

**CERTIFICATION OVER CERTIFICATION AS URBAN LAND TENURE  
CHALLENGE: THE CASE OF HADIYYA ZONE**



**LL.M THESIS**

**IN ENVIRONMENTAL AND LAND LAW**

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**CERTIFICATION OVER CERTIFICATION AS URBAN LAND  
TENURE CHALLENGE: THE CASE OF HADIYYA ZONE**

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**A THESIS SUBMITTED TO THE  
SCHOOL OF LAW,  
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**ADVISORS' APPROVAL SHEET**

This is to certify that the Thesis entitled 'Certification over Certification as Urban Land Tenure Challenge: The case of *Hadiyya Zone*' submitted in partial fulfillment of the requirements for Master's degree of Laws (LL.M in Environmental and Land Law) has been carried out by Getiso Detamo Mekebo, ID No. ELLR/009/09 under my supervision. Therefore, I recommend that the student has fulfilled the requirements and hence hereby can submit the Thesis to the school of Law.

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## DECLARATION

I hereby declare that this Thesis entitled as ‘Certification over Certification as Urban Land Tenure Challenge:the case of *Hadiyya Zone*’ is my original work and has not been presented for a degree in any other University, and all sources of materials used for this thesis have been duly acknowledged.

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## ABBREVIATIONS

ACHPR	African Charter on Human and Peoples' Rights
BUDH	Bureau of Urban Development and Housing
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women
COC	Certification over Certification
CSO	Civil Society Organizations
EACC	Ethics and Anti-Corruption Commission
E.C	Ethiopian Calendar
ELU	Ethics Liaison Unit
ELRT	Evolutionary Land Right Theory
ETB	Ethiopian Birr
EPRDF	Ethiopian People's Revolutionary Democratic Front
FCSA	Federal Central Statistic Agency
FDRE	Federal Democratic Republic of Ethiopia
FGD	Focus Group Discussion
GGLA	Good Governance and Local Affairs
HCA	Hossaina City Administration
HCAFIC	Hossaina City Administration First Instance Court
HZUDHD	Hadiyya Zone Urban Development and Housing Department
LDP	Local Development Plan
ICCPR	International Convention on Civil and Political Rights
ICESCR	International Convention on Economic, Social and Cultural Rights
IFST	International Federation Surveyors Team
MUDH	Ministry of Urban Development and Housing
MPACHPR	Maputo Protocol to the ACHPR on the Rights of Women in Africa
UDHR	Universal Declaration of Human Rights
NGO	Non Governmental Organizations
UDHB	Urban Development and Housing Bureau
UNECE	United Nations Economic Commission for Europe
SNNPRS	Southern Nations, Nationalities and Peoples Regional State

TI Transparency International  
WB World Bank  
WB LGAF World Bank Land Governance Assessment

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## *Abstract*

*Given the lack of a formal urban registration system in Ethiopia, registration and certification in urban centers are normally linked to the provision of land for new holdings or transfer of use rights for existing landholdings. It also relates to regularization process of informal settlements and current pilot works on urban land re-registration towards securing urban land rights. The purpose of registration and certification in urban land administration is aimed at securing urban lands for the landholders because secured tenure is a precondition to reap all the benefits accrued from urban land rights. In relation to registration of urban lands, this research considers COC as one of the major challenge of good urban land governance. COC is a scenario in which the same urban plots are entitled and certified for more than one person. In answering the research questions, the thesis involved a combination of doctrinal legal research and largely supported by qualitative data. To this end, the findings of this study uncovered hosts of problems such as; legal double or multiple allocations through earlier permit systems, issuance of forged receipts or titles and concluding illegal oral contracts. Further, regularization process of illegal settlements and existence of informal legal settlements without due documentation and serious corruption in urban land sector are also among the hosts. As a result, urban landholdings are insecure which has compromised all synergy of lease/use rights of the holders. Thus, some are beneficiaries and some others like vulnerable persons are victims. In a nutshell, this study identified that the urban land-to-landholders relationship is in a vicious circle and hence, COC is one of the manifestations of weak urban land administration. It recommends the enhancement of good governance in urban land administration and unreserved political commitment thereof towards ensuring secure urban land lease/use rights.*

**Key words:** COC, Good governance approach, Urban land tenure security, Urban land administration, Urban landholding certificate

# CHAPTER ONE

## 1. INTRODUCTION

### 1.1. Background of the Study

The word urbanization came into usage in 1880s, this means on the eve of growth of American cities.<sup>1</sup> It refers to the quality or state of becoming cities.<sup>2</sup> According to the urban lease laws of Ethiopia urban centers can be understood as ‘Any locality having a municipal administration or a population of 2000 or more inhabitants of which at least 50% of its labor force is engaged in non-agricultural activities’.<sup>3</sup> And urban land which is located within an administrative boundary of urban center is under the public ownership.<sup>4</sup> In these urban centers, the old possession (use right for indefinite period) and leasehold system (use right for definite period) are the two legally working tenure types.<sup>5</sup>

Therefore, successful implementation of the urban land administration depends on effective and efficient institutional, technical and land information systems. The institutional frameworks both at federal and regional levels are MUDH and BUDH and city administrations. As per the FDRE constitution, every landholder shall have the full right to the immovable property she builds and to the permanent improvements she brings about on the urban land by his labour or capital.<sup>6</sup> The urban administration laws also stipulate that ensuring good governance in urban land administration is also prerequisite to ensure secure urban land rights.<sup>7</sup> People need urban lands for different uses such as, residential, infrastructure, social services, and business activities.<sup>8</sup> Currently, studies show that the population increase in urban centers has created high demand and restless competitions to access this scarce resource and whichever, needs secure urban land rights.<sup>9</sup> Accordingly,

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<sup>1</sup>Merriam Webster Dictionary, Urbanization

<<https://www.merriamwebster.com/dictionary/urbanization>>accessed 16 November 2017

<sup>2</sup> ibid.

<sup>3</sup> Federal Urban Lands Lease Holding Proclamation (hereinafter, Lease Proclamation) No. 721/2011 Article 2 (3).

<sup>4</sup> FDRE Constitution, Article 40 (3) cum Lease Proclamation, Article 2 (2).

<sup>5</sup> ibid Article 2 (1) and Article 2 (18) .

<sup>6</sup> FDRE Constitution, Article, 40 (7).

<sup>7</sup> Lease Proclamation, Preamble.

<sup>8</sup> Legesse Tigabu, ‘Urban Land Acquisition and Social Justice in Ethiopia’ (2015) Vol. 4:1,1 Haramaya Law Review.

<sup>9</sup> Alain Durand-Lasserve and others, ‘Evaluating Impacts of Urban Land Titling: Results and Implications: Preliminary Findings’ (2006) 1-10.

ensuring good urban governance is a key to ensure secure lease/use right.<sup>10</sup> It is characterized by consistent legal and efficient institutional frameworks, well-established land information systems, transparency and accountability, public or stakeholders' engagement, human rights protection, equity and effective judicial protection of the urban land rights.<sup>11</sup>

Therefore, registration through certification or deed registration is one of the major functions of the urban land administration. It involves an entitling process of real rights to the possessors/owners: squatters on public or private urban landholdings, legal informal settlers, through lease systems and so on.<sup>12</sup> It also provides a safe and certain basis for the acquisition, enjoyment, and disposal of such rights. As per the economic approach, there is much convincing evidence from around the world; registration of urban lands has led to better access to formal credit, higher land values, higher investment and yield.<sup>13</sup> Lawyers also consider registration in urban land administration as it ensures secure urban land rights if it is administered properly. This line of argument is confirmed as per the formalization of land right theorists; such as, De Soto, ELRT and others. They argue that clearly defined property rights in land and the ability to draw on the state's enforcement capacity will reduce the risk of eviction or unwarranted loss, increase incentives for land and land related real property.<sup>14</sup> Furthermore, the *raison d'être* for ensuring good urban land governance to realize secure lease/use rights for the landholders is a human rights issue which emphasizes the idea that every citizen has the right to a secure place to live.<sup>15</sup>

Some others like Simpson argue as; security of tenure is not equivalent to secure ownership or possession.<sup>16</sup> Recorded and certified tenure is not a prerequisite for secure tenure.<sup>17</sup> It needs good governance and unreserved political commitment towards securing urban land rights.<sup>18</sup> In addition to this, the registration process shall work on 'functional-approach' that means proper urban land management shall be core to realize secure urban land rights for all

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<sup>10</sup>According to the United Nation Economic Commission for European (1996) 1-15.

<sup>11</sup> *ibid.*

<sup>12</sup> Lasserre (n 9).

<sup>13</sup> Gershon Feder and Akihio Nishio, 'The Benefits of Land Registration and Titling: Economic and Social Perspective, Land Use Policy', (1998) Vol. 15, No, 1-43, Esvier Science Ltd, Great Britain, preface.

<sup>14</sup>De Soto Hernando, *The Mystery of Capital: Why Capitalism Triumphs in the West and Fails Everywhere Else* (New York: Basic Books, 2000) 166-217.

<sup>15</sup> Lasserre (n 9)10-14.

<sup>16</sup> Rowton Simpson, *Land Law and Registration* (Cambridge University Press 1976) 1-15.

<sup>17</sup> *ibid.*

<sup>18</sup> The 2016 Land Governance Assessment Framework Report of Ethiopia (hereinafter, 2016 UN LGAF) 70-81.

landholders including women and vulnerable groups.<sup>19</sup> According to Simpson, land registration is not an end by itself and forgetting this elementary truth wastes money and effort.<sup>20</sup> According to the IFST, corruption is a serious challenge in urban land administration which ranges from petty corruption to state capture.<sup>21</sup> For instance, double or multiple allocation of urban lands in other words entitlement of the same lands for different landholders is a usual problem in sub-Saharan Africa such as in Tanzania and Kenya.<sup>22</sup>

Also, according to Mikia's research conducted in Cambodia and other developing countries, urban parceling was done on paper without reference to the situation on the ground, resulting in new rights to land being issued overlapping certificates with existing ones.<sup>23</sup> The enabling opportunities or causes for the urban land administration problems, as identified by the above-mentioned studies are corruption, absence of independent registration institutions, poor file management, lack of detailed surveys or recorded data on the allocated parcels.

When we thoroughly examine the Ethiopian urban land administration system, it is under-resourced, outdated and inefficient, poor in land information system and lacks skilled human power.<sup>24</sup> However, the recent progress is an enactment of Urban Landholdings Registration Proclamation No. 818/2014 (Registration Proclamation, hereinafter) which provides establishment of an independent urban land and land related real property registration and information institutions. This law stipulates that both the sporadic and systematic urban land registration systems could be employed regarding adjudication and registration of the rights to bring onto the register.<sup>25</sup> All registered parcels will be given a unique identification number, which will be used as a passkey to access information about the landholdings. And each landholder can easily be identified as owner or possessor and no parcel would be left without the identified possessor.<sup>26</sup> Yet, the weakness of urban land administration in Ethiopia is also related with non-implementation of this Registration Proclamation. Both illegal and

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<sup>19</sup>ibid.

<sup>20</sup>Lorenzo Cotula and others, 'Land Tenure and Administration in Africa: Lessons of Experience and Emerging Issues' (2004) International Institute for Environment and Development, London, 2-6.

<sup>21</sup>Paul Van Der Molen and Arbind Tuladhar, 'Corruption in Land Administration, International Federation of Surveyors' Article of the Month, March 2007, 1-30.

<sup>22</sup> ibid.

<sup>23</sup>Mika-Petteri Törhönen, 'Sustainable Land Tenure and Land Registration in Developing Countries, Including a Historical Comparison with an Industrialized Country' (2003) 5 Elsevier Science Ltd

<sup>24</sup>Transparency International, 'Ethiopia: Overview of Corruption in Land Administration' <<https://www.transparency.org>> accessed 20 November 2017.

<sup>25</sup>Andrus N. Ukaejiofo and Ijeoma S. Nnaemeka, 'The Dilemma of Restructuring the Land Governance System in Nigeria', Nigeria FIG Congress Engaging the Challenges Enhancing, the Relevance Kuala Lumpur, Malaysia 16-21 June 2014 1-7.

<sup>26</sup> Registration Proclamation, Preamble and Article 4.

informal settlements, unregistered urban tenures such as, government, religious, agricultural urban lands are potential challenges to complete urban land registration.<sup>27</sup>

Moreover, according to Daniel and Adisu, given the lack of a formal urban registration and registration system, registration in urban centers is normally linked to the provision of land for new holdings or transfer of ownership for existing holding.<sup>28</sup> The practice is not consistent; municipalities in urban centers mainly keep ledger books (registers) for transfers, mortgages, and title deeds separately.<sup>29</sup> In fact, among the titling of the new holdings or transfer of ownership/possession for existing holdings, titling through regularization of informal settlements, legal informal settlements and re-registration of urban lands through current pilot works is also common.

Departing from the above scenario, one of the major challenges of urban land administration in *Hadiyya* zone is certification over certification (COC, hereinafter) which refers to the allocation of the same urban plot for more than one person. In the study location context, COC process is not limited to the registration and certification of land for new holdings or transfer of ownership/possession for existing holdings rather than it is the result of weak urban land administration. There is no scheduled time framework to register and certify no formal registration procedure to do so rather it is an intrusion on urban landholders lease/use right. Neither the lease certificates nor deed registration systems effectively confer tenure security for landholders. And it is manifesting through registration and certification of the same urban land rights, in the name of different users by setting difference on acquisition and transfer. In fact, computerized urban land information system (legal cadaster) in the urban land administration is a key to identify rightful landholders and assure secure urban land rights if it is administered properly.<sup>30</sup> The WB and TI suggested that strengthening an independent tribunal or judiciary to handle cases arising from the land rights is also relevant.<sup>31</sup> It enables landholders to easily challenge their rights through courts or extra-judicial procedures when their lease/use rights in urban lands are unduly encroached.<sup>32</sup>

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<sup>27</sup>Tony Burns, 'Establishing a Legal Cadastre for Good Governance in Ethiopia: Identifying Bottlenecks and Steps toward Scale-Up' (2017) World Bank Conference on Land and Poverty, Washington Dc, March 20-24, 2017,1-8.

<sup>28</sup>Daniel Behailu and Adisu Kassa, 'Land Governance in Ethiopia: Towards Evaluating Global Trends' (2018) Vol.4, Issue. 3, 35-46 .

<sup>29</sup> *ibid.*

<sup>30</sup> 2016 UN LGAF of Ethiopia (n 18).

<sup>31</sup> *ibid.*

<sup>32</sup> *ibid.*

Therefore, in Ethiopia and the study location, ensuring transparency and the rule of law in the urban land administration should be an anchoring principle towards securing urban lands rights.

In a nutshell, this research is designed to examine COC as an urban land tenure challenge. The overwhelming majority of empirical evidence and literature at hand have been substantiating that the registration and issuing urban landholding certificate or granting with the authenticated deed registration (registering transaction documents) as a primary evidence for proof of ownership/possession. Many scholars and literature have also confirmed that registration is not all-cure to ensure secure urban land rights and needs good urban land governance. Facts on ground which this thesis has examined and analyzed the urban land administration challenges in Ethiopia in general and specifically in *Hadiyya Zone* confirms the later line of arguments. Hence, by understanding a case study in urban *Hadiyya Zone*, the thesis tries to answer the overarching question why COC is one of the major challenges of urban land tenure.

## **1.2. Statement of the Problem**

Good urban land governance is a solution to ensure secure urban land rights. Currently, ongoing urbanization along with an increase in population has created a massive demand for urban lands for different uses.<sup>33</sup> It needs transparent and responsible institutions to assure its tenure security. In Ethiopia, urban land administration is delegated to the MUDH at the federal level and at the regional level, for local governments or City administrations.<sup>34</sup> There are also an independent urban land and land-related real property registration and information institutions, required to be established at all urban centers.<sup>35</sup> These institutions, however, did not come in to effect except at federal and some regional capital cities. Registration in urban land administration helps to determine or identify the real owner or possessor of lease/use rights, restrictions and responsibilities. And a duplicate of *landholding certificate* which is issued and given to the landholders by registering institution is an evidence for proof of ownership or possession.<sup>36</sup>

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<sup>33</sup>UN-Habitat Report (2012) 15-25.

<sup>34</sup>Definition of Powers and Duties of the Federal Executive Organs Proclamation No.916/2015, Article 26.

<sup>35</sup>Registration Proclamation, Article 49, 50 and 51: Federal Urban Real Property Registration and Information Agency Establishment Regulation No. 251/2011.

<sup>36</sup>Registration Proclamation, Article 2 (14), 33 (1) & Article 6 (5).

Nevertheless, many empirical evidences show that registration of urban land rights is not equated or '*sine qua non*' with secure land rights.<sup>37</sup> It may not also *ipso facto* empower or confirm the real owner or possessor. Hence, security of tenure is a question of fact that exists without documentary evidence.<sup>38</sup> Security of title exists if the landowner/possessor is secure in his/her legal possession of the urban land.<sup>39</sup> The logic behind is, security of title cannot exist without documentary evidence. Therefore, grant of multiple certificates to different landholders in the same plot an urban land tenure problem at urban *Hadiyya* zone.

Another eye-catching issue under the Registration Proclamation is, in the process of re-registration, land adjudication shall be conducted by verifying the consistency of the evidence presented by the person reassuring to be right holder with evidence coming from the formerly established rights.<sup>40</sup> This law does not create new rights but only to reaffirm the established rights in land from the first registry through systematically adjudicating on-site.<sup>41</sup> Existing rights to land are either lease or old possession whereby the former urban landholding certificates or deed registration or other means are crucial. According to Hanstad, a developed system of property rights is a pre-requisite to a successful land registration.<sup>42</sup> Thus, COC in the same urban lands is an obvious challenge to identify who holds what land rights, restrictions and responsibilities.

Moreover, in Ethiopia urban land lack an inventory and legal cadastre for urban land titles and independent registry and information institutions.<sup>43</sup> In the study locations, majority of the urban residents possess their land and dwellings without formal security of land tenure. To this end, the Registration Proclamation is not yet in full function. Both records of state and private holdings are far from completeness.<sup>44</sup> However, in Ethiopia, some pilot projects have been commenced to register urban lands, including at urban *Hadiyya* zone. Yet, the progress

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<sup>37</sup>Registration Proclamation, Article 33 (2).

<sup>38</sup>Louis Charlebois, 'Creating Land Registration Systems for Developing Countries' (1999) *Amicus Curiae* Issue 21, 1-2.

<sup>39</sup>Hanstad Tim 'Designing Land Registration Systems for Developing Countries'(1998) *American University International Law Review* 13, no. 3, 647-703.

<sup>40</sup> Registration Proclamation, Article 14 (1).

<sup>41</sup> *ibid*, Article 2 (6).

<sup>42</sup>Tim (n 39).

<sup>43</sup> Burns (n 27).

<sup>44</sup> 2016 UN LGAF Report from Ethiopia (n 18).

of adjudication and registration process is very slow.<sup>45</sup> The lack of legal cadastre, registration process, and tenure records are serious challenges on securing urban land rights.<sup>46</sup>

Disputes related to the urban lands are also abundant at urban *Hadiyya* zone and Courts are overcrowded by cases arising from the urban land rights including cases arising out of COC. Some lost their lease/use rights or evicted and/or faced social crisis and engaged into serious litigations. In this regard, one can wonder that among other things, security of urban land tenure and effectiveness of urban land use control and strong judicial protection are crucial components of any land policy.<sup>47</sup> However, it lags in Ethiopia and the study locations. SIDA provides a lack of transparent land administration systems negatively impacts a country's economy in general and especially, the vulnerable groups.<sup>48</sup> On the other hand, becoming a recognized landowner/possessor can also lead to a heightened sense of self-respect and heartens participation in democratic processes. Hence, good urban land governance is a key for the households headed by women, elders, poor who are among the most vulnerable landholders.<sup>49</sup>

In summary, *COC is a scenario* of encroachment on urban land rights in which the same urban plot is allocated for multiple holders. According to the WB, urban land registration is not equated with rural areas and its role is greater in socio-economic spheres such as, to access formal credit, investment in land, and value addition.<sup>50</sup> In practice, this precious synergy of leases/uses rights at urban *Hadiyya* zone is at risk under the guise of the COC unless quick measures are taken or devised.

### 1.2.1 Research Questions

In order to examine and analyze COC as an urban land tenure challenge in urban *Hadiyya* Zone, the following questions need to be examined.

1. What are the underpinning problems/challenges of urban land administration in general (land and policy) and urban land registration (legal and institutional issues) in particular?

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<sup>45</sup>Burns (n 27).

<sup>46</sup>ibid.

<sup>47</sup>WB LGAF Report from Ethiopia (n 18).

<sup>48</sup>Lantmäteriverket (Swedish National Land Survey, Land Administration – Why (2008) SIDA 44516 en, 1, Published by SIDA Department for Infrastructure and Economic Cooperation.

<sup>49</sup>ibid.

<sup>50</sup>Lassarve (n 15).

2. Why COC is urban land tenure challenge at *Hadiyya Zone*? Enabling opportunities or routine causes?
3. Who were/are the victims or beneficiaries of wrong certifications? And what are the impacts or current and prospective challenges?
4. What should be done to overcome such problems?

### **1.3. Objectives of the Study**

#### **1.3.1. General Objectives**

The overarching objective of this study is to critically examine and analyze COC as an urban land tenure challenge in *Hadiyya Zone*.

#### **1.3.2. Specific Objectives**

This research has also the following specific objectives:-

- To examine and describe problems with regard to urban land administration (land and policy) in general and registration process focusing on legal and institutional issues thereof.
- To describe the enabling opportunities or causes for COC at urban *Hadiyya Zone* land sector.
- To explore and analyze the impact of COC on leasehold/use rights in urban lands, its current and prospective challenges.

### **1.4 Methodology of the Study and Research Design**

To answer the research questions and meet objectives of the research, appropriate research types and methods have been used. Based on the nature of the statement of the problem, the researcher used a qualitative research.<sup>51</sup> The conclusions drawn bases on hard evidence, gathered from real life experiences or observations. It also emphasizes on words and meanings rather than quantification.<sup>52</sup>

Second, the doctrinal research type in a legal research is common. Legal analysis can be carried out by synthesizing all relevant authority to extract a rule of law; applying the rule of

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<sup>51</sup>Keith Punch, *Introduction to Social Research: Quantitative and Qualitative Approaches* (London, SAGE Publications, 1998)193.

<sup>52</sup>Unlike Qualitative it related with quantitative type of research which bases data analysis in numbers. Thus it does not need quantification.

law to the facts of the problem and concluding the same.<sup>53</sup> Thus, it helps to pinpoint or clarify legal frameworks and find loopholes or impact of failure to implement the existing legal rules and principle..etc., relating to the issues in consideration. To this end urban land policy issues, legal and institutional frameworks towards bringing effective urban land registration helps to assure good governance in urban land administration have been examined and analyzed. Thus, research design follows a descriptive and relates the collected data with social realities in words and analyzing practical reality in light of rule of law, best practices, and principles.

#### **1.4.1. Data Collection Tools**

##### **a) Primary Sources**

To examine the research questions, the following firsthand information data gathering tools and techniques have been used. The data gathering techniques used are; interviews, personal observations and FGD. Moreover, the court decisions relevant to the issues under consideration have been examined and analyzed.

##### **b) Primary Authorities**

Primary Authorities do have the force and effect of law. Primary Authorities such as, FDRE Constitution, Civil code, both the Federal and SNNPRS urban land lease holding proclamations, regulations, and directives. International human rights conventions and instruments were thoroughly assessed to construct the rule of law and to apply issues under consideration and arguments in this thesis.

##### **c) Secondary Sources**

Secondary sources are used to explain legal concepts. They provide the researcher with background information and a framework of an area of the law, arranging legal principles in an orderly fashion.<sup>54</sup> Relevant literature and documents to the study at hand such as, books, journals, reports, newspapers, reports etc are used to substantiate the facts on ground or

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<sup>53</sup>Carol M. Bast and Margie Hawkins, *Foundations of Legal Research and Writing* (4<sup>th</sup> eds, Cengage Learning 2010) 27-40.

<sup>54</sup> *ibid* 41.

arguments. In contrast to primary authorities, secondary sources do not have the force and effect of law.<sup>55</sup>

#### 1.4.2. Sampling Techniques and Sample Size

This study employed a non-probability sampling type, especially judgmental (purposive sampling technique)<sup>56</sup> to address information-rich, interviewees and information scene. The purposive sampling was employed because of the writer's professional judgment that the place where the data is going to be collected is relevant to the problem in study locations. These techniques also selected because they take small-scale sampling thus, the possibility to select key informants, purposively. This helps the researcher easily to meet the objective of the research that intends to collect and analyze the data by purposefully choosing informants that will best answer the research question.<sup>57</sup> The population for a unit of analysis was taken from urban *Hadiyya* zone and other appropriate bodies which help to answer the research questions. The aerial scope of the study is limited to the *Hadiyya* zone at *HCA* at the three sub-City municipalities and *ShCA* municipality. These study locations are the two big urban centers (*beero'uwwa*) of the *Hadiyya* zone and dwelled with more than 178,000 populations and hence, the researcher believed that collected data is a representative.

The maximum variation sampling techniques employed in conjunction to purposive sampling because the study has involved selected key demographic variables that were likely to have an impact on participants view of the study. This was done by creating a sampling grid and recruiting groups that reflect various combinations of variables individuals from (women, poor, aged and rich) and from public officials and officers, such as judges, prosecutors, and private attorneys, experts from municipalities, private sectors, and neutral institutions. One mechanism for identifying how many participants is required is to keep interviewing until, in the analysis, nothing new comes from the data, a point called **saturation**.<sup>58</sup> In a nutshell, the information to get key informants has been directed by purposively selected *Kebelle* chairperson or localities focal persons (*mender teteri*). Again, victims were also identified by

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<sup>55</sup> *ibid.*

<sup>56</sup> Keith (n 51).

<sup>57</sup> John Creswell, *Research Design: Qualitative and Quantitative Approaches* (Thousand Oaks and London SAGE Publications 1994) 147.

<sup>58</sup> Michael Q. Patton and Michael Cochran, *A Guide to Using Qualitative Research Methodology*, (Medecins SansFrontieres, 2002) 9-10.

looking court files, and by accessing the petitions submitted by the victims to the ethics liaison units, good governance and local affairs offices.

#### **a. Interview**

To hold an interview with key informants, and to hold in-depth interview regarding some crucial issues in the study, interviewees were selected from all segments of the urban dwellers. From the vulnerable groups which include, urban poor, women and orphan children, new rural to urban entrants and aged (elders) persons. Others are; rich, illegal brokers and speculators. Moreover, from the public sectors; judges, prosecutors and police officers who have experience of handling disputes regarding urban land. Experts from the offices and departments of women and youth and private attorneys, experts from HZUDHD and each Municipality to acquire information regarding institutional capacity were also interviewed. Further more, experts were interviewed from other groups such as Media, good governance local affairs offices, and financial institutions to take insight from their perceptions regarding issues in the study.

#### **b. Personal Observation**

The researcher personally observed the research scenes especially Municipalities to examine, institutional issues especially about urban land administration issues in general and registration schemes and handling urban land information in particular. The researcher also partook as a participant observer during Interview and FGD and has inquired relevant data. The researcher has also employed one note-taking person during the course of data collection.

#### **c. Focus Group Discussions**

The other data collecting tool is FGD. It has been employed to generate qualitative data to supplement data obtained through key-informants interviewees and Court cases.<sup>59</sup> Three FGD sessions have been held at *HCA at Mee'l Amba*, and *Betel Kebelle's* and *ShCA* Municipality. FGD members were chosen by relevance to the issues, experience and knowledge they have with respect to matters of urban land rights. Besides, the availability and willingness of the individuals to participate in the discussion. The number was set as such to maintain both manageability and diversity of opinions and insights of different

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<sup>59</sup> Jenny Cameron, *Focusing on the Focus Group: Qualitative Research Methods in Human Geography* (Oxford University Press, 2003) 83.

strata of participants which usually takes 6 to 12. At each session, 11 persons and totally 33 persons participated in FGD.

Finally, in the social science most qualitative researchers, usually employ the coding system for data processing and analysis.<sup>60</sup> Some qualitative datasets can be analyzed without coding. Therefore, recursive abstraction method is among the common methods used, this means datasets summarized; those summaries are therefore described in summary, used examples and facts on ground. The process of collecting and then analyzing the data continues until saturation is reached (until no difference or new relevant data emerge).<sup>61</sup> Recursivity allows the researcher to look at the collected datasets in a holistic manner, moving from an inductive mode of inquiry to a deductive and then back to an inductive mode.<sup>62</sup> Therefore, the researcher is open to the potential of building new constructs or facts and integrating them within the existing findings and conclusions.

#### **1.4. Scope of the Study**

This study concerns problems urban land administration in which COC as challenges of urban land tenure challenge at urban *Hadiyya Zone*. It has critically examined urban land administration problems in general and it identified that the factors such as, enabling or routine causes for the COC to happen and categories of victims or beneficiaries due to wrong certifications and its impacts thereof.

#### **1.5. Significance of the Study**

This research is a case specific. More often, it brings an experience of urban land tenure challenge of urban *Hadiyya zone*. The finding of this research also enables to show the impact of COC in urban landholding rights and how it will affect lease/use rights and provides solutions thereof. Furthermore, it may also serve a source of information for legal practitioners, legislators, government policy framers, and researchers and so on.

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<sup>60</sup> Lawrence Neuman, *Social Research Methods; Qualitative and Quantitative Approaches* (6<sup>th</sup> eds University of Wisconsin 2006) 9-10.

<sup>61</sup> *ibid.*

<sup>62</sup> *ibid.*

## **1.6. Limitations of the Study**

One of the limitations of the study is that a purposive sampling may lack comprehensiveness. Secondly, lack of list of exact numbers of victims is a limitation that might have affected the depth of the study.

## **1.7. Organization of the Thesis**

This research has the following organizational structure. Following the introductory part, chapter two focuses discussions on urban land governance by reviewing the literature and theoretical issues. Specifically, it gives a brief overview of the urban land governance in Ethiopia focusing legal and practical problems towards securing urban land rights. In connection to this, the underlying principles and approaches or benchmarks under the human rights norms and world best practices towards improving urban land governance have been discussed.

In chapter three, it explores the role of registration in urban land governance. The conceptual frameworks, underlying theories, principles, legal and institutional frameworks, and current achievements and challenges of urban land registration and information systems at the national level and SNNPRS contexts have been discussed.

Finally, chapter four deals with the hallmark of the thesis. It focuses on COC in single urban plot as urban land tenure problem at urban *Hadiyya* zone of the SNNPRS. Empirically collected data has been examined, analyzed, discussed and interpreted, and findings are identified, concluded and recommended.

## CHAPTER TWO

### Urban Land Administration in Ethiopia: Trends, Challenges, and Prospects

#### 2.1. General Overview and Concepts

Land tenure is defined as the relationship among people with respect to land.<sup>63</sup> According to the Alain, UN-Habitat (2003a), Payne; land tenure constitutes the complex rules, principles, and procedures governing the rights, duties or restrictions, liberties, and exposures of individuals and groups in the use and control over the land.<sup>64</sup> In other words, it is the ways in which a society allocates/entitles the titles by which land rights are held. It also reflects relationships between people and land directly, and between policies in their dealings in land.

The urban land policy covers all land tenures, access, use, valuation, transfer, registration and land information systems, value and dispute settlement mechanisms.<sup>65</sup> It is a key to set guidelines and common benchmarks how those rights could be protected, benefits reaped and restrictions enforced.<sup>66</sup> This does not mean land policy options either private or public may by default be an end for secure land rights. Experience has repeatedly shown that around the world public ownership of the land cause to mismanagement, underutilization and corruption though not private ownership is all-cure unless a good urban land administration is assured towards ensuring secure land rights for the landholders.<sup>67</sup>

Moreover, land administration is a key instrument to implement urban land policy. It includes a processes of recording and provision of information about the land ownership or possession, value and use of land and its associated resources'.<sup>68</sup> This processes include adjudication of rights, the survey and description of these, their detailed documentation and the provision of relevant information.<sup>69</sup> In clear terms it includes recording,

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<sup>63</sup>FAO, (2012) on its VGGLF.

<sup>64</sup>Payne, G. *Urban Land Tenure Policy Options: Titles or Rights?* UN-Habitat International, (2001) Vol. 25, Issue 3, 414-42.

<sup>65</sup>Durand-Lasserve, and Royston L 'Holding their Ground: Secure Land Tenure for the Urban in Developing Countries' (Earthscan Publications, London. 2002) 193-207.

<sup>66</sup>Klaus, Deininger, 'The Land Governance Assessment Framework: Identifying and Monitoring Good Practice in the Land Sector (World Bank, 2012) 92-93.

<sup>67</sup> *ibid.*

<sup>68</sup>Guidelines for Land Administration with Special Reference to Countries in Transition, Economic Commission For Europe ECE/HBP/96, 3-10.

<sup>69</sup> *ibid.*

registration and publicizing of the grants or transfers of those land rights through, for instance, sale, donation, encumbrances, sub-division and so on.<sup>70</sup> And, titling of these rights, restrictions and responsibilities helps to ensure certainty in land rights by providing who owned/possessed what lands.<sup>71</sup> Therefore, a secure urban lease/use right assures all synergy of the benefits accrued from urban lands for the landholders.

According to FAO, the bundles of urban land rights can be the *uses, fructus, and abusus*, which in these modern days considered as the quantum of tenure security. It also defines as, security of land tenure means, the certainty that a person's rights to land will be recognized by others and protected in cases of specific challenges.<sup>72</sup> In a broad sense, Solomon Fikire noting it as:

[T]enure security, defined broadly, pertains to the assurance, confidence, or expectations of landholders remain in physical possession of, and the rights to, and the fruits of their land holdings and investments by their labor excluding the state, private individuals and other entities, either in the course of use or transfer.<sup>73</sup>

Security of urban land title or deed exists if the landowner/possessor is secure in his/her legal ownership/possession. Recorded and certified tenure is not a prerequisite to ensure secure tenure for the land holders. Thus, it needs incorporation of the good governance approach in urban land administration towards assuring secure urban land rights for the landholders.

## **2.2.Theories/Approaches towards Urban Land Administration**

### **i. Good Governance Approach**

According to UN LGAF, governance is defined as 'the manner in which public officials and institutions acquire and exercise the authority to shape public policy and provide public goods and services'.<sup>74</sup> The public interest calls the states behave in a responsible manner which can ensure effective and efficient service delivery systems.<sup>75</sup> Specifically, good governance in land matters is multifold aspects such as social, economic and

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<sup>70</sup>Tony Burns, 'Land Administration Reform: Indicators of Success and Future Challenges' (2007) Agriculture and Rural Development Discussion Paper 37, 15-6.

<sup>71</sup>Berhanu A, *Urban Cadastres for Urban Lands Governance Socio-Economic Analysis* (University of Twente Ae Enschede 2015) 1-10.

<sup>72</sup>FAO, Corporate Document Repository, Land Tenure and Rural Development, <<http://www.fao.org/docrep/005/y4307e/y4307e05.htm>> accessed 7 October 2017.

<sup>73</sup>Solomon Fikire, 'The Challenges of Land Law Reform, Smallholder Agricultural Productivity and Poverty in Ethiopia' (Warwick University, School Of Law 2005) 53.

<sup>74</sup>2016 UN LGAF (n 18).

<sup>75</sup>UN-Habitat, *Property Theory, Metaphors and the Continuum of Land Rights* (UNON, Publishing Services Sector 2015)1-13.

political.<sup>76</sup> And it needs multi-level and multi-actors participation including landholders and stakeholders. According to WB,

Land governance concerns the rules, processes and structures through which decisions are made about access to land and its use, the manner in which the decisions are implemented and enforced, the way that competing interests in land are managed.<sup>77</sup>

The ‘government institutions are responsible for land administration both on state-owned and private holdings to be operate in a transparent, accountable and efficient manner.’<sup>78</sup>

Therefore, good governance approach calls for the quality of urban land administration in order to assure secure urban land rights for the landholders. According to the WB LGAF and FAO, good land governance indicators and principles in land administration are;

**a) Legal and institutional framework;** the law should recognize a range of rights held by individuals as well as groups or rights held by women and other vulnerable groups. It also needs the land laws and regulations must be consistent and known to the general public. The government, elites, officials, land officers and others actors are accountable for their decisions and actions in relation to land to people relationship. Furthermore, the institutional frameworks and manner of service delivery shall ensure efficient and effective land and land related real property services for all the landholders.

**b) Management of Public Land;** this set of indicators seek the public land ownership or possession is justified, inventoried, under clear management responsibilities, and relevant information shall be publicly accessible. A transfer of public land to private use should follow a clear, transparent, and competitive process and payments are collected and audited.

**c) Public Provision of Land Information;** land information systems shall assure or provide sufficient, relevant and up-to-date data on land ownership or possession to the general public or individuals. Hence, this indicator requires urban land information (legal cadastre) systems are compatible across the land registry system. Registry information is updated, sufficient to make meaningful inferences on ownership/possession. Urban land

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<sup>76</sup> ibid

<sup>77</sup> 2016 UN LGAF (n 18).

<sup>78</sup> J.M. Lusugga Kiron, ‘Improving Land Sector Governance in Africa: The Case of Tanzania Paper prepared for the Workshop on Land Governance in support of the MDGs: Responding to New Challenges’ Washington DC March 9-10 2009, 1-10.

records or registry must be easily obtained by those who make legitimate inquiries, particularly the landholder, third parties and the public, land information without any challenges. Also, public and stakeholders such as, individuals, the private sector, NGO's, CSO and donors shall participate in urban land governance towards upholding tenure security.

#### **d) Land Use and Taxation**

This set of indicator among other issues deals whether, urban land use plans and regulations are justified, effectively implemented, do not drive large parts of the population into informality, and are able to cope with population growth. Land taxes are collected and the yield from land taxes shall serve the public interest. FAO, identified in this regard, rampancy of the informal land tenure and informal transaction reduces revenue collected by the state in the form of taxes and fees (for instance, from the registration fee, transfer tax (...).<sup>79</sup> Thus, Illegally transferred or encroachment of state or public lands reduces revenue the state would have collected from the legal transfer.<sup>80</sup> And it affect the public interest which could be accrued from the legal transfer.

**e) Dispute Resolution and Conflict Management;** The last but not the least, this set of indicator uses to assess whether a state has an affordable, clearly defined, transparent, an unbiased mechanisms for the resolution of the land dispute or doubts. Whether, a share of land rights affected by pending disputes or conflicts is low and decreasing from time to time. And it needs both the courts or extra-judicial systems shall work on impartial and undue delay when land rights are unduly encroached.

#### **ii. Rights Based-Approach**

International and domestic human rights laws are directly or indirectly related to protection of land rights. Land and land related real property ownership/possession rights are an essential human right issue. Here, human rights-based approach, towards securing urban lands rights emphasizes on moral entitlements and efficiency, unlike utilitarian which focuses

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<sup>79</sup> Weal Zakout and others, 'Good governnace in Land Adminstration Principles and Good Practices, WB FAO, Washington DC, 2006, 6.

<sup>80</sup>ibid.

on economic efficiency only.<sup>81</sup> Secure urban tenure, this means the idea that every citizen has the right to a secure place to live in conformity with International Treaties and Covenants.<sup>82</sup> Therefore, the rights over urban land cannot be separated from human rights.<sup>83</sup> Accordingly, the right to livelihoods is backed by both national and international human rights laws. These laws are both hard and soft. UDHR, under article 25 stipulates that everyone has the right to adequate living standards, that means; both social and economic facilities shall be facilitated without discrimination.<sup>84</sup> Similar legal provisions are also in ICESCR protects the right to an adequate standard of living of all human. Furthermore, those numerous economic, social and cultural rights enshrined in the UDHR, ICESCR, CEDAW, ICCPR, ICESCR, ACHPR and Maputo Protocol to on the Rights of Women in Africa are intimately connected to secure land rights.<sup>85</sup> Secure livelihood rights including land rights, also serve as a gateway for many civil and political rights of the man.<sup>86</sup> Therefore, the human rights norms call for secure urban land rights for all people, without discrimination including women and vulnerable groups. CEDAW stipulates discrimination of women human rights and fundamental freedoms in the political, economic, social, cultural, and civil or any other fields shall be tamed.<sup>87</sup>

When we come to the Ethiopia, the FDRE constitution stipulates, all Ethiopians have the rights to enjoy benefits accrued from natural resources including urban land rights.<sup>88</sup> And any discriminatory treatments of the urban landholders is void as per the FDRE Constitution.<sup>89</sup> Both UDHR and ICESCR and all other human rights instruments are adopted and ratified by Ethiopia.<sup>90</sup> Specifically, for women land rights the Constitution reads as:

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<sup>81</sup>FAO, 'The Continuum of Land Rights Approach; Recognizing, Recording, Administering a Variety of Appropriate and Legitimate Land Tenure Forms' (2015) FIG Working paper Paper <[https://www.fig.net/resources/proceedings/fig\\_proceedings/fig2015/ppt/glt\\_n\\_fig/glt\\_n\\_03.pdf](https://www.fig.net/resources/proceedings/fig_proceedings/fig2015/ppt/glt_n_fig/glt_n_03.pdf)> accessed on 15 March 2018.

<sup>82</sup> Lasserre (n 65).

<sup>83</sup> Kiron (58).

<sup>84</sup> UDHR, Article 25.

<sup>85</sup> Wickeri Elisabeth and Kalhan Anil, 'Land Rights Issues in International Human Rights Law,' (2010) Malaysian Journal on Human Rights, Vol. 4, No. 10; Drexel University Earle Mack School of Law Research Paper : Fordham Law Legal Studies Research Paper No. 1921447.

<sup>86</sup> Thomas Pogge, *World Poverty And Human Rights* (London Polity Press 2002) 1 - 15 <[http://www2.ohchr.org/english/issues/poverty/expert/docs/Thomas\\_Pogge\\_Summary.pdf](http://www2.ohchr.org/english/issues/poverty/expert/docs/Thomas_Pogge_Summary.pdf)> accessed on March 5 2018.

<sup>87</sup> CEDAW, Article 1.

<sup>88</sup> FDRE Constitution, Article 89 (1).

<sup>89</sup> FDRE Constitution, Article 9 (1).

<sup>90</sup> *ibid* Article, 13(1) cum 9 (4).

Women have the right to acquire, administer, control, use and transfer property. In particular, they have equal rights with men with respect to use, transfer, administration and control of land. They shall also enjoy equal treatment in the inheritance of property.<sup>91</sup>

Therefore, ensuring good governance in urban land administration is prerequisite to reap all the benefits accrued from urban land rights. Upholding urban tenure security for the landholders is a human right issue and the Ethiopian state is duty-bound to assure secure urban land rights for all landholders.

### **iii. Soft Laws: Setting Benchmarks**

Urban lands shall be governed under the command of good governance to uphold secure lease/use rights. And the land policy shall be geared towards good governance principles and best practices around from the world. To this end, there are Voluntary Guidelines and declarations what they are called (soft laws) namely, UNVGF<sup>92</sup> and Guidelines on land policy in Africa.<sup>93</sup> The two instruments directly focus on land policy and good urban land governance issues. It is a crucial element in determining if and how people, are able to acquire rights and comply with associated duties/restrictions, to use and control it.<sup>94</sup> Thus, any state land governance systems should fulfill the following qualities. It should serve the protection of human rights, ensure equity, avoid discrimination among the landholders, gender equality, ensuring transparency and public and stakeholders participation and so on.<sup>95</sup> Here, the applicability of the soft laws (that means, policy framework guidelines and declarations) in international relationships are voluntary. Individual states may or may not adopt such practices and principles. And they are not legally binding and they do not replace existing national or international duties by the respective states.<sup>96</sup> Therefore, the Ethiopian state is free to adopt the this soft laws because they also setting benchmarks for responsible urban land administration towards assuring secure urban land rights for the landholders.

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<sup>91</sup>ibid, Article, 35 (7).

<sup>92</sup>United Nation Committee on World Food Security of the Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries, and Forests in the Context of National Food Security(VGGTF,, hereinafter).

<sup>93</sup>FrameWork &Guidelines on Land Policy in Africa

<sup>94</sup>VGGTF.

<sup>95</sup>ibid.

<sup>96</sup> Daniel Behailu, *Transfer of Land Rights in Ethiopia: Towards Sustainable Policy Framework* (Eleven International Publishing 2015) 156.

### 2.3. Trends of Urban Land Administration in Ethiopia

In Ethiopia the historical pathway or trends of the urban land administration to-date can be gauged whether the good land governance scenarios are incorporated or not. Because, it helps to give the role of good governance and human rights approaches towards linking land rights in urban land administration. For instance, were/are the registered urban land rights are protected lands under the law and practice? Whether land information is efficient and accessible for the landholders. Is there public lands have inventory; that means whether a clear, transparent legal frameworks and rules for its management? Whether rights to land of all segments persons were/are protected or not.

#### 2.3.1. Imperial Regime (Pre-1975)

Urbanization is a recent phenomenon in the history of Ethiopia.<sup>97</sup> Urban land tenure history is also traced back to the emergence of Addis Ababa and used as both political and strategic place by the Menelik II.<sup>98</sup> Under the Emperor (pre-1975) there was freehold title regarding urban lands and landed real property/resources.<sup>99</sup> Urban lands can be privately owned, however, few urban landlords grabbed for their benefits, inequality and arbitrary evictions with regard to urban land rights was real problem.<sup>100</sup> Besides, in Ethiopia land records and information systems date back to the 6<sup>th</sup> century for churches, individuals, and Monasteries.<sup>101</sup> The first formal land and land related real property registration law was enacted in 1907.<sup>102</sup> This law was targeted to the Addis Ababa City and the main purpose was tax-assessment and collection rather than securing urban rights for the landholders. Unsurprisingly, during that period '*tax receipts*' were treated as critical evidence for proof of land rights. The second, phase was in 1960, the Civil Code first attempted to come up with a legal and institutional

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<sup>97</sup>Richard Pankhurst, *State and land in Ethiopian History* (Addis Abeba University, The institute of Ethiopian Study and Faculty of the Law 1966) as cited in Berhanu K. Alema, Urban Cadastres for Urban Lands Governance Socio-Economic Analysis (University of Twente Ae Enschede 2015) 15.

<sup>98</sup>ibid.

<sup>99</sup>ibid.

<sup>100</sup>Belay Zerga, 'Land Resource, Uses, and Ownership in Ethiopia: Past, Present and Future', (2016) Vol. 2, Issue 1, International Journal of Scientific Research Engineering Technology.

<sup>101</sup>Ibid.

<sup>102</sup>Zerihun A. Berisso and others, 'Implementation Practice: Real Property Registration Systems in Developing Countries: Confluence of Technological, Institutional and Organizational Requirements in the Addis Ababa Project Paper Prepared For Presentation at the Annual WB Conference on Land and Poverty the WB - Washington DC, April 8-11, 2013, 2.

base for urban land registration. The rights to real property (land and buildings) can be proved providing either receipts or deeds registration.<sup>103</sup> According to Klaus Deininger and Others:

Ethiopia's civil code requires all immovable properties to be registered as evidence of ownership. However, the notary public that is anticipated by the code has never been established. Instead, authentication of title documents and recording of transactions in immovable property are undertaken by municipalities and the deeds registration offices that they have established. Such records are the only legally acceptable evidence of rights over immovable property.<sup>104</sup>

The deed registration system is registration of transaction in land and landed real property rights rather than title ('*sima-mebt*') registration.<sup>105</sup> It did not provide for secure land rights to be adjudicated and established unattackable title.<sup>106</sup> Undeniably, one can conclude that urban land title certificates or authenticated deed documents are the *prime fasciae* of the evidence for the proof of the land ownership. However, this is a rebuttable presumption as per article 1195 sub-article (1) and article 1196 sub-article (1) of the Civil Code i.e., mean otherwise proof is also possible. Moreover, there was no active public participation, no informing, consulting and hence, it also lacks transparency in urban land administration. Some argue that the politics behind the land policy was reflected in urban land administration which the trend justifies that 'who controls resources controls power'.<sup>107</sup> Later on, the regime ended neither deeds registration nor any attempts to modernize urban land administration were fruitful towards ensuring tenure security for the landholders.<sup>108</sup>

### 2.3.2. The Derg Regime (1975-91)

In 1975 the *Derg* government removed the King and assumed state power and introduced state ownership of the urban lands. Private urban land ownership was outlawed. Right to use

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<sup>103</sup> According to the Ethiopian Civil Code Article, 1195, the issue by the administrative authorities of a title deed to the effect that a given immovable belongs to a given person shall raise a presumption that such person is the owner of such immovable. However, as per Article 1196, this presumption is rebuttable upon facts, when the title deed was not issued in accordance with the law or was issued by an authority having no jurisdiction; or the title deed was issued on the basis of an invalid act; or the plaintiff acquired the ownership of the immovable after the day on which the title deed was issued.

<sup>104</sup> Deininger (n 66).

<sup>105</sup> United Nations Economic and Social Council, Economic Commission for Africa Seminar on Cadastre Addis Ababa Dec 9/1970 E/CN.14/CART/270 Submitted by the Imperial Ethiopian Government.

<sup>106</sup> John M. Cohen & Peter M. Koehn (2013) 'Rural and Urban Land Reform in Ethiopia', *The Journal of Legal Pluralism and Unofficial Law*, 9:14, 3-62.

<sup>107</sup> Hussein Jemma, 'The Politics of Land Tenure in Ethiopia; Experience From South'; The Paper Prepared for XI World Congress of Rural Sociology, Norway, 25-30, 2004.

<sup>108</sup> Carol W. Dickerman and others, 'Land Tenure Security and Land Registration in Africa: Literature Review and Synthesis' (University Of Wisconsin Madison, LTC paper 137, 1989) 57-65.

the property and own buildings were possible as per the limit of the law.<sup>109</sup> Persons who did not own lands entitled to get urban land up to 500 square meters.<sup>110</sup> Extra-houses which are nationalized were rented out to the people who did not have a house.<sup>111</sup> In fact, this urban proclamation was aimed to attack the economic bases of *Elite's or* privileges in urban Ethiopia.<sup>112</sup> And the 'equity' and 'egalitarian' principles were endorsed towards 'ending disparity in wealth distribution among the royal family and the urban poor'.<sup>113</sup> Regrettably, the ill of this urban land policy was resulted in 'destruction and burring' of the former cadastre and urban land registers (ledger books).<sup>114</sup>

During the regime, institutional frameworks for urban land administration, urban cooperatives were responsible for registering private holdings, houses, maintaining nationalized units and collecting lands.<sup>115</sup> The Ministry of Public Works and Housing is responsible for overall registration of urban lands and houses belonging to the government.<sup>116</sup> However, there was no an efficient registration and information systems.<sup>117</sup> It was also uncertain for landholders about their lands are free from unwarranted encroachments.<sup>118</sup> Therefore, there was no good urban governance and human rights approaches incorporated in the urban land administration to realize secure land rights for the landholders.

### **2.3.3 EPRDF Regime (1991 to-date)**

The current government maintained the public ownership of urban lands that the policy line it has inherited from the *Derg* regime. Only the lease/use rights in urban lands is intact for the landholders.<sup>119</sup> Individuals and commercial or non-commercial organizations can access urban lands by way of lease contract. Individuals cannot own urban lands. In practice, public

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<sup>109</sup> Derg's Public Ownership of Urban Lands and Extra-houses Proclamation no.47/75.

<sup>110</sup> *ibid.*

<sup>111</sup> *ibid.*

<sup>112</sup> *ibid* Preamble

<sup>113</sup> Daniel (n 96) 10-25.

<sup>114</sup> Federal Urban Land Information (Cadastre) Training Manual (2008 Amharic Version).

<sup>115</sup> (n 110) Article 24.

<sup>116</sup> *ibid* Article 36 (4).

<sup>117</sup> Zemen H. Gebeyehu and others, 'Ethiopia's Move to a National Integrated Land Use Policy and Land Use Plan', Paper Prepared for Presentation at the 2017 World Bank Conference on Land and Poverty the World Bank - Washington Dc, March 20-24, 2017, 1.

<sup>118</sup> Mengistu Abebe, 'The March 1975 Land to the Tiller Proclamation: Dream or Reality'? (2016) Vol. 2, 1 American Research Journal of History and Culture (ARJHC).

<sup>119</sup> FDRE Constitution, Article 40 (4).

ownership is working on the ‘*mumbo-jumbo*’<sup>120</sup> maxim. Still, the urban land administration lacks good governance and human rights norms towards ensuring secure land rights and it remains an ongoing hot-debatable issue. Thus, the current legal and institutional frameworks and practical challenges in the urban land administration towards ensuring urban land tenure rights will be discussed as follows.

## **2.4. Legal Backings and Institutions Frameworks**

### **2.4.1 Laws**

#### **a) FDRE Constitution**

The essence of the urban land policy of Ethiopia is enshrined in article 40 (3) of the FDRE constitution. It proclaims that urban lands are under the public ownership. And the constitution obliges the State to protect land ownership/possession rights. The ‘Government has the duty to hold, on behalf of the People, land and other natural resources and to deploy them for their common benefit and development.’<sup>121</sup> It also recognizes the system of federal and regional self-governments and functions regarding land administration. Under article 50 (5) of the FDRE constitution, the federal government is entitled to enact laws on urban lands. On the other hand, the power to administer urban land is the responsibility of the regional states as per article 52 (b) of the same Constitution. Furthermore, the Constitution stipulates ‘Every Ethiopian shall have the full right to the immovable property she/he builds and to the permanent improvements she/he brings about on the urban land by his labour or capital’.<sup>122</sup> This right in land shall include the right to alienate, to bequeath, and, where the right of use expires, to remove his property, transfer his title, or claim compensation for it.<sup>123</sup> Therefore, all unjustified or contenting practices or intrusion towards urban land rights are prohibited.

#### **b) Urban Land Lease Laws**

In urban Ethiopia the year 1993 is the turning point in which the first urban lands lease policy was introduced. The Lease Proclamation sets an objective that good governance in the

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<sup>120</sup>Merriam Webster, definition of ‘*mumbo jumbo*’ : in its crude form appears as a legal complication or confusion to exploit private gain <<https://www.merriamwebster.com/dictionary/mumbo%20jumbo>> accessed January 27/2018.

<sup>121</sup>FDRE Constitution, Article 89 (5).

<sup>122</sup>ibid Article 40 (7).

<sup>123</sup>ibid.

urban land administration is prerequisite to uphold secure urban land lease/use rights for the landholders. All subsequent Revised Lease Proclamations without changing the lease policy confirmed old possessions (permit systems) to work along-side with the lease system. Hence, old possession defined as;

[A]n old possession means 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.<sup>124</sup>

While the lease means a system of land tenure by which the right of use of urban land acquired land under a contract of the definite period.<sup>125</sup> In connection to this, SNNPRS enacted the first Urban Land Rents and Lease-holding Regulations No. 1/1995, and all subsequent regulations and directives have confirmed the double urban tenure systems (that means leasehold and permit systems). According to the WB, this lack of clarity leads to coexistence of both tenures and has impacted overwhelming majority of the urban centers remain informal.<sup>126</sup> All subsequent acquisition of the all new residential dwellings and regularized informal settlements can be administered via the lease policy.<sup>127</sup> And the lease rights in urban lands can be acquired via tender or allotment process.<sup>128</sup> Any other ways of accessing urban landholding other than leasehold are prohibited.<sup>129</sup>

Thus, after all the legal requirements have been fulfilled or once a person delivered urban plot a leasehold title shall be entitled upon the lessee signing a lease contract.<sup>130</sup> A duplicate of lease certificate issued to landholders of the indicating the identity of the holder, location of the land, the size of the land serves as a proof of the evidence.<sup>131</sup> Once the lease contract is signed and a person is conferred with the leasehold title, the lessee enjoys all the use of rights in such plot. The lessee may transfer his leasehold right as collateral and capital contribution to the extent of the lease amount already paid'.<sup>132</sup> One thing to be worth mentioned is, if a lessee, with the exception of inheritance, wishes to transfer his/her leasehold right prior to the

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<sup>124</sup>Lease Proclamation, Article 2 (18).

<sup>125</sup>ibid Article 2 (1) ; Registration Proclamation, Article 2 (3)

<sup>126</sup>WB LGAF 2016 (n 18).

<sup>127</sup>Lease Proclamation Article, 5.

<sup>128</sup>Lease Proclamation Articles, 10, 12 and 13.

<sup>129</sup>ibid Article, 5 (1).

<sup>130</sup>ibid Article, 17 (1) and (2).

<sup>131</sup>ibid Article, 17 (4).

<sup>132</sup>ibid Article, 24 (1 & 2).

commencement or half completion of construction, she/he shall be required to follow the transparent procedure of sale to be supervised by the appropriate body.<sup>133</sup>

Hence, according to Lease Proclamation leasehold right can be lapsed when termination of lease contract take place as per the law. These criterions are when the lessee uses the land for the purpose other than the one indicated in the lease contract;<sup>134</sup> where it is decided to use the land for public purposes;<sup>135</sup> upon the lapse of the lease period without renewal.<sup>136</sup> Therefore, any unwarranted encroachments or lapse of lease/use rights out of the legal system is unjustifiable.

#### **2.4.1. Institutions**

Successful implementation of the urban land administration depends on effective and efficient institutional, technical and land information systems.<sup>137</sup> It one of the important thing to ensure tenure security. It helps to promote investments and reduces land disputes and land related real property as efficiently works.<sup>138</sup> According to Regina Birner and Austen Okumo institutional competencies regarding urban land administration can be gauged as whether effectiveness, efficiency, equity or gender issues, as well as corruption control mechanisms and sustainability was ensured.<sup>139</sup> Thus, the government institutions are responsible for urban land administration both on state-owned and private holdings to be operate in a transparent, accountable and efficient manner.

In Ethiopia urban lands administration is delegated to the MUDH at the federal level and at regional levels to the City governments and registry institutions.<sup>140</sup> The MUDH has duty to;

Ensure proper implementation; provide technical and capacity building, support to regions and city administrations, create with the assistance of technology a modernized and harmonized real property information systems at national level,

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<sup>133</sup> *ibid* Article, 13.

<sup>134</sup> *ibid* 21 (1) cum Article 25, 1 (a).

<sup>135</sup> *ibid* Article, 25 sub-article, 1 (b).

<sup>136</sup> *ibid* Article 25, sub-article, 1 (c).

<sup>137</sup> UN LGAF report from Ethiopia 2016 (n 18).

<sup>138</sup> *ibid*.

<sup>139</sup> Regina Birner and Austen Okumo, 'Challenges of Land Governance in Nigeria: Insights from a Case Study in Ondo State', Institute of Agricultural Economics and Social Science in the Tropics and Sub-Tropics, Hohenheim University, Stuttgart, Germany NSSP Working Paper No. 22, 6-8.

<sup>140</sup> Proclamation no.916/2016 (n 24).

adopt and follow up the implementation of national standard of real properties database and prepare model regulations, directives and manuals.<sup>141</sup>

Regional states are also empowered to administer urban lands by enacting their laws and establishing their own institutions.<sup>142</sup> The SNNPRS, enacted urban land lease laws regulations and directives to administer urban lands and these laws are *ipso facto* empowered local and City governments to handle urban land administration functions such as, allocation, disposal, use, adjudication, and registration. Thus, strengthening institutional capacities is one of the major goals towards securing use/lease rights.<sup>143</sup> These laws are also set bold objective to reduce doubts or disputes arising from urban land and landed real property.<sup>144</sup> Thus, the Lease Proclamation reads as;

Good governance is foundational institutional requisite for the development of an efficient, effective equitable and well-functioning land and landed property, sustenance of a robust free market economy, for building of transparent and accountable land administration systems that ensures the rights and obligations of the lessor and the lessee.<sup>145</sup>

In addition to this, Urban Land Leasehold Regulation No. 123/2007 and its implementation Directive No.8/2015 of the SNNPRS, ensuring good governance in the urban land administration through discouraging urban land speculators, illegal developers and corruption is prerequisite towards assuring secure urban land rights (emphasis supplied).<sup>146</sup> Any land officer, officials, and other colluding persons can be criminally liable for the maladministration of urban lands.<sup>147</sup> Finally, the 2016 draft Urban Lease Proclamation also aspires for an equitable distribution of land, less corruption and development of the urban centers. Furthermore, recently, some initiatives and measures have been also being taken to improve urban land administration including current pilot projects on adjudication and re-registration of the urban lands.<sup>148</sup>

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<sup>141</sup> *ibid* Article 26 ; See also, Lease Proclamation Article, 32 (1).

<sup>142</sup> *ibid*, Article 33 cum Article 50.

<sup>143</sup> Preamble of SNNPRS Lease Regulation.

<sup>144</sup> *ibid*.

<sup>145</sup> *ibid*.

<sup>146</sup> SNNPRS Regulation no.123/20, Article 2 sub-articles 18.

<sup>147</sup> Lease Proclamation Article 31 & Following: See also Article 4 (2) of the Lease Proclamation.

<sup>148</sup> Burns (n 27) 1.

## 2.5 Challenges: Policy, Legal and Practical Anomalies

### 2.5.1 Urban Land Policy and Tenure: Informal Tenure is ‘a Rule’

In Ethiopia, an individual cannot acquire the ownership to use the land for a given period.<sup>149</sup> Public ownership of the urban lands has its own implication towards ensuring secure lease/use rights. Experiences around the world has repeatedly shown that the public ownership of the land has conductive to mismanagement, underutilization of resources, and corruption.<sup>150</sup> According to the ‘*fortune Gazzete*’ writer, upholding public ownership of urban lands in Ethiopia ‘the heal-all is not assuring good governance in urban land administration.’<sup>151</sup> Ownership and access to urban land determines control over the land to enjoy all benefits accrued from it . Some others also argue that private ownership policy is better both in terms securing use and ensuring efficiency.<sup>152</sup>

In fact, urban land lease policy aspires the incoming urban land tenure is the only leasing.<sup>153</sup> Yet in urban centers the problem of coexistence of the old permit system under which an annual land rent is paid to the government and leasehold system a use right granted for definite period is paved a room for urban land tenure to be remain informal. Besides, the *status quo* of the illegal and legal informal settlements are also a real challenge towards ensuring good urban land governance. Unregistered and unmapped public lands, religious and urban agricultural lands are also challenges for effective urban land governance.<sup>154</sup> Experiences show that illegal squatings, urban agricultural lands, and including peri-urban lands, are registered and mapped like in Botswana.<sup>155</sup> There are some measures have been taken egularize informal settlements however, the process was hanged out by the malpractices and corruption and still, majority of urban land tenure reamain informal and needs legal backings.<sup>156</sup>

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<sup>149</sup>FDRE Constitution Article 40 (3).

<sup>150</sup> Deininger (66).

<sup>151</sup> Ethiopia news Alamariam, Land and Ethiopia’s Corruptocracy, 31 March 2013 <<http://almariam.com/2013/03/31/land-and-ethiopias-corruptocracy/>> accessed 10 March 2018

<sup>152</sup> Dessalegn (n 165).

<sup>153</sup> Lease proclmation, Article 5 (1).

<sup>154</sup> Deininger (n 65).

<sup>155</sup> Weal ZAkout and others, Good governnace in Land Adminstration Principles and Good Practices, World Bank, FAO, Washington DC, 2006, 6.

<sup>156</sup> Lease Procamation, Article 6 (5) of the ‘the regularization process to be undertaken by regions and city administration in accordance with sub-article (4) of this Article shall only be effective within four years of the coming into force of this Proclamation’.

### 2.5.2 Weaker Institutions

In Ethiopia urban administration lacks good governance owing to weaker institutions. Usually, missing of files and poor information systems are the real challenges.<sup>157</sup> It largely works on manually by keeping ledger books for the land registers. There is also a general lack of financial, technical and human capacity.<sup>158</sup> The systems are under-resourced; many of them are out-dated and inefficient.<sup>159</sup> According to the Daniel and Adisu ‘Given the lack of a formal urban registration and certification system, registration in urban centers is normally linked to the provision of land for new holdings or transfer of ownership for existing holding’.<sup>160</sup> It also relates to regularization process of informal settlements and current pilot works on urban land re-registration towards securing urban land rights. Nevertheless, the practice is not consistent; municipalities in major urban centers mainly keep ledger books (registers) for transfers, mortgages, and title deeds separately.<sup>161</sup>

Private encumbrances, if registered at all, are thus listed in separate documents, and the fact that registers are held separately from each other without clear cross-referencing makes it difficult for third parties to access them<sup>162</sup>

The problem is here, both the public lands and private holdings lack inventory.<sup>163</sup> Misplacements and the loss of files opens a way for encroachment of urban land rights. Access to urban land information systems is not easy for the rightful claimants and public in general. There is also little monitoring of staff in the registry or proactive systems to discourage illegal activity by land registry officers.<sup>164</sup>

### 2.5.2 Lack of Public and Stakeholders Participation

The lack of optimum level of public and stakeholders participation is one of the major cause of weak urban land administration.<sup>165</sup> In Ethiopia context, no other stakeholders such as, NGO’s and CSO’s even landholders themselves are not active participants in urban land administration towards ensure tenure security.

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<sup>157</sup> *ibid.*

<sup>158</sup> Transparency International (n 34).

<sup>159</sup> *ibid.*

<sup>160</sup> Daniel Behailu and Adisu Kassa, ‘Land Governance in Ethiopia: Towards Evaluating Global Trends’ (2018) Vol.4, Issue. 3, pp: 35-46.

<sup>161</sup> *ibid.*

<sup>162</sup> *ibid.*

<sup>163</sup> 2016 UN LGAF (n 18).

<sup>164</sup> Daniel and Adisu (n 28).

<sup>165</sup> Dessalegn Rahmato, ‘Land to Investors: Large-Scale Land Transfers in Ethiopia’ (2011) Forum For Social Studies, Addis Ababa, Ethiopia; Daniel Behailu, ‘Large-Scale Land Acquisitions in Ethiopia- Towards Attracting Foreign Direct Investment’ (2015) JLAEA Vol. 3 Issue 1.

### 2.5.3 Corruption in Land Sector: A Dangerous Pouch

According to Said Nuhu, the Democratic Governance Theory expounds the paramount importance to responsible governance in all issues of public services delivery and accessibility to resources including lands.<sup>166</sup> If the land administration is weak, the powerful are able to dominate the competition for scarce urban lands.<sup>167</sup> Corruption can occur from petty to state capture. The government can be captured by individuals, families, clans, groups or commercial companies who direct or indirectly diverts the public policy or implementation of laws for their own advantages and privileges.<sup>168</sup> TI also explains corruption as:

A link between corruption and governance is the misuse of entrusted power for private gain. Obscure, non-transparent decision-making processes create favorable conditions for corruption.<sup>169</sup>

Furthermore, according to the TI, effective land management reduces social tensions, reduces land and landed real property rights disputes, and promotes socio-economic growth in general.<sup>170</sup> Seith, also argues to ensure good urban land governance in urban land administration, public decision-making processes, procedure should be transparent and participatory.<sup>171</sup> Then, the rule of law is applied equally to all segments of the people such as women, and vulnerable groups and hence, most disputes are resolved before they changed into conflicts.<sup>172</sup>

For instance, in Botswana and Tanzania double allocation of urban plots was a great problem before current reform measures have been taken.<sup>173</sup> Mikia also argues that in Cambodia and in other developing countries, 'urban parceling was done on paper without reference to the situation on the ground, resulting in new rights to land being issued overlapping with existing ones is an example for a characteristics of the weak urban land governance.'<sup>174</sup> These studies identified that the absence of independent land registration institutions, digitalized urban

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<sup>166</sup> Said Nuhu and others, 'Land Access and Corruption Practices in the Peri-Urban Areas of Tanzania: A Review of Democratic Governance Theory (2017)', Vol.05 No.04 18, Open Journal of Social Science

<sup>167</sup> Van Der Molen (n 22) 1-5.

<sup>168</sup> Said (n 166).

<sup>169</sup> TI, Ethiopia, Overview of Corruption in Land Administration <<https://www.transparency.org>> accessed on 20 November 20/2017: Ethiopia World Bank, 'Diagnosing Corruption in Ethiopia: Perceptions, Realities, and the Way Forward for Key Sectors' (2012a).

<sup>170</sup> Seth Aslama and others, 'Tools to Support Transparency in Land Administration: Securing Land Rights for All', Vol. 978-92-1-132549-2, United Nations Human Settlements Programme (UN-Habitat 2013) 1-10.

<sup>171</sup> Said (n 166).

<sup>172</sup> *ibid.*

<sup>173</sup> *ibid.*

<sup>174</sup> Törhönen (n 23).

land information systems; poor file management and missing of the files are the hosts for the rampancy of the corruption in urban land administration.<sup>175</sup>

In Ethiopia urban land sector is hanged by corruption. According to the fortune gazzete writer, it is estimated that about 15,000 forged titles have been issued in Addis Ababa in the past five years.<sup>176</sup> The WB on its work titled as; '*Diagnosing corruption in Ethiopia*', TI on its assessment of land governance in Ethiopia entitled as '*Overview of the corruption in Ethiopian Land Sector*' and some other writers on fortune gazzete, titled as '*Land and Ethiopia's Corruptocracy*', confirms that land sector in Ethiopia is the second host of the corruption following the revenue sector. Thus, lack of transparency in the urban land administration is still at issue. In Ethiopia ensuring transparency and accountability in public service is a fundamental constitutional principle. It calls for state conduct and activities shall be done in transparent and accountable manner.<sup>177</sup>

Moreover, both federal and SNNPRS urban lease laws stipulate that good governance is a fundamental prerequisite to ensure an appropriate administration of land. Departing from theoretical and legal norms, in practice, corruption replaces the government bureaucracy by shortening the path to access urban lands through bribing public officials and land officers.<sup>178</sup>

#### **2.5.4 Weak Dispute Resolution Mechanisms**

Laws alone are not enough to secure urban landholders lease/use rights. In private property law regime, the role of courts is paramount importance to claim back its valid root when those property rights encroached.<sup>179</sup> More strongly, it requires an independent, competent and impartial judiciary with due integrity to achieve secure urban land rights in public ownership guise. The judicial role towards protection of land rights is very weak in Ethiopia.<sup>180</sup> Especially, claims arising from the title of certificates of immovable property possession or ownership are changing from time to time. At earlier times the Federal Supreme Cassation Bench (FSCCB, hereinafter) passed a decision which asserts the power to revoke or cancel land titles in case, disputes arising from cancellation or revocation by the sole will of the

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<sup>175</sup>Van Der Molen (n 22).

<sup>176</sup>Fortune Gazzette (n 151).

<sup>177</sup> FDRE Constitution, Article 12.

<sup>178</sup> Daniel (n 160).

<sup>179</sup> Hailu Burayu, and Others, 'Judicial Protection of Private Property Rights in Ethiopia: Selected Themes' (2013) Mizan Law Review Vol.7, No.2 351.

<sup>180</sup> *ibid*

municipalities; then ,City Municipalities are capable to do so rather than courts.<sup>181</sup> Later on, the same bench affirms that the courts are eligible to test legality of the cancellation or revocation regarding formerly issued land title deeds by the City Municipality.<sup>182</sup> Thus, this decision sheds light on the authority of courts to examine the legality of cancelation or revocation of landholding title certificates by administrative bodies.<sup>183</sup> Thus, the courts are required to behave in a manner that the urban land rights of all the segments shall be equally protected and enforced.<sup>184</sup> An independent tribunal or judiciary to handle cases arising from the urban land rights is vital.<sup>185</sup> If enforcement on urban land rights is further jeopardized via weak judicial system which could be manifested by the bias of the courts would affect the all the synergy of lease/use rights.

### 3. Prospect of Urban Land Administration in Ethiopia

Currently, Ethiopia's population size has increased to over a 100 million.<sup>186</sup> According to the 2015 National Urban Systems Study the urban population of Ethiopia will increase by some 31 million and the total population by 43 million i.e. nearly 75% of the total population increment between 2015 and 2035. Besides, it was estimated that according to 2018 WB urban population constitutes over the 22,180,245. Urban population would tripling even earlier by 2034, with 30 percent of the country's people in urban areas by 2028.<sup>187</sup> In this factual analysis UN-Habitat (2012 a), stipulates that ongoing urbanization along with an increase in population has created a massive demand for urban land for different purposes such as residential, infrastructure, social services, and business activities.<sup>188</sup> It needs ensuring transparent allocation procedure and tenure security for the landholders'. Like in the world in Ethiopia, natural increase by birth and rural to urban migration is the notable factors for urban population increase. Furthermore, scarcity of agricultural lands in rural Ethiopia is

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<sup>181</sup> *Addis Abeba City Administration, Land Development and Administration Bureau* [2000] 22719 FCBD[2000] vs *Woreda 6 Kebele 02 Administration vs Bekelech Amerbeh* [2000] 29822 FCBD[2000] 5.

<sup>182</sup> *Warite Bubula vs Golgeta City Administration* (Among two Persons)[2005] 75414 FCBD[2005] 14, (Amharic version).

<sup>183</sup> The decisions of the Federal Supreme Court Cassation Division in File No. 67011 (Taitu Kebede's Heirs vs. Tirunesh and others), File No. 64014 (Genet Seyoum v. Kirkos Sub-City Kebele 17/18 Administration and others) and File No. 48217 (Abadit L. v. Zalambesa Town Administration & Berhane Z.)

<sup>184</sup> FDRE Constitution, Article 13 (1), 25 cum 40 (3) (4).

<sup>185</sup> SIDA ( n 43).

<sup>186</sup> According to 2017 World Bank Estimation Index.

<sup>187</sup> 2016 Urbanization Review of the Ethiopia; Zemen Haddis, *Land Policy Implications in Rural-Urban Migration: The Dynamics and Determinant Factors of Rural-Urban Migration in Ethiopia* (Technische Universität München 2014 )1-4: 13-19 and 64-119.

<sup>188</sup> UN-Habitat (2012 a).

encouraging migration, among the youths and landless to the urban centers.<sup>189</sup> Thus, the demand for urban lands for different economic and social purposes is also ever increasing. This fact obliges the urban and local governments in Ethiopia and SNNPRS to uphold secure urban land rights for the landholders. Therefore, transparent land allocation procedure and introduction of formal registration and certification systems, improved information systems in urban land administration would assure secure urban land rights.

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<sup>189</sup> De Brauw Alan and Valerie Mueller, 'Do Limitations in Land Rights Transferability Influence Low Mobility Rates in Ethiopia' (2012) *Journal of African Economies* 21(4): 548-579.

## CHAPTER THREE

### The Role of Registration in Urban Land Administration: Legal, Institutional, and Practical Challenges in National and SNNPRS Perspective

#### 3.1. Working Definition of Land Registration

There is no definitive definition of land registration; however, a renowned expert in this area Jaap Zevenbergen, simply defined it as a record of all rights, restrictions, and responsibilities in the land.<sup>190</sup> Many kinds of literatures are also defined it as ‘the process of recording and guaranteeing, information about the ownership or possessions of land either through the storage of contract documents about the land which is called deeds registration or by compiling special inventories of land ownership via title registration.’<sup>191</sup> The Ethiopian urban landholding Registration Proclamation defines it as ‘the process by which a landholding rights, restriction, and responsibility are registered in the legal cadastre register.’<sup>192</sup> Thus, registration in urban land administration brings a safe and certain basis for the acquisition, enjoyment, and disposal of rights in land.<sup>193</sup> And it provides a degree of certainty and security to the owner or possessors as well as to others having rights in land.<sup>194</sup>

#### 3.2. Types of Land Registration

If your land or property was not registered, how do you prove it really does belong to you is the underlying premise. The aim is assuring tenure security. Its development traced back to situations of land recordation in the United States, involves registering or recording of documents affecting interests in land with its aim of restricting double selling.<sup>195</sup> Later on, the title registration system developed to fill gaps in deeds registration towards ensuring greater security in land rights.<sup>196</sup> The title registration system was first introduced in Australia, in 1858, by Sir Robert.<sup>197</sup> According to Miki, the land registration systems consist

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<sup>190</sup>Jaap Zevenbergen, ‘A Systems Approach to Land Registration and Cadaster’ (2004) Nordic Journal of Surveying and Real Estate Research Vol. 1, 1.

<sup>191</sup>Biruk Tadesse, *Legal and Institutional Frameworks for Urban Landholding Registration: A Case Study of Addis Ababa*: (Addis Abeba University, College of Governance and Law 2017) 1-10.

<sup>192</sup> Registration Proclamation, Article 2 (18).

<sup>193</sup>Lassarve (n 12).

<sup>194</sup>ibid.

<sup>195</sup>Biruk (n 191) 10-23.

<sup>196</sup>Tim (n 39).

<sup>197</sup>Zevenbergen (190).

and most of the times it took two tasks namely, fiscal and legal registers.<sup>198</sup> The fiscal registration is a collection of data which is established for taxation purpose only. The legal aspects are the deed registration and title registration systems.<sup>199</sup> These systems focus on urban land administration functions that means, registering rights, restrictions, and responsibilities regarding land rights.

### 3.2.1. Deed Registration System

Deed refers to a document written document executed in accordance with law, wherein a person grants or conveys to another a certain land.<sup>200</sup> The land deed registration system is a deed itself that is a document which describes contracts or transaction in the land, is registered.<sup>201</sup> For instance, a deed can be, deed of sale, deed of donation, deed of mortgage, lease contracts and so on.<sup>202</sup> It is an evidence that a particular transaction took place, and in principle not in itself proof of the legal rights of the involved parties. By the same token, it is not also an evidence of its legality.<sup>203</sup> According to the Mika-Petteri, in the deeds registration system, a registered deed takes priority over an unregistered or a subsequent deed, and in some urban land administration systems, unregistered deeds are not accepted as proof of title.<sup>204</sup> Before, any dealing can be safely effectuated, the supposed owner must trace his/her ownership or possession back to a good root of title.<sup>205</sup>

### 3.2.2. Title Registration System

A land title is the evidence of the right of the owner/possessor or the extent of his interest, and by which means he can maintain control and as a rule assert right to exclusive possession and enjoyment benefits accrued from the land.<sup>206</sup> Therefore, a title registration is a system by which possession or ownership of land and landed real property is established through the issuance of an official certificate indicating the name of the

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<sup>198</sup>Törhönen (n 23).

<sup>199</sup> *ibid.*

<sup>200</sup>Tim (n 39).

<sup>201</sup> Annick Girardin, *Land Tenure and Development, Formalising Land rights in developing countries: moving from Past Controversies to Future Strategies* (2015) Paris, Ministère des Affaires étrangères et du Développement international (Maedi), Agence française de développement (AFD) 82.

<sup>202</sup> *ibid.*

<sup>203</sup>Tim (n 39).

<sup>204</sup>Törhönen (n 23 ) 5-25.

<sup>205</sup> *ibid.*

<sup>206</sup> *ibid.*

individual in whom such possession or ownership is vested.<sup>207</sup> After the registration document is entitled the certificate of title. Unlike deed system in which the transaction of land rights is registered, in this system the legal consequence of that transaction i.e. the right itself (title).<sup>208</sup> Simpson, well quotes it as, title registration aims to simplify and secure rights in land, avoids repetition and increase efficiency.<sup>209</sup> Therefore, title registration is bases its root on a state guarantee of the land title for the landholders.<sup>210</sup> Yet, existence of overriding interests over the same title may be problematic since the title is meant to be absolute'.<sup>211</sup> Furthermore, according to Mikia

Theoretically, since only an entry to the register can convey title, a title register needs always to be updated, which in developing countries is often likely to remain in the realms of theory.<sup>212</sup>

Therefore, finality is ensured upon title registration, recurrent adjudication is unnecessary and titles may become primary evidence for proof of ownership or possession.<sup>213</sup> And a duplicate of landholding certificate delivered to the land possessor or owner or kept legal cadastre for urban titles can appear as a primary evidence for proof of ownership or possession.<sup>214</sup>

### **3.3.Theories/Approaches**

#### **3.3.1. Formalization Theory**

Formalization theory proposes for the land rights, giving a written and legal form or bringing informal tenure to formal one.<sup>215</sup> This phenomenon traced back to the 1980s, individual private title deeds were promoted as the best way to more secure, protecting them from arbitrary state interventions and enabling them to invest in their landholdings.<sup>216</sup> Girardin, presents like policies to register and certify land rights can foster secure tenure, increase investment, encourage economic development and improve poor people's secure land rights

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<sup>207</sup>Registration Proclamation, Article 33 (2): See also, Lease proclamation Article 17 (1).

<sup>208</sup>Jaap (n 161); see also Tim (n 39).

<sup>209</sup>Simpson (n 16).

<sup>210</sup>Törhönen ( n 23).

<sup>211</sup>ibid 18.

<sup>212</sup>ibid.

<sup>213</sup>ibid.

<sup>214</sup>Registration Proclamation, Article 33(2) cum Article 6 (5).

<sup>215</sup>Girardin (n 201).

<sup>216</sup>ibid.

and social integration, and ensure social harmony.<sup>217</sup> It is also confirmed by Hernando De Soto's and ELRT, clearly defined property rights in land and land related real property the ability to draw on the state's enforcement capacity will reduce the risk of eviction or unwarranted loss, increase incentives for land-and landed real property investment.<sup>218</sup>

No doubt about the land registration and issuing of a title certificate has the positive role of ensuring tenure security. In contrast, some argue that registered and certified lands are not be regarded as a panacea, or as having any intrinsic virtue to tenure security.<sup>219</sup> According to UN Guidelines regarding registration of urban lands in developing countries in general and WB's assessment on registration of the urban lands suggests that; registration by itself may or may not be the solution. And there is no mechanical link between registration and certification of urban lands towards securing lease/ use rights. According to Hastand, if such rights in land are uncertain, non-existent, or poorly defined by law, registration and certification of those rights is likely to be an expensive and wasteful attempt.<sup>220</sup> Thus, urban land registration via certification or deed registration needs the unreserved political will of the governments in order to uphold secure lease/use rights.<sup>221</sup> Simpson, best quoted it as 'land registration and certification is only a means to an end, much time, money and effort can be wasted if that elementary truth be forgotten.'<sup>222</sup>

In a nutshell, urban land registration and certification, the political economy behind the land policy and land reform measures is a key to gauge abovementioned lines of arguments. For instance, the Ethiopia urban land tenure history shows us that either deed registration and/or issuing a duplicate of landholding certificate for urban land lease/use rights was and is inadequate towards ensuring tenure security.<sup>223</sup> Therefore, mere registration and certification of urban lands could not ensure secure land tenure. The good land governance approach and human rights norms should be adhered too. And if possible land reform should be non-political and should be concerned with putting in place an efficient land administration infrastructure to manage the landholders to land relationship.

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<sup>217</sup>ibid.

<sup>218</sup>De Soto (n 14).

<sup>219</sup>Leckie, 'Framing the Discussion about Housing Rights, COHRE, Geneva, *mimeo as cited by Alain Durand-Lasserve and others*', 'Evaluating Impacts of Urban Land Titling: Results and Implications: Preliminary Findings'(2006)13-14.

<sup>220</sup>Tim (n 39).

<sup>221</sup>Lasseve (n 219).

<sup>222</sup>Gershon (n 13); Lorenzo (n 20).

<sup>223</sup>Hussein (n 107).

### 3.3.2. Functional-Approach

The functional approach emphasizes on land tenure registration via deed registration or title registration system, have a positive impact on social and economic objectives of the nation. The urban land registration and certification can be gauged whether it has ensured secure lease/use rights of all segments of the society. According to Alain ‘functional-approach’ towards land registration focuses on proper urban land management and /or empowering vulnerable groups such as women, children, and elderly through land and landed real property ownership /possession.<sup>224</sup>

### 3.4. Principles of Land Registration

According to Merriam Webster dictionary, Oxford Dictionary and Black Law Dictionary defines, principles as ‘fundamental truths or doctrines of law; comprehensive rules or doctrines which furnish a basis or original or others; settled rules of action, procedure, or legal determination. This means principles helps to provide background information and a framework of an area of the law and practices towards establishing certain binding norms. Specifically, regarding urban land registration systems, according to Molen, Hastad and Jaap; and Torrens system (title registration systems) the following principles calls for ensuring good governance in urban land administration. And secure urban land rights can be realized via incorporating the following seven basic principles in registry and establishing legal cadastre:

**a) The Publicity Principle.** It connotes that relevant documents regarding the creation, transfer, and deletion of rights, restrictions and responsibilities to land are open for public inspection, giving third parties an opportunity to be informed about the legal status of land.

**b) The Specialty Principle.** This principle calls for all subjects, objects, and their mutual relationship is sufficiently specified, giving third parties an opportunity to know exactly which rightful claimants claim: which rights, restrictions and responsibilities and interest to which a plot.<sup>225</sup>

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<sup>224</sup>Lasserve (n 65).

<sup>225</sup> Paul Van der Molen, ‘Land Administration Theory: Thinking in Terms of Migration of Systems’, FIG XXII International Congress Washington, D.C. USA, April 19-26 2002, 9.

**c) Principle of the Booking.** This principle implies that a change in real rights on an immovable property especially by transfer is not legally effectuated until the change or the expected right, restrictions and responsibilities is registered in the land register. All existing real rights should be specified and open for inspection, land-related restrictive rights, and interest as per the urban land administration laws.<sup>226</sup> Furthermore, it is closely related to the protection of the real owners or possessors, including *bona fide* third parties and the interest of public.

**d) The Consent Principle.** The consent principle implies that the real (rightful) entitled or possessed person is registered, in the register must give his consent for a change of the writing in the land registry. Thus, all otherwise of change of title without the consent of rightful claimant is prohibited.

**e) The Mirror principle.** The principle as per the torrens (title registration system) 'the register is believed to reflect the correct legal situation. The register should reflect (mirrors) precisely and completely all current facts about landholder titles.

**f) The Curtain Principle .** It requires the register contains all the information about the land title (that means about rights creation, transfer, restrictions and responsibilities and interest on land). Therefore, according to this principle there is no need to check historical documents to verify the information about such landholdings.

**g) The Insurance or Guarantee Principle.** In good urban land administration the state guarantees that what is entered in the register is true for third parties in good faith. According to this principle, the landowners or landholders who are contracted by the register are reimbursed from an insurance fund of the state.<sup>227</sup> Compensation could be granted due to loss of rights when errors or mistakes made by the registrar of land titles.<sup>228</sup> The world experience shows that, here, the government is duty-bound to collect fees from the land transaction to refund the victims. In United States of America it is an essential component of the land title registration system is an assurance fund to compensate parties who suffer damages due to the registrar's mistakes.<sup>229</sup> In English and Welsh, land registration liability rests on registrar, where there is an 'error or omission' in the register and the registrar decides not to correct the

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<sup>226</sup> Van der Molen (n 225) 1-15.

<sup>227</sup> Tim (n 39).

<sup>228</sup> *ibid.*

<sup>229</sup> *ibid.*

error or omission any person affected by this will be indemnified.<sup>230</sup> Thus, the abovementioned principles are incorporated under the Ethiopian Registration Proclamation in one way another.<sup>231</sup> And urban landholdings Registration Proclamation of Ethiopia urges for the establishment of the security fund at urban centers.<sup>232</sup> Thus, registering institution shall be liable for damage caused to third parties who acted in good faith relying on the proof of registration of right restriction or responsibility on a registered landholding.<sup>233</sup> This cannot also bare the registration institution to claim against any person who benefited illegally or against his own officers and employees at fault.<sup>234</sup> After establishing the fund, the registering institution can levy a charge not more than one percent of the value of transaction involving landholdings.<sup>235</sup> In Ethiopian context, still lack of established registraterng institutions and security funds to rectify errors or mistakes by the registering institution.

### **3.5. Urban Land Registration Law of Ethiopia**

#### **3.5.1. Land Rights Registerable**

What are the continuum of land rights will be registered in urban Ethiopia? According to the UN-Habitat, a continuum of rights establishes a position on the role of the state and then defines the terms of land tenure as formal and informal.<sup>236</sup> Registration of rights in a private property regime considers a full ownership right over the land. During the imperial period, in Ethiopia, property rights (full ownership) in the urban land can be brought onto the register. While during the *Derg* regime urban lands were under the public ownership and the only limited use rights were eligible to be registered. And this policy shift had shackled the urban tenure security. Currently, EPRDF which took power in 1991 also inherited the same line of land policy of the derge reigme. Thus, either the lease/use rights are eligible to be brought onto the land register. The Registration Proclamation confirms it as; ‘all rights, restrictions, and responsibilities’ stipulated in contracts of lease holdings or old possession shall be registered.’<sup>237</sup> Therefore, land rights of an individual, or organizations or two or more persons

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<sup>230</sup> *ibid.*

<sup>231</sup> Preamble of the Registraton Proclmation.

<sup>232</sup> *ibid* Article, 41(1).

<sup>233</sup> *ibid* Article rticle 40 (1).

<sup>234</sup> *ibid* Article 40 (2).

<sup>235</sup> *ibid* Article 41 (2).

<sup>236</sup> UN Habitat, Theory of Property Rights (n 75).

<sup>237</sup> Registration Proclamation, Article 30 (1).

can be registered as co-holder of a right on in single landholding.<sup>238</sup> Here, as adopted by the UN-Habitat, 'in land tenure, a restriction may be a general restriction such as, a town planning regulation that prevents the holder of rights in land from exercising certain actions'.<sup>239</sup> Restrictions such as, expropriation for a public purpose, land use restriction, issues of both structural and local development plan are also registered. According to the same author responsibility connotes that it binds a person or the holder of a real right to perform a particular duty or refrain from performing a particular action.<sup>240</sup> For instance, in Ethiopia, concerning responsibility, payment for the lease period, duty to start and complete development as per the time frame set by the lease directive is a scenario of responsibilities.

More clearly, all rights, restrictions, and responsibilities created through total or partial sale, donation, inheritance, assignment of share, contribution in kind, or other act or event as permitted.<sup>241</sup> All decisions or orders rendered or contracts concluded by a legally authorized organ to extinguish, reduce, expand, modify or amend rights, restrictions or responsibilities can also be registered.<sup>242</sup> Furthermore, a contract of sub-leasing for transferring landholding rights and any mortgage contract or attachment restrictions and responsibilities can also be registered.<sup>243</sup> In a nutshell, the uses right both on old possession and leasehold and attached restrictions and responsibilities are eligible to be brought onto the register.

### 3.5.2. Objectives of the Registration

One of the grand objectives of urban land registration is ensuring secure urban land use/lease rights. Assuring good governance in urban land administration is also a key task. Thus, the Ethiopian land administration system under registration law aspires the following objectives;

**a) Secure rights for the landholders in immovable property.** In Ethiopia, immovable property means the lands and landed real properties such as, buildings and other perennial plants by the exclusion of grasses, crops and other non-perennial plants.<sup>244</sup> The law is desired to realize, the use rights of all Ethiopians to immovable property they build on the land and

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<sup>238</sup>ibid Article 14 (5).

<sup>239</sup>Micheal Barry and others, 'Land Registration Usage Theory: A Case Study in Ghana' UN-Habitat Annual World Bank Conference on Land and Poverty Washington 23 –26 April 2012, 1-15.

<sup>240</sup>United Nation Habitat Theory of Property Rights (n 65).

<sup>241</sup>Registration Proclamation, Article 30 (2).

<sup>242</sup> ibid Article 30 (1) and (2).

<sup>243</sup> ibid Article 30 (4).

<sup>244</sup>Ethiopian Civil Code, Article 1130; Urban Land Adjudication Regulation No.324/2014, Article 2 (9).

their right to use land in urban centers. The non-discriminatory protection of landholding rights of private, joint holders, associations, state lands and non-governmental institutions is one of the prime objective.<sup>245</sup>

**b) Building Institutional Competency and Information Reliability.** Strong institutional frameworks and competencies for secure urban land tenure is an overarching objective as per the Registration Proclamation. Its preamble reads as, ‘registration of urban lands is a fundamental institutional prerequisite to generate reliable information for the country's economy which will be utilized for the required service, especially, to give security for the possession right of citizens, and thereby accelerating socio-economic and environmental protection.

**c) Pro-Market Orientation.** One of the major element of a good land policy can be gauged whether it assured efficiency in the land market or not.<sup>246</sup> Here, the Registration Proclamation sets ‘up-to-date, efficient, and compatible with a market transaction that facilitates registration of rights, restrictions, and responsibilities, regarding land and landed real property interests’.<sup>247</sup> The aspired goal is ‘to enhance the contribution of land and landed real property to the development through ‘*free market*’ economic system by registering and certifying land possessor, who develops on the land and to ensure his/her possession remain secure.<sup>248</sup>

**d) Establishment of the Legal Cadastre.** One of the grand objectives of the urban landholdings registration proclamation is to establish a national database over urban lands.

Legal cadastre is defined as:

[A]n updated landholding information system containing a record of the rights, restrictions and responsibilities on a defined legal boundary for each landholding demarcated as parcel on map.<sup>249</sup>

From the quotation, one can wonder that the urban lands database enables to identify the size, direction, and use rights, restrictions, and responsibilities of all urban land holdings. The well established and managed legal cadastre for urban land titles improves urban land administration and empower landholders to remain secure in their ownership or possession.

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<sup>245</sup>Preamble of the Registration Proclamation; see also Article 4 (1) of the same Proclamation.

<sup>246</sup> UN LGAF (n 18).

<sup>247</sup> Preamble of the Registration Proclamation.

<sup>248</sup> *ibid.*

<sup>249</sup> *ibid* Article 2 (5).

**e) Collection of Revenue.** One of the crucial goals of this law is to raise the government revenue through efficient tax assessments to enhance a socio-economic and environmentally sound development.<sup>250</sup> Thus, secure urban tenure helps to enhance socio-economic and environmentally sound development of the country in general.

**f) Reducing urban land disputes.** This set of objectives aspire, minimizing urban land disputes, through ensuring good governance in urban land administration. It enables to reduce disputes or doubts arising from land and landed real property rights and establishing the transparent and working system. Furthermore, making governmental services, efficient and enabling the possessor to enjoy its property he/she develops in accordance with the law and development of cities is the target of the registration law.<sup>251</sup> Therefore, adjudication of land rights is a tough task in registration process towards achieving the above grand objectives.

### **3.6. Adjudication of Urban Land Rights: A Tough Task**

Adjudication is a process whereby existing rights, restrictions and responsibilities in urban lands are finally determined.<sup>252</sup> The process needs a greater attention when land rights are brought onto the register. In principle, this process ‘neither alters existing rights in land nor creates new ones; rather it establishes what rights exist, by whom they are exercised and to what limitations, if any, they are subject’.<sup>253</sup> It necessitates determining ‘who’ owns ‘what land’, that is the rights, restrictions responsibilities regarding landholdings can be ascertained as well as the extent of the land affected. Hence, the land adjudication systems can be either sporadic or systematic. According to UN guidelines on land registration to the word ‘sporadic’ in this context means ‘here and there’ or ‘now and then’.<sup>254</sup> Sporadic adjudication can be applied voluntarily unless compulsory sporadic registration of urban lands upon transfer effected. While systematic adjudication is a process of defining and ascertaining rights in land in a parcel by parcel or area by area basis.<sup>255</sup> All parcels are brought onto the register. Unlike, sporadic type of adjudication, systematic approach must be compulsory

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<sup>250</sup>ibid Preamble cum Article 4 (2).

<sup>251</sup>ibid.

<sup>252</sup>United Nation, Land Administration Guidelines (n 68) 18-19.

<sup>253</sup>ibid.

<sup>254</sup>ibid.

<sup>255</sup>UN Registration Guideline (n 68).

since it is necessary to summon everyone who claims to own or possess urban land within a designated neighborhood to give evidence.

In Ethiopia, either the leasehold/ use rights are eligible to be systematically or sporadically adjudicated, registered and certified.<sup>256</sup> ‘Systematic adjudication helps to ascertain existing rights in landholdings within a defined landholding adjudication neighborhood’.<sup>257</sup> This system helps to register all lands that mean no parcel shall be without an identified owner in a given adjudication neighborhood.<sup>258</sup> According to the Registration Proclamation of Ethiopia, it is done through systematic adjudication for the first time only.<sup>259</sup> One can wonder that the sporadic adjudication system<sup>260</sup> and the majority of informal nature of urban tenure may also slow the pace of adjudication and complete registration of urban lands in Ethiopia.

Finally, in adjudication process the dispute settlements or reduction of the doubts, this law stipulates for the establishment of the dispute resolution tribunals in the adjudication neighborhood.<sup>261</sup> These tribunals are called adjudication grievance handling tribunal (AGHT, hereinafter) and that community observer teams. Any person aggrieved by decisions made in adjudication has 15 days to make an appeal, with these appeals to be resolved by AGHT.<sup>262</sup> Some also argue that the process could be enhanced by a policy to provide a range of dispute resolution services, including alternative dispute resolution.<sup>263</sup> Then after the adjudication of land rights once finalized the registration and certification process will continue and helps to link landholders with their respective rights.

### **3.7. Effect of Registration and Non-Registration**

In other countries, experiences show that once the land is adjudicated and its overall feature identified it enters into a land registry. The registering government institution will survey the land, match the titles (rights) with each respective land information system, and finally, the issuance of a title certificate took place. Furthermore, all registered parcels will be given a unique identification number, which will be used as a passkey to access information about

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<sup>256</sup>Registration Proclamation, Article 10 (2).

<sup>257</sup>ibid Article 2 (6).

<sup>258</sup>N. Ukaejiofo (n 25).

<sup>259</sup> Registration Proclamation, Article 10 (1).

<sup>260</sup> ibid Article 11 (3).

<sup>261</sup>Lease Proclamation, Article, 17: Federal Urban Land Adjudication and Registration Regulation No.324/2014 Article 67.

<sup>262</sup> ibid.

<sup>263</sup>Burns (n 27).

their landholdings. The identification number will also be written on the land title certificate issued to landholders. These will serve as primary evidence for proof of land and landed real property ownership.<sup>264</sup> Any dispute or claim to urban land use rights will be based on possession of these land title certificates. The same experience is endorsed under Ethiopian Registration Proclamation, as per article 8 (1) and (2).

After the registration is over ‘a certificate of landholding right indicating the date and year of its registration signed by the registering officer with the seal of the registering institution affixed thereon shall be given to the person whose landholding is.’<sup>265</sup> Thus, upon holding of land title certificates, ‘unless proved to the contrary, any person to whom a holding right certificate is issued’.<sup>266</sup> The certificate holders shall be deemed to be the possessor of the land indicated in the certificate and owner of the immovable property situated on the land’.<sup>267</sup> In addition to this, the legal cadastre, which shall be organized and kept in the registering institution, constitutes the primary evidence for landholding certification purpose.<sup>268</sup> And it also gives priority rights for the first registered rights in urban land in case claims/disputes arises who is the first owned/possessed.<sup>269</sup>

Whereas, the effect of non-registration as stipulated in the Registration Proclamation, ‘a landholding use right or immovable property ownership right on landholding, unless register of landholding, may not be set up against any person.’<sup>270</sup> Another important issue is ‘where two or more persons have acquired from the same person a right subject to registration the one whose right is first registered in the register of landholding shall have priority’.<sup>271</sup> However, the right of the second person may not be registered in so far as it is in conflict to the right which has been first registered.<sup>272</sup> And ‘nothing shall affect the rights of such second person against the person from whom he/she has acquired the landholding right’.<sup>273</sup> The facts can be taken to determine who is the real possessor/owner are; ‘where the rights, restrictions, and responsibilities registered are equally old or the priority of one in relation to the other cannot be established, preference shall be given to that number of the

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<sup>264</sup>Tim (n 39).

<sup>265</sup>ibid Article 33 (1).

<sup>266</sup> ibid.

<sup>267</sup> ibid Article 33 (2).

<sup>268</sup> ibid Article 6 (5).

<sup>269</sup> ibid Article 43 (1).

<sup>270</sup> ibid Article 47.

<sup>271</sup> ibid Article 43 (1).

<sup>272</sup> ibid Article 43 (2).

<sup>273</sup> ibid Article 43 (3).

registration which is the register comes before.<sup>274</sup> What would be if there is misregistration and the rightful claimants cannot be ascertained by this criterion? And in practice, there are scenarios of forged titles issued which are older than the legally acquired titles.

### **3.8. Correction and Cancellation of the Registration**

‘Any entry in a register may be corrected based on the request of the person who caused its registration, by the judgment of a court or an appropriate organ or by the agreement of persons interested in the matter subject to correction’.<sup>275</sup> The registration institution by its own motion *ex officio* has the power to cancel urban land titles following the set legal procedures. Cancellation via *ex officio* of the registry institution can be made only where the said right, restriction, and responsibility created definite period and such period has lapsed.<sup>276</sup> The enabling facts are omission or mistakes made by the land officers. Finally, the effect of cancellation of registration is ordered by the court or appropriate organ, the rights, restrictions, and responsibilities entered in the register shall be canceled there from.<sup>277</sup> It is also effective as of the date of the cancellation.<sup>278</sup>

### **3.9. Registry Institutions: Achievements & Challenges**

#### **3.9.1. National Scenario: Achievement**

MUDH at the federal level is empowered for follow-up and for ensuring the proper implementation of the urban registration laws, and standards all over the regions and cause corrective measures to be taken where the problem exists.<sup>279</sup> It has also the responsibility of providing technical support and training assistance to regions on the legal framework and to serve as a national database on urban land registration and land-related property information systems.<sup>280</sup> The re-registration projects aimed to identify urban lands and related resources which help to ensure secure landholding of the citizens’ rights to land use and develop a complete cadastral map. The information gathered from the adjudication and registration will also be used as input in establishing legal cadaster.

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<sup>274</sup> *ibid* Article 43 (4).

<sup>275</sup> *ibid* Article 45 (1).

<sup>276</sup> *ibid* Article 45 (3).

<sup>277</sup> *ibid* Article 45 (5) cum Land Adjudication Regulation Article 65 (1).

<sup>278</sup> *ibid* Article 45 (2).

<sup>279</sup> Proclamation no. 916/2016, Article 5; Registration Proclamation, Article 49.

<sup>280</sup> *ibid*.

A Federal Land & Real Property Registration Agency has already been set up to oversee the urban land re-registration process. Establishing a 'legal cadaster information production and urban land tenure security being standardized and trustworthy in urban centers by since, 2025 is aspired goal.'<sup>281</sup> Another institution which is designated as the Former Land Registry (rights-creation institution) under the Registration Proclamation; that is having a duty to submit all documents evidencing the right it has already created and the restriction and responsibilities it has previously registered regarding each landholding to the newly established urban landholding registry institution while land adjudication is conducted.<sup>282</sup> Inconnection, 'documents regarding rural landholdings which may be incorporated within the administrative boundary or an urban center shall be submitted to the concerned urban administration by the rural land administration organ formerly administering the land'.<sup>283</sup> Over all rgestration and improved land information system in urban land administration will serve as;

Urban land property rights registration, authentication, owner land tenure security and the benefits of real estate ownership rights recognized by urban economic, social and environmental development to accelerate in cadaster in urban land information exchange system to serve as a home for all documents.<sup>284</sup>

Moreover, MUDH has developed a nice agenda of activities to support GTP II including the adjudication and registration of urban lands and development of urban cadastre system development, follow-up and quality control.<sup>285</sup> By this plan the aspired goal is at least over 1.6 million urban plots will be adjudicated and around 1.2 landholdings will be registered across 91 Cities in five years.<sup>286</sup> In the current progress about 200,000 adjudicated and 150,000 registered in just the first year across Addis Ababa and in the identified 23 cities.<sup>287</sup> Also, regional counterparts will be set up to administer the urban land and property registration system.<sup>288</sup> The regional states land registry institutions are expected to implement the nationwide implementation of tasks given for them under the Registration Proclamation in relation to the purpose, the principles and most essential conditions for the successful

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<sup>281</sup>Federal Urban Land & Land Related Property Registry & Information Agency, <<https://www.africaphonebooks.com/ethiopia/en-US/Federal-urban-land--land-related-property-Reg>> accessed on 3 March 2018.

<sup>282</sup>Registration Proclamation, Article 10 (5) and (6).

<sup>283</sup> ibid Article, 10 (6).

<sup>284</sup> ibid.

<sup>285</sup> Burns (27) 4.

<sup>286</sup> ibid.

<sup>287</sup> ibid.

<sup>288</sup> Registration Proclamation, Article 50.

registration of urban lands.<sup>289</sup> Thus, a number of pilot projects have been commenced at urban centers to develop urban legal cadastre (in Addis Ababa and in the 23 Cities at the regional levels).<sup>290</sup>

### **3.9.2. Challenges to Complete Registration**

The successful implementation of urban lands and landed real property registration system depends on legal, institutional, technical and effective land information systems.<sup>291</sup> According to Tim and Jaap essential conditions for effective land registration are: landowners and public and stakeholders must generally understand and support the system's introduction: government must bear the expense and duration of the operation: property rights and property boundaries must be clearly recognizable and definable: qualified survey registry staff must be available and a developed system of property rights must exist.<sup>292</sup>

Hence, according to them 'a well-designed and efficiently operated land registration system can greatly reduce disputes and litigation over land, resulting in better social relationships, less work for overworked courts, and low expenses for the individual'.<sup>293</sup> Furthermore, an experience from some sub-Saharan-African countries such as Botswana and Asian tigers such as, South Korea, Japan, and Hong Kong show that; registration and modernizing urban land information systems helps to ensure good urban land governance. For instance, in Botswana, nearly all urban lands are registered, mapped and they established strong land information (legal cadastre) systems towards ensuring land tenure security. When we come to the Ethiopian context, the following factors are real challenges to achieve effective and efficient urban land registration and improvement on urban land administration .

#### **i. Urban Land Tenure & Legal *Lacuna***

Simpson provides; tenure types may not automatically confirm tenure security yet it needs quality land administration.<sup>294</sup> According to the Mikia tenure types may be a challenge for efficient urban land registration and urban land administration.<sup>295</sup> In urban Ethiopia, the lease

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<sup>289</sup>ibid.

<sup>290</sup>Burns (n 27) 3.

<sup>291</sup>2016 WBLGAF (n 18)

<sup>292</sup>Tim (n 39); Jaap (n 190).

<sup>293</sup>Ibid.

<sup>294</sup>Simpson (n 16).

<sup>295</sup>Torhanon (n 23) 8-25.

and permit tenure systems, however, are not only real tenure features. The rampancy of the unregistered legal and illegal informal settlements (squattings) are challenges to easily to identify who is the real possessor/owner. According to the Daniel and Adisu, given the lack of a formal urban registration system, registration in urban centers is usually linked to the provision of land for new holdings or transfer of ownership/possession for existing holdings.<sup>296</sup> Only about 25% of individually held urban properties have been recorded and the records are not reliable or conclusive.<sup>297</sup> It needs due attention as well as much effort to bring urban lands onto the register and improve land information systems.

Another eye-catching issue under the Registration Proclamation is; documentary evidences are crucial to ascertain the existing rights to land.

[T]he urban land administration organ shall organize and submit to the registering institution, documents evidencing the right it has already granted and the restrictions and responsibilities it has already registered regarding each landholding.<sup>298</sup>

This can be done by presenting land deeds, or equivalent proof, to an assigned government body/institution. This law also does not create new land rights but only to reaffirm the established rights.<sup>299</sup> Thus, the issues of unregistered government lands, religious lands, and urban agricultural landholdings at urban centers are real challenges for the adjudication and re-registration. Open lands under condominium holdings also need legal backings to bring on to the register.<sup>300</sup> Besides, in practice, not all parcels are going to be registered in a short period of time because sporadic registration is voluntary. It may be a challenge to ensure secure tenure for the landholders. Hanstad confirms that; before land registration can be successful; there must be a developed system of property rights and such rights should be certain, unless registration of uncertain rights is likely to be an expensive and wasteful attempt.<sup>301</sup>

Moreover, according to the Registration Proclamation 'Unless proved to the contrary, any parcel of land which lease/use right is not created shall be presumed to belong to the government and upon application, be registered in the name of the organ entrusted to

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<sup>296</sup>Daniel (n 160).

<sup>297</sup> *ibid.*

<sup>298</sup> Registration Proclamation, Article 14 (1).

<sup>299</sup> *ibid.*, Article 2 (6).

<sup>300</sup> Burns (n 27).

<sup>301</sup> Tim (n 39).

administer or develop the land',<sup>302</sup>The difficulty here is, how article 10 sub-article 7 and sub article 8 of the Registration Proclamation cum with article 14 (1) of the urban land adjudication regulation which puts documentary evidence as a condition precedent to adjudication be interpreted and implemented in consistent with article 14 (4) of the regulation, which deals with rights not created lands. The problem is rights are not created do not have title deeds or documents, or a defined right. Some consider it an exception to the documentary evidence and the government so long as to prepare inventory. Furthermore, nations from around the world determine priority areas to adjudicate consider issues like a high degree of dealing in land, a desire to use land as a credit base, a high degree of litigation concerning land and so on.<sup>303</sup> In Ethiopia, it can be carried in areas that having LDP and regularization of illegal settlements are completed.<sup>304</sup> This may not be all-cure to rectify urban land problems and laws should be amended to coup up with the world experiances.

## **ii. Registry Institutions and Information Systems.**

The Registration Proclamation obliges that all regional states and city governments to establish the registry and land information institutions.<sup>305</sup> Yet, no all regional states and urban centers have established this urban land registry institutions. Only attempts have been made to establish except at the federal level, some regional states and Addis Ababa City administration.<sup>306</sup> As a result, the Registration Proclamation which adopts both sporadic and systematic urban land adjudication and registration systems, is not yet in full function throughout the country.<sup>307</sup> Both records of public and private holdings are far from completeness. It needs establishing and institutional capacity towards bringing urban lands onto the register. Burns, identified problems in current pilot works on urban land adjudication and re-registration process that it lacks cooperation among rights-creation institutions and new registration institutions.<sup>308</sup> However, this law is silent in the event that former land registry (both the former urban or rural right-creation institution) fail to respond within the prescribed time limit or fails to respond at all while land adjudication is conducted.

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<sup>302</sup> Registration Proclamation, Article 14 (4).

<sup>303</sup> Tim (n 39).

<sup>304</sup> Registration Proclamation, Article 10 (10).

<sup>305</sup> *ibid*, Article 50 (1).

<sup>306</sup> 2016 UN LGAF (n 18).

<sup>307</sup> *ibid*.

<sup>308</sup> Burns (n 27).

### **iii. Corruption**

According to the WB, if there is high informality in urban land and it will serve as a shield for the rampancy of corruption.<sup>309</sup> IFST also identified corruption in urban land administration for instance, 'Parallel titles issued for registered and unregistered parcels: approval letters were designed, survey records simulated, deed plan prepared and title issued outside the government system'.<sup>310</sup> If the current status of the corruption coverage in Ethiopian urban land sector did not curved; it may affect an ongoing adjudication and registration of urban land rights.

### **iv. Lack of Public Awareness and Participation**

Public awareness is a precondition in adjudication and registration process. In practice, it lacks continuity and efficiency as tested in pilot projects and lacks meaningful participation of the public.

### **v. Lack of Resource**

Capacity is to mean both human (educated and skilled human power) as well as a technical and financial resources. Resource limitations are also one of the challenges of urban land urban land administration in general. And the land registration process needs huge resource. Lack of resource and poor land information systems such as, loss of files for existing urban land rights and misplacements are challenges to finalize urban land registration.<sup>311</sup>

## **3.10. SNNPRS Context**

Southern nations, nationalities and peoples regional state is one of the nine ethnically based regional states of Ethiopia (SNNPRS or region, hereinafter), which is structured into 14 zones and four special *Woredas*. Urban Centers in the region under the oversight and guidance of Regional Urban Development and Housing Bureau have empowered to administer urban lands.<sup>312</sup> Among other responsibilities making the region's urban centers to be guided by plans, making land provision efficient and fair, improving land and land-related information systems and ensuring public and stakeholders participation in the urban land

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<sup>309</sup>WB LGAF report from Ethiopia (n 18).

<sup>310</sup> Van der Molen (n 225).

<sup>311</sup> Burns (n 27).

<sup>312</sup>SNNPRS Executive Bodies Proclamation: SNNPRS Leaseholding Regulation.

administration is key. To improve urban land information, Urban Land and Land Related Property Registration and Information Agency was established as per the regulation no. 99/2004. Furthermore, Urban Land Development and Management office and respective business process are established at the urban and local administrations with the aim of assuring the improved and efficient urban land administration in 2013/2020. According to the 2017/18 report of the regional BUDH all majority urban centers have got their plans and yet, the overwhelming majority of the urban centers remain informal. In fact, municipalities mainly keep ledger books (registers) for transfers, mortgages, and title deeds. Still, in most urban centers within a region urban land information systems are handled manually on the paper by opening files in the name of landholders and vulnerable to the ruin and loss.

Moreover, towards improving urban land information systems (establishing legal cadastre), some pilot works have been commenced in some second-graded (reform) urban centers, such as, at *Hawassa, Hossaina, Dila, Wolayyita Sodo and Arbaminch*. An adjudication and registration process will also continue into 10 selected urban centers.<sup>313</sup> However, this vision still hanged out by the high level of unauthorized and unregistered informal settlements, poor filing management systems for existing landholdings, lack of resource.<sup>314</sup> besides, the land registration and information institutions are established in all urban centers. Therefore, this compounding factors in urban land administration challenges like in a nation, in the regions could limit urban centers and local administration's capacity to implement urban land laws and enforce regulations. Thus, weak institutional capacity towards urban land administration encourages encroachment rather than ensuring secure urban land rights.

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<sup>313</sup>SNNPRS, BUDH, Government Affairs Communication Affairs Directorate; official Statement by Mrs Tadelle W/Michael and, Wolayyita Sodo, May 19-11, 2018 9<sup>th</sup> Month Report.

<sup>314</sup> *ibid.*

## CHAPTER FOUR

### COC as Urban Land Tenure Challenge; Experience from Urban Hadiyya Zone

#### 4.1 Brief Overview of the Study

*Hadiyya* zone is one of the zonal administration structures in the SNNPRS. It shares boarder, in the North, with *Siltie and Gurage*, in the south, with *Wolayitta*, in the south-east with *Kambaata* and *Tambaaro*, in the South-west and in the West, with *Omo* River which separates it from *Oromia* region and the *Yem* special *Woreda*. Urban centers trend and urban population in the last few decades has been increasing in high speed.<sup>315</sup> The current estimation of the population size of the zone is over 1.75 Million.<sup>316</sup> Urban population constitutes around 20% of the total population.<sup>317</sup> For administrative feasibility, this zone is structured into 10 *Woredas* and two-City administrations. There are also more than ten *Woreda* level and about 21 *Kebelle* level emerging-municipalities.

The study locations are, HCA and ShCA which are the two big urban centers in the zone. *Hossaina* (earliest name *Wachamo*) is capital of the *Hadiyya* zone. It is located at a distance of 231 Kilo Meter from Addis Ababa, Capital of Ethiopia and far from 168 Kilo Meter from *Hawassa* City, the region's Capital. It is also one of the five big Cities of the region (second-graded status such as, *Dilla*, *Woliyytta Sodo* and *Arba Minch*). According to the Federal Central Stastics Agency 2013/14 documents, HCA's population increased over 100 thousand. It is structured into one main municipality, three sub-municipalities, Eight *Kebelles* and 165 localities. The second study location was *ShCA*. It was established since 2013/2014 and dwelled by more than 30 thousand population. It has one municipality, two sub-Cities and six *Kebelles*.

Urban centers in the study are called '*beero'wwa*' in the local language. Usually, a traditional belief in *Hadiyya* population, urban centers are considered as the place of '*blessings and civilization*'. And currently, rural to urban migration in study area is common. As a result, according to interviewees, it has created a massive demand to access urban lands for different

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<sup>315</sup>Agago Sadoro and others, 'Hadiyya Zone Socio-Economic and Geo-Spatial Data Analysis' (Hosaina, 2009/2017) 2-10.

<sup>316</sup>ibid.

<sup>317</sup>ibid.

uses such as residential, infrastructure, social services, and business activities. Urban administrations and municipalities obviously need to operate in a transparent and responsible manner towards securing urban tenure.

#### **4.2 Urban Land Tenure and Administration Problems: Situation Analysis**

In *Hadiyya Zone*, earlier times, urban centers were few in number. Majority of the zone were rural districts. Currently, urban centers are increasing. To trace back about the urban land tenure issues, during the imperial regime, urban land can be privately owned. Furthermore, urban lands are both the source and wealth for the *balabats* (landlords). Further, other than ruling classes, other inhabitants cannot dwell on urban centers as their own whims unless in a restricted manner. As a result, urban land tenure is insecure and subject to arbitrary eviction.<sup>318</sup> Hence, both registered and unregistered urban land rights were subject to arbitrary encroachments.

During *Derg* regime, urban lands and extra-houses were under the state ownership. Urban land use rights are subject to arbitrary eviction and hence, it was insecure so much more. More often, according to the interviewees' destruction and burring of the former cadastre and ledger-books that have affected use right was another problem. Title deed registration systems took place and people were entitled to some restricted use rights. However, a deed registration system under the Civil Code was not effectively and efficiently implemented. As a result, the overwhelming majority of both state and private landholdings were left without inventoried, well-managed and unregistered.

Currently, EPRDF took power in 1991 and it has subsisted the policy line of the *Derg* regime. As per urban land policy, working tenure is leasing. The working urban land tenure systems are, however, the lease systems and old possessions (permit system) at urban *Hadiyya Zone*. Yet, both informal settlements (squating) and legal informal settlements (landholdings without documentation which can be proved by providing such as, electricity

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<sup>318</sup>Tilahun Mishago, *An Overview of Hadiyya History from 12th to 18th Centuries* ( May 2004) 14-15; Alebachew Kemiso and Samuel Handamo, *Hadiyya People; History and Culture* (Sefer Publishing 2002) (Amharic version) 68-69.

bills, water fee bills and telephone bills).<sup>319</sup> Yet, various urban tenures such as state-owned and private holdings are not fully inventoried, registered and managed as well.

### **4.3.Weak Institutions and Poor Land Information Systems**

Municipalities or emerging municipalities at urban centers of *Hadiyya* zone have the power to undertake functions of urban land administration under the guidance of the Zonal UDHD and the regional BUDH. However, the majority of the urban land rights remain without documentation and regularization. About 35% of private urban landholdings have been documented by usual registration systems (by keeping ledger-books(registers)). Majority of the urban residents occupy their land and dwellings without any formal security of land tenure. Further, it lacks legal backings to regularize the vast informal settlements (squatings) in the urban *Hadiyya*. Infact some measures have been taken to regularize some informal settlements from 2006-2008 E.C. However, the period to regularize such settlements has been lapsed before completing adjudication, registration, and certification process was done. Usually, municipalities mainly keep ledger books (registers) for transfers, mortgages, and title deeds. Still, urban land information systems are handled manually on the paper by opening files in the name of landholders and vulnerable to the destruction and loss.<sup>320</sup> Urban ledger books for title deeds are also stored as files for each land and land related real property identified by a physical address at the Land Development and Management Core Business Process (hereinafter, LD&M).

The commencement of current pilot work on re-registration is valuable. Here, the urban landholding registration and information unit (hereinafter, Unit) is duty-bound to undertake such purposes. It is a part of national policy to computerize and keep databases (legal cadastre) of land and land related real property rights. The systematic adjudication and re-registration process is commenced on a *parcel by parcel* bases at selected five adjudication neighborhoods at *HCA*. Yet, this Unit, is not well equipped, staffed and resourced. The process is also hanged out by, among other problems, such as, boarder disputes, lack of public awareness, multiple allocations and lack of cooperation from the rights-creation LD&M business process, which is mandated to transfer such documents evidencing the

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<sup>319</sup> SNNPRS Lease Directive 08/2015 Article 2(8).

<sup>320</sup> Personal observation by the researcher. During the field observation, the municipalities both at the *HCA* and *ShCA*, urban land information systems are handled manually on the paper by opening files in the name of landholders. It is also vulnerable for encroachments and misplacement, loss of file this means ledger books (registers) are subject to wear and tear.

landholdings. In fact, about 2940 plots were adjudicated, yet only 843 plots have full evidencing documents. About 1410 plots were occupied without legal means and proper documentation, and about 687 plots are registered in disputed registers.<sup>321</sup> And, until collection of this data, no single urban plot is re-registered and certified.<sup>322</sup> Therefore, according to the interviewees, urban land administration faces lack of transparency, lack of public participation, and lack of resources (both financial and human resources).<sup>323</sup> There was/is no efficient database for urban land title deeds.<sup>324</sup> Both the records of state and private landholdings are far from completeness. There are also issues of misplacement and loss of files. Registers are not easily accessible to the landholders or third parties.

According to the lease laws of the Ethiopia and SNNPRS, good governance is a fundamental prerequisite to avoid corruption, and discourage urban land speculators and illegal brokers. Furthermore, according to Muradu, due to lack of good governance in urban land administration, expropriation of the urban lands under the guise of '*public purpose*' is considered as both real and perceived challenge for secure urban land tenure.<sup>325</sup> Despite the above mentioned compounding factors that affect urban land rights, COC is one of the major challenges for securing urban land rights for the landholders. In the study locations scenario, COC is not limited to allocation of the new holdings or transfer of use rights for existing holdings or via regularization process rather, it is a result of weak urban land administration. There is no scheduled time or formal procedure to register and certify unlike rural land registration or current pilot works on urban land registration. But, it is the way of encroachment of the urban landholders' lease/use right. The registration and issuance of the '*urban landholding certificates*' such as; in the name of deceased person and somebody lives somewhere abroad, in the name of two different family members, in the name of two different persons by setting time differences on acquisition and transfer are the instances of COC. Thus, the hosts or good opportunities to the rampancy of COC is a lack of good governance in urban land administration.

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<sup>321</sup> Hadiya Zone, UZDHD, 2010/2018, 9<sup>th</sup> Month Report.

<sup>322</sup> Interviewee held with Musadiff Amdala, the officer at the Urban land registration and information Unit, on 18 March 2018.

<sup>323</sup> Interview with Municipality Land officers.

<sup>324</sup> Personal observation by the Researcher (March 19 to 21).

<sup>325</sup> Muradu Abdo, 'Reforming Ethiopia's Expropriation Law' (2015) Vol.9 No.2, 302 Mizan Law Review

#### 4.4. Hosts of COC

##### a. Legal Double or Multiple Allocations vs Permit Systems

Strengthening land and land related real property is a tool to ensure secured tenure for landholders.<sup>326</sup> And to realize such objectives, nations from around the world do have their own policies and land administration systems. In urban Ethiopia, before 1993 E.C and until urban administrations introduce lease systems, access to urban lands through permit systems was common. The same is true for *HCA* in 1997, 1998 and 2004 E.C. There were around 9000 urban land lots prepared for different uses which include residential, commercial and other development activities. According to the respondents and the 2004 SNNPRS EACC report on land administration abuse at *HCA*, at Addis sub-City, *lich amba Kebelle*; at *Goffereda* sub-City at *heto Kebelle*; and at *Sech Duna* sub-City, *gurguade* and *lebashay and tembaroo sefer*, more than 152 lots were double and/or multiple allocated and registered.<sup>327</sup> Furthermore, more than 2400 lots were left open (not allocated duly for the users). An interview held with the officials and experts from the ELU and GGLA confirms:

Land administration at urban *Hadiyya* zone is an uncured disease. Factors, such as, corruption, missing of files, and double or multiple allocations are rampant. Moreover, jumping plots on LDP and complexity in-situ (on site) was another problem. Usually, more than 80% of the claims which are brought before these offices are overwhelmingly land and landed real property issues.<sup>328</sup>

Thus, lack of transparency in permit allocation procedure is a major problem towards ensuring good urban land governance.<sup>329</sup> The site plans were designed to cover all mischief of the land officers and officials. Some lots were difficult to find both in the site plans and on the ground.<sup>330</sup> During the permit systems, lands, which are allocated legally, are either left without due registration and certifying or left open without due allocation. According to the interviewees, municipality top officials and about 36 officers were removed from their offices for the abuse of lands. This in turn has contributed for hiding and deletion of data which would indicate the list of the permit beneficiaries. This fact confirms that the IFST and Mikia's findings in land administration problems in developing countries. That is to say, lack of recorded data on allocated lands is a cause for double or multiple allocations of the same

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<sup>326</sup>Deninger, (n 66) 17-18.

<sup>327</sup>Interview with the Committee Members for the investigation of Urban Land problems in *Hadiyya* Zone especially at *HCA* on 18, March 2018.

<sup>328</sup>Interview with Officials and Officers from ELU and GGLA.

<sup>329</sup>*ibid.*

<sup>330</sup>*ibid.*

lands for more than one person. This factual situation on ground facilitates the multiple certifications of the same lands for more than one person. Thus, it clearly contravenes the grand objective of both Urban Land Lease and Registration laws which warn that good urban land governance is prerequisite to uphold secured lease/use rights. Such factual scenarios on ground calls for the implementation of the Registration Proclamation, which aspires, 'each parcel shall have a unique parcel identification code prepared in accordance with the national standard which may not be duplicated on another parcel in any urban center'.<sup>331</sup> Thus, all urban lands must be inventoried and linked with the legitimate landholders to overcome such problems.

#### **b. Forged Receipts or Titles Vis-a-Vis Permit Systems**

According to the interview held with the land officers in the study locations, more than 1404 forged receipts were issued to access urban lands along the legal permit systems before the introduction of the current lease system.<sup>332</sup> Furthermore, HCA has got second-graded (reform) City administration status since 2013. Following this good opportunity, the main municipality was, sub-structured into three self-administrative sub-Cities and their own respective municipalities. Accordingly, the transfer of landholding files or registers lacks transparency and accountability. The lack of an inventory of both private and public landholdings is a real phenomenon. Therefore, identifying who holds what land, is not a simple task. And it paved a room to access urban lands through the forged receipts or issuance of the overlapping forged titles easier on prior existing legal titles.<sup>333</sup> More often, free or green public areas and state holdings are vulnerable to this kind of encroachments. To this evidence, a criminal case<sup>334</sup> initiated against 91 wrong receipt holders or title holders.<sup>334</sup> Therefore, forged (wrong) receipts or issuance of the forged titles, due to poor file keeping systems along the legal titles have served as a good cause to allocate the same lands to different persons. This confirms the sub-saharan experience; parallel titles issued for registered and unregistered parcels: approval letters are designed, survey records simulated, LDPs prepared and title issued outside the government system.

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<sup>331</sup> Registration Proclamation, Article 4.

<sup>332</sup> Interview with Mr. Temesgen Alero, *Hadiyya* Zone administration office ELU, Officer, on 3 March 2018.

<sup>333</sup> Interview with Land Officers and Municipality officials, on 7 March 2018.

<sup>334</sup> Interview held with the *Hadiyya* Zone Prosecution Core Business Process Public Prosecutors, on 6 March 2018.

Facts on ground show that there are tripled registration and certification in the same plot at *betel Kebelle* in *HCA*.<sup>335</sup> For instance, the lot numbers 361, 362, and 363 were certified in the name of *Bekelech Wolde* by certificate number, *hcam/ 2044/06*, date of issuance is 16/07/06 E.C and Certificate number, *hcam/ 1429/05*, date of issuance is 23/11/06 E.C. Again, contrasting this entitlement, the same Municipality issued, the second wrong Certificate, for *Tedesse Lengano and Temesgen Shamebo* on 23/11/2006 conferring the same leasehold right.<sup>336</sup> It has also affected *bonafide* buyers and they lost their monies, developments on the land and have faced social conflicts. Here, the ill is that there is no established security fund for the protection of rightful landowners or possessors. Although government institutions are responsible for transparent and accountable urban land governance both on state possessed/owned and private holdings, the practice odds and paves a room for urban land rights to be encroached via issuing overlapping forged permit receipts or titles along-with legal titles.

### **c. Informal Settlements and Regularization Process**

Illegal occupations (squatings) are defined as lands or houses which are illegally occupied or settled by individuals or groups out of the government rules.<sup>337</sup> Informal tenure often involves squatting, where households occupy a parcel of land that belongs to someone else that may be on state holdings or private holdings. In connection to this, an experience from other countries; like, Botswana and Namibia have achieved registration and well established legal cadastre for all urban land titles including urban agricultural landholdings. However, in Ethiopia, the *status quo* of the informal urban tenure is insecure so much more. Rapid urbanization collaborated with population increase has also created high demand to access this scarce resource. In fact, real situations on ground oblige City (urban) governments to introduce effective urban land policies, laws and seek to implement properly.<sup>338</sup> Legesse also confirms that in the face of rapid urbanization secure urban land tenure should be core agenda.<sup>339</sup>

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<sup>335</sup> Interview with Mr. Henok Eshetu, Justice Department expert, 3 March 2018. (He was a member of urban land administration problems investigation team at *HCA* in 2015).

<sup>336</sup> *ibid.*

<sup>337</sup> Jan K. Brueckner and Harris Selod, 'A Theory of Urban Squatting and Land-Tenure Formalization in Developing Countries' (2009) *American Economic Journal: Economic Policy*, 1:1, 28–51

<sup>338</sup> WB LGAF report from Ethiopia (n 18).

<sup>339</sup> Legesse (n 8) 2-10.

In study locations, empirical evidence shows that lease policy escalated demand to access urban lands. Urban lands are unaffordable to the larger part of the society through legal means or lease procedure. Thus, they pay bribes that would enable easy access to urban lands. According to the Daniel W/Geberiel, these urban lands were serving as a pouch for the malpractices and corruption.<sup>340</sup> More often, these settlements are not well adjudicated and brought onto the register. Public officials and public servants usually ask and take bribes regarding these urban land tenures either to regularize or not to demolish.

In the study locations context, the illegal settlements (squatings) are rife. Interviewees point out it as about the 30% of the settlements are illegal settlements. However, these settlements are not duly adjudicated, registered and certified. In the last two years, some measures have been taken to regularize these informal settlements. During the regularization process, in principle, unauthorized occupants receive 200 square meters.<sup>341</sup> However, an exception is they can be entitled upto 500 sq.m plot if they fully developed such lands. All landholdings exceeding this legal limits will be deposited to the Land Banks under the state holdings. However, on the regularization process, both the formal (legal) and/ or forged receipts were issued to allocate lands that would be under the state holdings or private holdings and COC.

The second issue is; COC is serving as, *a way to bring the illegal settlements into the legal one*. In fact, the urban lease laws prohibit any unauthorized developments and settlements that take place on private urban agricultural landholdings or state-owned lands in urban centers. If thereby, unauthorized developments thereof, and either local or city administration decided to demolish and make free, later on, without considering who owns such lands it belongs to the state as per the lease implementation directive of the region. According to the interviewee, to give legality of rights in such lands, the land officers and illegal brokers, speculators and other third parties-those who have money and resource- enter into illegal oral contracts. Automatically, more than one certificates are to be issued on the same lands. Later on, they appear before the courts in order to get a decision which obliges the City's municipality either cancellation or revocation of one of the overlapping title certificates.

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<sup>340</sup>Daniel Woldmichael 'Informal Settlement in Ethiopia, the Case of two Kebeles in Bahir Dar City'2011 Fig Working Paper Marrakech, Morocco, 18 -22 May 2011, 23.

<sup>341</sup>SNNPRS Lease Directive no 8/2015 Article, (15).

#### **d. Legal Informal Settlements; Source for Overlapping Titles**

The legal informal settlements, unlike the illegal informal settlements, acquire land through legal means. But, they have no documentation and certification. Landholders can typically demonstrate evidence of tax receipts or payment of telephone or electricity connection fee bills, water fee payment bills as per the lease directive of the region. In the study locations, the legal informal settlements have created fertile ground for COC in the same urban lands for multiple landholders. Overlapping Certificates are issued due to lack of formal documentation. The facts gathered from vulnerable group's interview and some experts from the public sector and FGD; successive urban landholding certificates are issued in the name of different persons to claim long root (chain of) rights both on state-owned and private holdings. Therefore, urban land governance lacks rule of law and transparency, once it has got cover of the legal informal land tenure.

#### **e. Breach of Illegal Oral Contracts**

According to the Ethiopian contract law, contracts cannot be entered to perform unlawful or immoral obligations.<sup>342</sup> It usually takes place when agricultural lands at urban centers is taken for development purposes. Illegal oral agreements are made among urban agricultural landholders and municipality officials or officers via agency of colluding illegal brokers and speculators to allocate more plots to the urban agricultural landholders under the guise of *land to land compensation*.<sup>343</sup> Here, the cause of COC has the following scenario. First, the urban agricultural landholders, who is entitled and certified, arrange transfer contracts to third parties.<sup>344</sup> However, if the urban agricultural landholders oppose allocation of the promised lands to the third parties, the second certificate would be issued to the third parties. Then; a *breach of the illegal oral contracts* comes into the picture and serious court litigation continues.<sup>345</sup> Therefore, this factual situation on the ground contravenes the command of the lease law which stipulates that access to urban lands is through the transparent tender procedure and source for COC.

#### **f. Biased Rulings of the Courts; an Older Title Certificate Suffices Right**

A strong judiciary is very crucial in urban land governance to ensure the protection of the urban land rights when such rights are unduly encroached. IFST and the WB, suggested

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<sup>342</sup> Ethiopian Civil Code, Article 1678 cum 1716.

<sup>343</sup> FGD held in persons of of 11 persons at 01 *Kebele*, *SHCA*, 13 March 2018

<sup>344</sup> Interviewee held with Victims and Agricultural Landholders.

<sup>345</sup> Ashenaf Abreham Interview held with Judges and Prosecutors at *ShCA*, on 11 March 2018.

that: empowering strong judiciary or courts with special benches or alternative tribunals to entertain cases arising from the lands would help to ensure secure lease/use rights in land. More often, corruption by land officers, the bias of the courts and adhering to discriminating norms affect land rights of the vulnerable groups. Empirical evidence in the study shows that the role of judiciary is very weak. For instance, the case between *Mrs. Adench Dejene* against *Hossaina Municipality vs Mulneh Erso*, file no. 20789 and over many cases as cited in this thesis, when the Court decisions as examined thoroughly, ‘***an old land certificates are valid***’. Therefore, the law enforcement and the judicial role with respect to the protection of urban land rights is encouraging encroachment rather than securing.

**g. Corruption: Accountability is ‘an Exception’**

Corruption in public sector is a serious problem in Ethiopia. According to the Dessalegn, TI and WB, unsurprisingly, corruption is rampant in the land sector. Interview held with the victims and public officials show that corruption facilitates access to urban lands rather than waiting government bureaucracy. They call it ‘*maaxxaare’oomma and musisimma*’ by local language which loosely refers to ‘*rent-seeking*’ and *corruption*, respectively. This done mostly through receiving bribes (cash amounts ranging from 200 ETB to 100,000 ETB), nepotism (friendship or close family) or agreement to share market value after the transfer of wrongly acquired urban lands.<sup>346</sup>

For instance, in the case between *Mrs. Abeba Abriham Vs Amarech Tadesse*, illegal double certification has been issued for two leaseholders. As per the supporting evidence, the rightful landholder is the *Mrs. Abeba Abreham*, later on, the same plot no. 44 was re-certified for *Mrs. Amarech Tadesse* in the same land by the same municipality. In fact, the difference is, it was signed and certified by different land officers. Thus, it deviates/contravenes the promising principles of urban land registration. In which the booking principle calls for protection of the first registered persons use/lease rights. The consent principle which requires the free will of the prior possessor for any subsequent change to his lease rights.

Moreover, professional ethics among land officers and officials at the Municipalities is a major cause for corruption. According to the interviewees, miserly urban land governance

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<sup>346</sup>A tragedy at lot no. 38. This lot number is initially registered under the government holdings (open). Subsequently, it is allocated to the Mr. Berhanu Ergando, who was developed and dwelled. Again, the same plot is allocated to the Almayehu Bafo for dislocating him from the former possession due to the land needed to the development purposes. Then the dispute aroused between them. Later on, Mr. Berhanu transferred it to the Zeleke Watiro and Zeleke Watiro transferred to the Amano Anjelo.

took place through the collaboration of the so-called *mezigebe bet* (registrar).<sup>347</sup> This fact is also supported by civil and criminal cases brought before a court of law. Here, to cure such problems some countries adopted the professional code of conducts in the land sector which is the first quick win to halt corruption. Another is developing educational and corruption prevention strategies, including training professionals. Furthermore, motivating the good performing staff and experts through promotions and granting incentives is another solution. Lastly, corrective action may also be taken as a solution. For example, the criminal and anti-corruption laws of Ethiopia criminalizes corrupt land officials, officers, and other colluding persons. Besides, according to article 2116 (1) of the civil code ‘Any civil servant or government employee shall make good any damage he causes to another by his fault.’ And as per article 2116 (2) the state can also be held liable when those land officers or employees acted in their official capacity. That means, when public officials either omitted or erred during registration and certification of landholdings.

In the study locations, however, a little attempts/measures have been taken to establish good professional ethics among working staffs and land officers towards taming corruption and malpractices in the urban land sector.<sup>348</sup> Moreover, there are also shields such as membership in a certain *tribe* to escape justice among the ethnic group. Thus, in practice, unaccountability for such urban land administration dismals is remaining ‘**a rule**’ and accountability is ‘**an exception**’. In summary, good governance in urban land administration requires the rule of law, transparency, and equity. And according to Ethiopian urban land leaseholding and criminal laws, those public officials, individuals and other colluding person’s shall be liable in one or the other way.<sup>349</sup>

## **4.5. Beneficiaries and Victims**

### **4.5.1. Beneficiaries**

#### **a. The Government Officials and the Land Officers**

The interviewees uncovered that public officials and illegal speculators are beneficiaries from the wrong certifications. Incidences of allocation and certification for more than one

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<sup>347</sup>In ledger books, there are open pages and lines left to claim a long chain allocation, acquisition and transfer to cover all the mischief.

<sup>348</sup> Report of ELU, 9<sup>th</sup> Month 2010.

<sup>349</sup> Article 35(1) and following of the Lease Proclamation no 721/2011: any person or employee in charge of implementing this proclamation, regulations and directives to with the intent to obtain or for himself or to procure for another person undue advantage; grants an urban land in contravention of this proclamation is punishable with the rigorous imprisonment 7 to 15 years and with a fine from 40,000 to 200,000 ETB.: Proclamation no. 943/2015 of the Anti-corruption law of Ethiopia.

individual are mostly done by officials and land officers deliberately without following allocation procedures and motivated by personal gains and benefiting third parties. Thus, they lack professional ethics and fail to be bound by the law of the nation and paved a room for the encroachment of the landholders right.

#### **b. The Rich, the Illegal Brokers and the Speculators**

According to UN-Habitat (2008), ‘insecure residential houses status means first of all insecure tenure, if the right of all individuals and groups, lacks effective protection by the state against unlawful evictions’.<sup>350</sup> According to the interviewees, for instance, at *betel Kebele*, urban land lot numbers from 361-368 were allocated for the rightful landholders and again, certified for the rich, illegal brokers and speculators. Leasehold certificates are issued and sold for some *bona fide* third parties. Furthermore, the complaints received by the GGLA and ELUs, and, facts gathered during FGD, show that the speculators and illegal brokers are colluding with municipality officials and land officers to encroach both private and public lands under the guise of COC.<sup>351</sup> This factual situation shows that there is lack of transparency, accountability and equity principles in which essential virtues of good urban land governance and need to be halted.

### **4.5.1 Victims Owing to Wrong Certifications**

#### **i. General Public (Government Interest)**

Both formal and informal urban land tenures are rife in the study locations. Most of the urban lands, which are under the state holdings, are not registered and mapped. These lands are subject to different sorts of encroachments such as, among other factors, a wrong certification (overlapping certifications) which is issued for multiple users is a major one. According to the interviewees wrong double/multiple certificates were issued over the state holdings. The reason for multiple entitlements is to create the long root or chain of the old acquisition. Also, forged receipts and forged titles were used to access government or public/state lands.

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<sup>350</sup> UN-Habita.(2012 a).

<sup>351</sup> FGD held in persons of of 11 persons at *bobicho Kebele, HCA*, 1 March 2018.

## ii. Vulnerable Groups

### a. Women, Poor, Children and Elderly Persons

According to SIDA, secure land ownership or possession is paramount importance for households headed by women or orphans, who are among the most vulnerable groups.<sup>352</sup> A discriminatory encroachment against vulnerable groups such as women, aged (elderly) and others segments under the guise of urban land governance may violate human right norms and affect their urban land use /lease rights. Under the Ethiopian laws, property rights of women and vulnerable groups are equally protected. Thus, no one is subject to any kind of discrimination regarding access to lands, use, collecting usufructs and transferring of the same. Despite, such reality in theory and laws; the practice odds that, the women and poor are victims by issuing COC in the same lease/use rights. Thus, the quick win to address practical problems would be giving a special attention to the women and poor persons land rights.

Other groups such as orphan, children and elderly often encounter discriminatory treatment and protection by the state in order to avoid unwarranted economic exploitation.<sup>353</sup> When they lose their parents due to different factors, inheritable use rights to land are recurrently encroached by the close relatives and families. Furthermore, elderly persons land rights are also subject to this kind of encroachments. Again, the urban land governance ill is, at *mee'l amba kebele*, the *Kebelle's* chairmen, public officials, and land officers colluded with others and received compensation from the *Ethiopian Electricity Power Agency (ELPA)* due to high-tension electricity transmission expansion program by issuing second wrong-certificates on the same plots. Later on, the rightful claimants, were entitled only 200 sq.m plots at the outskirts of the City which is not yet, properly serviced.<sup>354</sup>

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<sup>352</sup> *ibid.*

<sup>353</sup> Lillian Mushota and others, 'Using the Courts to Protect Vulnerable People: Perspectives from the Judiciary and Legal Profession in Botswana', Malawi, and Zambia (Southern Africa Litigation Centre 2014)

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<sup>354</sup> FGD held in persons of of 11 persons at *Mee'l amba Kebele, HCA*, on 5 March 2018.

### iii. New Rural to Urban Entrants

Rural to urban migration in the study location is rampant. And it is one of the major causes for the rapid urbanization of the zone. According to the interview held with some victims of the COC and confirmed during FGD, their lease/use rights in urban land is affected. Another scenario of encroaching land rights of new entrants is usually they buy such encumbered lands through multiple allocations, lose their monies and face social crisis.

## 4.6. Impacts

### 4.6.1. Current Impacts and Prospective Challenges

#### a. Tenure Insecurity: Discriminatory

In principle registered and certified lease/use rights in urban landholdings are secure than unregistered ones. Registered and/or certified urban land use/lease rights also provide a safe and certain basis for the acquisition, enjoyment, and disposal of land rights.<sup>355</sup> And, according to the De Soto, World Bank and *Girardin*, it provides a degree of certainty and security to the owner or possessors.<sup>356</sup> Policies to urban land registration can foster or increase investment in lands, encourage economic development, improve poor people's security and social integration, prevent and ensure social harmony.<sup>357</sup> However, empirical evidence in study areas show that there are both perceived and real urban tenure insecurity under the guise of COC. The state holdings, the women and the vulnerable groups are subject to this kind of encroachments and in practice urban land tenure is insecure and discriminatory.

#### b. Compromising the Use/Lease Rights

The lease/use rights in urban lands are subject to encroachment under the guise of COC. According to the interviewees with victim groups and justice bodies, people are worried about urban *landholding certificate*, would not appear as an evidence for proof of their possession. The victims faced lack of formal credit access, investment or development of their urban lands.

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<sup>355</sup> Lasserre, (n 65).

<sup>356</sup> Tim (n 39).

<sup>357</sup> Girardin (n 201).

### **c. Sources of Social Crisis:**

Good governance in urban land administration prevents land and land related real property disputes from changing into the conflict or social crisis.<sup>358</sup> However, in the study locations, it lacks good governance. COC has affected *bonafide* buyers and they lost their monies and have faced social crises.

### **d. Land Disputes;Unwanted Expenses**

Cases before the courts arising from land and land related real property are abundant in Ethiopia and it shares more than 51% of total cases incoming before the courts.<sup>359</sup> An interview held with judges, prosecutors, and police officers, confirms that courts are overcrowded by claims arising from urban land rights in general. The cases of border disputes, multiple allocations of the same plots for more than one person is also common. In connection to this, according to Hasted 'a well-designed and efficiently operated land registration system can greatly reduce disputes and litigation over land'.<sup>360</sup> It also results in better social relationships, less work for overworked courts, and fewer expenses for the individuals.

Empirically, the tragedy of COC confirmed by civil, criminal cases and counter-claims over the same use rights disproves the above mentioned objectives<sup>361</sup> of urban land registration. Landholders lost their monies through prolonged (delayed) litigations and impartial court orders or decrees. During the field observation, there is a case which took 7 (seven) years and last verdict passed by *Federal Cassation Bench (cassation over cassation)*. Here, the underlying land registration principles which could work in both deeds or title registration systems such as, the booking, consent, and specialty; calls for registered land rights required to be consistent throughout the land registry system. This study, however, identified that such norms are eroded.

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<sup>358</sup> Seith (n 170).

<sup>359</sup> UNLGAF report from Ethiopia 2016 (n18).

<sup>360</sup> Tim (n 39) : Jaap (n 190).

<sup>361</sup> See Chapter 3, of this thesis which deals about the objective of urban land registration.

#### **e. Adjudication and Legal Cadastre: Challenge**

In principle, ‘the land adjudication process neither alters existing rights in the land nor creates new rights; rather it establishes what rights exist, by whom they are exercised and to what limitations if any, they are subject’.<sup>362</sup> In practice at urban *Hadiyya* zone, majority of urban landholdings are unregistered and uncertified. Poor staffing and missing of files are also practical challenges to ensure good urban land governance. Nowadays, pilot works on adjudication and registration process has been commenced in the study areas towards improving urban land information system. Documentary evidences-either lease certificates or deed registration-are key to adjudicate and identify the legitimate possessor/owner. However, COC has created a challenge to adjudicate and bring into the register.<sup>363</sup> Further more, under the Registration Proclamation, establishing a national database over urban lands (legal cadastre) is one of the grand objectives. The database (legal cadastre) helps to identify the size, direction, and use rights of different tenures in urban lands. Therefore, COC would be both real and perceived challenge to the adjudication and future establishment of the legal cadastre unless good urban land governance ensured thereof and rectified promptly.

### **4.7. Findings, Conclusions and Recommendations**

#### **4.7.1. Findings**

This study is a case specific. It identified urban land administration problems of urban *Hadiyya* zone of the SNNPRS of Ethiopia. The data collecting tools both the primary and the secondary sources have been used. Primary Authorities such as legal analysis regarding the issues at the study, especially, urban land policy and non-implementation of the registration proclamation have been thoroughly examined and identified towards ensuring tenure security.

Specifically, the issue under study, COC, is one of the major cause for urban land tenure insecurity. The multiple allocation scenarios include; the issuance of the ‘urban landholding certificates’ in the name of the deceased person before some years ago and somebody alive/live somewhere abroad; in the name of two different family members or in the name of two different persons, by setting time differences on acquisition and transfers. More often,

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<sup>362</sup> *ibid.*

<sup>363</sup> Interview (n 322).

wrong urban landholding certificates are older than prior right landholding certificates to cover all the mischiefs. And the enabling opportunities or cause for the COC as identified by this study are; legal double or multiple allocations of the same lands through permit systems, issuance of forged land allocation receipts or titles through permit systems, through regularization of the illegal settlements (squatting), the legal informal settlements (these lands without legal documentation and a cause for overlapping titles). The illegal prior oral agreements entered among the agricultural land holders and land officials or land officers via colluding illegal brokers or speculators and biased court's rulings and serious corruption in urban land administration are also among the identified hosts of COC.

Moreover, the identified impacts are, urban tenure insecurity and restricts benefits accrued from the urban land rights; such as mortgage, donation, credit access, and development even livelihood (shelter). Furthermore, it has created challenges for the adjudication of lands through current pilot works and registration of urban land rights. And it is an obstacle for the ongoing establishment of legal cadastre either delays or creates difficulty in identifying the right holder. It has also caused the social crisis among the landholders, and *bona fide* third party buyers. They lost their monies and development on land and increased land disputes, unwanted litigation costs/expenses for the right full landholders. In a nutshell, this study identified that people-land relationship is in a vicious circle which has compromised all the synergy of benefits that could be accrued from the leases/uses rights. Therefore, these all identified problems are directly or indirectly contravening the good urban land governance and human rights norms which calls for quality assurance in the urban land administration. The government or the public interest in general and particularly, the women, children, elders and new rural to urban entrants have suffered a lot. Here also, the study identified that beneficiaries of the wrong certifications. Namely; the government elites (disguising their personalities but others are in their shoe), officials or land officers and the outside colluders such as, illegal brokers and speculators and some agricultural landholders. Therefore, the government institutions are responsible for urban land administration both on state possessed/owned and private holdings to operate in a transparent, accountable and efficient manner to ensure secure urban land tenure. Yet, the practice stood on the wrong side and urban land tenure is insecure among other factors, COC is one of the major challenges of urban land tenure at urban *Hadiyya* zone. And finally, the findings can inform further (deep)

research on urban land administration especially impact of COC on public interest is necessary.

#### **4.7.2. Conclusions**

Good governance in the urban land administration is prerequisite towards ensuring secure urban land lease/use rights. It is characterized by consistent legal and efficient institutional frameworks, well-established land information systems, transparency and accountability, public or stakeholders' engagement, human rights protection, equity and effective judicial protection of the urban land rights for the landholders. However, in Ethiopia there was no good governance in urban land administration ensured through the three regimes. There is also no efficient and effective urban land registration systems, no inventory of each urban landholdings and improved land information systems towards assuring secure urban land tenure. In fact, the purpose of registration and certification in urban land administration is remain, securing urban lands for the landholders because secured tenure is a precondition to reap all the benefits accrued from urban land rights. It may not also *ipso facto* brings tenure security unless responsible urban land governance thereof, which is collaborated with improved land registration and information system, to establish compensation fund for land registration errors or mistakes, and promote the publicity and transparency in land information systems.

When we come to the study context, in relation to registration of urban lands, this research considers COC as one of the major challenge of secure urban land tenure in *Hadiyya Zone* of the SNNPRS of Ethiopia. COC is a scenario in which the same urban plots are entitled and certified for more than one person. The findings of this study uncovered hosts of problems such as; legal double or multiple allocations through earlier permit systems, issuance of forged receipts or titles and concluding illegal oral contracts. Regularization process of illegal settlements and existence of informal legal settlements without due documentation, biased rulings of the courts and serious corruption in urban land sector are also among the hosts. As a result, urban landholdings are insecure which has compromised all synergy of lease/use rights of the landholders. Thus, some are beneficiaries and some others like vulnerable persons are suffered a lot. Therefore, the factual situations on ground calls for, besides, registration of use/lease rights in urban lands, there should be a political commitment towards ensuring good governance in urban land administration. Hence, based on the findings, to overcome such problems I will forward the following suggestions;

### 4.7.3. Recommendations

Towards halting urban land administration problems and ensuring secure use/lease rights for the landholders, the double-fold that means both pro-active and reactive measures should be recommended.

- **Comprehensive urban land policy and reform.** It is first task to ensure secure urban tenure. The good governance in urban land administration should if possible be non-political and should be concerned with putting in place an efficient land administration infrastructure to manage the landholders-to-land relationship.
- **Buildup institutional capacity and information systems.** Urban land registration proclamation should be implemented promptly. Urban land registry and information institutions should come into effect at all urban centers. All urban land tenures such as stateholdings and lands under private holdings shall be inventoried as properly and clearly linked to landholders. Finally, the legal informal settlements shall be documented and certified.
- **Establish Special Compensation Fund.** Compensation system is an important part of the urban land registration system. It helps to rectify the mistakes or omission done by the land registrar which would enable to indemnify the victims properly.
- **Ensure Transparency.** Government conduct and work process shall be transparent and efficient because corruption flourishes when transparency is absent. Unless corruption is halted in urban land administration, the lease/use rights of legitimate possessors/owners could not be secured. Furthermore, due attention should be taken when agricultural urban lands are needed or taken for development purposes or incorporated in urban boundary.
- **Ensure Public and Stakeholders Participation.** Integration of the hands of the public and all other stakeholders in urban land administration should be promoted. Land as a human rights issue, smooth bureaucracy is needed and thus, campaigns should be held in cases of use/lease rights in urban lands, unduly encroached for instance, under guise of COC.
- **Reforming and strengthening the Judiciary or Tribunals.** The WB and IFST promote, strong judiciary or an alternative tribunals towards the protection of land rights should be encouraged and be the policy issue. Within courts, independent or

separate benches should be empowered to see the land and land related real property disputes to protect urban land rights with due integrity.

- **Vulnerables Interest.** The land rights of all segments of the urban landholder's shall be protected and respected, equally. Therefore, the government should be duty-bound via human rights norms towards respecting and protecting secure urban land lease/use rights of the all landholders in general and special attention should be given to the land rights of the vulnerable persons.
- **Accountability.** All misbehaved or corrupt land development and management officers and officials, colluding third parties should be accountable as per the laws of Ethiopia.
- **Misappropriated or allocated public lands** and state holdings should be returned back to the legitimate possessors/owners.
- **Indemnification.** In conclusion, individuals whose the lease/use rights in urban land affected under the guise of COC should be indemnified as per the general jurisprudence of Ethiopia.

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## 6. Appendices

### 6.1. Annex-I: Double /Multiple Allocations though Permit Systems

no	Lot number	Agricultural landholder/s	Allocation scenario	Rightful claimant	Problems issues
1	903	Teshale Eromo	Solomon kedir	Desta Eromo	Double allocations
2	904	Desta eromo	Sayo Bekele and Elias Dilamo	Desta eromo	multiple allocattions
3	965	Sofia Busser	Birtuken duobale	Sofia Busser	Double allocation
4	963	Habib temam	Girma Manamo	Habib Temam	double allocation
5	961	Mosha Degife	Allocated for unknown	Mosha Degife	Double allocation
6	864	Esmael and Shemelo Sabute	Markos Ossamo	Esmael and Shemelo Sabute	Double allocation
7	894	Phetros Abere	Allocated for unknown	Phetros Abere	Double allocation
8	898	Birtuken Gutama	Allocated for unknown	Birtuken Gutama	Double allocation
9	862	Askel Gebereyes	Melse Shoge, Tesheme Gulilat, and Askel Gebereyes	Askel Gebereyes	Multiple allocations
10	889	Alemnesh Bugale	Allocated for unknown	Alemnesh Bugale	Double allocation
11	893	Ashenafi Abuto	Allocated for unknown	Ashenafi Abuto	Double allocations
12	895	Dessalgn Sulamo	Allocated for unknown	Dessalgn Sulamo	Multiple allocation

*Table 1: Double Allocation*

892	915	945	969	987
893	916	946	970	988
895	917	947	971	989
899	918	948	972	990
900	919	949	974	991
901	920	950	975	992
902	922	951	976	993
905	923	952	977	994
906	925	953	978	995
907	926	954	979	996
908	927	955	980	997
909	928	912	981	998
910	929	936	982	999
911	930		983	1000

*Table 2: Land lot numbers double-registered*

**የደ/ክ/ብ/ብ ሕ/መንግስት የስነ-ምግባርና ፀረ-መ-ስና ሪፖርት**

የክልሉ ስነ-ምግባርና ፀረ-መ-ስና በሆ/ክ/አስ/ር ማ/ቤት መሬት አቅርቦትና አስተዳደር ላይ ያሉ የአሠራርና የአስተዳደር ችግሮችን ከህዝብ በደረሰው ጥቆማ መሠረት ከ2003 ማለቂያ እስከ 2004 መጀመሪያዎቹ ድረስ ሰፊ ጊዜ ወስዶ ባጠናው የጥናት የምርመራ ውጤቶችና ዋና ዋና ግኝቶች ብለው ቡድኑ ያቀረበው ሪፖርት

በሆሳሳና ከተማ ማ/ቤት በ1997 እና በ1998 ዓ/ም የከተማው ነዋሪ ህዝብ የመኖሪያና የንግድ ቤት ማስሪያ የሚሆን በወቅቱ በነበረው አሰራር መሠረት ሽንሽና ያካሄደው ሲሆን በወቅቱ 6526 የዕጣ ቁጥር ብዛት ያላቸው መሆኑን ያሳያል። እንዲሁም በ2001 እና በ2002 ሌላ ሽንሽና ለልማት ተነሿ ሰዎች በዩኒቨርሲቲ ሰይት እና በማዕረግ ለተመለሱ ወታደሮች በሌባሻ እና በለወልድ ሰይት የተደረገ ሲሆን በእነዚህ ሽንሽኖች ላይ በዞንና በከተማ አስተዳደር አስተባባሪ ኮሚቴ እንደሽንሽኑ ከተወሰነው ውሳኔ ውጪ ማ/ቤቱ የከተማ አስተዳደርም ይሁን የዞን አስተዳደር ፈቃድ በሌለበት ተሸንፏል የተባሉት ለዩኒቨርሲቲ ግንባታ ተነሽኖች በተደረገው ሽንሽኑ ለሽንሽና የተወሰነው 412 ዕጣዎች ሽንሽና የተደረገው ግን 555 ዕጣ ቁጥር ሲሆን ከተቀዳው ውጪ የተሸንሸው 143 ከዚህ ሌላ ለወታደሮች ከተሸንሸው ውስጥ በሌባሻ ሰይት ላይ 11 በባለወልድ ሰይት ላይ 13 በትርፍነት መሸንሽኑን ያሳያል። በ1997 እና በ1998 ዓ/ም ላይ እንደንድ የማ/ቤቱ ባለሙያዎችና ሃላፊዎች በደረገት ሽንሽና ላይ ህጋዊ ባለቤት ሰይፈጥሩ ቦታው የሸንሸነ ወሳን ድንገይ ከታተክለ ቦታ እንደ ጉርጓዴ ሰይት 426 ዕጣ ብዛት ከተሸንሸነ ውስጥ 226 ዕጣ ላይ ግለሰቦች ቀርቦ ያተመዘገቡ ሲሆን 105 ዕጣ ለግለሰቦች ያልተሰጣ መሆኑንና እንዲሁም 17 ዕጣዎች ተደራረቡ መሆኑን ያሳያል። ሌላ በሌባሻ 1998 ዓ/ም 905 ዕጣዎች የተሸንሹ ሲሆን 279 እና 90 ዕጣ ቁጥሮችን እና 9 ዕጣ ማ/ቤቱ ባለሙያዎችና ባለይዞታዎች ያስረከባ ሲሆን ቀሪዎቹ 103 ዕጣዎች ለማንም ያለመሰጣቱን ያሳያል። ሌላው ባለወልድ ሰይት ላይ 666 ዕጣ ቁጥሮች የተሸንሹ ሆነው 45 የሚሆኑ ዕጣ ቁጥሮች ላይ ሰው ቀርቦ ያልተመዘገበው 11 ዕጣዎች ተዳደራሩ ቢሆን እንዲሁም በፕላን ላይ ክፍት በሆኑ ቦታዎች ላይ መረጋጋጫ የተሰራ መሆኑን ያሟያል ሲሆን በመስክ ላይ ግን በዶ ሜዳ መሆኑን ያሳያል እንዲሁም በእናቶች አምባ 231 ዕጣ የተሸንሹ ሲሆን ክፍት 34 ቦታዎች እንደሉ ሪፖርቱ ያስረዳል። በአዲስ ከተማ ክ/ከተማ በሜዕል አምባ ብዛት 981 ሲሆን የተመረጠው ብዛት ግን 461 የእርሻ ባለይዞታዎች ብዛት 345 ሆነው 14 ዕጣ ቁጥሮች ክፍት ናቸው የሚል ነው። ሌላው በሌሻ አምባ ቀበሌ የተሸንሸው ከዕጣ ቁጥር 982 እስከ 1827 ሲሆን ከዚህ ውስጥ 33 ዕጣዎች የተደጋገሙ፤ የወሰን ድንጋዮች የማይታዩና ብሉኩ ላይ 273 ግለሰቦች ቀርቦ የተመዘገቡና 297 ዕጣዎች ክፍት የሆኑ ሲሆን ከዚህ ውስጥ በ89 ዕጣ ላይ ሰው ቀርቦ የተመዘገበ 208 ዕጣዎች ግን ሰው ቀርቦ ያልተመዘገበ ሲሆን በጎ/ሜ ከተማ ክ/ከተማ በሄጦ ላይት ላይ ሁለት ሳይቶች ያልጸደቁና አዘጋጅ ያልተወቃ ሲሆን በቀረበው ሰይት ላይ በአንድ ሳይት ላይ 387 ዕጣዎች የተሸንሹ ሲሆን ሌላው ሰይት ላይ ከዕጣ ቁጥር 799-176 መሸንሽኑን ያሳያል። በዚህ ሰይት የሳይት ፕላን አለመጠበብ፣ በተጨማሪ ግሪን ኤርያና መንገድ አለመለያት እንዲሁም የዕጣዎች መደራረብ ችግሮች ያሉ መሆኑን ያስረዳል። እንዲሁም በባሌ ሳይት ላይ 1036 ዕጣዎች የተሸንሹ ሲሆን ከዚህ ውስጥ 610-699 ድረስ 90 ዕጣ ቁጥሮች 610-699 ድረስ ዕጣዎች በሳይት ፕላንም ይሁን በመሬት ላይ የለማገኘቱን ስያስረዳ ሌላው ዕጣ ቁጥሮቹ በድርጅት ግቢ ውስጥ መሆንና የዕጣ ቁጥሮች መደራረብ ችግሮች እንዳለ ያስረዳል። ከዚህ በተጨማሪ 40 ዕጣዎች ክፍትና ሰው ቀርቦ የተመዘገበ ሲሆን 37 ዕጣዎች ላይ ሰው ያልቀረበ መሆኑን ያሳያል። እንደአጠቃላይ በሪፖርቱ ለመረዳት እንደተቸለው በሁሉ ሳይት ላይ የተዘለሉ፣ በትርፍነት የተሸንሹ፣ የተደራረቡ፣ ሃላፊነት በሌላ ሁኔታ በክፍትነት የተቷዉ ወዘተ.

source: HCA ELU (2014)

መ/ቁ/00162

ፍርድ ቤቱ ትክክለኛውን ፍትሕ ለመስጠት ያመቺ ዘንድ ከሚከተሉት ጣልቃ ገቡ ዋናውን ስፒኦ እንዲሁም የጨረታ ሰነድ የገዙበትን ዋናውን እንደያቀረቡ ታዘው ከሚከተሉት ጣልቃ ገቡ ዋናውን ስፒኦ እና፡- ዋናው የጨረታ መግዣ ሰነድ ሲያቀርብ ጣልቃ ገቡ ደግሞ ከተከሰቱ ማዘጋጃ ቤት በትዕዛዝ ይቅረብ ማለቱ የጨረታውን አካሄድ አጣራጣሪ አድርጎታል ቢሆንም ግን ፍርድ ቤቱ የጣልቃ ገቡን ጥያቄ በመቀበል ማዘጋጃ ቤቱ እንደያቀርብ አዘው በትዕዛዙ መሠረት ቀርቦ ስታይ ጣልቃ የገዙበት ሰነድ በእጁ አለመኖሩና በፋይል ውስጥ ሁለት ስፒኦ እና ጨረቃ የተገዛበት ሰነድ መገኘቱ የጨረቃውን ሂደት አጣራጣሪ አድርጎታል፡-እንዲሁም የጣልቃ ገቡ ተወካይ አቶ ታደሰ ሚካኤል ከምዕራብ በደዋቾ ፍትሕ ጽ/ቤት ውክልና ተሰጥቶኛል ስል የተወዳደረበትን ውክልና ምዕራብ በደዋቾ ወረዳ ፍትሕ ጽ/ቤት በቁጥር ምዕ/በ/ወ/ፍት/322/09 በቀን 30/09/2010 ዓ.ም ጽፎ ለሾኔ ከተማ መጀመሪያ ደረጃ ፍርድ ቤት በላከው መረጃ፡- ተወካዩ አዩር ባአዩር ምንም መረጃ ሳይኖር ውክልናውን የወሰደ መሆኑን የገለፀ ስሆን ይህ ስሆን ደግሞ ጣልቃ ገቡ ያለህጋዊ ውክልና በሌላ ሰው ስም ተከሰቱ መ/ቤት ያካሄደው የጨረቃ አካሄድ ሕጋዊ ነው ማለቱ ተገቢነት የለውም፡፡

በአጠቃላይ ከመሸ ጀምሮ በተገለፀው ምክንያት ተከሰቱ ማዘጋጃ ቤት ሕጋዊ በሆነ መንገድ ባወጣው ጨረቃ መሪት ላይ ከሚከተሉት መንገድ ተጨርቶ አሸናፊ መሆኑ ካረጋገጠ በኋላ ጣልቃ ገቡ አሸንፏል ተብሎ ውል እንደገባና ግብር እንደገብሮ ማደርጉ ተገቢነት የለውም ጣልቃገቡም ቢሆን በሕግ አግባብ ተወዳዳሪ ባልሸነፈበት ቦታ ላይ ተወዳዳሪ አሸንፎዋል፡፡ ማለቱ ከላይ በፍርዱ ሐተታ ላይ በተገለፀው ምክንያት መከራከሩ ተገቢነት የለውም፡፡

በዚህም መሠረት በመዝገቡ ላይ የሚከተለው ውሳኔ ተሰጥቷል፡፡

**ውሳኔ**

1. በሾኔ ከተማ አስተዳደር 01 ቀበሌ በተለምዶ ቁጣባ ሰፈር ተብሎ በሚጠራበት አካባቢ በብሎክ ቁጥር 521 ፐርሴል ቁጥር 111 ላይ ባወጣው ጨረቃ ማስታወቂያ ለክርክሩ ቦታ 20.17/ሃያ ብር አሥር ሰባት ሣንቲም/ አቅርቦ ያሸነፈው ጣልቃ ገቡ ስይሆን ከላሻ ስለሆነ ተከሰቱ መ/ቤት ይታወቅ እንደያስረክብ ውሳኔ ተሰጥቷል፡፡

**ትዕዛዝ**

1. ከሚከተሉት ጣልቃ ገቡ የተጠበቀ ነው፡፡
2. በመዝገቡ ላይ የይግባኝ መብት የተጠበቀ ነው፡፡
3. መዝገቡ ውሳኔ ያገኝ ስለሆነ ይመለስ፡፡

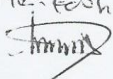
ተጠቃሚ ተሰዘዝ  
 1 ከወጣት ጋር የተከሰቱ ጣልቃ ገቡ  
 በመጠቃሚያ ላይ የተጠበቀ ነው  
 2 ለውክልና ተሰጥቶኛል የሆኑት  




Figure 1: Double Allocation





ቁጥር 764/1650  
ቀን 19/08/09

ለሆሳዕና ከተማ ፖሊስ ጽ/ቤት  
South Nations Nationalities & Peoples  
Regional State

ሆሳዕና፣  
Hadisa Zone Hosaana City  
Administration Headquarter of  
Hadisa, Kebele Sub-city

ጉዳዩ፡- ስለዕጣ ቁጥር 44 ማረጋገጫ ማስረጃና ማብራሪያ ስለመስጠት ይሆናል

ከላይ በርዕሱ ለመጥቀስ እንደተሞከረው ወ/ሮ አበበ አብርሃም በ1998 ዓ.ም በነበረው የከተማ ቦታ ምሪት ዘመን በተሰጣት በፀረ-መስና ምርመራ ወቅት በተደረገው ማጣራት ለወ/ሮ አበበ አብርሃም በሆሳዕና ከተማ ሜዳል አምባ ቀበሌ ዕጣ ቁጥር 44 ላይ የይዘታ ማረጋገጫ ቁጥር አ/ክ/ክ/ማ/273/07/2005 በቀን 25/07/2005 ዓ.ም ማረጋገጫ በስሟ ተሠርቶ ወጪ ተደርጎ ፕላንም የፀደቀ ሲሆን ማረጋገጫውን ያዘጋጀው አቶ ተፈራ ስሜ ያፀደቀው አቶ ኤልያስ ወንድሙ ሆነው በወቅቱ ከይገባኛል ነፃ መሆኑ ተረጋግጦ በሕጋዊ መንገድ የተሠራ ሲሆን በድጋሚ ለወ/ሮ አማረች ታደሠ ከህግ አግባብ ውጪ ማረጋገጫ በተመሰሰላል ዕጣ ቁጥር 44 በቁጥር አክማ/758/08 በቀን 03/06/08 ተደርቦ በአቶ ገረመው ከበደ አዘጋጅነትና በአቶ ኤልያስ ወንድሙ አረጋጋጭነት ተሠርቶ የተሠጣት መሆኑን ይህም ማረጋገጫ ተደርቦ የተሠራበት አግባብ ከህግ ውጪ መሆኑን እንገልጻለን።

*Handwritten signature and text*



*Handwritten initials*

Figure 3 Approval letter for its illegality (COC)

የክፍለ ከተማ ዐን የቦታ ዕጣ ያወጡ ስም ዝርዝር 1998

ተ.ቁ	ሙሉ ስም	የክርኔ ንግድ ቁጥር		የወጣው የቦታ ዕጣ ቁጥር	የወጣበት ቀን
		ባለ 300	ባለ 100		
1.	መስፍን መስፍን ለተ/			27	13/10/98
2.	ፍቃድ ከድር/ ለተ/			36	12/10/98
3.	ወ/ሮ ደብረ ስላሳ			37	13/10/98
4.	አቶ መሊቀን ይህን			39	13/10/98
5.	ወ/ሮ ዘውዴ ጌራ			41	10/10/98
6.	ሀይለ ሙሉ መስፍን ለተ/			42	10/10/98
7.	አቶ አብርሃም ጌታቸው			43	10/10/98
8.	ወ/ሮ አበበ አብርሃም			44	13/10/98
9.	የገሌገሌ ጠምዶሪ ዮሀንስ			47	13/10/98
10.	አቶ ገገሌ ጠምዶሪ			56	13/10/98
11.	ፍቃድ በረከት ለተ/			58	17/10/98
12.	አቶ ደንቆ ከፍሌ			59	13/10/98
13.	ደመቆት ሃይለ ለተ/			61	9/10/98
14.	ወ/ሮ ለፍትህ ጸሐይ			65	13/10/98
15.	ገዛኝ ሀይለ			68	12/10/98
16.	አቶ ተስፋዬ ለይቆ			69	12/10/98
17.	ፍቃድ ገብረ ገብረ			70	13/10/98
18.	አቶ ለበራ ደበበ			71	12/10/98
19.	አቶ አለመ ፎርሲያ			72	10/10/98
20.	ወ/ሮ ወይንሽን ተፈሪ			73	12/10/98
21.	ወ/ሮ አሚር ለላግሱ			74	20/10/98
22.	አቶ ከይሩ ሀርገላ			75	13/10/98
23.	ምስጋኔ ለሬ			76	12/10/98
24.	ታምራት ለበገ ለገሰ			79	12/10/98
25.	ሰሙ ጸገራ			81	17/10/98
26.	ምስጋኔ ባሕር ለገሰ			82	12/10/98
27.	ብረሃኑ ለገሰ			82	12/10/98
28.	አቶ ተፈሪ ኤርገዳ			85	17/10/98
29.	አቶ ደርጅ ሚካኤል			91	14/10/98
30.	ወ/ሮ አለሙድ ደበበ			92	14/10/98
31.	ወ/ሮ ለበገ ለገሰ			93	13/10/98
32.	ገብረ ለገሰ ለገሰ			94	13/10/98
33.	ሰሙ ሚካኤል			95	13/10/98
34.	አቶ አበበ ለገሰ			97	14/10/98
35.	ወ/ሮ ለላግሱ ለበገ			99	13/10/98
36.	አቶ አበበ ለገሰ			100	13/10/98
37.	አቶ ተፈሪ ለገሰ			101	13/10/98

Figure 4: Cadaster Record



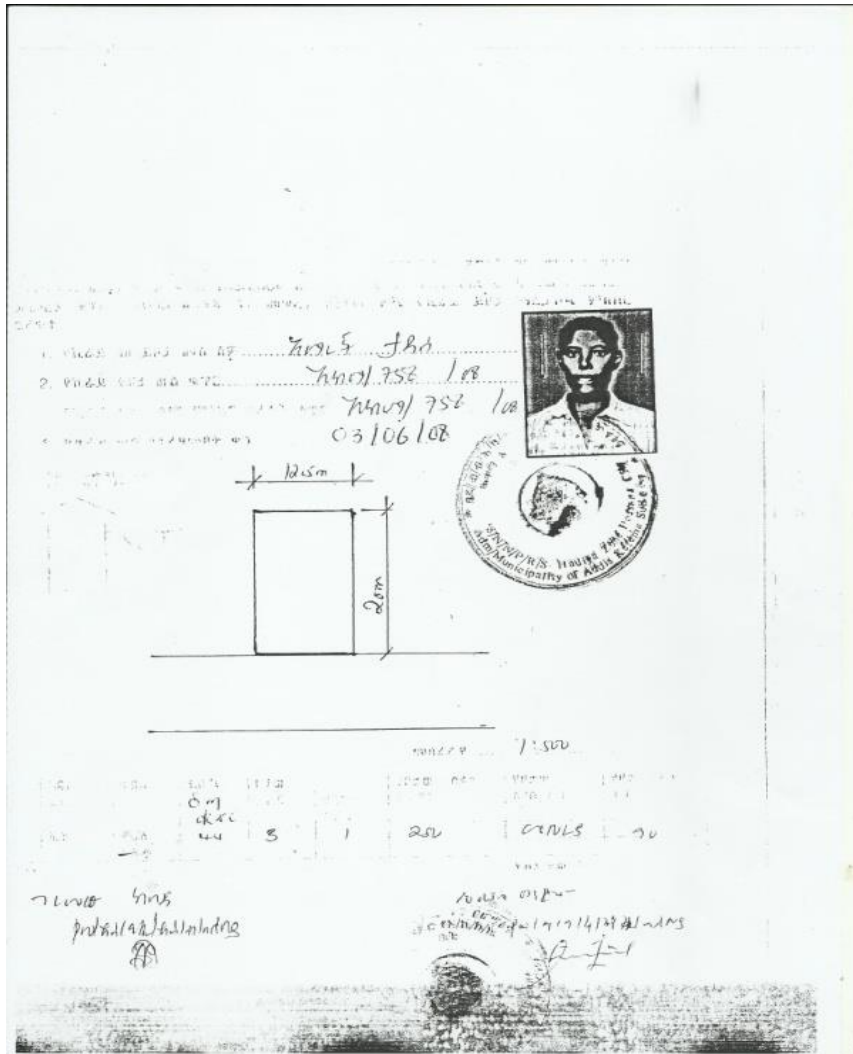



Figure 6: Certification(Wrong)



**የግዛት ስጦት ሰነድ**  
**የግዛት ስጦት ሰነድ**  
**የግዛት ስጦት ሰነድ**

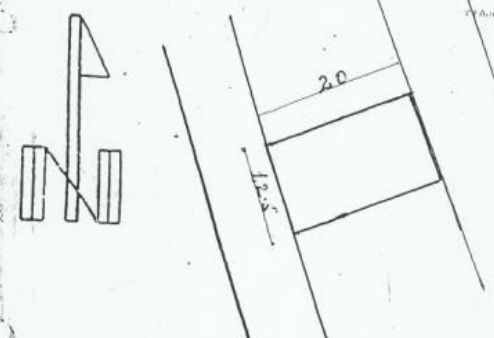
  
 ብርሃኑ ማር 2003

**የግዛት ስጦት ሰነድ**  
**የግዛት ስጦት ሰነድ**

1. የግዛት ስጦት ሰነድ ቁጥር: 00435/2003  
 2. የግዛት ስጦት ሰነድ ቁጥር: D 621/49/2003  
 3. የግዛት ስጦት ሰነድ ቁጥር: 8621/03/2003  
 4. የግዛት ስጦት ሰነድ ቁጥር: 05/09/2003  
 5. የግዛት ስጦት ሰነድ ቁጥር: 99

**የግዛት ስጦት ሰነድ**  
**የግዛት ስጦት ሰነድ**

2003/09/01  
 2003/09/01



መጠን: 2400

ቁጥር	ስም	የግዛት ስጦት ሰነድ ቁጥር	የግዛት ስጦት ሰነድ ቁጥር	የግዛት ስጦት ሰነድ ቁጥር	የግዛት ስጦት ሰነድ ቁጥር	የግዛት ስጦት ሰነድ ቁጥር	የግዛት ስጦት ሰነድ ቁጥር
1	አብነት	05/09/2003	05/09/2003	05/09/2003	05/09/2003	05/09/2003	05/09/2003

የግዛት ስጦት ሰነድ ቁጥር: 05/09/2003  
 የግዛት ስጦት ሰነድ ቁጥር: 05/09/2003




Figure 8: First Certified









## 6.2. Annex-II. Lists of Interviewees

- Interview with Henok Eshetu, an expert at vital events registration unit, HZJD, (*HCA*, 1 March 2018)
- Interview with Mr. Temesgen Alero, *Hadiyya Zone Administration Office* Ethics Liaison Unit Officer, 3 March 2018
- Interview with Mr. Mathewos Lomabso, Ethics Liaison Unit Officer at *HCA (Hossaina)*, 5 March 2018)
- Interview with Mr. Merte Zeleke, (Prosecutor at *Hadiyya Zone Prosecution Core Business Process*, 8 March 2017)
- Interview with Mr. Daneil Anshebo, Prosecutor at *Hadiyya Zone Prosecution Core Business Process*, 11 March 2018
- Interview Mr. Admasu Belilo, *Hadiyya Zone, Good Governance and Local Affairs Head*, March 12, 2018
- Interview with Mr. Muluneh Eriso, Victim of COC (*HCA + Me'el Amba Kebelle*, 13 March 2018)
- Interview with Mr. Asafa Lacce, Victim of the COC, (*HCA, Bobicho Kebele*, 14 March 2018)
- Ashenafi Abreham, Interview with Mr. Desallegn Melkemu, Judge in *SHCAFI Court*, March 14, 2018
- Interview with Mr. Ashenafi Abreham, Prosecutor at *Hadiyya Zone Justice Department Prosecution Process at Shone Branch office*, March 1, 2018
- Interview with Mr. Alemayehu, Judge in *HCAFI Court*, March 14, 2018
- Ashenafi Abreham, Interview with Mr. Mulunnesh Feleke, victim of the COC at the *SHCA*, March 17, 2018
- Interview with Mrs. Adnech Dajene, victim of the COC *HCA Me'el Abmba Kebele*, March 18, 2018
- Interview with Mrs. Amerech Abreham, *HCA Victim of the COC*, March 16, 2018
- Interview with Mrs. Bekelech Wolde victim of COC, March 15, 2018
- Interview with Mrs. Langanu, Victim of the COC March 6, 2018
- Ashenafi Abreham, Interview with Mr. Markos Seramo, victim of double allocations *SHCA*, 6 March, 2018
- Interview Mr. Tessema Abuto, victim of the COC, March 14, 2018

- Interview with Mr. Musadif Amedala, *HCM* Urban Landholdings Registration and information Unit Expert, March 14, 2018
- Interview with Mrs. Tigist W/kidan, victim of the COC March 8, 2018
- Interview with Desta the former Ethics Liaison Unit officer at the *HCA* April 16, 2018
- Tessemma Tulamo, Registrar at HCAFIC March 6, 2018
- Interview with Mado Ermaco, the victim of double allocation (plot no. 1626), March 16, 2018
- Interview with Berhanu Abebe, the victim of double allocation (plot no.1692), March 16, 2018
- Interview with Ahmed Awono, the victim of double allocation (plot no.1475), March 16, 2018
- Interview with Demise Dentamo the victim of double allocation (plot nos. 669 & 1201,1475), March 16, 2018
- Interview with Bekelech Wolde the victim of double allocation (plot nos. 361 & 362), March 16, 2018
- Interview with Temegen Shamebo the victim of double allocation (plot nos. 361 & 362), March 16, 218

### 6.3. Annex-III Interview and FGD Guidelines

#### a) Interview Guidelines for Judges, Prosecutors, and Police Officers

##### Introduction

Dear interviewee,

I am pleased to meet you. My name is Getiso Detamo. I have also an assister Mrs. Elisabeth Sadore who takes notes for me. The principal objective of this interview is to gather all the relevant information or data for the partial fulfillment in LL.M Degree in the regular program in Environmental and Land Law, Hawassa University. Currently, I am undertaking a research on entitled as 'Certification over Certification as Urban Land Tenure Challenge: The case of *Hadiyya Zone*'. The data will be utilized only for academic purpose. Your information is very much valuable to achieve the desired goal of the study. Thus, you are kindly requested to give answer freely and openly. Any information you give is to be kept confidential. In a nutshell, thanks in advance for your unreserved cooperation and dedicating your invaluable time.

Name-----Age-----Address, Social Status-----.Job-----profession.....

1. Do you have an idea about challenges regarding urban land administration in *Hadiyya Zone*?
2. Why is COC is rampant? What do you think the enabling opportunities or routine causes? What are the challenges regarding resolving disputes arising from the COC?
3. Who are the usual victims that appear before the court with claims arising from encroachment under the guise of COC?
4. From your experience who are the agents or role players in such misdeeds? Who are the beneficiaries of the wrong certifications or allocations?
5. What do you think COC as current and prospective challenges regarding urban land rights?
6. What about the urban landholder's perception about the security of their land rights and land certificate as an evidence for proof of urban lands?
7. Have you any idea about the current land policy towards secure urban land tenure? Is there anything about the professional ethics and institutional competencies of the land officers at the Municipalities? What should be done to overcome such problems?

**b) Interview Guidelines for City Municipality and Urban Development and Housing, Keble chairmen, Heads and Experts**

Introduction

**Dear Interviewee,**

I am pleased to meet you. My name is Getiso Detamo. I have also an assister Mrs. Elisabeth Sadore who takes notes for me. The principal objective of this interview is to gather all the relevant information or data for the partial fulfillment in LL.M Degree in the regular program in Environmental and Land Law, Hawassa University. Currently, I am undertaking a research on entitled as ‘Certification over Certification as Urban Land Tenure Challenge: The case of *Hadiyya Zone*’. The data will be utilized only for academic purpose. Your information is very much valuable to achieve the desired goal of the study. Thus, you are kindly requested to give answer freely and openly. Any information you give is to be kept confidential. In a nutshell, thanks in advance for your unreserved cooperation and dedicating your invaluable time.

Name-----Age-----Address, Social Status-----.Job-----profession.....

1. What are the challenges of urban land administration in *Hadiyya Zone*?
- 2.How do you describe institutional issues towards urban land administration in City and Sub-City Municipalities?
- 2.How do you see that the nature of the urban land, registration and certification undertaken by the municipalities? How do you describe the land information systems and keeping files about the lands rights?
- 3.Have you experienced COC? If it so, what do you think about the enabling opportunities or outline causes that are from the COC in single plots?
- 4.Who are the victims that appear before your office with the claim of encroachment on their holdings and its impacts on lease or use rights?
- 5.From your experience who are the role player in such cases? Who are the beneficiaries?
- 6.Was/Is there public consultations and discussions regarding urban land administration?
- 7.Have you any idea about the current land Policy and laws or implementation guise towards ensuring tenure security issues? Is there anything about the professional ethics of the land officers at the Municipalities? What should be done to overcome such problems?

**c) Interview Guidelines for Experts from Good Governance and Local Affairs Offices, Victims, Experts from Women and Youth Offices and Departments, Private Sectors and Independent Institutions**

**Introduction**

**Dear Interviewee,**

Thank you for agreeing to meet with me. My name is Getiso Detamo. And I am pleased to meet you. I also have an assister Mrs. Elisabeth Sadore who takes notes for me. The principal objective of this interview is to gather all the relevant information or data for the partial fulfillment in LLM Degree the regular program in Environmental and Land Law, Hawassa University. Currently, I am undertaking a research entitled as ‘Certification over Certification as Urban Land Tenure Challenge: The case of *Hadiyya Zone*’. The data will be utilized only for academic purpose. Your information is very much valuable to achieve the desired goal of the study. Thus, you are kindly requested to give answer freely and openly. Any information you give is to be kept confidential. In a nutshell, thanks in advance for your unreserved cooperation and dedicating your invaluable time.

Name-----Age-----Address, Social Status-----.Job-----profession.....

- 1.What are the major challenges of urban land administration in *Hadiyya Zone*?
- 2.Have you experienced COC in same plots, if any? What do you think the enabling opportunities or routine causes that you are experienced in your case?
- 3.Who are the victims that appearing before your office with the claim of encroachment on their landholding rights? From your experience who are the role player in such cases? Who are the beneficiaries of the wrong certification?
- 4.issuance of the COC, how do you understand the potential impacts on such rights?
- 6.Was/is there public consultations regarding urban land administration?
- 7.Have you any idea about the current land policy and laws, institutional and imlementation issues towards ensuring secure urban land tenure? Finally, what should be done to overcome such problems?

Thank for your cooperation again!

## **d) Focus Group Guidelines for Selected members from the Kebelle and Localities**

### **Introduction**

Dear interviewee,

Thank you for coming. My name is Getiso Detamo. I am pleased to meet you. My name is Getiso Detamo. I also have an assister Ms. Elisabeth Sadore who takes notes for me. The principal objective of these FGD is to gather all the relevant information or data for the partial fulfillment in LLM Degree the regular program in Environmental and Land Law, *Hawassa* University. Currently, I am undertaking a research entitled as ‘Certification over Certification as Urban Land Tenure Challenge: The case of *Hadiyya Zone*. The data will be utilized only for academic purpose. Your information is very much valuable to achieve the desired goal of the study. Thus, you are kindly requested to give answer freely and openly. Any information you give is to be kept confidential. In a nutshell, thanks in advance for your unreserved cooperation and dedicating your invaluable time.

### **Issues that would be Discussed**

1. Do you have an idea about challenges regarding urban land administration in *Hadiyya Zone*? Please discuss in detail.
2. Why is COC is rampant in study locations? What do you think the enabling causes and routine causes? Who are the victims? What are the impacts on urban land rights on either lease or use rights?
3. From your experience who are the role player in such cases? And who are the beneficiaries of the wrong certifications?
4. What about the urban landholder’s perception about the security of their land rights and land certificate as an evidence for proof of urban lands?
5. Are there public consultations regarding urban land administration? Have you any idea about the current land policy towards tenure security issues? What do you feel about the laws and implementation issues? Is there anything about the professional ethics and competencies of the land officers at the Municipalities? Finally, what should be done to overcome such problems?