gult rights entail "fief holding rights" whereas rest rights confer "land-use rights." He adds that "[i]n its most general sense, rist refers to the right a person has to a share of the land first held by any of his or her ancestors in any line of descent." According to Hoben, rest refers to the theoretically inalienable and inheritable land right of peasants. The peasant had the right to claim rest land through both the paternal and maternal lines. The individual rest holder could have only a usufractary title because the ultimate title to the land lays in the "descent corporation" or the lineage. This evokes the view that under such system of land tenure no right of alienation by individuals could exist. This implies that the rest system of land holding has a communal

[73]Land Tenure among the Amhara of Ethiopia: The dynamics of the cognatic descent, Chicago/London, 1973.

character because of the undifferentiated complex of rights. What all this means is that many individuals could have concurrent and miscellaneous rights over piece of land. For Hoben, gult confers material advantages to and forms the basis of political power for the elite. It also plays a useful role in the administration of land and the people occupying it. The bundle of rights which the state transfers to the balägult could include adjudication; govern ship, and the right to collect tribute. Taddese Tamirat also shares essentially the same view with Hoben as regards the role of gult in the administration of the country and adds that it was equally significant in military mobilization. The bälägult simply enjoyed the right to tribute in the form of part of the annual produce from the land. However, they could not claim tributes as owners. Hoben writes that both rest and gult rights extended over the same land they complemented each other as such: "it is of fundamental importance to remember that rist and gult are not different types of land but distinct and complementary types of land rights." Thus the exact scope of right of bälägult and resängä is somewhat blurred or overlapping. These assertions by Hoben regarding the nature of rights of rest and gult have almost attained the status of the basic principles and have become "established" points of departure for analysis of class relationships and the land tenure system. Some difference of detail notwithstanding, this view shared by a number of scholars, including Donald Crummey.

Crummey argues that in regions where the rist system predominated, gult was the tribute right exercised by the non-farming elite, and that the bälaägult, in his capacity as pure tax and tribute collector, had absolutely nothing to do with the production process and with the land. He asserts, like Hoben, that the ristägnä had mastery over the means of production and enjoyed absolute autonomy of production.…Without abandoning the view that gult was essentially a tribute right Crummey further argues that tribute rights had acquired a character of property, being transferred by sale or otherwise without necessarily involving the state. In other words, the individuals at the receiving end of the buying an the selling process could accumulate tribute rights over large amounts of property. Tribute rights were thus exchanged negotiated, fought over, etc. The selling and buying of tribute rights over land (i.e. gult) provides additional evidence to the argument that gult was given and taken away only by the

kings was incorrect, and that the gult holders exercised the right of transfer without necessarily obtaining permission or sanction of the kings.

Defining and delimiting the meanings and scope of gult and rist rights, Merid writes that gult "has never been a form of land tenure"; it was, he says, only "a system of defraying remuneration for services out of taxes and tributes which could have been collected in kind.[74] Gult rights only conferred partial usufruct rights." He goes on to state that even rist rights did not allow "absolute ownership rights on the individual. It has done so on the lineage or descent group only." According to Merid, though the individual members of the descent group enjoyed perpetuity of tenure they could not have an absolute interest in an allotted portion of the descent property in land. The justification for the inalienability of rist land, according to Merid, was the desire to preserve it for the needs of the present and unborn individuals in the line of descent; in his words rist could not be alienated "because it belonged to the living and the yet unborn." One could, of course, give out his or her land on terms of tenancy. Merid adds a few other points to his description of the rist system: one is that membership in rist owning group could be obtained or acquired only through birth. The second is that there was no big private or individual ownership of land because of the workings of rist system of land. Because of the rist system big holdings of landed property soon melted away. The third point is that the most important and overriding interest of the village community and the lineage was to achieve solidarity. He writes in this connection that "throughout history community solidarity and the rist system have been reinforced and preserving each other. Individualism would have no place in the society." The rist system also created conditions for excessive litigation and invariably acrimonious relationships among members of the descent groups.

At this point it will be apposite to mention the work of a scholar who represents a dissenting opinion on some of the issues from the established scholarship. Shiferaw Bekele, in a work that surveys the literature on land tenure, has convincingly showed the inadequacy of existing

[74] Merid Wolde Aregay. "Land Tenure and Agriculture Productivity, 1500-1855", Proceedings of the Third Annual Seminar of the Development of History. Addis Ababa, 1986

interpretations of the principle of land holding.[75] For Shiferaw, guilt implies more than merely administrative control over land. He argues that scholars have all too often confused guilt holdings as simply administrators by claiming the guilt entails a right over tribute. In actual fact, when it was granting that gult the state was transferring land to the full ownership of the grantee. It thus involves a proprietary right in land. He points out that although there are differences in certain peculiar details from place to place, there was a large measure of commonality in the basic principles and concepts pertaining to land ownership in Ethiopia. This was so particularly from the Gondärine period through early twentieth century Ethiopia. Shiferaw concludes that "…in the Gonderine era, what was granted was the land rather than tribute only." Unlike many scholars, he argues that the land so given by way of guilt did not remain in the property of the original cultivators or ristägnä. There was no concurrent right of a miscellaneous character over land since it was individually or privately owned and the right of the bälägult and risrägnä were very clearly differentiated.

By way of summary, it can be said that although there were different practices in the country the basic point is that gult was a grant of land to individuals and the church for some service rendered to the king. The gult land usually encompasses of large area of land and balagult prefers to put tenants on the land, through time become restägnä. The gultägnä on the other hand has the right to be an administrator, tax collector and adjudicator over the people in his gult land. Rist system is on the other hand a system which may be acquired either by royal grant to individual person and the land continues to be cultivated by is descents, or by being ristägnä or tenant in some bälägult's land and continue to benefit on the land.

## 2.6. ETHIOPIAN URBAN LAND LEASE SYSTEM AND SOCIAL JUSTICE

Social justice in land administration requires participatory land transfer and use system. Whatever the form of land tenure system a country may have adopted, an equitable land

[75] Shiferaw Bekele. "The Evolution of Land Tenure in the Imperial Era", Shiferaw Bekele (ed.) An Economic History of Modern Ethiopia 1941-74. Dakar: Codesria, 1995.

market system is indispensable to ensure access to land to everyone. Ensuring social justice in urban land allocation is imperative these days[76]. The FDRE constitution obliges the government to enact laws which "guarantee to all persons equal and effective protection without discrimination on grounds of race, nation, social origin, color, property…or other status"[77] and formulate policies which ensure that "all Ethiopians get equal opportunity to improve their economic conditions".[78] All resource related laws, policies and measures introduced by the government are expected to be in light of these grand constitutional principles. A legislation which apparently treats individuals equally may indirectly discriminate against a section of the society for it fails to consider prevalent facts and this might have detrimental effect on the livelihood of those discriminated against. 'Equal and effective protection' would require laws, policies and measures which give due attention for substantive and not formal equality.

The existing lease system has introduced transparent and accountable land transfer system and this in turn has minimized corruption. The rent seeking individuals cannot negotiate with and bribe public officials to get large tracts of land which are used to enrich both the officials who get bribery and the rent seekers who further transfer these plots of land to derive excessive money over bare land without introducing any improvement.

Though the existing urban land lease system has made the land acquisition system transparent and accountable, the substantive rules governing acquisition of land have actually made a significant portion of the society incapable of accessing urban land. This is evident when we see the urban land lease hold rules which prohibit acquisition of land other than through the lease system and the rules on tender which is the principle in the urban land lease and allotment which is open in exceptional cases.

[76]Paul Hendler & Tony Wolfson, The planning and "unplanning" of urban space, 1913-2013: Privatized urban development and the role of municipal governments, (2013) at. 29.
[77]Ibid supra note 5 , Art 25.
[78] Ibid. Art 89

Individual citizens who do not have the financial means to compete in lease tenders nor can make use of the modality of allotment to access urban land (as this is allowed in exceptional cases) are denied equal opportunity with others in distribution of the most important national wealth - land. Those who have been rent seekers and got rich overnight manipulating the previous lease system are now financially capable of offering highest prices in tender procedures and can easily drive out the majority whenever the government offers land lease bids. What is worse, there is no limitation on the number of lease bids an individual may participate in. As long as an individual is competing for different plots, there is no any limitation on the number of bid documents he/she may buy and this allows the rich to push out the lower class in each and every offer. All these would mean that the dealing over the cake is between the rich and government. Thus, the government has failed to adhere to the constitutional economic objectives of the country.

Making urban land unaffordable to some section of the society would have serious implications on social rights[79] of those who cannot access land and this becomes an impediment to progressive enhancement of citizens' access to housing and social security. Thus, the existing urban land lease law, by failing to set an accommodative land acquisition system, has defeated the grand social objectives under the constitution. Though the government claimed to have helping the poor by providing land for free for the construction of condominium houses, the number of individual who benefit from such government controlled scheme are too little to change the overall situation.

It should also be noted that individuals seek land not only to build a resident but also to do other activities for their livelihood. If the poor are looking for secured and long term urban tenure for such purposes, they can get it only through tender procedure and this procedure would obviously drive them out of the game as the rich are able to bid higher land prices and make urban land unaffordable to the poor. In this regard, the new lease system failed to ensure social justice which requires equitable distribution of common resources including land. Art 89(2) of the FDRE constitution declared that "government has the duty to ensure

[79] Ibid. Art 41 and the following

that all Ethiopians get equal opportunity to improve their economic conditions and to promote equitable distribution of wealth among them."[80] To advance social justice and improve land development, land development policies, laws, programs and plans should be accommodative and consider the land interests of the poor.

## 2.7. ADMINISTRATION OF URBAN LAND LEASE HOLDINGS

The lease proclamation declares that "any person permitted urban land lease holding in accordance with this proclamation shall conclude a contract of lease with the appropriate body"[81]. From this provision we can understand that any individual who is legally permitted to lease urban land according to the rules outlined in this proclamation must enter into a lease agreement with the relevant authority or governing body. Anyone who meets the criteria for leasing urban land must follow the proper procedures and sign a lease contract with the appropriate entity. This provision is emphasizing the requirement for individuals who are eligible to lease urban land to follow the legal procedures set out in the proclamation or law governing land leasing. It specifies that those who meet the qualifications and criteria for leasing urban land must not only adhere to the rules but also engage with the relevant authority or governing body responsible for overseeing land leases. In practical terms, this means that individuals who wish to lease urban land must comply with the established guidelines and regulations, which may include criteria such as eligibility requirements, lease terms, and any other stipulations outlined in the law. Additionally, they are required to formalize their intent to lease the land by signing a lease agreement with the appropriate entity, which could be a government agency, municipality, or any other authorized governing body. By stressing the importance of entering into a lease agreement with the relevant authority, this statement underscores the significance of legal compliance and proper documentation when engaging in urban land leasing activities. It highlights the need for individuals to follow the prescribed procedures and obtain the necessary approvals before leasing urban land to ensure transparency, accountability, and adherence to the law.

[80] Ibid. sub articles of Art 89

[81] Urban land lease holding proclamation No. 721/2011, article 16(1)

The lease contract shall include the construction start-up time, completion time, payment schedule, grace period, rights and obligations of the parties as well as other appropriate details.[82]. This provision states the essential components that must be included in a lease contract for urban land. Practically Construction start-up time refers to the agreed-upon date when the construction activities on the leased land will commence. It is important to specify this in the lease contract to establish a clear timeline for the development of the property. Completion time also indicates the deadline by which the construction or development activities on the leased land must be completed. Setting a completion time helps ensure that the project progresses in a timely manner and provides clarity on when the property will be ready for use. Payment schedule refers the payment terms agreed upon by the parties involved in the lease contract. It includes details such as the amount of rent, frequency of payments, due dates, and any penalties for late payments. A clear payment schedule helps prevent misunderstandings and ensures that financial obligations are met promptly. Grace period refers to a specified period after the due date during which a payment can still be made without incurring penalties. Including a grace period in the lease contract allows for some flexibility in case of unforeseen circumstances that may delay payment. Rights and obligations of the parties specify the rights and responsibilities of both the lessor and the lessee under the lease agreement. It outlines what each party is entitled to and what duties they are expected to fulfill during the term of the lease. Other appropriate details encompass any additional provisions, conditions, or specific requirements that are relevant to the lease agreement. It may include clauses related to maintenance responsibilities, insurance coverage, dispute resolution mechanisms, or any other terms that need to be addressed to protect the interests of both parties. By including these elements in the lease contract, all parties involved can have a clear understanding of their obligations, rights, and expectations throughout the leasing process. This helps promote transparency, accountability, and legal compliance in urban land leasing arrangements.

[82] Ibid. (article 16(2)

A person permitted urban lease holding shall be made aware the contents of the lease contract and shall effect the down payment of the lease price prior to signing the contract.[83] this provision means that a person who is allowed to hold an urban lease must be informed about the contents of the lease contract before signing it. Additionally, they are required to make a down payment of the lease price before finalizing the contract. In practical terms, this provision ensures that the individual entering into the lease agreement fully understands the terms and conditions of the contract they are about to sign. By being made aware of the contents of the lease contract, the person can make an informed decision regarding their obligations and rights under the agreement. The requirement to effect a down payment of the lease price before signing the contract serves as a commitment from the lessee to proceed with the leasing arrangement. It also helps demonstrate the lessee's financial capability and willingness to fulfill their financial obligations related to the lease. To sum up, this provision aims to protect both parties involved in the lease agreement by ensuring transparency, clarity, and commitment from the lessee before formalizing the urban lease.

A person who has signed a lease contract shall be issued with a lease holding certificate prepared in accordance with article 17 of this proclamation and shall receive the plot of land by personally appearing on site."[84] This provision indicates that once a person has signed a lease contract for a plot of land, they will be provided with a lease holding certificate. This certificate will be prepared in accordance with the regulations outlined in Article 17 of the relevant legal document or proclamation. Additionally, the individual will physically receive the designated plot of land by personally appearing at the site. In essence, this process ensures that the lessee receives official documentation in the form of a lease holding certificate, which serves as proof of their right to use and occupy the specified plot of land according to the terms of the lease contract. By physically appearing at the site to receive the land, the lessee confirms their acceptance of the lease agreement and formally takes possession of the property. This procedure helps to formalize the leasing arrangement, establish clarity regarding the rights and responsibilities of the lessee, and provide a clear

[83] Ibid article 16 (3))
[84] Ibid Article 16 (4).

record of the land transaction for both parties involved. It also helps prevent any misunderstandings or disputes regarding the allocation and use of the leased land.

The appropriate body shall have the responsibility to follow up and ensure that the urban land handed over pursuant to sub article (4) of this article is developed in accordance with the lease contract and that the annual lease payment is effected timely.[85] From this provision we can understand that the relevant authority or governing body is responsible for monitoring and ensuring that the urban land allocated to a lessee, as outlined in the preceding section of Article 16, is developed as per the terms and conditions specified in the lease agreement. The responsible body must oversee the development process to ensure that the lessee complies with the agreed-upon terms of the lease contract. The authority is also tasked with verifying that the lessee makes timely payments of the annual lease fees as stipulated in the lease agreement. By fulfilling these responsibilities, the governing body aims to guarantee that the urban land is utilized appropriately and that all financial obligations related to the lease are met promptly. This provision emphasizes the role of the governing body in overseeing the development and payment aspects of urban land leasing agreements to uphold compliance, transparency, and accountability in the leasing process.

## 2.8. CONVERSION OF OLD POSSESSION TO LEASE HOLDING AND SOCIAL JUSTICE

The other issue related with access to urban land and tenure security is the conversion of old possessions into lease holding system. The year 1994 marked the introduction of a lease system (Ethiopia, Urban Lands Lease Holding Proclamation No. 80/1993. NEGARIT GAZETA No. 40, 53rd Year, 23 December 1993, Addis Ababa) in Ethiopia to administer urban land.[86] This proclamation declared that once the lease system under the proclamation entered into force, urban land should be administered through lease. But, its enforcement did not go far and we can even find urban areas not administered through the legally prescribed

[85] Ibid Article 16 (5)
[86] Ibid supra note 6,

lease system hitherto. This proclamation was later repealed by Proclamation No. 272/2002.[87] This proclamation too remained dormant in most of the urban areas in Ethiopia and got repealed by urban land lease holding Proclamation No.721 in 2011.[88] Therefore, there are old possessions (non-leasehold land use rights) which predate the introduction of the lease hold system in 1994 and continue as such in urban centers. Accordingly, "old possession" is defined under Art 2(18) of the Lease Hold Proclamation No. 721/2011 as "a plot of land legally acquired before the urban center entered into the leasehold system or a land provided as compensation in kind to persons evicted from old possession."[89] As the previous lease proclamations were not implemented nationwide effectively, most of urban land holdings in Ethiopian cities are acquired through legal arrangements other than the lease system. According to the definition provided under Art 2(18) of the proclamation, such holdings or substitutions given when such holdings are expropriated are considered as old possessions.

If most of the possessions in Ethiopian cities are old possessions as per the definition discussed above and such old possessions are going to be converted to lease holdings, addressing such conversion is worth considering in appreciating the implications of the conversion to social justice. Article 6 of the new lease proclamation has declared that the old possessions will be converted to lease holding after studies are conducted by the appropriate body. Transfer of urban land holding rights other than through inheritance will also automatically convert the old possession to a lease holding. [90]

Those who have old possessions are paying fixed and relatively low rents hitherto. Such fixed payments are set considering living standards of citizens and are affordable. These

[87]Ethiopia, Re-enactment of Urban Lands Lease Holding Proclamation No.272/2002, FEDERAL NEGARIT GAZETA, 8th Year No. 19, 14th May 2002, ADDIS ABABA.

[88] Ibid. supra note 8,.

[89] Ibid, Art 2(18).

[90] Ibid, Art 6, along with other provisions which set the obligations of someone with urban land holding rights.

people are not paying market prices for the land. On the other hand those to whom urban land is transferred through the lease arrangement have to pay very soaring down payments and periodic lease payments to complete the remaining balance. The researcher found such differential treatment unjust. There is no any substantive ground to treat the old and new possessions differently except the point of time. Two individuals exercising urban land use rights on plots of the same size, place and purpose will have to pay significantly different amounts as the one who received such land through the lease system has to pay the market price while the other with an old possession on a land of the same value has to pay not market lease price but very low and fixed land tax. The people and state should be able to derive appropriate proceeds from old possessions as the owners of land in Ethiopia.[91] Thus, the government has to embark on converting old possessions and should set benchmark lease prices to be imposed on old possessors when it takes such a measure as the lease price to be paid by old possessors cannot be determined through tender procedures.

One may say that the new lease system should not change the real property rights of urban residents retroactively. One of the cardinal principles of law is that no law should affect already existing legal relationships retroactively. This is to ensure certainty and confidence in creating legal relationships. If laws can apply retrospectively and disturb already established legal rights and obligations, individuals will not feel confident while involving themselves in land related transactions. Such retrospective effect of law can also undermine citizens' reliance on legal instruments and institutions. Yet, compelling circumstances (for example, uniform administration of land) may dictate the state to introduce such laws. Under the Ethiopian legal system, it is not totally impossible to enact laws with retrospective effects. What is clearly prohibited is enactment of criminal laws with such effect (Art 22 of FDRE Constitution).

[91]Mekasha Abera, Ethiopian Basic Lease Law Concepts and the problems associated with the lease system, April 2013, at. 40.

A contrary reading of this particular provision would give us the impression that the government can enact retroactive laws on civil matters when pressing circumstances require so though the general principle is that laws should not have retroactive effect. Thus, converting old possessions to the new lease system could bring about social justice, uniformity in administering urban land and sustainable and healthy development of urban centers. Such conversion process should, however, be flexible to allow the poor continue holding their possession with affordable lease prices. The problems which are caused by the existing lease holding system should, of course, not be allowed recur in the conversion process.

What is rather challenging is the discontent those old possessors will have when government starts implementing such conversion. The country introduced a lease hold system in 1994 and thus the majority of the residents in urban centers got their land use rights under the old possession system and many even have been getting urban land through such system after the adoption of the lease system as the urban lease hold proclamations were inactive in many urban centers until recently as I explained it earlier.

The lease hold proclamation No. 721/2011 is silent on many issues about conversion of permit holdings into the lease system. It does not go beyond stating that "the modality of converting old possessions into lease hold shall be determined by the Council of Ministers (CM) on the basis of a detailed study to be submitted by the Ministry". [92] The proclamation has not set time framework. It has not also given basic directions on how the CM should determine the modality of conversion. To the author's knowledge, neither a detailed study nor a decision on the modality of conversion to be used is made so far. Institutional, economic and political factors could explain the government's reluctance on this compelling issue. Whatever factor might have caused such a delay, the old possessors are benefiting a lot paying relatively low fixed land tax while the new possessors have to pay the market prices of land.

[92] Ibid. supra note 8, Art 6(1)

The other point worth considering here is the change in size of the parcel following conversion. When an old possession is converted into the lease system, the old possessor's land size may increase, decrease or remain unchanged according to the national standard to be approved. The Amharic version refers to the 'national standard to be approved' and the English version employs the phrase 'in accordance with the approved national standard'.[93] As the Amharic versions of the Ethiopian laws practically prevail over the English version when there are inconsistencies between the two versions, we should think of a new standard to be approved to guide implementation of the lease proclamation. The country has not so far approved a new national standard since the enactment of the urban leasehold proclamation and different plot sizes of the same purpose are being transferred to individuals through tender procedure. As any ambiguity in the prospective plans and standards may open room for corruption and defeat the purposes of the proclamation, such delicate issues need to be treated watchfully.

The urban land lease hold proclamation has also a discriminatory effect against those whose old possession size has to be reduced in light of the national standard to be approved. While those individuals who get extra land will only pay the market price of this additional land like other citizens, individuals whose old possession size has to be reduced will get compensation only for the 'property to be removed from the land so reduced'; they will get nothing for losing part of their land use right.[94] Transfer of any property attached to an old possession through whatever modality except inheritance results in conversion of the old possession into the lease system. This shows how the government is enthusiastic to gradually convert old possessions into the lease system making use of the natural course of transaction in real property in urban centers rather than taking a measure which transforms all old possessions at a time. Equally, merging of an old possession with a new lease hold converts the whole

[93] Ibid, Art 6(2).

[94] Ibid., Art 6(2)(a).

holding to lease hold reads.[95] On the other hand, transfer of a property attached to an old possession through inheritance does not result in conversion of the old possession. The rationale behind this might be to leave the rights transferred through such modality undisturbed as inheritance is not for consideration and doesn't form part of commercial transaction. One thing that we should take note here is that the exemption that the heirs may exercise over transferred old possession will come to end whenever the CM adopts a modality to convert all old possessions into the lease hold system.[96]

Thus, this exception under art 6 sub art 3 of the urban land lease hold proclamation is temporary and will become inapplicable after some time. Yet, given the reluctance the government has shown to convert old possessions into the lease system, this exception may last long.

Here, the researcher is not suggesting that the government should swiftly convert old possessions to the lease system. Swift and ignorant measures could result in quite onerous and unaffordable obligations. But the standard at which old possession are converted into the new lease system are haphazard and less convincing, and deserve scientific approach.

[95] Ibid., Art 6(6)

[96] Ibid., Art 6(3).)

# CHAPTER 3: LEGAL AND PRACTICAL ASPECTS OF CONVERSION OF PERMIT HOLDING INTO LEASE SYSTEM

## 3.1 LEGAL ASPECTS OF CONVERTING PERMIT HOLDING INTO LEASE SYSTEM

### 3.1.1. Permit holding under the current urban land laws

In the present land tenure arrangement of the country, for urban lands, a leasehold system is introduced. Concerning the status of old possessions, controversies exist when one looks at the currently governing proclamation which is enacted with various lease principles in a motive to ensure a unified land tenure arrangement in urban centers of the country.[97]

Old possession is defined under the current proclamation as "a plot of land legally acquired before the urban center entered into the lease hold system or a land provided as compensation in kind to persons evicted from old possession."[98] According to this definition, there are two types of holdings which are treated as old possessions. The first is related to those lands that were acquired before a certain urban center entered into a lease system; and the second is related to lands that an old possession holder acquired in the form of compensation for the lands taken away by the government through expropriation.

Thus, all land acquired and held during the imperial era, the Derg era, and after that, outside the lease system, is considered as old possession. Besides, replacement land given to owners

[97] Ibid. supra note 8, Art 4 listed the principles of lease in Ethiopia. accordingly, the right to use of urban land by lease shall be permitted in order to realize the common interest and development of the people; the offer of lease tender and land delivery system shall adhere to the principles of transparency and accountability and thereby preventing corrupt practices and abuses to ensure impartiality in the process; tender shall reflect the prevailing transaction value of land; the urban land delivery system shall give priority to the interests of the public and urban centers to ensure rapid urban development and equitable benefits of citizens and thereby ensure the sustainability of the country's development.

[98] Ibid, Art. 2(18)

whose land was expropriated may also be considered as old possession since the land was given without lease contract.

The SNNP Regional State Urban Lease Implementation regulation defined old possession as: "Old possession means a plot of land legally acquired before the urban center entered into the leasehold or a land provided as compensation in kind to persons evicted from old possession after the implementation of the lease proclamation or the land acquired before the implementation of the lease proclamation which recognized by the law to carry on as land holding without the leasehold system."[99] This definition, similar to what is provided in the federal proclamation, recognized lands gained in permit, and those lands given as a replacement to the holders due to expropriation decisions, as possessions in permit. In addition to the federal proclamation definition, those urban lands, that were acquired outside the lease system before the coming into force of the lease system in the country, but allowed to continue in that state by an appropriate organ, are properly addressed and they are simply old possessions that shall continue in that state until conversion is made. Hence, in this legal instrument, old possessions are defined to encompass more lands above and beyond the federal proclamation's definition.

The proclamation has no immediate or automatic application to all urban areas in the country. A grace period is provided to some towns and the task of assigning these towns is left to regional cabinets. For this, the proclamation specifies that:

"Regional cabinets may specify urban centers to which this proclamation remains inapplicable for a certain period: provided, however, that such transitional period within which the proclamation remains inapplicable in any urban center may not be more than five years starting from the date of the coming into force of this proclamation."[100] Hence, to the maximum of five years dating the introduction of the proclamation, there may be some urban

[99] Ibid. supra note 16, Art. 2(7)

[100] Ibid. supra note 8, Art. 5(4) & ibid, supra note 16, Article 5(1) of

centers where the proclamation will not automatically apply for which they will be governed through the permit system.

In these towns, therefore, whatever kind of transfer is made on the land, it will not result the conversion of the permit holding into the lease system. However, when the urban centers supply land in this transitional period, the delivery shall be through tender and the benchmark shall be the annual land use rent of the locality.[101] In general, at the time the coming into force of this new proclamation, leasehold is the only means of land acquisition mechanism in Ethiopia as it is clearly stated in the proclamation that "without prejudice to the provisions of Article 6 of this Proclamation, no person may acquire urban land other than the lease holding system provided under this Proclamation".[102]

In the current lease proclamation, it is said that the fate of converting old possessions into the lease system will be decided by the Council of Ministers upon a detailed study to be made in the future.[103] In other words, all "old possessions" will not be converted in mass at once to leaseholds before the detailed study is conducted in the future. The proclamation, in the meantime, requires the conversion of old possessions into the lease system in one of the following events whether there is total conversion or not.

Where a property attached on an old possession is transferred to a third party through any modality without inheritance.[104] Informal settlements that have been regularized pursuant to the regulations of regions and urban administrations.[105] Where an application to merge an old possession with a lease hold is permitted.[106]

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[101] Ibid, Art. 5(5)
[102] Ibid, Art. 5(6)
[103] Ibid, Art. 6(1)
[104] Ibid Article 6(3)

[105] Ibid Article 6(4)

[106] Ibid Article 6(6)

The first modality for conversion of old possessions is when a property is transferred to a third party and property transfer in this case includes sale, exchange or donation, except for inheritance. It must be noted that since land is not subject to sale, the subject matter of "transfer" is not the land itself but the immovable on the land, i.e. building. From this we can understand that, if a house resting on permit holding/old possession is sold, exchanged, or donated, the new owner shall possess the land on lease basis.[107]

On the other hand, when an informally held possession is regularized by an appropriate organ, this possession will be converted to the lease system.[108] Land may be held and construction of houses may be carried out without the permission of the urban land administration offices. Normally while houses are found built without the permission, the usual measure taken in such cases is demolition of the informal settlement.

However, in some cases, there might be measures to regularize and formally register these settlements. Hence, the regularized possessions will be governed as per the principles in the lease system. And the third possibility where an old possession will be converted to the lease system is where an old possession is to be merged or amalgamated with a piece of land already leased. Hence, even if these two parcels have been governed through different systems (one through the lease system and the other in permit), once they are merged or amalgamated, the entire possession will be converted to the lease system.

### 3.1.2 Conversion of permit holding under Subsidiary Legislations

According to the FDRE lease proclamation[109], regions and city administrations shall have the powers and duties to issue regulations and directives necessary for implementing the Proclamation. This being the case, the Ministry of Urban Development, Housing and Construction (now the name is changed to Ministry of urban Development and Housing) has

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[107] Daniel W/G, Ethiopian land law text book, Bahir Dar University, Institute of Land Administration, 2013, p. 78

[108] Ibid supra note 16, Article 7(2)

[109] Ibid, article 33

prepared a model land lease regulation two months after the issuance of the proclamation. This document was submitted for discussion primarily in Addis Ababa, Dire Dawa and some regions.[110] Though this model land lease regulation is not a binding document, it is expected that it will significantly influence the subsequent regulations to be issued by regions and city administrations.[111] According to the current lease proclamation, as a matter of principle old possessions, upon any dealings other than inheritance, should be converted into the lease system. However, depending upon the intention of the proclamation, pertinent provisions of the law are elaborated under various subsidiary legislations. In this regard, Article 8 of the regulation (i.e. the model lease regulation of the FDRE Ministry of Urban Development, Housing and Construction) which is enacted to enforce the proclamation provides the exceptional scenarios by which old possession shall not be transferred into the lease system. While formulating these exceptional modalities, it is perceived that the ministry has based itself on the scope and intent of the proclamation which is enacted by HPR.

Though most of the modalities adopted under the regulation are consistent with the terms of the proclamation, the legitimacy of some of these exceptions must be questioned as it goes contrary to the hierarchy of law in the legal jurisprudence. In the well accepted hierarchy of laws, regulations are inferior laws that are to be promulgated with a purpose of implementing a certain proclamation on the issues similar to it. When the regulations attempt to govern issues that are contrary to the proclamations or include further illustrations that are not foreseen by the proclamation, at least to the extent of the provisions that go against the proclamation, it shall be made void. While the proclamation restricted the mode of conversion shall always be made upon any transfer save inheritance, the regulation shall only have the discretion to exercise within the ambit of its superior law and it shall not contradict with the proclamation. According to Article 8 of the Southern Lease Regulation, the

[110] Ibid supra note 27
[111] Ibid, supra note 8, Article 14 and 16)

following are among exceptional circumstances that the previous holder(s) of old possession shall continue to be within the old possession tenure arrangement;

- When the rights holders of the existing property obtained by inheritance submit a request for division and the partition is approved and allowed by the plan.
- When a husband and wife who have different existing possessions in a divorce divide their possessions according to the procedure determined by law and when the partition is approved by law.
- When one of the divorced husband and wife or some of the heirs/legates, up on payment of its value to the other/s agree to take over the whole of the old possession.
- A replacement land provided to holders of old possession whose land was lost by expropriation.
- Holdings acquired before the coming into force of the lease system and decided by the administration to continue as an old possession in accordance with the law.
- Possessions confiscated during the Derg and determined to be returned to the previous holders by the relevant government body.
- Holdings which were transferred to a third party due to different circumstances before the coming into force of the proclamation but whose title deed is in issued in the name of the transferee.

As it can be easily observed from the above stated exceptions, it is possible to infer that most of the modalities are somehow consistent with the intent of the proclamation. However, in some cases, the regulation has gone a little further and has included some exception which might be perceived as a bird's-eye view of the issues. Nonetheless, in other cases, the regulation has also included few seemingly contrary exceptions. For instance, the third exception can be questioned in line with the intent of the proclamation. This is because if either of the heirs or divorcees has reimbursed the value[112] of the property, in effect such

[112] It is also confusing whether such value refers to the value of the property attached to the land or the land itself.

arrangement tantamount a transaction concluded between the heirs or the divorcees. Thus, if this circumstances result in the transfer of one's holding/property to another person especially based on pecuniary dealings, it seems that the modality is apparently contrary with the proclamation. Because the proclamation does not have the intent to include those monetary based transactions as an exception like the case of inheritance. Lets we discuss about the SNNP region land lease regulation regarding conversion of permit holding to lease hold tenure.

The preamble of the regulation said that the…to implement the lease proclamation fully the regulation undertaken in conformity with the situation of urban. This implies that the regulation is required to undertake fully implementation of the proclamation and it is enacted as per article 33 of the proclamation, powers and duties of regions and city administrations. Under its sub article, regions and city administrations shall have the powers and duties to issue regulations and directives necessary for the implementation of the proclamation.

Regard with the purpose of my study it is important to discuss about challenges of conversion of permit holding to lease and what is provided by the regulation to the issue. The regulation defines the term old possessions under its article 2(7) and the definition seems copy paste of article 2(18) of the lease proclamation.

Part two of the regulation, provides about the administration of urban land lease holding. According to article 4 of the regulation state that the way of urban land allocation and it limited the land acquisition means to lease holding system saving old possession. From this we can understand that it have been aimed at prohibiting any mode of allocation of urban land holding other than lease holding system.

When we come to the issue of conversion of permit holding, article 6 of the regulation provide about the administration of urban land old possessions. As per this provision it needs to wait for discussion and detailed study to be undertaken for providing mode of conversion. This is also the direct copy paste of the lease proclamation under its article 6 and mandatory conversion will be inevitable.

The regulation requires the conversion of old possession to lease hold system during its transfer to third party by any modality other than inheritance. The person to whom the property transferred becomes the possessor through leasehold saving inheritance. The regulation says …without prejudice to sub article 6 of article 6 of the proclamation the amalgamation of old possession with leasehold should be administered as leasehold tenure. This is a mandatory conversion of old possession to lease hold when amalgamation between old possession and lease hold takes place.

But what is the amalgamation of two old possessions? Does it subject to mandatory conversion or not. Regarding this issue the regulation does not say anything and remain silent, in a similar way with the proclamation. The reason for this may be that the regulation is a direct copy of the proclamation. However, the assumption is that it does not subject to mandatory conversion as the proclamation and the regulation doesn't expressly say so and it should be remain as old possession. Regarding the issue, a directive of Addis Ababa city administration promulgates: "where old possessions are to be merged, they will be administered according to old possessions tenure".[113]

Furthermore to answer this question it is important to obtain information from land authority, to this effect the researcher conducted interview with the land administration professionals of Guragae Zone Arekt City, Emdbre City and Agena City administration municipal office regarding the practice that the amalgamation of two permit holdings doesn't subject to mandatory conversion. They added that there is no ground to convert such holding as there is no transfer to third party via transaction of old possession without inheritance. The researcher stand regard with this is that the SNNP regulation should contain clear provision to avoid such confusion.

Article 7 of the regulation provides the administration of urban land by lease holding tenure. Sub-article 1(c) of this provision declare that old possession transferred to third party enter in to lease holding according to the size of land under the document. The regulation has also

[113] Addis Ababa City Administration, land delivery service manual, directive No. 12/2011, Article 18(2)(4).

provided further additional scenarios that favor for non-conversion of old possession into the lease system. Accordingly, among the various scenarios that will not result the conversion of old possessions into the lease system, it is provided that "non-documented holdings shall be caused to have a holding certificate in accordance with a directive to be issued by the Bureau."[114] Generally, the overall issue here is in contrary to what proc. No. 721/2011 stipulated, the above subsidiary laws, that repeatedly referred the proclamation, go beyond establishing those scenarios that shall not result conversion of old possessions into the lease system.

## 3.2. CHALLENGES OF CONVERSION OF PERMIT HOLDINGS OF LAND INTO THE LEASE SYSTEM

Conversion of permit holdings to the lease system will benefit not only the government, but also provides incentives to the individual landholders and third parties too. We can look the benefits from the perspective of the government, the landholders and third parties. On the side of the government, for instance, there will not be two types of land tenure arrangements in towns (some part of the urban land administered under the lease system while the remaining land by permit holdings). Uniform land tenure and simplified land administration will prevail in urban areas. A better land information system that will help for increased levy of tax since it will help to expand tax bases; and it will bring about coordination among stakeholders.

Also, from the landholders‟ and third parties perspective, conversion of permit holdings to lease hold will have a multi-faceted advantages including, the right to mortgage lease rights since as it is provided in the proclamation, the lease holder can mortgage his rights to the extent of payment he has already made; the holder will get grace period concerning the lease price payment;

[114] Ibid. Reg. No.123/2014, supra notes 16, Art. 8(5)

However, the conversion does not only entail benefits; rather, it has also its own challenges. Conversion is takes place when there is the incidents of transfer of property on permit holdings of land to a third party through any modality other than inheritance. In these transfer cases, the permit holdings shall be subjected to conversion to the leasehold system. There for, the followings are the challenges in law and practice when converting permit land tenure to lease tenure system

### 3.2.1. The legal challenges in converting permit land tenure to lease tenure

Article 6 of the new proclamation is meant to govern the conversion of permit holdings into the lease hold system. The rules for total conversion shall be made by the Council of Ministers upon a detailed study submitted by the Ministry of Urban Development and Construction.[115] Unlike Article 5(4) of the proclamation, which sets the maximum time limit of five years within which the urban centers may suspend the enforcement of the proclamation, Article 6(1) except providing the possibility that the Council of Ministers may come up with the urban land conversion modalities into a lease system, it does not set the time limit when the regulation would be issued. The provision also states that the process of enacting the regulation should not preclude the revision of the rental rate applicable to permit holdings.

This particular provision may have many-sided implications. From the very beginning, since the time limit is not set yet and no visible action is begun by the authorized organ, the process of enacting the regulation may take a very long time. Due to this, the permit holdings tenure arrangement will continue to exist along with the lease system for a period that cannot be easily predicted. In addition, the inclusion of the last statement on the provision regarding the possibility of making revision on the old permit holdings rental amount may also indicate that such regulation may not be soon reached since there is a possibility to increase the rental amount to be paid on permit holdings leaving the possibility of providing conversion rules on timely basis. Hence, there is a possibility of delay of enacting the much expected regulation.

[115] Ibid. supra note 8, Arts.6(1) and 2(22)

Moreover, when the provision indicates that "the modality of converting permit holdings into leasehold shall be determined by the Council of Ministers …" it is not clear about the type and nature of these modalities whether the Council of Ministers will adopt different modalities than those acknowledged under sub Article 3 of the same provision. This is because sub Article 3 has said that "where a property attached on permit holdings is transferred to a third party through any modality except inheritance, the person to whom the property is transferred becomes the holders via lease holding". By looking at the way the provision is framed, it appears restrictive. Thus it is not clear what can be introduced and determined by the Council of Ministers other than those modalities dealt with indirectly under the proclamation.

If the Council of Ministers is endowed with a delegated authority of putting the details of those modalities already recognized under the various governing laws of the country, there may not be any confusion. Thus, rather than framing the provision as if the council will come up with new modalities, it may have been better if it were about setting the circumstances to be adhered during the conversion of permit holdings into the lease system through those modalities already identified by the proclamation itself.

In the meantime, taking into account the manner through which the lands in permit holdings were acquired, the proclamation requires a minimum lease price to be paid by the landholder whenever his/her land is converted into a lease system.[116] If the lease rent is much greater than the rent paid for the permit holdings of land, the payment can be perceived as a burden by the landholders.

The SNNP Regional State Urban Land Lease Holding Regulation has also confirmed the approach adopted under the federal proclamation in stating "without prejudice to the provisions indicated under Article 6 (3), (4) and 6 of the proclamation [referring to the federal proclamation], permit holdings shall continue as they are until it is determined

[116] Ibid. supra note 8 FDRE Lease Proc. No. 721/2011, Art. 6(7))

through public discussions and undertaking detailed study pursuant to Article 6 (1) of the proclamation".[117]

At this level, the Proclamation anticipates the entry point for conversion to be the incidents of transfer of property on permit holdings of land to a third party through any modality other than inheritance. In these transfer cases, the permit holdings shall be subjected to conversion to the leasehold system. Apart from transfers, the case of consolidating a leasehold land with a previously permit-based holding would also result in uniformalising the entire possession into leasehold.[118] The SNNP Regional State urban lease law provides a series of rules that shall be considered when a land held through permit system is converted into the lease system. As the researcher understandings that the conversion of Permit holding into a lease system will not be an easy task and, in some cases, it may also come up with unintended consequences mainly for the following reasons:

Even though Article 6 of the proclamation gives the power to the Council of Ministers to determine the modality of converting old possessions into leasehold on the basis of detailed study to be submitted by the ministry, there is no action, taken by any of the concerned bodies. Due to this reason, the permit holdings will remain as they are for till now. And this is in compromising every objectives of the lease system and in creating uncertainty on the part of the permit holders.

Under Article 3(1) of Proc. No. 80/1993 it has been stated that the proclamation will be applicable on all urban centers except those holdings used for residential purposes. And under sub-art.2 of the same provision, transfer of any dwelling houses to a third party through any modality than inheritance will shift the old possession tenure into a lease system. Moreover, pursuant to Article 15 of same proclamation, holders of an urban land for any

[117] Ibid, supra note 15, The Revised SNNP Regional State Urban Land Lease Holding Regulation No.123/2014, Art. 6.

[118] Belachew Mekuria, Overview of the Core Changes in the New Ethiopian Urban Land Leasehold Legislation, Mizan Law Review, Vol. 5 No. 2, Dec. 2011.

other purpose than construction of residential dwelling were expected to apply for the concerned organ within the time limit to be determined by the town administration for conversion of their holding from old possession into a lease system. Even though this approach could be considered as one lesson even for the upcoming regulation, it would have been more clear and practicable if the provision has also addressed as to what will happen if the landholder become unwilling to apply.

Under Article 3(1) of Proc. No. 272/2002 as well it was stated that the proclamation shall be enforced on urban lands held through permit system, leasehold or by any other means. Moreover, Article 3 (2, (a)) also provides the authority to determine the timeframe when a certain old possession should be converted into a lease system and when a certain town to shift its urban land tenure arrangement into a lease.

Nonetheless, currently with regard to the issues stated herein above, Article 3 proclaimed that, save those exceptional circumstances, the lease law shall be enforced on all urban centers in Ethiopia without making any difference on the land use type. Therefore, except setting a certain time limit for adopting a lease system in a certain urban centers upon the decision of the regional cabinets under Article 5(4) and the four year period in order to regularize the possessions held without the authorization of the appropriate body as per Article 6(4) and (5), most of the provisions which deals with old possession are a redundancy of what has been said for more than a decade.

Therefore, unless the council of ministers become pragmatic and committed in taking measures in adopting feasible and appropriate strategies and finally enacting the regulation, it will be once again oratory and is very difficult to see uniform urban land tenure system in the country in the near future.

There is no specific time limit set for all urban centers within which they should convert permit holdings into lease holdings. In order to avoid the same mistake that has been made while enacting the proclamation i.e. the failure to set the time limit for the Council of Ministers to enact the regulation, while such regulation is finally formulated and approved, a specific time limit should have set for all urban centers with in which they should convert

their old holdings into a lease system. Otherwise, the process of having a similar tenure throughout our urban centers will be remote.

It is clear from the contrary reading of Article 6(6) that when two adjacent permit holdings of a person are merged, the newly created plot shall also continue in that state. Since the law requires that the holding shall be in a lease system if either of the plots to be merged is under the lease system or if both of them are under lease, for a stronger reason, when two permit holdings are merged, they shall continue with same status. However, one of the reasons for the existing lack of success for conversion of permit holdings into lease during merger is related with the size of the lease holding to be merged and the ultimate consequences of the payment. This is to say that given the ultimate consequence of payment of lease rent for the entire holding after conversion and due to lack of awareness of the purpose and benefits of the lease system, the permit holders may not incline to merge and convert their possession into a lease system.

The proclamation is uncertainty regarding consequences if the Council of Ministers fails to conduct a detailed study in time. According to Article 6(7) of the proclamation, during conversion the lease rates applicable to the possession shall be lease bench mark price of the locality. How much to pay, how to afford the money needed and what will happen if the money needed is not affordable is not clear in practice.

### 3.2.2. Practical Challenges of converting permit land to lease system

In Central Ethiopia Region, Gurage Zone is divided into West and East and in West there are ten districts and five city administration. Among the five city administrations Wolkite City Administration is a category two whereas the remaining four Cities are category three Cities. All the other ten districts are a category four Cities. Among them the researcher takes the two City Administration that are Arekete and Agena as a sample. Regarding the problems encountered when converting permit land to lease, the Zone municipality was asked to provide the cities representing Gurage Zone for the research. They told me that it would be good if you worked on Agena and Arekit City Administration, so I was able to choose the right one. Since the problem surrounding challenges of converting permit land to lease is

similar, I believe that if four people from each city are selected and interview and discussed, it will be possible to find out the actual problem. According to the information given by Agena City municipality, in Agena City there are around ten permit holders among them the four won the permit bid in 2007 and six of them in 2008 E.C. The amount of the winning bid was from three birr to 25 birr. Whereas according to the information given by Arekt City Municipality, in Arekt City there are totally 22 permit lands which was won the bid during the time in 2005, 2006 and 2008 E.C.

According to the information similarly given by both Arekt and Agena City Municipality, permit lands are only converted from permit tenure to lease when there is a case transferring permit land to third party on any means other than inheritance. These conversion processes can present challenges, particularly when converting permit lands to lease tenure especially regard with transferring fees of six present of the total estimation cost of the house to the government Because of Wolkite City is Category two from the beginning it automatically apply the lease proclamation from its approval in 2004 E. C., according to the information given by Gurage Zone Municipality, there is no any permit holdings of land in Wolkite City in the transition period prescribed under Article 5(4) of the lease Proclamation. Therefor the researcher understand that in Wolkite City of Gurage Zone, since 2004 E.C. which is the year approved the lease proclamation, the only means to accessing the urban land is lease as per the lease proclamation but not any permit bid. Therefore, from this the researcher understands that accessing urban land, without lease system in the five year transitional period, i.e. from 2005 – 2010 E.C. was only apply for the Zonal Wereda City rank of Category 4 and above. The then both Gurage Zone Gumer Woreda Areket and Edja Woreda Agena City were category four City or in Amharic ፈርጅ 4 ከትማ. Even though, at present both City has developed to the status of Category three in Amharic ˆ’ ፈርጅ ሶስት ከትማ since 2014 E.C. Therefore, at present both Areket and Agena Cities has separated from Gumer Wereda and Edja Wereda respectively and lead by their own City Administration Kentiba. Both cities was used the permit holding of land which was given in accord with the transitional period of five years according to Article 5(4) of the current lease proclamation..

Therefore, the researcher conducted the work under Areket and Agena City Administrations and made interview with their municipal land management worker and with 4 permit holder of land in each. And also I made a group discussion with them regard with the challenges of converting permit holdings to lease at the research area.

According to the information given by Bitwe Agza who is Guragae Zone Agena City Administration Municipal Land Management Coordinators, in Guragae Zone Agena City Administration there are only about 10 permit holder of land who won the bid in 2007 E.C. and 2008 E.C. on the bid price of birr 3.20 to 25.25. He said that all the permit holder have an interest to convert their permit land to lease tenure, but we only convert the permit land to lease when there is transfer to third party except inheritance.

The permit holder of the land, begun from 2011 E.C, applied to the city municipal to convert their permit land to lease. Even though, unless the city municipal has no clear law to govern such conversion, it has no obligation to convert their permit land in accord with their application. Although there is no clear instruction to convert permit hold to lease tenure, it is causing a lot of good governance problems due to the permit holders not converting their holdings to lease tenure. He states that in 2008, a bidder named Maregn Tamre, who won a bid of 250 square meters at birr 25.10 cents per square meter, asked him to pay the total annual bid fee for two years but he not paid. Finally the bidder was sued in Gurage Zone Edja Wereda Court in 2015 for saying that he would not pay if the permit did not change to a lease, and he was ordered to pay a two-year arrears of birr 12575.50 including the fine punishment.

When I went to Edja Wereda Court to inquire about the case and tried to investigate, the court explained that a file was opened between the Agena City Municipality agent prosecutor and the defendant Margn Tamre in file number 12766 on 08/02/2015 E.C and the defendant decided to pay the dispute. From this the researcher conclude that the absence of clear detailed law to convert permit land to lease cause many problem of good governance. Quite similar with Agena City, all the permit holders who lived in Arekt City are very interested to

convert their permit land to lease tenure but they cannot convert to lease because of the absence of clear detailed law.

According to the interview made with the permit holders, among the major challenge during conversion of permit land to lease tenure is that of the existence of high amount of cost of converting/transferring fees. It is the cost associated with the conversion process. During the conversion, there are converting fees that need to be paid. When there is a transaction involving permit land and transfer of the permit land to third party, there is a mandatory conversion of the permit land to lease tenure based on the total estimated cost of the building on the permit land.

Therefore there is a payment required amounting to 6% of the total estimated cost of the permit land. Out of this 6%, 4% is designated for the municipal authorities and 2% is allocated to the revenue bureau. For instance, if the estimation of the permit holder house is birr 2,000,000/ two million/ , 6 % of it is equal to birr 120,000. This is the cost paid to the government to transfer the permit land to third party by any means other than inheritance. Because this fee is very detrimental to both the owner and the buyer, so instead of transferring the permit land to lease, they will stay with the legal representative to sell just to avoid paying the fee. There is also no governing law about who should pay the transferring fees of 6%. There is also no clear guideline regarding who should pay the lease price of land, the buyer or the seller?.

During the interview conduct with the permit holder especially, permit holders in Arekt city, states that the process of converting permit land to lease tenure is very bureaucratic, especially for the permit holder. This means that there are many administrative procedures, paperwork, and regulations that the permit holder needs to navigate in order to complete the conversion. It suggests that this bureaucratic process can be challenging and burdensome for the permit holder. As a result, the permit holder considers this bureaucracy as one of the challenges they face when converting their permit land when they want to transfer their permit to third party in any way other than inheritance.

To conclude, one of the major challenges to convert permit holdings to lease is absence of detailed law enacted by the Council of Ministers because the rules for total conversion shall be made by the Council of Ministers upon a detailed study submitted by the Ministry of Urban Development and Construction. Although there is no clear instruction to convert permit hold to lease tenure, it is causing a lot of good governance problems due to the permit holders not converting their holdings to lease tenure. Generally, among the major practical challenges lack adequate knowledge of municipalities to distinguish leasehold and permit land, endless annual payment of permit holders and permit holders faces difficulties accessing bank loans without clear lease tenure documentation.

# CHAPTER 4: CONCLUSION AND RECOMMENDATION

## 4.1. CONCLUSION

According to the current lease proclamation of Ethiopia, except permit holdings of land from inheritance, all permit holdings of land should be converted to the lease system. The modality of converting permit holding in to lease hold shall be determined by the Council of Ministers on the basis of a detailed study to be submitted by the Ministry; provided however, that the process of such study may not preclude a revision of the existing rental rate applicable to permit holdings. The SNNPR Regulation. No.123/2015 provides about the fate of permit holdings under article 6 of the proclamation and set out all permit holdings in the region are going to be converted to lease system after the promised law comes, after a detailed study, by the Council of Ministers; and for the time being permit holdings will be changed to lease hold system providing there is transfer made by any means saving inheritance. In Ethiopia, the Ministry of Works and Urban Development in collaboration with regional and cities land administrations is vested with the power of conducting a study in order to make a determination on how permit holdings shall be converted to lease by the Ministry.

As this study shows that there are serious challenges, especially in practice, on conversion of permit holdings to the lease system in the research Area i.e. the case of Guragae Zone. The overall

issue in the lack for mass conversion of permit holdings to the lease system in Ethiopia today is due to the absence of clear legislations and elite political and legal administration in the area of land to successfully manage these possessions. The attempt to convert permit holding into the lease system has also been intended previously but failed. The current governing urban land lease proclamation, unlike its predecessors, authorized the Council of Ministers to enact detailed regulation with the aim of converting permit holding into the lease system. But so far yet there is no regulation enacted by this organ and this is creating paramount challenges in total conversion of permit holding and having a unified tenure arrangement in urban centers of the country.

The researcher find out plenty of legal and practical challenges in converting permit holdings to the lease system as outcome of the research. In the process of conversion, various strategies shall be adopted by the concerned body.

During the conversion, there are converting fees that need to be paid. When a transaction involving permit land takes place, there is a mandatory conversion of the permit land to lease tenure based on the total estimated cost of the building on the permit land. Specifically, there is a payment required amounting to 6% of the total estimated cost of the permit land. Out of this 6%, 4% is designated for the municipal authorities and 2% is allocated to the revenue bureau. This means that the permit holder or party involved in the transaction must pay these fees as part of the process of converting the permit land to lease tenure.

The process of converting permit land to lease tenure is very bureaucratic, especially for the permit holder. This means that there are many administrative procedures, paperwork, and regulations that the permit holder needs to navigate in order to complete the conversion. It suggests that this bureaucratic process can be challenging and burdensome for the permit holder. As a result, the permit holder considers this bureaucracy as one of the challenges they face when converting their permit land to lease.

Therefore, the cost of converting or transferring permit land to lease tenure can be significant challenges due to the financial burden of paying the converting fees, which are calculated, based on the total estimated cost of the building on the permit land. This financial aspect adds another layer of complexity and difficulty to the overall process of converting permit

land to lease tenure. Accordingly, failure of the council of Ministers to begin a thorough study and discussion on the expected regulation are among the identified challenges for converting permit holding/old possession in to the lease system. According to the lease proclamation the CM has given a mandate to make a detailed study and discussion concerning the issue of converting old possession to lease system. Till now there is no such detailed study and discussion regard with issue. The absence of such detailed study is among the challenges of converting permit holding to lease system.

## 4.2. RECOMMENDATION

The process of conversion of permit holding into the lease system is not an easy task. It may require multifaceted activities and involvements of various stakeholders. The process of converting permit holding to lease tenure must also been made very carefully because it may be wrongly perceived by the urban landholders and escalate the contentions that have observed following the enactment of Proclamation No.721/2011. The proclamation and the model lease regulation are silent with regard to the kinds of preparatory tasks that should be carried out prior to the conversion of permit holding into a lease system.

The Council of Ministers shall come up with the detailed rules for converting permit holdings into the lease system. The provisions of the proclamation which provides power to institution of Federal Government on the determination of the method of the conversion should be amended. And, the amendment should give meaningful decision- making space to each of regional states to determine the method of the conversion. The amendment should also oblige the government to consult the section society who holds permit land on the merit and methods of the conversion.

Especially in tackling previously existed gaps in various urban land law with regard to conversion of permit holdings, the regulation should be framed in containing required specifics and it has to be also feasible and set the time frame for the conversion of permit holdings into a lease system. Cost reduction strategies to minimize the financial burden associated with converting fees for land permits to leases. Consider offering incentives or subsidies to reduce conversion costs for permit holders.

The CM should enact a comprehensive and detailed study to assess the current land management system, identify challenges, and propose policy recommendations for improvement. Encourage collaboration between stakeholders, experts, and policy makers to conduct a comprehensive study that informs evidence based decision makings. The government should provide training and capacity building programs for government officials, and stakeholders involved in land management to enhance their knowledge and skills in addressing land related challenges effectively. Foster community engagement and consultation in land management processes to ensure transparency, inclusivity, and participation of local stakeholders. Involve community in decision making, planning, and implementation of land policies to promote sustainable land use practices and social cohesion and to avoid the problem of good governance. By implementing these recommendations, stakeholders can work towards overcoming the challenges associated with bureaucracy, conversion costs, payment disparities, tenure insecurity, and lack of detailed studies in land management, leading to more efficient and equitable land governance practices.

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## Annexess

Questions of Interviews

- The municipal professionals

- How many permit holdings of land on the city?
- What are the obligations of the permit holders?
- What are the rights of the permit holder?
- How the conversion does take place?
- What about the coordination between and among stakeholders during the conversion process?
- Do the professional have an access to get the required knowledge of lease proclamation?
- Do the permit holders have an interest to convert to lease?

- permit holder

- What are the overall challenges to convert permit holdings to lease tenure
- Do you have an interest to convert your permit land?
- What the answer provided by the municipality when you ask to convert?

Group discussion

- ✓ The major challenges of converting permit land to lease
- ✓ Sources of the challenges.