

DIRE DAWA UNIVERSITY

COLLEGE OF LAW

CONVERSION OF OLD POSSESSION TO LEASE HOLD AND ITS IMPLICATIONS ON TENURE SECURITYIT OF OLD POSSESSORS IN *DIRE DAWA*

A RESEARCH SUBMITTED TO DIRE DAWA UNIVERSITY COLLEGE OF LAW IN PARTIAL FULFILLMENT OF THE AWARD OF A BACHELOR OF LAW (LLB) DEGREE

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Declaration

I, ADEM ABDELA ADEM, hereby declared that this dissertation is original and has never been presented in any other institutions. To the best of my knowledge and belief, I also declare that any information used has been duly acknowledged.

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Acronyms and Abbreviations

EPRDF----------Ethiopian Peoples' Revolutionary Democratic Front

FDRE---------- Federal Democratic Republic of Ethiopia
MoUDC---------- Ministry of Urban Development and Construction

DDCA----------Dire Dawa City Administration

LDMB----------Land Development and Management Bureau

MP----------Parliament Member

DARO----------Documents Authentication and Registration Offices

UN-HABITAT-----United Nations Human Settlements Programme

Abstract

Ethiopian government adopted a new urban land Proclamation in 2011. Apart from eliminating all forms of tenure other than lease, the Proclamation requires for conversion of old possessions to leasehold tenure system. This paper assesses the implication of the Proclamation on tenure security of holders of old possessions in Ethiopia particularly in Dire Dawa. Land tenure security has two core elements objective and subjective. The objective element refers to the existence of an effective legal protection against eviction or arbitrary curtailment of land rights. The subjective element refers to the perception factor that landholders have sufficient confidence that they will not be arbitrarily deprived of their rights over their land. Viewed from these elements, the new law adversely affects tenure security of holders of old possessions for the following major reasons. First, the conversion impairs tenure security because it expropriates some rights without compensation and tenure security is a right that stands primarily for protection of landholders against arbitrary expropriation. Secondly, the conversion causes tenure insecurity because, at least, empirical evidences show that holders of old possessions feel the law has caused them tenure insecurity. Thirdly, the conversion has jeopardized rule of law and constitutionalism which are vital for a tenure security.

The findings further revealed that implementation of proclamation and subsidiary legislation of Dire Dawa encountered many challenges. The major challenges identified was the followings; Lack of information access and awareness, tenure insecurity, informal settlements, informal land markets, inequity, Weak administrative capacity, and Lack of transparency.

The last but not the least, the current urban lease holding proclamation and the subsidiary lease holding laws should be amended to adopt accommodative urban land acquisition and transfer system which even, at times, allows the poor acquire urban land for free as land in Ethiopia belongs to the public at large and everyone should be enabled to access it.

Key Words: *Urban Land, Lease, Tenure Security, Conversion, Old possessions, Dire Dawa, Ethiopia.*

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CHAPTER ONE

1. INTRODUCTION

Countries around the world do have their own unique land policies and laws. Pragmatic differences in terms of political, social, economic and cultural setups have made adoption of different land policy and law schemes in such dissimilar societies inevitable. Accordingly, a country which has a society divided across economic classes with huge difference will not opt for land policies and laws which enable individuals to own land privately as this would allow those who have controlled the means of production and capital to buy all the land across the country and exploit the lower class. It is in light of such facts that the FDRE constitution declared that both urban and rural land and other natural resources are owned by the state and peoples of Ethiopia and thus cannot be owned privately.[1]

At the beginning of the 1990s, prompted by consideration of a free market philosophy, a clear demarcation between public ownership of land and individual land-use right appeared and for the first time, an urban leasehold system was introduced in Ethiopia. In 1993, the Ethiopian government enacted the first and new urban leasehold proclamation that may be cited as the Urban Lands Lease Holding Proclamation No. 80/1993. Ethiopia witnessed two other urban land leasehold proclamations that came one after the other: Proclamations, 272/2002, and 721/2011.[2]

The newly enacted proclamation No. 721/2011 has emphasized that any urban land which has not been under leasehold system shall be

[1]Constitution Of The Federal Democratic Republic of Ethiopia, Proclamation No 1/1995, FEDERAL. NEGARIT GASETTE, 1st Year No.1, 1995(here after FDRE CONSTITUTION),Art.40(3) declared that "*The right to ownership of rural and urban land, as well as of all natural resources, is exclusively vested in the State and the peoples of Ethiopia. Land is a common property of the Nations, Nationalities and Peoples of Ethiopia and shall not be subject to sale or to other means of exchange*."

[2]Zelalem Yirga ADAMU, USA, Critical Analysis of Ethiopian Urban Land Lease Policy Reform Since Early 1990s. FIG Congress 2014.

permitted to be held only by lease system. Apart from bringing all forms of land tenure systems outside of lease system to an end, the legislation requires the conversion of all previous holdings in the form of permit system to leasehold. The intent is to create uniformity of the informal settlement of the old possessions with the new, consolidated leasehold system. The new proclamation clearly states that lease payments are provided when informal land settlements are unified with old possessions and are merged with newly leased lands.

While farmers may get rural land for free as proclaimed under the constitution,[3] urban residents have to go through tender and allotment procedures of the urban land lease system to secure urban land use rights on a plot of land. The Ethiopian urban land lease system has tried to ensure the right balance between the interest of the public at large as owner of land on one hand and individual interests related to urban land on the other. Among the most important urban land related interests of the individual citizen is tenure security.

As urbanization is growing fast in Ethiopia, introducing and implementing a land administration system which ensures tenure security is mandatory. In the absence of tenure security, no one is content to bring about any form of permanent improvement to land. This has serious ramifications as it discourages real estate development and ultimately results in shortage of housing and other immovable properties needed for different uses.[4]

1.1Background of the Study

Dire Dawa City located in the eastern part of Ethiopia and found at about 445kms distance from Addis Ababa. The city administration has total land area of 1,288.02 Km2, Dire Dawa city administration is situated in the

[3]See Art 40(4) of the FDRE Constitution.

[4] Sisay Habtamu Tekle, 2012, *Urban Land Policy vis-à-vis Tenure Security and the Environment:* A Case Study of Addis Ababa, Ethiopia. Also see Shlomo Angel, David de Groot, Richard Martin, Yohannes Fisseha, Tsigereda Taffese and Patrick Lamson-Hall 2013, *Urban Expansion (Ethiopia)*: Interim Report August 18 2013.

Eastern Lowlands of Ethiopia and it is federal chartered city. As urban centers in Ethiopia are expanding fast, adopting and executing a flexible urban land use system which can respond to the ever mounting demand for urban land and ensure tenure security would be mandatory. In the absence of tenure security, no one is happy to bring about a costly permanent improvement to land.[5] To that effect the Ethiopian government passed a new and controversial urban land law. Apart from bringing all forms of land tenure systems outside of lease system to an end, the legislation requires the conversion of all previous holdings in the form of permit system to leasehold.[6]The adoption of this legislation caused apprehension on the part of large number of urban landholders which also drew the attention of other stakeholders such as political parties and some members of the international community. One of the key issues of concern with regard to the new land Lease Proclamation relates to its implication on tenure security of urban landholders. In this regard, many urban landholders in general and holders of old possessions in particular were worried about the forthcoming impact of the law on their holdings.

Interestingly, the public was silent when the government passed this piece of legislation for a reason which has to do with apparently lack of awareness. As the future enforcement of this law would have caused serious challenges, however, the government undertook series of awareness enhancement campaigns during which the public aired its views.

Generally, there is no agreement on the ramification of the Proclamation. While some scholars allege that the legislation has detrimental effect on tenure security of urban landholders, the others include stakeholders as one exposure of tenure insecurity but, government authorities categorically

[5]https://www.researchgate.net/publication/283082698_The_Ethiopian_Urban_Land_Lease_Holding_Law_Tenure_Security_and_Property right accessed on october 1/ 2017.

[6]Art 6/1 of the Urban Lands Lease Holding Proclamation, Proclamation No. 721/2011, Federal Negarit Gazeta,
Year 18, No. 4.

reject this argument.[7] Leaving the broader range of analysis on the implication of the Proclamation to various stakeholders aside, this work examines the implication of conversion of old possessions to leasehold, one of the thorny issues in the new Proclamation, on tenure security of urban land holders.

In fact, the issue of conversion of old possessions to leasehold dominated much of the discussions held during the awareness raising discussions. What likely impact will the conversion bring to tenure insecurity of urban landholders in general and holders of old possessions in particular will thus be examined thoroughly against the backdrop of the elements of land tenure security and practical challenges encountered.

1.2Statement of the Problem

The enactment of the new urban land lease holding proclamation has become a burning issue of the day as it is worrying many Ethiopians, especially on the Ethiopian media. Many people are expressing their discontent and sense of lack of tenure security on their holdings. The Re-Enactment of Urban Lands Lease Holding Proclamation No. 272/2002 is repealed by the Urban Lands Lease Holding Proclamation No.721/2011. With the exception of the five years grace period that may be given to some towns based on the decision of the regional cabinets, this proclamation obliges all urban centers in Ethiopia to administer urban land only through the lease system and provides for the conversion of old possessions to lease hold in case such possessions are transferred to third parties with the exception of inheritance.[8]

Where old possession is to be merged or amalgamated with leased land it means that the old possession and the leased land must have been bordering each other and now have changed into one property. What about amalgamation of two old possessions? This case may be appeared when two or more old possessions wanted to be amalgamated. The law does not say

[7]Daniel W. Ambaye, urban land transfer and state monopoly in value capture in Ethiopia
[8]See supra note 6, Articles 3, 5 and 6(3).

anything about it, and this is one gap of the proclamation. As the proclamation is silent on this issue there is no agreement on whether the conversion is mandatory or not.

Indeed, many people are disappointed especially by the conversion of old possession to lease hold which is said to be carried out after a study is conducted by the Ministry of Urban Development and Construction and presented to the Council of Ministers for approval and the restrictions imposed on transfer of old possessions.[9] The government alleges that the proclamation is enacted in response to the problem of rent seeking and corrupt practices emanating from the gaps created by the previous lease proclamation. For this purpose unlike the previous proclamation, this new one has incorporated very serious penalties for the violation of its provisions and the regulations and directives which will be issued for its implementation.[10]

The penalties provided under art.35 of this proclamation seem to show the strong stand of government to abolish rent-seeking and corruption with regard to land allocation.[11] It also may be taken as a tool to exclude any types of land allocation other than lease hold system and the measure to deter the deviant land possessor and employees who is in charge of implementing this proclamation, regulations and directives to be issued.

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

[9]Ibid.article 6.
[10] See Supra note 6, article 35.
[11] Under its art.35, this law has introduced the penalty of imprisonment that ranges from 1 to 15 years, and monetary fine of 10,000 to 200,000 Birr. These penalties may be imposed on an officer or employee (in charge of implementing this proclamation and regulations and directives to be Issued hereunder), or private individuals involved in unlawful acts of fencing an urban land, or carrying out construction on such land, or who are involved in a bid by using falsified documentary evidence.

However, many people find it strangely ironic to see the government in a rush to legislate such an intensely sensitive issue for hundreds of thousands of residents with historical landholding rights, without even meeting the minimum standards of law making.[12] It is said that this revised urban land lease holding proclamation did not see the legal drafting procedures such as being tabled for debate among experts and scrutiny by members of the public. It is also added that it was not even reviewed by drafters at the Ministry of Justice, a federal agency whose responsibilities include checking whether any law to be decreed is in conformity with existing laws and the supreme law of the land, the Constitution. Staffed with six drafters, it is expected to respond with feedback within 18 days of the submission of a bill by its authors.[13]

It is mentioned that even if the proclamation contains important provisions the processes followed in the enactment of the same were not correct as neither the public nor members of the parliament have been consulted during the preparation of the proclamation.[14] Moreover it is added that the parliament did not discuss the proclamation but it adopted the proclamation for it was ordered to do so and hence the process was undemocratic.[15] Of course the officials in the MoUDC are also convinced that sufficient public consultations and discussions were not made because the government hurried to adopt this law to stop the rampant corrupt and rent seeking practices related with land allocation and land market.[16]

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[12] EdenSahle, LandLeaseLawLandsHardinLandholders'Laps, (availableat:http://addisfortune.com/Vol_12_No_613_Archive/agenda.htm), (2017), last visited on September 14, 2017.

[13]Ibid.

[14] Araya Asgedom, Salient Features of the New Ethiopian Urban Land Lease Holding Proclamation No.721/2011 and Its Implications on the Ethiopian Economy, (Unpublished), 2013, Addis Ababa University School of Law, p.20.

[15] Ibid. As cited in Araya Asgedom, He, Ato Atsbha Aregawi also mentioned that in an attempt to avert rent seeking practices this proclamation may negatively affect the urban poor and the middle income who are afflicted by the housing problem. He finally emphasized that as the housing problem in urban areas is a burning issue even for the government mechanisms by which the law can benefit the poor and the medium income urban residents should be designed in the regulations or in any other way.

[16] ibid

To the shock of many, including those in the system, the process is said to be devoid of Parliamentary debate, without any hearings offered to the public. The MoUDC insisted on an immediate vote on the bill, without letting the standing committee in Parliament take the case up for further public scrutiny.[17]The bill was made into law with a single opposition vote from Girma Seifu, an opposition party MP. “I do not understand why they choose to make it so fast and surprising,” said Girma, who claims not to have had time to read all the proclamations in the short period of time allotted, told Fortune and said “Such kinds of laws have to be discussed by the public and the responsible standing committee in the parliament.” [18]

Legal experts speculate that the lease proclamation has been deliberately kept away from the public in an attempt to avoid speculative lease right transfers at higher prices, without the state taking its cut even if officials at the Ministry reject such assertions.[19]According to legal experts, inhabitants in urban area will be required to pay lease based on market rates for the land they possessed for many years and on which they constructed houses prior to the coming in to force of this proclamation, after the study which will be submitted by the MoUDC is submitted and approved by the Council of Ministers as the new law recognizes lease holding system as the only way for one to get land in the urban areas.[20]

As a result it is said that this law reduces the chance to own private property and render many homeless if they cannot pay for the lease of the land they have their houses or business establishments on. Government officials in charge of clearing the mess in the land regime of the country are on the retreat, at least after admitting flawed procedures in the legislative process of the revised law on urban land lease. They left a rather baffled

[17] Supra note 12.
[18]Ibid.
[19]Ibid.
[20] supra note 12.

public into more confusion, unable to answer questions directed at them during town hall meetings held across the cities.[21]

Therefore, in this paper, the researcher intend to; -evaluate and analyze the controversial issues of the laws which include among other thing conversion of old possessions to leasehold whether the law violates the tenure security of the people, urban land holder, in Ethiopia particularly old possessors in Dire Dawa. Moreover to explore the law which currently in operation and, the practice in Dire Dawa with regard to the issues at hand and; discuss possible implications of the law on the country's economy particularly on that of Dire Dawa and lastly to propose possible solutions.

1.3 Research Question

Generally, the following issues on the legal regime and the institutions responsible for implementing the proclamation in Dire Dawa will be raised and resolved as much as possible. In light of the above mentioned points, the study will attempt to address the following questions:

- What is the implication of the conversion of old possession to lease hold system on old possessors in Dire Dawa?
- Is the conversion of old possession to lease hold system justified?
- What are the challenges faced during implementation of the new lease proclamation in Dire Dawa?
- What is the effect of conversion on property rights of the holder of old possession in Dire Dawa?

1.4 Objective of the Study

1.4.1 General Objective of the Study

Proclamation No.721/2011, which provides for the lease holding of urban lands, was enacted on 28 October 2011. There is research work done so far on the legal regime of this title. However, there is no research done regarding this issue specifically on Dire Dawa city. So the major objective of

[21]Ibid.

this research is, to study and analyze the implication of conversion of old possession to lease hold and its implication on tenure security of old possessor in dire dawa, the area of study.

1.4.2 Specific Objectives

- To assess whether the conversion of old possession to lease hold system justified.
- To evaluate the law in line with its implication on tenure security of holders of old possessions.
- To analyses the challenges faced during implementation of the new lease proclamation in Dire Dawa city.
- To find out whether the conversion of old possession to lease hold is opposed by Dire Dawa urban residents.

1.5 Scope of the Study

The study mainly focuses on the critical analysis of conversion of old possession to lease hold and its implications on tenure security of holders of old possession. The study primarily dealt with urban land lease proclamation, proc. No; 721/2011. However, the study will also dealt with the former urban land lease holding proclamations; the proclamation to provide for the lease holding of urban lands No. 80/1993 and the Re-Enactment of Urban Lands Lease Holding Proclamation No. 272/2002. And other specific laws of Dire Dawa city administration as far as conversion of old possession concerned. The study area will be limited to Dire Dawa city administration.

1.6 Significance of the Study

As this study is the first of its kind in dealing with the conversion of old possession to lease hold right, in Dire Dawa city administration, it may be utilized as a preliminary research for the study to be conducted by the subsequent researcher about the conversion of old possessions to lease hold

and contribute something so that various measures will be taken for the revision of the law.

The land lease proclamation has been subjected to a lot of critics from inhabitants of cities and towns regarding the conversion of old possession to land lease. Thus, the results of the study may contribute to the debate that exists on the land lease law issues. Moreover, the study can be considered as an addition to the limited literature available on urban land lease holding in Ethiopia in general and Dire Dawa city in particular. Given the appropriate dissemination mechanism, it is hoped that the results of this study will have an impact on the academic community, governmental and non-governmental organizations, policy makers and the public at large.

1.7. Research methodology

1.7.1Research Design

In this study the Doctrinal and Non-Doctrinal type of research method will be employed. Hence the practical impact of lease laws will be dealt.

1.7.2 Sources and types of data

For this study the researcher will use data type and sources that contain both qualitative and quantitative in order to achieve the research objectives as its importance. Accordingly both primary and secondary sources of information related with conversion of old possession and its implications on old possessors in Dire Dawa will be considered.

1.7.3 Primary sources

Primary sources to be studied include the New Urban land lease holding proclamation No 721/2011, the former two urban land lease proclamations; i.e. the proclamation to provide for the lease holding of urban lands No. 80/1993 and the Re-Enactment of Urban Lands Lease Holding Proclamation No. 272/2002. And, other relevant subsidiary legislations of Dire Dawa city administration also will be used.

1.7.4 Secondary sources

Secondary sources include books, journals, unpublished materials, newspapers and internet sources.

1.7.5 Data collection method

For this research data will be gathered through referring to different available legal materials and documents which have relation with the issues in question. Further, the primary data will be gathered through conducting interview and distributing questionnaires to the relevant institutions and other stake holders. The questionnaires will be based on closed-ended types of questions and interview will be held based on guiding questions with the respondents of concerned institutions and individuals.

1.7.6Sample of data

The sample size for this study will be 35 respondents for questionnaires that will be distributed to different stake holders, including urban land lease holder, old possessor, land authority, brokers and other concerned institutions. The interview will be held with the concerned land authority and other stake holders like urban land lease holders, old possessors, banks' employees and brokers and other related institutions on the areas of laws which may be cause for confusion and where there is gaps of laws. The necessary documents that may help us to conduct this research will be used. These documents may include Dire Dawa city administration charter, regulations, directives and other documents.

1.7.7 Data analysis and presentation

After collecting data the collected data will be processed and it will be further analyzed in relation with literature review on the issues at hand so that the study will be easy to be understood by everyone. Finally, the outcome of the study will be presented on written materials and detailed oral presentation.

1.8 Limitation of the study

The researcher, while conducting the study, may face the following limitations, lack of enough data, lack of adequate sources of information, language barrier limited access to internet And, reluctances of some respondents to give credible information and lack of awareness on the subject matter could be also taken as a setback to this study.

1.8 Organization of the paper

This work will consists of five chapters each of which will further divided into topics and subtopics. Chapter one is about the introductory part of the research. It includes, introduction, background of the study, Statement of the problem, research questions, scope of the study, and objective of the study, research methodology, and limitation of study, significance of the study and organization of the paper. Chapter two, literature review, will address conversion of old possession to lease hold; introductory remarks, definition, history of lease, conversion of old possession to lease hold in previous and in the new proclamation are included. The third chapter will emphasize the modalities of conversion, reason for conversion, Conversion of Old Possessions viewed from tenure Security Point of view**,** Perception of the Public towards conversion, Legality of the Conversion and Elements of Land Tenure Security in particular. The fourth chapter will be devoted to analyze the practical implication of the conversion on tenure security of old possessor and challenges encountered during implementation. Finally the paper shall end with conclusion and recommendation.

CHAPTER TWO

CONVERSION OF OLD POSSESSION TO LEASE HOLDING

2.1 Introductory Remarks

This chapter mainly deals with conversion of old possession to lease hold. Under this chapter, after highlighting some introductory remarks, the study going to deal with some of the controversial issues of the proclamation which among others include; Conversion of old possessions to leasehold. This chapter mainly devoted to; defining lease, history of land lease in Ethiopia, Land tenure during Emperor Haile Selassie regime, Derg and EPRDF respectively.

2.1.1 Defining Lease

As it is conventional to start with the definition of the term under consideration prior to discussing its merits the researcher will try to define the term lease from various sources.

The new urban lands lease holding proclamation defines 'Lease' as a system of land tenure by which the right of use of urban land is acquired under a contract of a definite period.[22] 'Lease' is system of land tenure by which the right of use and transfer of urban land is acquired under a contract of a definite period. Land tenure could be expressed as the possession and use

[22] Supra note 6, Art 2(1).

of land by individuals or groups for limited or unlimited period of time. [23] According to Oxford dictionary (1998), tenure is defined as the condition or form of right or title, under which real property is held. Thus under the proclamation lease is defined as a system from which the right to use of urban land for a limited duration is derived by way of a contract. The contracting parties are of course the lessee and the lessor i.e. the state represented by the government and the lessee. As per Black's law dictionary, 'lease' means to grant the possession and use of (land, buildings, rooms, movable property, etc.), to another in return for rent or other consideration.[24] In this case in addition to the fact that the time limit is not indicated, the agreement includes letting of movable properties also.

Long man dictionary of contemporary English also defines 'Lease' as a written agreement, made according to the law, by which the use of a building or piece of land is given by its owner to somebody for a certain time in return for rent for length of time such an agreement is to last.[25] In this case the agreement which relates to the use of land and buildings in consideration for rent should be written and it is made for a limited time according to the law of the land. Thus, generally, in our context, lease is a contract for consideration between an owner and a tenant granting the exclusive right to use of land for a fixed period.

2.2 History of Land Lease in Ethiopia

As it is a case for many developing countries, land has special place in the socio-economic and political life of Ethiopians. Taking the economic facet, land has been a source of wealth, economic growth, employment and a source of basic survival for an overwhelming majority of the population of the country and it will remain so, at least, for foreseeable future.[26] When it comes to urban land, it is evident that the country is witnessing rapid level

[23] Daniel w/gebriel and Melkemu Belachu ,land law teaching material,2008 justice and legal research inistitute.p.76
[24] Bryana A. Garner (ed.), Black's law dictionary,(2009, 9th ed.), West, A Thomson Reuters Business, U.S., p.972.
[25]Longman's dictionary of contemporary English (1986), Longman group Ltd. UK. , p.623.
[26] Bacry Yusuf et al, Land Lease Policy in Addis Ababa, (2009), p. 14

of urbanization which is drastically changing the physical, social, economic, political and administrative structures of the cities.[27] This calls for its continuous and yet predictable regulation for which the policy environment of land tenure is the starting point.

2.2.1Land tenure during Emperor Haile Selassie regime:

The urban land tenure policy of Ethiopia has passed through a range of paths at different times and regimes. Even if it is not in its current sense the idea of leasing land existed starting from ancient times. It was part of a variety of land holding types prior to 1975. This was incorporated in to written laws during the reign of Emperor Haile Selassie when private ownership of land was allowed and landlords were entitled by the civil code to lease their land to their tenants.[28] In the period before 1975, the urban land tenure policy was a freehold tenure system that allows land to be sold, exchanged, rented, leased or transferred without restriction.[29]

2.2.2Land tenure during Derg regime

The written laws during reign of Emperor Haile Selassie which allowed private ownership of land lease system was abolished by the Derg regime when both rural and urban land was nationalized and any sale or exchange of land was prohibited by law.[30] At this time, large tracts of urban land were allocated for free to individuals, private and public sector enterprises.

Based on the ideology, which envisaged to "socialize the overall economy", The Derg regime nationalized urban land for the benefit of the Ethiopian people in the belief that public control and allocation of land will be both

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[27]Ibid.

[28]See articles 2896 offs, of the Civil Code of the Empire of Ethiopia, Proclamation No.165/1960. Negaret Gazeta. Year 19, No.2.

[29] Gondo, Tendayi, Housing Informality in Expanding Ethiopian Cities: Moving beyond the 'New Normal' Syndrome, in Manfred Schrenk et al (eds.) Change for Stability Life Cycles of Cities and Regions: The Role and Possibilities of Foresighted Planning in Transformation Processes (2011), p. 407

[30] See Government Ownership of Urban Land and Extra Houses, Proclamation No. 47/1975 and Public Ownership of Rural Lands, Proclamation No. 31/1975 Negarit Gazeta. Year 34, No. 26 for rural lands.

more efficient and more equitable than leaving it to market forces or to traditional authorities.[31]

Thus a fundamental change regarding land and housing took place in the country in 1975.

A critical step that took place at this time was the separation of the right to use land from the ownership of the land, which allowed the state to continue to own the land while leaving the use right to land holders.

2.2.3Land tenure after downfall of Derg regime

Then after the down fall of the Derg regime, the government led by *EPRDF* that took power in 1991, even if did not change the public ownership of land in general, has made important changes on policies of urban land. Lease became the over-riding urban land holding system through proclamation No.80/1993. This proclamation enabled the government to transfer urban land administration from the permit system to leasehold system. The TGE introduced a public lease form of urban land tenure system in Ethiopia by virtue of Proclamation No.80/1993, as revised by Proclamation 272/2002 with a view to transfer use rights over land from government holding to private individuals. Apart from the revenue generation to support the urban infrastructure, one of the important objectives of the lease law was to "turn land from a timeless and costless resource into formally exchangeable commodity with both cost and time limit"[32] thereby increase land use efficiency and investment.

Of course, these former urban land lease holding proclamations were not practically applicable to all urban centers throughout the country and it is the new proclamation No.721/2011 which has expressly provided that every urban center in Ethiopia will be administered by the lease proclamation even if there is a transitional period of five years depending on the decision of the concerned regional cabinets for some towns found in the various

[31] See the preamble of the Government Ownership of Urban Land and Extra Houses, Proclamation No. 47/1975. Negarit Gazeta.Year 34, No. 41.

[32] Abuye Aneley, Synoptic Reflection On Urban Land Administration Issues In Ethiopia, (Unpublished), 2006, Windhoek, p. 5

regions.[33] Surprisingly, at the time of conducting this research the five year transitional period was lapsed as such all urban center should be administered by the lease proclamation of proc. No. 721/2011.
However, the current lease proclamation has attracted the attention of the public because it has some basic changes from the former two lease proclamations. It provides for the administration of all urban land through the lease system and imposes various restrictions on transfer of properties attached to the land. Consequently many people complain that the new lease holding proclamation narrows one of the fundamental and important rights of citizens, i.e. the property right of individuals. The restrictions imposed by the law on transfer of properties attached with the land are cited as one manifestation of such interference with individual's property right.

Of course the reason why this system is devised is obvious. Before the coming in to force of this
Proclamation, when old possessions were sold, the government got almost nothing. But now, what is special to proc.no.721/2011,is that it wants to get lease payments when an old possession is transferred through all means other than inheritance. Thus this Proclamation has found a system by which the government derives the required benefit from the value of the land.[34]
Property transfer in this case, as mentioned above, includes sale, exchange or donation, excepting inheritance. It must be noted that since land is not saleable, the subject matter of "transfer" is not the land itself but the immovable on the land, i.e. building. Hence, whenever a house rested on old possession is sold, exchanged, or donated, the new owner shall possess the land on lease basis. Any person who acquires the right to hold urban land on lease may transfer such right to contribute in the form of a share to the extent of the rent paid. In implementation, a lessee may not transfer his

[33] supra note 6, article 5(4).
[34] Araya Asgedom, supra note 14 at.26

right of lease but may collect income which is higher than the rent of land he paid. When the lessee collects an income higher than the rent he paid, he has the duty to pay the difference to the city administration or municipality.[35]

2.3 private Property Rights of individuals

2.3.1 Constitutional provisions on land use rights

Although land is publicly owned, pursuant to Article 40(3) of the Ethiopian Constitution[36], Article 40(1) stipulates that "Every Ethiopian citizen has the right to the ownership of private property." Subject to the prescriptions of the law and public interest, Article 40(1) guarantees, "the right to acquire, to use and, in a manner compatible with the rights of other citizens, to dispose of such property by sale or bequest or transfer it otherwise." The definition of private property under the Constitution[37] envisages "tangible or intangible product which has value and produced by the labor, creativity, enterprise or capital of an individual [... or a legal person]" or, "in appropriate circumstances, by communities specifically empowered by law to own property in common."

The Constitution regards private property of individuals and legal persons as the product of one's "labor, creativity, enterprise or capital", and it also envisages the legal recognition of community ownership." Subject to the public ownership of land, Article 40(6) of the Constitution recognizes the land use rights of private investors "on the basis of payment arrangements as established by law".[38] This constitutional recognition of

[35] Daniel Woldegebriel (2013). Land Rights and Expropriation in Ethiopia, PhD Thesis, Real Estate Planning and Land Law, Department of Real Estate and Construction Management, School of Architecture and the Built Environment Royal Institute of Technology (KTH), Sweden. p.78.

[36]FDRE Constitution Article 40(1), reads: "The right to ownership of rural and urban land, as well as of all natural resources, is exclusively vested in the State and in the peoples of Ethiopia. Land is a common property of the Nations, Nationalities and Peoples of Ethiopia and shall not be subject to sale or to other means of exchange."

[37]Ibid, Art. 40(2).

[38] Ibid. Art. 40(6). The provision reads "Without prejudice to the right of Ethiopian Nations, Nationalities, and Peoples to the ownership of land, government shall ensure the right of

land use rights accorded to investors extends to other citizens as well. For example, Articles 40(4)[39] and 40(5) [40] of the Constitution guarantee the land use rights of smallholder farmers and pastoralists. The joint reading of sub-Articles 4, 5 and 6 of Article 40 of the Constitution shows that land use rights have constitutional recognition in Ethiopia.

Moreover, a careful reading of Article 40(7), second sentence, shows that the right of an owner of an immovable property goes beyond the property that s/he has built and the permanent improvements made on the land. The provision reads: Every Ethiopian shall have the full right to the immovable property he builds and to the permanent improvements he brings about on the land by his labor or capital. This right shall include the right to alienate, to bequeath, and, where the right of use expires, to remove his property, transfer his title, or claim compensation for it. The phrase "where the right of use expires, to remove his property" clearly shows that a house owner's rights can be restricted to the property on the land only when the duration of the land use right expires. This, in other words, recognizes the entitlement of an urban homeowner not only to the property on the land, but also to land use right, which apparently has economic value.

2.3.2 Urban land use rights –versus- mere holding and usufruct

The elements of ownership embodied in continental legal systems are the right to use (usus), the right to enjoy the fruits (fructus), and the right to dispose of (abusus). Article 1205 of the Ethiopian Civil Code[41] has adopted this approach. The land use right which can be claimed by the urban house owner goes beyond mere holding on behalf of the state or the government,

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private investors to the use of land on the basis of payment arrangements established by law. Particulars shall be determined by law.

[39] Ibid. "Ethiopian peasants have right to obtain land without payment and the protection against eviction from their possession. The implementation of this provision shall be specified by law."

[40] Ibid. Ethiopian pastoralists have the right to free land for grazing and cultivation as well as the right not to be displaced from their own lands. The implementation shall be specified by law."

[41] Article 1205 states the scope of ownership rights. Sub-Article 1 states the scope of the right to use and exploit property, and Sub-Article 2 recognizes the right to dispose of property 'for consideration or gratuitously.

because a holder (as envisaged in the Civil Code) possesses a thing on behalf of another owner or possessor.[42] Although lease holding does not confer ownership rights over the land, it is not exclusively restricted to 'usus' (short of enjoying the fruits of ownership) because the leaseholder is entitled to construct buildings on the land and then own the buildings during the period of lease.

In spite of current restrictions on transfer of leasehold under Proclamation No. 721/2011[43] on which a certain level of construction is not made, leasehold over land is not a restrictive use right (mere usus) comparable to a tenant's use right of a house s/he has rented from the owner. Instead, it is an expansive use right which includes the right to use, develop and exploit the land. Leasehold over urban land thus confers a wider right than usufruct under the Civil Code.[44] Article 24 of the Lease Proclamation can also be cited in this regard because it recognizes the right to transfer or pledge leasehold rights under the circumstances stipulated in the provision. The owner of an urban house is regarded as the owner of the building, and at the same time, as the possessor of the land based on leasehold or old possession.[45] In effect, property rights of urban house owners go beyond claims over the roofs and walls, but should also extend to the economic value of their rights to use the land. Upon expropriation, equity thus requires compensation not only to the roofs and walls, but also to the land use rights that are being transferred to the new holder. In other words, the principle of 'efficiency' cannot justify the denial of compensation (commensurate with the market price paid by investors to municipal authorities) for the land use rights that a house owner loses.

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[42] See for example Civil Code, Arts. 1141, 1147

[43] The restriction under Article 24 et al of Urban Lands Lease Holding Proclamation No. 721/2011 is meant to control speculative land transfers which are susceptible to corruption.

[44] See Civil Code, Articles 1309-1358 for the rights in usufruct.

[45] Article 2(18) of the Urban Lands Lease Holding Proclamation No. 721/2011 defines 'old possession' as "a plot of land legally acquired before the urban center entered into the leasehold system or a land provided as compensation in kind to persons evicted from old possession''.

It is noted that "property rights should not be restrictively interpreted to mean fixtures to the land. The person who uses land has use rights that will be terminated due to expropriation, and this should also be considered during expropriation".[46] Instead of compensation commensurate with the value of the use right on the land, an urban landholder shall, upon expropriation, be entitled to "a plot of urban land, the size of which shall be determined by the urban administration, to be used for the construction of a dwelling house"[47] and a displacement compensation "equivalent to the estimated annual rent of the demolished dwelling house or be allowed to reside, [free] of charge, for one year in a comparable dwelling house owned by the urban administration".[48] These entitlements for a plot of land and displacement compensation shall also apply mutatis mutandis to houses used for business undertakings.[49] There are many types of loss that are not considered in the process of compensation. The valuation is not thus appropriate. In addition to the enhanced value of the land use rights and location value that are left unconsidered, there are also indirect losses (such as trade loss) due to trade interruptions as a result of the expropriation process.[50]

2.4 What Is Old Possession?

In order to explain what conversion of old possessions is all about, it is imperative to discuss what old possession is in the context of the present urban land lease regime of Ethiopia. The term old possession was not as such new concept in Ethiopia. In fact, the classification of urban landholdings into old possessions and new possessions (lease possessions)

[46] Cited at supra note 14, Yoseph Aemero, Former High Court Judge, Currently Attorney and Consultant at Law (Focus group discussion summary), 13 July 2013.
[47] Expropriation of Landholdings for Public Purposes and Payment of Compensation Proclamation No. 455/2005, Art. 8(4)(a).
[48] Ibid. Art. 8(4)(b).
[49] Ibid. Art. 8(5).
[50] Cited in Areya Asgedom, supra note 14. Daniel Woldegebriel, Bahir Dar University, Institute of Land Administration (Focus group discussion summary), 13 July 2013.

was first introduced by the first Ethiopian Lease Proclamation, Proclamation No. 80/1993. In many of its articles, the Proclamation regulated matters relating to old possession.[51] Similar conclusion may also be made after reading Art 3 of the Revised Urban Lease Holding Proclamation, Proclamation No. 272/2002.

The term 'Old possession' is also defined under article 2(18) of the new lease holding proclamation as "a plot of land legally acquired before the urban center entered into the leasehold system or a land provided as compensation in kind to persons evicted from old possession". Article 2(7) of the draft model regulation on the other hand defines 'old possession' as "a plot of land legally acquired before the urban center entered into the leasehold system or a land provided as compensation in kind to persons evicted from old possession or a land which didn't have title dead but currently recognized." The last one is an addition made by the council of minister regulation. Thus, all in all, old possessions are possessions which were acquired during the Derg era and before as well as those acquired then after through a means other than lease hold.

2.5 Conversion of Old Possession to Lease Hold In Previous and In the New Lease Proclamation

2.5.1 Proclamation No. 80/1993

The first lease law i.e. proclamation no. 80/1993 which attempted to avoid the allotment of urban land for urban residents for free has been amended two times. The first amendment is made by Proclamation No. 272/2002 and the second one is by the current Proclamation No. 721/2011.

The present government designed a new land tenure system for urban Ethiopia, i.e. the lease system. The administration of urban land by lease

[51] Urban Lands Lease Holding Proclamation, 1993, Arts 3 and 15 of the proclamation which expressly exclude old possessions from the scope of application of the proclamation and subjects some (vacant) land permitted for purposes other than construction of dwelling houses to the lease system respectively

holding started for the first time during the transitional government of Ethiopia when proclamation number 80/1993 was enacted. A critical step in this legal reform was thus the change from the permit system to lease hold system. Of course, the lease system was introduced before the promulgation of the FDRE constitution.

Consequently, one cannot consider the constitution as a basis of the introduction of the lease system in Ethiopia; the basis of this law rather seems to be the policy change from command economy to liberal economic system.[52] Moreover, the constitution does not give any clue about the establishment of the lease system as a mode of allocation of urban lands. This in turn has become a source of debate among legal professionals. According to this lease proclamation, all urban land is owned by the government[53] and transfer will only be carried out through the lease system. Article 3 of the proclamation which provides the scope of application of the same states that the proclamation shall not be applicable to urban lands previously utilized for building dwelling houses, provided however that where a dwelling house is transferred to another person in any manner other than inheritance, the person to whom the said house is transferred shall hold the land in accordance with the lease hold system. Moreover, article 15 of the same required all land holders utilized for non-dwelling house to apply to the appropriate town administration to convert the same in to lease holding and obtain lease holding title document. However, the conversion of old possessions to lease hold provided under articles 3 and 15 of this proclamation was not put in to practice.

2.5.2 Proclamation No. 272/2002

Then the first lease proclamation was replaced by the Re-enactment of Urban Lands Lease Holding Proclamation No.272/2002. It was stated under

[52] Supra note 13, p. 157.
[53] See the first paragraph of the preamble of the Urban Lands Lease Holding Proclamation, Proclamation No. 80/1993. Negarit Gazeta of the Transitional Government of Ethiopia.Year 53, No. 40.

article 3(2) of this law that “this Proclamation shall be applicable to an urban land held by the permit system, or by lease-hold system or by other means prior thereto, as well as to an urban land permitted hereafter.” But the application of this proclamation on land allotted before the establishment of the lease system was not made practical. Proclamation No. 272/2002 too didn’t bring the required change in urban land administration and it was later repealed by the current urban land lease proclamation No. 721/2011. Therefore, there are old possession/ non leasehold land use rights which are held since pre 1994 times and after in urban centers which have not implemented the previous land lease proclamation.

The idea of converting old possessions in to lease holding was opposed by many people stating that old possessions should not be differentiated from inheritance. Of course, the intention of the government to convert old possessions in to lease hold is not new. The repealed proclamation no. 272/2002 after stating under its preamble that lease will be the cardinal and exclusive urban land-holding system, provided under article 3(2) dealing with its scope of application that “this

Proclamation shall be applicable to an urban land held by the permit system, or by lease-hold system or by other means prior thereto, as well as to an urban land permitted hereafter.”

2.5.3 The New Lease Proclamation No 721/2011

Once again the second lease proclamation proc.no. 272/2002 was repealed by the Urban Lands Lease Holding Proclamation No.721/2011. With the exception of the five years grace period that may be given to some towns based on the decision of the regional cabinets, this proclamation obliges all urban centers in Ethiopia to administer urban land only through the lease system and provides for the conversion of old possessions to lease hold in case such possessions are transferred to third parties with the exception of inheritance.[54] Moreover, unlike the repealed lease proclamation which

[54] Cited above at supra note 6, See Articles 3, 5 and 6(3).

allowed four means of urban land acquisition: auction, negotiation, assignment and allotment,[55]the new one recognizes tender and allotment as the only two basic means of leasehold right transfer from government to citizens.[56]

The current lease proclamation has attracted the attention of the public because it has some basic changes from the former two lease proclamations. It provides for the administration of all urban land through the lease system and imposes various restrictions on transfer of properties attached to the land.

As a result, the new proclamation happened to be very controversial and has attracted the attention of the public as it introduces vital changes from the former two. This proclamation is designed among other things to gradually convert urban land holding acquired through the permit system and imposed many restrictions on transfer of properties attached with the land. As a result, it is worrying many Ethiopians. Many people from various professional sectors opposed its adoption. It is said that there are gaps between this law and other laws of the country and that the law does not enable the people to have secured access to land. Indeed, many people are disappointed especially by the conversion of old possession to lease hold which is said to be carried out after a study is conducted by the Ministry of Urban Development and Construction and presented to the Council of Ministers for approval and the restrictions imposed on transfer of old possessions.[57]

Unlike the previous Lease Proclamations, the new Lease Proclamation comes up with an express definition of old possession. Accordingly, old possession refers to "a plot of land legally acquired before the urban center entered into the leasehold system or a land provided as compensation in

[55] See article 4 of the Re-enactment of Urban Lands Lease Holding Proclamation, Proclamation No.272/2002. Federal Negarit Gazeta. Year 8, No. 19. See also the Urban Land Lease-holding Regulation of Addis Ababa City Government, Regulation No.29/2010. Addis Negari Gazeta. Year 2, No. 29.

[56] supra note 6, at Art. 7(2).

[57] Supra note 6, at Art. 6.

kind to persons evicted from old possession."[58] From this definition, it is easy to conclude that old possessions refer to all landholdings outside of the lease system. It follows that old possession refers to the following forms of urban landholdings. First, it refers to holdings that are given before the enactment of the new lease law if the urban center[59] was not a lease town. Secondly, in the case of lease towns, old possession refers to landholdings that were given prior to the introduction of the lease system. Thirdly, it refers to the holdings that were given through the permit system in lease towns in which both, the lease system and the permit system were operating in parallel.[60]Fourthly, old possession refers to a holding that is granted as a substitute of an old possession if such possession is expropriated for public purpose.

In general, the current proclamation as indicated above has clearly declared that there is a proposal on the part of the government to convert all old possessions in to lease hold. But as to the modality of converting such possessions in to lease hold the ministry of urban development and construction will conduct a detailed study and submit it to the council of ministers. Thus it is based on this study that the council of ministers will determine such modality of conversion. To this effect MoUDC enacted regulation.

[58] Ibid. Art. 2(18).

[59] Urban center is defined by the new lease proclamation as "urban center" means any locality having a Municipal administration or a population size of 2,000 or more inhabitants of which at least 50% of its labor force is engaged in nonagricultural activities". Urban Lands Lease Holding Proclamation, 2011, Art 2(3), Proclamation No 721, Federal Negarit Gazeta, Year 18, No. 4

[60] This was possible for two reasons. First, this practice was common in many parts of the country. Secondly, as Proclamation No 272/2002 empowers regional governments to decide on the specific matters relating to lease, some regional states used to allow the parallel operation of both systems of holdings

2.6 Uniformalisation of urban land holdings

2.6.1 Prohibition of Land Possession and Permission other than Lease Holding

Uniformalising the urban land holdings under the unified leasehold system remained a long over-due project of the current government. It was anticipated under the 272/2002 urban land lease proclamation that aspires to make all urban land fall under the lease hold system[61] based on the time and conditions to be set by the concerned region or city government. The significant change that this newly adopted proclamation has introduced relates to the express prohibition of any other form of land holding by declaring that 'no person may acquire urban land other than in accordance with the leasehold system stipulated under this Proclamation.[62] However, the legislature has still provided for exceptions taking into account the difficulty that some of the regions might encounter in enforcing this strict prohibition. The exception shall only be accepted upon the particular regional cabinet's decision specifying urban centers that may be granted a transitional period of not exceeding five years for applying this proclamation.[63] Now, as these five years lapsed, no region in Ethiopia allowed to grant urban land except through the leasehold system except as provided under the lease regulations of council of minister.

2.6.2 Conversion Of Old Possession to lease hold

Conversion of the old possessions into the leasehold system is the second measure that the law has introduced towards the uniformalisation process. This is, by far, the most controversial and complex process that will undoubtedly create public discontent, to say the least. Urban land holdings in the country at their current status are primarily held through the permit system and thus, the conversion of all those holdings into the unified

[61] See Article 3(2) of the Urban Lands Lease Holding Proclamation 272/2002, Federal Negarit Gazeta, 8th Year no 19, Ginbot 14, 2002, Addis Ababa.
[62] Supra note 6, at Art. 4(1).
[63] Ibid, Article 4(4). Note that at the time of writing this research, in2017, the transitional period granted under this article is expired.

leasehold system requires time, caution to be exercised by the cohort of experts of the appropriate government organ. Accordingly, the Council of Ministers, based on the detailed study by the Ministry of urban Development and Construction, is expected to lay down, as it were, by regulations, the modality of converting old possessions into leasehold.[64]

The new lease holding proclamation, proc. no.721/2011 after providing under article 5 that "it is prohibited to administer land other than the lease holding system", states that "the modality of converting old possessions into lease hold shall be determined by the Council of Ministers on the basis of a detailed study to be submitted by the Ministry; provided however that the process of such study may not preclude a revision of the existing rental rate applicable to old possessions".[65]

The proclamation clearly declares that all land in urban areas shall henceforth be transferred in to lease system (Art.5.) The idea is that land held during the Derg era and before then as well as land held through informal means and not certified must be registered as leased land. Many writers argues that regularization of irregular land holding paves the way for illegal land grabbing in urban as the land hold illegally can be changed to legal holding. Contrastingly, others argue that demolishing all irregular settlements or the land held illegally is so detrimental to the economy of the country and the fate of large number of poor illegal land holders and may cause great social disturbance.[66]

The same idea was, of course, incorporated in the previous proclamation as well. The difference between the previous and the current lease proclamations is that the current lease proclamation attaches mandatory lease payment to the status. Transfer of land holding into lease system means that all land in urban areas, after being identified and registered by the municipality, shall be registered as lease land and the holder shall enter

[64] Ibid, Article 5(1).
[65] Supra note 6, Art.6(1)
[66] Araya Asgedom, Supra note 14. at p.30-34.

with the government a lease contract that among others includes lease period and lease price to be paid (art. 15). The lessee will then be issued a "lease certificate" that shows name of lessee, land size, location, land use purpose, lease price, lease period and so on.
Although the timing of transferring all land which are outside transaction is not decided under the proclamation, the proclamation declares that the following land related activities shall be subject to payment of lease Price when land is transferred to third person other than inheritance, when old possession and newly leased land are amalgamated/merged, and when informal settlement land is being regularized (art.6).

The effect of transfer of land right in the event of the above three situations is that buyer or holder will pay "lease benchmark price", minimum lease price, which shall be set by every urban center, multiplied by the area of the land size. The calculation of this price takes into "account the cost of infrastructural development, demolition cost as well as compensation to be paid to displaced persons in case of built up areas, and other relevant factors".[67] The initial payment will not be less than 10% (art.20) and the remaining will be paid over long period of time which is differentiated based on the purpose of holding.

[67] Supra note 6. Art.2 (11).

CHAPTER THREE

IMPLICATIONS OF CONVERSION OF OLD POSSESSIONS ON TENURE SECURITY OF HOLDERS OF OLD POSSESSIONS

3.1 Introduction

Under this chapter the paper focuses on the conversion of old possession and its implication on tenure security of holders of old possessions in general as it can be understood from the topic of this chapter and it will give emphasis to the modalities of conversion, reason for conversion, Conversion of Old Possessions viewed from tenure Security Point of view**,** Perception of the Public towards conversion, Legality of the Conversion and Elements of Land Tenure Security in particular.

3.2 Modalities of Converting Old Possessions to Lease System

As per the new Lease Proclamation, conversion of old possessions takes place in one of two ways. The first one is the future full-scale conversion anticipated by the law to transfer all forms of old possessions to the lease system. In respect to this, the Proclamation states that such conversion shall take place based on the modality to be determined by the Council of Ministers on the basis of a detailed study to be submitted by the Ministry of Urban Development, Housing and Construction.[68]

The second modality is a gradual conversion of old possessions into lease form of tenure. There are three specific situations in which old possession must be converted this way. To begin with, the Proclamation states that where a property attached to old possessions transferred to a third party through any modality other than inheritance, the person to whom the property is transferred becomes the possessor through lease holding.[69] The second situation refers to regularization of informal settlements. With regard to this, Art. 6(4) of the Proclamation states, "in order to regularize

[68] Supra note 6, Art 6(1).
[69] Ibid Art. 6(3)

possessions held without the authorization of the appropriate body, the possessions which have found to be acceptable in accordance with urban plans and parceling standard following the regulations to be issued by regions and city administrations shall be administered by lease holding." The third situation is where an old possession is merged to leasehold.[70]

3.3 Reasons for the Conversion

One interesting question in connection with the conversion issue is why the government preferred to the conversion of old possessions to lease form of tenure. In Ethiopia, purposes of Proclamations are found in either of two parts of the respective Proclamation. Many of the Proclamations state their respective objectives at the preamble section of the Proclamation. On the other hand, some Proclamations expressly allocate an article that states the objectives of the Proclamation. As the Lease Proclamation does not allocate any provision dealing with the objectives, recourse will be made to the preamble part of the Proclamation. But none of the paragraphs in that part deals with old possessions. While conversion of old possessions is one of the grand features of the Proclamation, the objectives of the conversion are not mentioned in the Proclamation. Thus, it is inevitable to resort to the overall circumstances and trends accompanying the urban land tenure in general and the new Lease Proclamation in particular.

Since 1993, lease has been the dominant form of urban land tenure system in Ethiopia. In major cities of the country, lease has been even the only means of land holding though it has diversified features and performance records. The repealed Lease Proclamation, in particular, stipulated a conversion of old possessions to lease system "as per the time and conditions to be set by the concerned region or city government."[71]

[70] Ibid. Art. 6(6)
[71] Re-Enactment of Urban Lands Lease Holding Proclamation, Art 3(2), Proc. 272, Neg. Gaz. Year 2002, No. 19.

In addition, that very Proclamation extends its scope of applications to towns other than the ones officially recognized to be lease towns during the re-enactment of the Proclamation in 2002 "as per the time and conditions to be set by the concerned region or city government." These together with the current prohibition of land provision other than the lease system[72] and the stipulation to convert old possessions to leasehold show that "uniformalising the urban landholdings under the unified leasehold system remained a long over-due project of the current government."[73]

Evidently, having a uniform system of landholdings has many advantages over having various tenure systems, administrative convenience to say the least. The main issue is why lease is preferred to the permit system in a situation where urban landholdings in the country currently are primarily held through the permit system.[74] Although this is a question difficult to answer because it is a policy choice, it is possible to estimate taking the overall benefit of the lease system into consideration. "The first and usual objective of any leasehold system is to collect enough capital money in the form of ground rent to finance the urban infrastructure systems"[75]

The fact that lease is time bound and therefore certain plot of land may be re-leased after the expiry of the lease period also makes the revenue to be lucrative. Lease also attaches monetary value to land so that land is provided according to the market forces of demand and supply. Moreover, properly implemented lease in general and the auction oriented system of lease in particular promotes transparency in land governance. In view of these, it is easy to conclude that the conversion is by and large justified by revenue motive and other advantages of lease system in urban land administration.

[72] Supra note 6, Art. 5
[73] Belachew Mekuria, Overview of the Core Changes in the New Ethiopian Urban Land Leasehold Legislation, Mizan Law Review, Vol. 5 No. 2, (Dec. 2011), p.314
[74]Ibid.
[75] Daniel Welde gebriel, The New Land Lease Proclamation: Changes and Implications, http://www.thereporterethiopia.com/Politics-and-Law/the-new-landlease-proclamation-changes-implications.html, Last visited on November 12, 2017

3.4 The Impact of the Conversion on Tenure Security

3.5 Conceptual Framework and Elements of Land Tenure Security

There is a direct relationship between land tenure security and socioeconomic and political development of a country. There is, for instance, direct relation between land tenure security and investments on land which, in turn, is very much linked to improvement of standard of living of a nation's population.[76] As a result, access to land with sufficient tenure security forms central element of land-related development strategies for individuals, groups, cities, and nations. It is difficult, if not impossible, to achieve sustainable investment on land without tenure security.[77] Tenure security is even more important in urban than rural areas because the interplay of demand and prices of land is high.[78] In as much as there is such an inseparable link between land tenure security and quality of life, the degree of the security of the tenure is crucial for any urban life. However, first and foremost, let us highlight the defining elements of tenure security so as to examine the implications of the conversion of old possessions on tenure security.

Land tenure security comprises two important concepts: *land tenure* and *tenure security*. In its general view, land tenure refers to "the relationship, whether legally or customarily defined, among people, as individuals or groups, with respect to land. Rules of tenure defined how access is granted to rights to use, control, and transfer land, as well as associated responsibilities and restraints."[79] Generally speaking, land tenure includes three basic things.[80] First, land tenure refers to people's

[76] United Nations Human Settlement Programme (UN-Habitat), Secure Land Rights for All, (2008), p. 1
[77] Geoffrey Payne, Urban Land Tenure and Property Rights in Developing Countries: A Review of the Literature, (1996), p. 13.
[78] Ibid.
[79] Food and Agriculture Organization (FAO), Land Tenure and Rural Development, Land Tenure Studies 3, (2002), p. 12.
[80] Gudeta Seifu, Rural Land Tenure Security in Oromiya National Regional State, Ethiopian Business Law Series, in Muradu Abdo, ed. Land Law and Policy in Ethiopia Since 1991: Continuities and Changes, Addis Ababa, 112

relationship to land. Second, land tenure is an institution through which individual's access to land and use right is determined. Thirdly, it denotes rules of the game through which the content of rights and duties of individuals with respect to land are defined. The relationships are usually defined by formal laws or customary rules. In both cases, tenure rules define land property rights regarding access, control and transfer of rights with corresponding duties and restraints.

Tenure security is defined in a variety of ways by different authorities. Yet, many agree that the term has two core elements. Land tenure security refers primarily to an "effective legal protection against eviction or arbitrary curtailment of land rights, with enforceable guarantees and legal/social remedies against the loss of these rights."[81] [Forced] eviction refers to the permanent or temporary removal of an individual, families and/or communities from the home/land they occupy against their will and without the provision of and access to appropriate forms of legal or other protection.[82]

In the course of the eviction, wide range of rights may be violated either due to absence of justification/legality for the eviction or the way the eviction is carried out.[83] Expropriations effected without the fulfillment of the substantive or procedural requirements form among such kinds of evictions. To put it otherwise, any measure that entails an arbitrary denial of existing legally recognized land rights amounts to tenure insecurity.

The second major component of tenure security relates to the perception element that the land users have confidence that they will not be arbitrarily deprived of the rights they enjoy over their land and the economic benefits

[81] UN-Habitat, Supra note 76.
[82] United Nations Human Settlement Programme (UN-Habitat), Monitoring security Tenure in Cities: People, Land and Policies, (2009), p. ix.
[83] Ibid

that flow from it.[84] This refers to the perception of landholders in relation to their land that they would not be evicted from their holdings arbitrarily.

Hence, while the first component is related to objective elements that can reasonably be measured against the laws and policies of the tenure system, the second component deals with subjective elements related to the landholders' perception of the security of their rights.[85] Viewed from these two elements, the question, therefore, what the implication of the conversion of old possessions to leasehold form of tenure system are to be discussed here in under.

3.6 Conversion of Old Possessions viewed from tenure Security Point of view

As stated above, security derives from the fact that bundles of rights on land that are supported by known and legitimate set of rules cannot be challenged without reason and that, if they are challenged, local conflict resolution mechanisms and/or courts will uphold them. In exceptional circumstances, evictions or curtailment of land rights can take place but only by means of known and agreed legal procedures, which must be objective, applied equally to all, contestable, and independent.[86] This sort of protection is given to land holders by the FDRE Constitution, which states that a property cannot be expropriated except in cases where this is necessary and upon payment of compensation.[87]

The specific substantive and procedural requirements that must be fulfilled to effect expropriation are provided by legislation and other subsidiary laws;[88] the major ones being the existence of public interest for the

[84] UN-Habitat, supra note 76.
[85]Gudeta Seifu, supra note 80.
[86] French Development Cooperation, Land Governance and Security of Tenure in Developing Countries, (2009), p. 46.
[87] FDRE Constitution, Art. 40 (8). Although the constitution does not use the term 'eviction,' expropriation done in contravention to the legally protected property rights (rights over land and other properties attached to land) is one form of eviction.
[88] There are two important legislation in this regard which are Expropriation of Landholdings for Public Purposes and Payment of Compensation, Proclamation No.

expropriation, payment of compensation and procedural safeguards such as notification of the landholder prior to the expropriation (at least 90 days before the eviction), and right to appeal,[89] etc. Thus, it is clear that land tenure security is a constitutionally guaranteed right in Ethiopia from legal point of view.

Now, it is time to examine the implication of the conversion against the backdrop of the above discussions. The new Lease Proclamation anticipates that old possessions shall be converted to leasehold in accordance with Council of Ministers regulation "on the basis of a detailed study to be submitted by the Ministry of Urban Development, [Housing] and Construction"[90] And also the same is proclaimed under dire dawa regulation.[91] This does not necessarily mean that the substantive and procedural safeguards provided in the Constitution, Proclamations and the subsidiary laws issued to implement the constitutional provision need to be complied with.

This may amount to expropriation of some elements of the property rights of the holders of the old possessions unconstitutionally. To begin with, in converting old possessions to leasehold, the law is converting time-boundless land use rights to rights bound by time. This is clearly an arbitrary curtailment of rights which amounts to expropriation. The concept of expropriation refers to "a governmental taking or modification of an

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455/2005 and the Council of Ministers Regulation on Payment of Compensation Situated on Landholding Expropriated for Public Purposes, Regulation No. 135/2007. There are also a number of subject matter-specific directives. Moreover, the provisions of the Civil Code relating to expropriation are also applicable on matters not provided by the above legislations and without contravention to same. See Civil Code of Empire of Ethiopia, 1960, Art. 1460-1488.

[89] In fact, the appeal right is defective on its own realm as it unusually limits it only to the amount of compensation excluding appeal on the very order of expropriation. See Art 11 of Proclamation No. 455/2005.

[90] Supra note 6. Art.6.

[91] Art.6 of Dire Dawa regulation no.8/2012, regulation to provide for lease holding administration of urban land.

individual's property rights, especially by eminent domain."[92] Accordingly, expropriation refers to either of two things: taking of the property over which property rights are exercisable by a government organ or modification of the constitutive rights of a property which is a case in the Lease Proclamation.

On another count, the conversion of old possessions to leasehold entails eviction/expropriation without compensation which is a serious setback to tenure security. As mentioned above, the property rights for indefinite duration that one has over a land will be limited by time as a result of the conversion. According to the Lease Proclamation, the right holder is not entitled to any compensation other than removing his properties attached to the land at the expiry of the lease period.[93] The fact that renewal of a lease after the expiry of the lease period is not a right recognized by the Proclamation exacerbates the situation.[94] Had the holder been able to keep on holding the land according to the permit system, s/he would not have been forced to surrender the land any time as s/he would have had an indefinite right. Because of the conversion, however, s/he is losing property right over that particular land without commensurate compensation for the damage s/he sustained due to the taking of the land by government. This is even direct expropriation of property rights without compensation and in contravention to the procedural safeguards provided by the Constitution, Proclamation and subsidiary laws and entails serious negative impact on tenure security.

Besides, holders of old possessions are disadvantaged by the time limit provided in the new law for a construction to be completed. The previous law does not set specific time duration within which construction shall be

[92] Bryan A.Garner (ed.), Black's Law Dictionary, (8th Ed., 2004), p. 1585. Eminent domain according to same dictionary refers to the inherent power of a governmental entity to take privately owned property, esp. land, and convert it to public use, subject to reasonable compensation for the taking.
[93] Supra note 6, Arts. 19(1), 25(5)
[94] Ibid. Art. 19(1).

commenced and completed. As a result, the regional states have been flexibly approaching the matter taking their respective circumstances and the development level of their respective towns into account.[95] This situation used to allow the leaseholders to hold their possessions for long time which, in turn, gives them a chance to wait till they get better price in case they want to sell their holdings along with the improvements they have made on the land.[96] Moreover, the relatively relaxed duration for completion of constructions was an additional advantage for lease holders.

However, the new law provides two year time limit within which the construction of buildings must be completed provided this provision is applicable to the old possessions to be converted to lease system. In this case, dire dawa lease regulation provides the same time limit for completion of construction in dire dawa city. wait On top of losing the economic returns attached with time, holders of old possessions have to face the two years' time limit for competition construction the moment their possessions are converted to leasehold. This, in turn, has been another point of concern and source of tenure insecurity.[97]

Further, the fact that the Lease Proclamation compellingly changes the form of tenure from the permit system of indefinite duration to leasehold of definite duration by itself and on its own affects tenure security. If the legislature's power goes to the extent of changing the scope and duration of rights on land acquired in the past unpredictably, there is no guarantee, in the future as well, that it keeps its promises. Hence, there is lack of guarantee in enforcement of existing property rights. If the conversion is taken to be legally right, there would not be any wrong if the legislature, for instance, shortens the duration of lease for residential housing, science and

[95] Supra note 4, Art. 12
[96] It is to be noted, however, that this has been a source of concern for the government as significant parcel of land used to be kept idle that gave rise to negative effect on land use efficiency.
[97] Araya Asgedom, supra note 14, P. 28.

technology, research and study, government offices, charitable organizations, and religious institutions from 99 years[98] to, say, 40 years.

One may even argue that the situation results in retroactive application of a law. Even though the principle has different weight in civil and criminal matters (it is very strict in the latter case), it is a principle that has significant importance even in civil cases particularly when it comes to tenure security of property rights. Some writers argue that retroactive application of laws that adversely affects once-established property rights should be discouraged unless they are accompanied with adequate compensation.[99] One of the reasons for the extension of the principle of non-retroactivity to civil laws is in order to prevent unfair and capricious changes in the law.[100]

True, Ethiopian law has limited the application of the principle only to criminal cases;[101] hence one cannot argue that the constitution is violated on this point. One may also argue that the law's application is limited only to future conducts and relationships. Hence, the argument of retroactivity of a law may not be as such sound enough. However, it is clear that the effect of the law is not limited to property rights acquired after the law as it curtails already established property right without compensation. Hence, it is reasonable to argue that the law has retroactively impacted rights acquired before its enactment which in turn undermines tenure security as it causes uncertainty to the legal environment of urban land tenure, to say the least.

3.7Perception of the Public

The second and related component of tenure security is the degree of confidence that landholders would not be evicted from their holdings which

[98] Supra note 6, Art. 18(1)(a),
[99] Steve Selinger , The Case Against Civil Ex Post Facto Laws, Cato Journal, Vol. 15, Nos,2-3 (1995), p.207-212. See also Jan G. Laitos, Legislative Retroactivity, Journal of Urban and Contemporary Law, Vol. 52, No. 81, (1997), p. 81-157.
[100] Ibid.
[101] Supra Note 6, Art. 22

is the perception (subjective) element. Indeed, this matter needs to be studied with a reasonable depth and to have obtained the perception of public at large. Thus, as far as DDCA concerned study that assesses the perception of the public arising out of the conversion of old possessions to leasehold form of tenure had been conducted. The detail of the result will be presented under chapter four of this paper.

3.8Legality of the Conversion

In this section, the legality of the conversion from the constitutional viewpoints will be investigated because such legality has its own impact on tenure security. In treating the legality of the conversion, it is good to start with the constitutional basis of the leasehold form of tenure as this answers some of the questions that may be raised in respect to the conversion.

In Ethiopia, the first lease form of urban land tenure system, as mentioned above, was introduced in 1993 by the then Transitional Government of Ethiopia, just two years prior to the promulgation of the FDRE Constitution. When the Constitution came into force in 1995, it, unlike the case of rural land which is expressly regulated, failed to provide any urban tenure system. Thus, it is difficult to take the federal constitution as the basis for the introduction and dominance of the lease system in Ethiopia.[102]

The reason for failing to regulate the matter is understood differently. While some argue that this is an implied endorsement of the already operating urban land lease system, others do not accept this line of reasoning on the ground that the constitution could have easily included it had that been the actual reason.[103] Given the weight that must be attached to the constitutional framework, constructing a constitutional basis for lease through the "implied endorsement" argument seems flawed. In fact, the Constitution clearly recognizes rural land lease as one modality of land

[102] Molla Mengistu, The Ethiopian Urban Landholding System: An Assessment of the Governing Legal Regime, Ethiopian Business Law Series, in Muradu Abdo, ed. Land Law and Policy in Ethiopia Since 1991: Continuities and Changes, Addis Ababa, (2009), p. 157.
[103] Ibid.

acquisition for investors. Thus, it would have been possible to insert certain provision that deals with the urban land lease.

However, the legislation seems to violate some constitutional provisions from different perspective. For instance, the government did not consult the public to express its views before the issuance of the law. The FDRE Constitution has treated land specially and differently. Art 40(3) of the Constitution provides that land is a "common property of the state and the people of Ethiopia." Literally speaking, this constitutional provision makes the public a joint owner of both urban and rural lands together with the government.

There are two ways of understanding this constitutional proviso. The first line of arguments suggests that there is no distinction between the people and the state; hence the purpose is simply to forbid private ownership of land.[104] On the contrary, the second line of argument holds that the Constitution, by expressly mentioning that land belongs both to the people and state, considers the state and the people as two distinct entities. According to this line of understanding, the state and the people are separate entities and land is the joint property of these entities.[105] In line to the later point of view, it is arguable that such arrangement creates a joint ownership of land between the people and the state which entitles the people for wider rights than simple use or lease rights.[106]

In this regard, the researcher thinks that the second line of reasoning is sound for the following major reasons. First, the Constitution has clearly mentioned that land is the joint ownership of the state and the people. It would be inappropriate to impair what is clearly provided by the Constitution."[107] Secondly, during the drafting of the Constitution, many

[104] Melesse Damite, Land Ownership and Its Relation with Sustainable Development, Ethiopian Business Law Series, in Muradu Abdo, ed. Land Law and Policy in Ethiopia Since 1991: Continuities and Changes, Addis Ababa, (2009), p. 32.
[105] Ibid.
[106] UN-Habitat, supra note 76.
[107] Supra Note 103, p. 32.

members of the Constitutional Assembly argued that land is the common asset of the society and the later; mainly the pastoralist communities do not accept the agency of the state.[108] It follows that this was one of the reasons for arranging a joint ownership of the state and the people.

Joint ownership on the other hand creates a situation of equality between the parties. As such, decisions and laws relating to land cannot be unilaterally taken by the government which is just co-owner and not sole owner, of the land. This makes the issue of conversion by unilateral decision of the parliament, a political representative of the public but part of the government (co-owner), against the law. It means that the public has a constitutionally guaranteed right to have a say directly. Hence, the public should have, at least, had the opportunity to air its views before the adoption of the law by the parliament.

Apart from the joint ownership argument, the conversion is not constitutionally acceptable because the public should have an opportunity to air its views on such law again because it hugely affects its interests. The FDRE Constitution explicitly recognizes the right to participation in the process of designing and implementation of developmental policies, laws and projects particularly when such instruments and/or projects affect them and the community they belong to.[109] Had the deliberation of the House of Peoples Representatives been enough, there would not have had a reason for the Constitution to provide for the public a right of consultation (participation). So, it is possible to conclude that the collective right of participation is also violated. In fact, it seems that there was a rush in passing the legislation even by the legislature itself. On this point, the speaker of the House, in his briefing to journalists in 2012 admits that the

[108] Ibid.
[109] FDRE Constitution, Art 43(2).

Proclamation was approved “before taking deep and thorough discussion in the House” and he “got big lesson from it.”[110]

On another count, the law leaves a room to partly rectify the lack of public participation limitation. The Proclamation, which stipulates that the entire conversion of old possessions is to take place in the future by a regulation of the Council of Ministers after a thorough study is conducted by the Ministry of Urban Development, Housing and Construction gives, one more chance to the public to air its views. According to the federal draft Model Regulation, old possessions will be converted in its entirety within five years’ time period.[111] In doing so, Art 6 of the Regulation requires conducting thorough discussions with the public before the conversion takes place. Even if this requirement cannot set an agenda on the very conversion decision, it gives an opportunity to the public to raise its concerns and pass an optimum solution within that framework.

[110] Cited in Araya Asgedom, supra note 14. Solomon Bekelle, Abadula Admits problem with approval of the lease proclamation,http://capitalethiopia.com/index.php?option=com_content&view=article&id=1461:a badula-admits-problem-with-approval-of-leaseproclamation&catid=35:capital&Itemid=27 31 July 2012.

[111] Art. 5, Council of Ministers Model Urban Land Lease Holding Regulation (Draft), (2011).

CHAPTER FOUR

OVERVIEW ON PRACTICAL IMPLICATIONS OF CONVERSION ON TENURE SECURITY OF OLD POSSESSORS IN DIRE DAWA

4.1Interpretation, Analysis and Presentation of Data

4.2INTRODUCTION

This study conducted in Dire Dawa Administration on the issues of conversion of old possession to lease hold and its implications on tenure security of old possessors. The research mainly depends on data collected from different stakeholders through different data collection methods especially by employing questionnaire and interview. The questionnaire prepared by employing close ended questions for Dire Dawa land development and management bureau and old possessors in separate section. Each gives their responses with respect to questions forwarded to them by researcher. The interview also made with land authority and employees as far as the questions concerned to them. And also the interview conducted with the old possessors, banks' employees, brokers and urban lease land holders, by forwarding questions prepared for them as guiding questions to make the interview objectives based and plausible. Therefore, this section of the paper dedicated to analysis of primary data collected.

4.3 FINDINGS OF THE STUDY

Finding of the study was the result of information obtained from questionnaires, interviews, and personal observation undertaken by the

researcher in selected areas supposed conversion of old possession are involved in. The target group for interview was urban land holder, old possessor and employees of LDMB, employees of federal DARO branch of Dire Dawa, brokers, and banks' employee who supposed to have some potential knowledge on the area of study. In the study, the researcher has conducted interview with 15 individuals from various stake holders and dispatched questionnaires to 35 respondents, and undertaken observation. The researcher has also interviewed officials whom the issue of urban land concerns.

The researcher, before rushing into interview the participants, developed question that was specially developed to fit all respondent individually. The question included a set of questions that guided the researcher in conducting the interviews. The researcher has also dispatched 35 questionnaires to the respondents and the questionnaires have 10 closed ended questions. In doing so, the researcher has dictated and explained the questions when the respondents fail to understand the questions.

Since the researcher was dealing with such sensitive information, on sensitive area of land, the research participants was told in advance that their full anonymity was protected if they wanted, to establish the trust of the research participants. The researcher spent a time at the beginning of each interview and questionnaires by telling the participants briefly about the study and the purpose of the information. The researcher request them to understand that their role in the process was very important and that the information hopefully would be beneficiary for both parties' beneficiary in a sense that the study will help the people and the government to know what is impact of these law on stake holders and search for way out and the voice of the stake holders as a participants can be heard. In addition, it may help the authority in identification of challenges during implementation of laws, which might have initiate them to devise mechanism to overcome different challenges and problems. The researcher also took short notes during the

interviews. When required, the interviewees were interrupted to make the point clear and complete. Based on the above mentioned collection of data, the result of findings will be discussed in the following section.

4.4 Perception of the Public towards the conversion

The second and related component of tenure security is the degree of confidence that landholders would not be evicted from their holdings which is the perception (subjective) element, as it is discussed in the previous section, chapter three. Indeed, this matter needs to be studied with a reasonable depth and across the country at large. However as far as the case study city concerned, the researcher conducted interview and distributed questionnaire to various stake holders to study the perception of the public arising out of the conversion of old possessions to leasehold form of tenure.

There are many evidences that reveal the existence of the perception on the part of the holders of old possessions. To begin with, many of the urban landholders expressed their discontent and insecurity with the conversion in many instances. Following the enactment of the Proclamation, series of public discussions were held in the presence of Dire Dawa senior government officials. Conversion of old possessions to leasehold dominated much of the discussions in which vast number of the participants revealed their feeling of insecurity. In a situation where overwhelming majority of urban land possessions are held by the permit system,[112] it is not surprising to see that the urban landholders were very much concerned about it. Also, the officials did not hide the existing discontent and the perception of insecurity, but believes that this happens as a result of unfounded fear and that holders should rather convert their old possessions to leasehold taking the advantages of transferring to lease these days over the future mainly

[112] Interview with Ato Jemal Yesin , Dire Dawa Land Development and Management Bureau, legal section Head.(Dire Dawa, November,25 2017).

because the lease price will be higher in the future than present, in a way mentioning the inevitability of the conversion.[113]

4.5 Conversion and its Practical implications on tenure security

As legal analysis was made under chapter three of the paper now it is time to make practical analysis With regard to implications of conversion on tenure security of old possessor.

One of old possessors who want anonymous of his name told the researcher that there is a real uncertainty caused as a result of the law that converts old possessions to leasehold form of tenure. In the researchers collection of data through interview and distributing questionnaire to investigate the matter in Dire Dawa, they stated that they are feeling unsecured because of the law and practice of conversion that started to be implemented on informal settlement and during transaction, and amalgamation of old possession with leased possession.

From the discussion with old possessors, it is possible to understand that their problem is not only about the lease hold system. Many say that they become tenants of the government. But many years have passed since land fall under the ownership of the state and the people. However it is now that people are internalizing this issue, when they heard about the restrictions imposed by the law during transfer of a right over land holding and the fact that the government is undertaking a study as to the modality of converting old possessions to lease hold. It is stated that the reason why old possessors remained silent up to the time of its implementation is that their right was freely transferable and the rent paid before for the land they possessed was also negligible. But when they heard that this land may be converted to lease hold in the near future, they started to think that the money that will be paid for the government in the form of lease would discourage buyers and the fact that the location value which is currently diverted to the

[113] Ibid.

government treasury decreases the income which could have been earned by the land holder during transfer, as dire dawa LDMB started implementation of proclamation.

Another old possessor [114]on his part said that the new lease law puts his tenure security at stake and violates his constitutional right to freely transfer his possessions attached with the land to his off springs. He believes that during transfer old possessors should also get the value of the land on which their property is found because it is those possessors who made such land valuable after their big and longtime effort. The other old possessor expressed that 'We have human right to live on and derive any profit on our land', he said. Additionally, he stated that the new lease holding proclamation has forced him to change his idea of selling his old possession found in the central part of the city at market price and buying another one at lower price at the out skirts of the city to help his family economically. Moreover, He added that this law violates the right of citizens to freely produce private property and is eroding the trust that the people have to wards the government. Finally if the government stick to its stand to have a uniform urban land administration, it is better to make old possessors sign a lease contract for the given period of lease without making any lease payment, he mentioned. In this regard this old possessor seems to be more concerned about the lease payments that might be imposed on old possessors during the conversion of old possessions to lease hold.

From the above interview It can be safely concluded that old possessors bitterly oppose the lease proclamation taking in to account the following consequences: 1) because of the restriction imposed by the law old possessors couldn't sale their possessions for a good price, because buyers are subjected to two payments when buying old possessions. As a result if

[114] Interview with Ato Ahmade Alisho, Resident of dire dawa ganda tesfa kebele,(Dire Dawa, November 10, 2017)

they can’t sell their possession for a good price, they can’t solve their economic problems. 2) Old possessors cannot currently obtain a good amount of loan by mortgaging their old possession because location value will not be taken in to consideration and banks are not sure how much lease will a buyer pay in case the debtor defaults. 3) After the completion of the study by the MoUDC, the council of ministers approved the study and decides for the conversion of old possession to lease holding. As a result, such possessors might be subjected to payment of lease price which might be beyond their capacity. 4) even though the Council of Ministers decide for some old possessions to remain as they are, as the increase in the existing rental rate is one possible alternative put under the proclamation, if the rental rate is increased without taking the capacity to pay off an average old possessor, old possessors will be subjected to either the sale of their possession at a discount price or they will be entering in to a huge debt.

Such people have also been seriously affected by the law in respect to getting loans from banks. Through interview conducted with employees’ of bank the researcher found that banks are not extending as much loans as they used to extend before the adoption of the Proclamation "because location value will not be taken in to consideration and banks are not sure how much lease will a buyer pay in case the debtor defaults"[115]

The researcher have also conducted an interview with two brokers who are engaged in facilitating the sale of houses in Dire Dawa, as to what the sale of houses currently look like. Of course one of the brokers did not want to disclose his name and said, the fact that old possessions are said to be converted to lease hold during sale has created a big problem not only on old possessors and buyers of old possessions but also on brokers who used to derive a good amount of income from the sale of such possessions. He mentioned that buyers are disappointed by the additional lease payments

[115] Interview with Hiwot Mersha Mekuria, officers of Cooperative Bank of Oromia, kezira branch (Dire Dawa, December 4, 2017)

imposed by the law the amount of which is not known during initial sales negotiations. By the same token, sellers are not comfortable with this law because the buyers are offering lower prices than what was paid before the coming in to force of this law taking in to account the fact that they will pay land lease to the government.

Other broker whose name is Ato kifle[116] said that the proclamation has brought all problems which also seriously affected the brokers. According to him, buyers currently pay: 1) the price of the house to sellers, 2) lease and sells tax to the government and 3) brokers' commission as a result of which buyers' motivation has greatly decreased. It was said that discouraged by this law, buyers are not currently willing to buy old possessions and even lease holdings.

Consequently, it is mentioned that many buyers are spending their money out of the intended purpose as they couldn't purchase houses freely as before. The brokers also stated that sellers are also greatly affected by this proclamation as they couldn't solve their problems by selling their houses because there are no buyers who offer the intended price. For them if there are no buyers, selling becomes a mere wish.

They also added that the decrease in the sale of houses is even a loss to the government, because, the income that would have been acquired from the sale, transfer of title, has greatly decreased in the case of lease hold and almost stopped in the case of old possessions. For them, if sale transaction of houses decreases, brokers, the government, sellers as well as buyers will be negatively affected.

In sum, Brokers who claim themselves to be the bridge between the sellers and the buyers are also affected by this law, because, the decrease in the sale of such properties has brought a decrease in their income.

[116] Interview with Ato kifle, Broker who engaged in bridging the buyer and seller of house in dire dawa, (Dire Dawa, November 20, 2017).

Similarly, the Proclamation has caused uncertainty on the part of potential buyers of old possessions. Further, the evidences obtained from Documents Authentication and Registration Offices (DARO) of Dire Dawa Branch show transactions relating to old possessions fall following the coming into operation of the Lease Proclamation, though it is not possible to say by such percent.[117]

Further, in describing the effect of this law, some interviewee contends that the law "raised confusions, doubts and uncertainties on urban land holdings." Further they told the researche that most urban land holders believe that the new law could arbitrarily dispose of their proprietary rights and reduce the value of improvements made on their holdings.[118]

From these, we can say that the Proclamation poses practically considerable negative impact on tenure security of holders of old possessions.

4.6 DIRE DAWA ADMINISTRATION URBAN LAND RELATED LEGISLATIONS: REGULATION AND DIRECTIVES.

4.6.1 REGULATION NO.8/2012, OR, REGULATION NO.8/2005EC

Dire Dawa city Administration cabinet enacted regulation no.8/2012, regulation to provide for lease holding administration of urban land, following the enactment of federal urban land lease proclamation no.721/2011. Preamble of the regulation says that the ...the fully implementation of the proclamation on urban land lease holding system, the regulation undertaken in conformity with the situation of urban. This shows that the regulation is needed to undertake fully implementation of the proclamation and it is legislated based on article 33 of the proclamation, powers and duties of regions and city Administration. Under its sub article of the same, regions and city Administration shall have the powers and

[117] Interview with Getachew Eshetu, Document Authentication and Registration Office, Dire Dawa Branch, authenticated documents affairs assistant,(Dire Dawa, December 12, 2017)
[118] Ibid.

duties to issue regulations and directives necessary for the implementation of this proclamation.

For the purpose of this study it is important to discuss about conversion of old possession and what is provided by the regulation with regard to the issues at hand. Before rushing to discuss about conversion of old possession it seems technical to say few about old possession under the regulation. The regulation defines the term 'old possession'[119] and the definition is carbon copy of article 2(18) of proclamation, as such there is no need of analysis on the definition of the term old possession under the regulation, to avoid redundancy and the analysis on this issue have been made in detail under chapter two of this paper, literature review. Part two of the regulation provides the Administration of urban land lease holding. The stipulation starts from article 5 of regulation which talks about the way of urban land allocation and it limited the way of urban land acquisition to lease holding system save old possession.[120] This stipulation seems that it have been aimed at prohibiting any mode of allocation of urban land holding other than lease holding system.

When we come to discuss conversion of old possession, Article 6 of the regulation dedicated to administration of urban land old possession.[121] The regulation ordered us to wait for discussion with the peoples and detailed study to be carried out for providing mode of conversion. This is also the direct language of the proclamation under its article 6 and mandatory conversion will be inevitable. The regulation requires the conversion of old possession to lease hold during its transfer to third party by any modality other than inheritance.[122] The person to whom the property transferred becomes the possessor through lease hold. As the regulation says....

[119] Regulation no.8/2012, regulation to provide for lease holding administration of urban land. Art. 2(7) .
[120] Ibid. at 6 and 8 respectively.
[121] Ibid Art.6 stipulated that..... without prejudice article 6 sub article 3, 4 and 6 of the proclamation old possession specified under sub article 1 Article 6 of the proclamation shall remain under old possession until discussion held with the peoples and detailed study are to be carried out.

Without prejudice to sub-article 6 of article 6 of proclamation the amalgamation of old possession with lease hold should be administered as lease hold tenure. This is mandatory conversion of old possession to lease hold when amalgamation between old possession and lease hold takes place.

But what is the amalgamation of two old possessions? Does it subject to mandatory conversion or not? Concerning this issue the regulation does say nothing and remain silent, in a similar fashion with the proclamation. This may be for the reason that the regulation is somehow direct copy of the proclamation and the legislators may be influenced by the proclamation as the regulation promulgated after enactment of proclamation. However, the assumption is that it does not subject to mandatory conversion as the proclamation and Dire Dawa urban land lease regulation doesn't expressly say so and it should be remain as old possession. In relation to this, a directive of the Addis Ababa City Administration says: "where old possessions are to be merged, they will be administered according to old possession tenure".[123]

Furthermore to answer this question it is important to gather information from land authority, to this effect the researcher conducted interview with W/ro Muna Mohammed Ibrahim[124] to have full information about practice of Dire Dawa concerning issue at hand. She told the researcher that, the practice of Dire Dawa concerning the amalgamation of old possession is that it doesn't subject to mandatory conversion. She added that there is no reason to convert such holding as there is no transaction in this case and the conversion most of the time is aimed at the time of transactions of old possession in any form of transfer other than inheritance. Further she

[122] Art.7(1) of regulation no.8/2012, regulation to provide for lease holding administration of urban land.
[123]Article 18(2)(4) of Addis Ababa City Administration 2004, Land Delivery Service Manual, directive No. 12/2004 E.C.
[124] W/ro Muna Mohammed Ibrahim, land holding administration and transfer time hosting mini project assistant, (Dire Dawa, December 5, 2017)

stated that when old possessions are amalgamated it shall remain old possession because the urban land lease proclamation and Dire Dawa regulation doesn't require expressly mandatory conversion of such amalgamation and remain silent and we have to abide by law.

However one employee of LDMB concerning the issue at hand said that the practice of Dire Dawa seems requiring mandatory conversion during merging of old possessions because there is no formality of giving certificate for old possession when old possessor wants to get certificate of land holding for his/her amalgamated old possession. We have prepared certificate of holding (*karta*, in Amharic) only in one format, certificate of holding through lease and no other different formats for old possessions, he said showing the researcher the certificate of holding prepared by bureau, LDMB. It is easy to understand from this that the denial of different form of certificate for old possession is indirectly requiring mandatory conversion of amalgamation of old possession though the law is silent on the issue[125].

The researcher tried to compare the above discussed two contrasting idea on practice of dire dawa and reached at conclusion that when old possessions are merged together it remain to be governed by old possession, and the second contrary idea which says it subject to conversion to lease administration does not hold water because the law does not require conversion expressly. And also it is in line with the legislations of other federal city administration, Addis Ababa city administration directive no. 12/2004Ec. However to avoid confusion it is better if Dire Dawa City Administration regulation incorporate such stipulation clearly.

Concerning scenario when one co-heir leave his share, of immovable old possession acquired by succession, after division carried out, for the other co-heir, does the share he obtained from his co-heir convert to lease

[125]The interview with Mr. Mulugeta kassa, lease revenue collector at Dire Dawa administration land development and management bureau,(Dire Dawa, November 25, 2017)

or not is another critical question which must be ascertained. Proclamation stipulate that eternal conversion of old possession will takes place after public discussion held and study conducted by MoUDC. And somewhere in the regulation exception is listed when old possession do not enter in to lease holding. Accordingly the regulation provides "where the divorced spouse or the holder of inheritance ; up on the decision the division of the possession, Either one of the spouse or some of the successor after payment of the partial estimation cost, holding the whole possession and recognition of the plot plan."[126] From the verbalization of this provision it seems proper to deduce that the possession of co-heir who receive his and the share of his co-heir against partial estimation cost should remain old possession and shall not subject to conversion because it is expressly provided as an exception of conversion.

However, to ascertain the practice the researcher asked one of employee of LDMB[127], and the response is opposite of the above analysis, and she said that in the above mentioned scenario the holding should be converted to lease holding because the relationship between co-heirs or joint successors, in this scenario, are parties to contract of donation as one of the successor leave his share against partial estimation cost. She added that whenever there is transaction of old possession it should be subject to conversion because the government should not lost what supposed to gain, from transaction of old possession. Even though revenue generation is the sole objective of proclamation, her argument seems flawed because the law expressly provided as exception and such argument of revenue generation may not come in to picture in this scenario. Therefore from the above short discussion it could be concluded that there is discrepancy between law and

[126] Art.8(3) of Regulation to provide for lease holding administration of urban land, Regulation No.8/2012,
[127] W/ro Muna Mohammed, Supra note 124.

the practice of LDMB and such discrepancy should not be appeared as the law is clear[128] in the researcher's eyes.

Article 7 of the regulation provides the Administration of urban land under lease holding tenure. Sub-article 1(c) of this article says old possession transferred to third party enter into lease holding according to the size of land under the document. The detail of this shall be determined by directive, directive no.1/2012 directive to provide administration of land hold through lease system. Moreover, an article 23 of the regulation provides allotment of residential plot of land to displaced person due to development. Sub-article 1 of this article provides "legal old possession holder displaced accordance with sub article 2 of article 6 of proclamation shall be entitled to substitute plot of land based on old tenure system by considering the standard of the place, the standards and access services of the plot. Detail shall be determined by directives. Sub article 2 of article 23 of regulation also provides land as a compensation for displaced land.

4.6.2 DIRECTIVE NO.1/2012

This Directive issued to provide detail provisions as far as the issues provided by regulation number 8/2012 concerned. Under its part two it provides, Administration of urban land lease holding. Under this heading article 5 is direct translation of article 5 of Dire Dawa regulation[129] in to Amharic and article 6 of directive also adopts the language of Article 6 of regulation about Administration of urban land old possession. Article 7 also provides old possession and illegal holding conversion to lease hold system. Article 8 of the same provides the exception to article 7 and it have long list holding of old possession that do not enter into lease system sub-article 1-7

[128] Article 8 of the regulation provides exceptions to article 7 where old possessions do not enter into lease holding tenure. It provides the exception in detail, under sub-article 1-7 of article 8 of the same.
[129] Regulation to provide for lease holding administration of urban land, Regulation No.8/2012,

are dedicated to exception. As this directive incorporated almost the similar issues with the above sated regulation, no need of more elaboration.

4.6.3Directive No.16/2008EC

This directive is the directive to provide certificate of holding for old possession and undocumented holdings after ascertainment of holding size. This is the latest directive with regard to regularization of informal settlements. It is enacted for non-implementation of previous directives of dire dawa on regularization irregular settlements. This regulation come in to operation recently and its implication on tenure security might be the impact as regularization is one mode of conversion of old possession to lease hold and it put burden of lease payment on low income people who are irregular settlers.

4.7 CHALLENGES DURING IMPLEMENTATION OF LEASE PROCLAMATION AND OTHER LEGISLATIONS IN DIRE DAWA

It is possible to understand the challenges of cities concerning to urban planning and urbanization from the statements made by UN-HABITAT[130] on its website recently, *["Cities are facing unprecedented demographic, environmental, economic, social and spatial challenges. There has been a phenomenal shift towards urbanization, with 6 out of every 10 people in the world expected to reside in urban areas by 2030. In the absence of effective urban planning, the consequences of this rapid urbanization will be dramatic. In many places around the world, the effects can already be felt: lack of proper housing and growth of slums, inadequate and out-dated infrastructure – be it roads, public transport, water, sanitation, or electricity – escalating poverty and unemployment, safety and crime problems,*

[130] UN Habitat is the United Nations programme working towards a better urban future. It is mandated by the UN General Assembly to promote socially and environmentally sustainable towns and cities. Its mission is to promote socially and environmentally sustainable human settlements development and the achievement of adequate shelter for all. available on this Website: www.unhabitat.org, accessed on December 5, 2017.

pollution and health issues, as well as poorly managed natural or man-made disasters and other catastrophes due to the effects of climate change"[131]*.....emphasis added.]*

From the above statements of UN-HABITAT, it is possible to understand that the problems of urbanization is great agenda in the world and Ethiopian cities are also not an exception, as such Dire Dawa is one city of Ethiopia which are facing these problems of urbanization.

During implementation of proclamation, as it can be seen from the empirical research conducted in 2015,[132] in Ethiopian cities the following problems are the major ones. These problems includes: tenure insecurity, informal settlements, informal land markets, inequity, lack of information access, weak local government capacity, lack of transparency and rent-seeking. These problems are discussed as indicators of 'bad' land governance. Among these problems of land governance the focus, for this paper, is given for, Lack of information access and awareness, tenure insecurity, inequity and informal settlements, Weak administrative capacity, and Lack of transparency.

4.7.1Lack of information access and awareness

Lack of information access- is evident from two aspects. The first relates to access to land use and cadastral information. It is mentioned that the cadastres are poor and incomplete and land use plans are obsolete in the city. These imply that decision making on different aspects of urban land is not based on appropriate and reliable information. The second problem is the lack of information access during bidding. Important information to bid and fix the auction price, full information of the plot including location, size, lease time, and initial lease prices are essential. However, according to the

[131] Ibid.
[132]. Berhanu K. Alemie, et al, 'Integrating the layers: an analysis of urban land governance in contemporary Ethiopia',JLAEA Vol.3 Issue 2, Jul 2015 Ardhi University. Journal of Land Administration in Eastern Africa.

respondents in the questionnaire, it frequently happens that such information may not be equally provided to all stake holders who want it.

Awareness of the peoples- issues related to the awareness of the peoples towards the lease system in general and issues of conversion of old possession in particular is one of the questions incorporated in the questionnaire prepared for LDMB. Based on the question forwarded to the respondents in the questionnaire Large number of respondents replied strongly Agree.[133] This shows that the peoples have no sufficient information with regard to lease system and conversion of old possession. They are in confusion and worrying about their urban land holding as the proclamation and other land related laws come in to implementation without holding much consultation and creating awareness of peoples, during its enactment. This is in conformity with discussion made in the literature review part.

Concerning this issue the researcher try to give more emphasis and focus during data collection as such the question also encompassed in the questions prepared for guiding interview with the LDMB. As far as this issue concerned one interviewee told the researcher that most of the peoples of Dire Dawa doesn't have sufficient information about lease system and lease laws in general and conversion of old possession in particular. They don't know about what is the difference between the old system, permit system and the current, lease system as they have no enough understanding of lease system and mode of its payment, he said.

Additionally, he said that they have no enough understanding on the way of computation and amount of payment of lease that the LDMB require them to pay according to art.20 of lease proclamation and other Dire Dawa Administration urban land related subsidiary legislation. For example, when the authority require urban land holders, the payment of lease they refuse to make payment reasoning that they have already paid the land tax fee to

[133] Note here that the question is, '*peoples have no sufficient information with regard to lease system'*.

the government for their immovable property. They claim that the government is imposing double taxation on land holders, one for property attached to land, in the form of tax and the second lease payment for their holdings. As mentioned above the people didn't have sufficient information about lease and the laws related to lease, including proc.no.721/2011 and its implementation legislation of Dire Dawa city administration. As the causes of this problem related to awareness of society he mentioned as an example the following;-

1. *Perception of Ethiopian peoples on land ownership;*. - Ethiopian peoples in general have perception that the land whether urban land or rural land belongs to them as they inherited from their fore ancestors who are indigenous to the area. The land belongs to tribes who occupied the area from time immemorial. In fact, the majority of peoples who have been living in Dire Dawa city are two ethnic groups, Oromo and Somali, both these ethnic groups have special place for land and influenced by their tradition to land, land belongs to them. Further, the people persistently objected lease laws and policy, especially proclamation no.721/2011. Furthermore, even those who entered into lease are entering into the system for there is no controlling and follow up of Dire Dawa city administration, and they doesn’t worry about lease payment as they can escape it easily.[134]

2. *Administrative problem of controlling and follow up (monitoring)* - he said that there is no effective mechanism of controlling and follow up of land administration, especially with regard to lease payment and irregular settlement. There is a very wide possibility when land holders can escape the implementation of urban land related laws, especially with regard to lease payment. As such large number of lease land holder left without paying lease payment for many years.[135]

[134] Interview with Ato Sajid Aliyi ,Director of land bank and transfer directorate, at Dire Dawa land development and management bureau,(Dire Dawa, December 4, 2017).
[135] Ibid.

3. *Lack of sophisticated system of implementation*- using old system of revenue collection and new system of payment for lease is not come to operation, but recently the bureau developed new system of payment for lease payment separately from taxation system and started giving information about lease payment for people when they have come to pay tax for land and other immovable property on the land. Here the government should apply totally the recent developed system of lease payment without any form of delay.

4. *Lack of capacity to pay lease payment*.-The above listed causes resulted in the problem of lack of capacity to pay, financial capacity in a sense that when the people's perception to lease is hostile, no government follow up to enforce the people to effect the payment and no separated system of payment for lease, the people may stay without paying lease payment and this leads to increase the debt on land holder, for example, if one holder doesn't pay lease payment for 10 years or above, the arrears will be very difficult to carry out as it may be beyond the capacity of land holder, remember that we are talking about irregular settlement and most of the holder in this area is low income people. Thus, they have no financial capacity to pay. This problem of financial incapacity to pay huge arrears or lease payment would put the life of low income urban land holders, especially old possessors, on red line. Because If s/he failed to pay lease payment with in the specified time limit and accumulated arrears for three years his/her possession shall have automatically seized and sold to collect the arrears[136] And left the poor homeless, added fuel on fire. This has direct negative impact on tenure security of old possessor, as it amounts to direct expropriation of old possessors' land holding rights without compensation.

From this we can easily understand that the people have no access to basic information specifically about conversion and lease in general.

[136] Art 31(2) of regulation no.8/2012, Dire Dawa regulation to provide for lease holding administration of urban land. See also supra note 6,Art.20(6)

The issue of awareness of peoples is related to the harmonization of lease policy with perception of society to upgrade the understanding of peoples on this sensitive area of economic policy, especially land policy. It is constitutional right of citizens to participate on policy formulation and to consultation and expression of views, art.90 (6) and 90(2) of FDRE constitution respectively. And the issue of public consultation on any economic policy during formulation, adoption and operation at any time is constitutional right of citizen and failure of such consultation may lead the country to unrest as it can be inferred from the issues of Addis Ababa Regional Integrated master plan.[137] Therefore, the government has to devise mechanisms to provide sufficient and timely information to conduct public consultation and create public awareness.

4.7.2Tenure insecurity

The issue of tenure security have given emphasis and discussion, in this paper, under the previous section, as chapter three of the paper is devoted to the issues of implications of conversion of old possession on tenure security of the land holders, where much discussion and legal analysis have taken place. However in this sub topic we will have, the bird's eyes view, to the practical problem of tenure security in Dire Dawa.

Tenure insecurity is a problem specifically in Dire Dawa city and in Ethiopia in general from two aspects. First, the slums and informal settlements that populate large areas of city are clear indications of lack of tenure security. This aspects of tenure insecurity given much discussion and focus under the following sub topic, informal settlements. Second, according to the respondents, even, a legal landholder in the city can be expropriated anytime if the plot is required for government purposes. For instance, Article 9 sub article 3 of Dire Dawa government charter

[137] Tsegaye Ararsa, why resist the addis abeba master plan?—a constitutional legal exploration, August 20, 2015. Presented on Addis standard Magazine as special guest. (Accessed 0n December 12, 2017)

proclamation[138] stipulate that the powers and functions of city administration, inter alia, to Administer, according to law, the land and the natural resources located within the bounds of the city; '*expropriate*,' in accordance with law, a private property and or clear and take over land possession designated as, and object of '*public interest*' after having paid commensurate compensation;.

Moreover, an article 23[139] of the regulation provides allotment of residential plot of land to displaced person due to development. Sub-article 1 of this article provides "legal holder of old possession displaced in accordance with sub article 2 of article 6 of proclamation shall be entitled to substitute plot of land based on old tenure system by considering the standard of the place, the standards and access services of the plot. Detail shall be determined by directives". However the stipulation of the regulation' *legal holder of old possession*' seems tried to exclude illegal holders of old possession from getting replacement plot of land during expropriation of such holding. Sub article 2 of article 23 of regulation also provides land as a compensation for displaced land. In this case, a replacement plot, but mostly less in size, is provided in the city outskirts, which are less developed with minimal infrastructure, facilities and transportation: people expropriated from their original place are exposed to additional costs. It also appears the compensation payments do not consider current land values and geographical locations. In this regard, the ease at which land can be expropriated appears to promote the perspective that tenure is not well secured. And also land holder, especially old possessor in an interview and respondents of questionnaires said that conversion of old possession[140], during transaction in general and amalgamation of lease and old possession

[138] Art. 9(3) of Dire Dawa Administration Charter Proclamation No. 416/2004.

[139] Art, 23 of regulation no.8/2012, Dire Dawa regulation to provide for lease holding administration of urban land.

[140] Art.7(1) of regulation no.8/2012, Dire Dawa regulation to provide for lease holding administration of urban land.

in particular, amounts to indirect expropriation of urban land holding without compensation. And the society's perception as discussed above may serve as an additional evidence to show the existence of tenure insecurity.

4.7.3Inequity

From an interview conducted during this study,[141] the researcher concludes that there are two types of inequity in urban land in general and in dire dawa in particular are identified: inequity between wealth status and inequity due to special relations. Regarding the first type, land is accessed depending on the wealth or capital status. The second source of inequity is the officials' special relations with the people. This may include tribal, origin or relative based. For instance, in Dire Dawa, ethnic based inequity is mentioned. In this city, the mayor position shifts between people of Oromo and Somali ethnic background every two years. In this case, it appears that when a person from one ethnic is in power, s/he favors their own ethnic group.

4.7.4Informal settlements

The Dire Dawa urban land leasehold regulations on issues of informal settlements and old possessions is that the regulation does not provide clear distinction between old possessions and informal settlements, - informal settlements are described within old possessions article. , in Dire Dawa the second regulation issued in 2013 considers informal settlements before 2012 to be illegible. Another point is that the first formalization regulation in Dire Dawa was issued before proclamation 721/2011; meanwhile, issues of formalization are not given attention in proclamations 272/2002. This indicates that regions can use their constitutional right to issue a regulation when required though not always the case. In Dire Dawa though the first formalization law was issued in 2007, it felt to address the different

[141] Interview with Ato Jemal Yesin, Dire Dawa Land Development and Management Bureau, legal section Head.(Dire Dawa, November,25 2017).

problems due to inefficiency of implementation though. In addition, land became unreachable to the urban poor: the lease prices were soaring from time to time. Thus, the urban poor prefer to get access to land through illegal means.

The combined results suggest informal settlements are increasing in dire dawa city. informal settlement are expanding in all directions of the city periphery i.e. *Ganda Gabare, Ganda caffe* and *Ganda Gara* informal settlement to the East, *Gorro* informal settlement to the North West and *Sost kilo* informal settlement to the South East and other informal settlements like *Gande* informal settlements around Dire Dawa University. The respondents mentioned that high rental price of houses, less accessibility of government houses, and market inflation are some of the causes. However, experts from Dire Dawa land development and management bureau claim informal settlement prevalence is decreasing after the introduction of the 2011 urban land proclamation and he added that but it is difficult to say it is decreased confidently because there is no effective mechanism devised to control further illegal land occupation, informal settlement. The major cause of informal settlement is non-existence of other options of access to urban land for low income people, 'option less people' to use his word and they resort to illegal settlement or illegally holding land as this is the only their available alternative to get urban land.[142]

Ato Sajid Aliyi told the researcher with regard to regularization of irregular settlement/informal settlements that the people didn't want to regularize their illegal holdings and they claim that the holding belongs to them as they were living in the building they constructed for long period of time and even now. There are many individuals who have said that he didn't want to take certificate of land holding by lease after regularization takes place. He added, that they have other reason to deny regularization of their informal

[142] Ato Sajid Aliyi. Supra note, 134

holding, service payment for certificate of holding and lease payment when their holdings regularized. In other words, they fear the service payment and lease payment when their holding converted to lease holding through regularization of informal settlements.

The researcher asked the interviewee that whether the regularization of informal settlements encourage illegal land grabbing. He said the regularization directly encourage illegal land grabbing, but if the government refuse to regularize informal settlements its outcome is very decisive , as it may lead the country to unwanted situations, like political, social and economic crises. And from two evil the government seemed preferred the less evil, regularization of informal settlements.[143]

With regard to question 'what actions are taken to protect further informal settlements?, there are some measures which has been taking by land banks and transfer section of LDMB of Dire Dawa among which fencing and taking land without holder to land bank and creating awareness for community live around peripheral area of city not to take land illegally and construct any building and stopped regularization of informal settlements from 2003EC and holding after this year are not subject to regularization and the fate of such settlements are not clarified under the proclamation and regulation. But the researcher thinks that it will be demolished or taken by government as it will not subject to regularization, this may exacerbate the problems. He added that the measure and actions taken to protect further illegal settlements are not sufficient and we can say nothing is done to protect further informal settlements as it is continuous in the city periphery.

This result is in agreement with different studies in Africa[144] that reveal access to urban land for low income people becomes a critical issue in the

[143] Ibid.
[144] Brown-Luthango (2010), Access to Land for the Urban Poor—Policy Proposals for South African Cities, (Urban Forum, 21, 123–138). and Mosha (2013), Low-Income Access to Urban Land and Housing in Botswana, (Urban Forum, 24, 137–154)

contemporary urbanization in the region. From the discussion made above one can notice that the urban land governance problems both at the national and city level appear to be similar.

4.7.5Rent-seeking

In the urban land management, rent-seeking related with urban land is labeled as the major problem in urban areas of Ethiopia and dire dawa is not an exception. In the study city, rent seeking activities involve through the strategic chain among the people, government officials and the brokers. The results of questionnaire reveal that there is a slight improvement after the implementation of proclamation 721/2011. This is because transparency is slightly improving, especially in rent-seeking hotspot areas identified by the government including auction and land delivery processes. However, the results in the responses of respondents of questionnaire indicate slight improvements of the problems exist at city level after proclamation 721/2011.

4.7.6Weak administrative capacity

Every respondent both land holder and land development and management bureau at dire dawa level agreed on this problem. As obtained from interview conducted both with employees of land bureau and land holder in the case study city, there is shortage of trained human resources and materials (e.g., computers and offices). These altogether hinders the capacity of the municipality, for example, to execute programs aimed at controlling informal settlements. This problem appears a common problem in cities of most developing countries[145]. Currently, the government in the case study city establishes 'Afresh gibrehail[146]' to control informal settlements. They are responsible for demolishing newly constructed informal houses and controlling further construction. Apparently, demolition becomes a source of disputes as it is obtained during interview

[145]

[146] Interview with Ato Abraham kabede, Land Development and Management Bureau, land allocation and standardization high expert, (Dire Dawa, November 26, 2017)

with the case study city land authority (LDMB). To solve the problem related to urban land governance, inter alia, to improve the administrative problem, dire dawa cabinet has proposed new regulation which is at drafting stage; its draft is under way, at the time of conducting this study. The researcher efforts to access the draft regulation remain dream as it has not disclosed to the public at the time of writing this paper. So it is not plausible to have discussion on it.

4.7.7 Lack of transparency

Transparency is crucial in land governance: other land governance problems such as rent-seeking, societal participation and information access are linked. Literature shows that improving societal participation especially at the local level leads to improved transparency, which also helps to improve rent-seeking. The results show that transparency in urban land related decision making is another problem in the case study city. After the implementation of proclamation 721/2011, however, the problem of transparency is slightly improved.[147]

From this statement of employee it is possible to conclude that the proclamation have prospects to land administration in preventing and reducing other problem of urban land governance which have direct or indirect relation with transparency.

[147] Interview with Ato Kaleab Sisay, Land development and Management Bureau land plan examination and standard preparation case team, (Dire Dawa, November 26, 2017)

CHAPTER FIVE

CONCLUSION AND RECOMMENDATION

5.1Conclusion

This paper investigated the impact of the new Lease Proclamation on tenure security of holders of immovable properties known as old possessions in Ethiopia particularly in Dire Dawa. The findings reveal that the obligation for compulsory conversion of old possessions has negative impact on tenure security for the following main reasons.

First, the conversion violates the constitutionally guaranteed right of joint ownership of land and the collective right of public participation. This endangers the rule of law and constitutionalism which are vital for tenure security as such constitutional principles enhance certainty, predictability and confidence of urban landholders. Secondly, the conversion impairs tenure security because it is an indirect expropriation without compensation and tenure security is a right that stands for protection of landholders against expropriation. Thirdly, there are empirical evidences that show that the obligatory conversion requirement has brought about tenure insecurity of holders of old possessions in urban areas.

Additionally, the study made effort to come across the perception of peoples towards conversion in particular and lease in general. As such it identified the perception of the peoples toward the lease and conversion as very hostile and they persistently opposed the proclamation, especially with regard to conversion and still objecting it. Through ought the study the

paper also tried to assess the challenges faced during implementation of lease proclamation and other urban land legislations of dire dawa. As such the findings revealed some major practically existing problems of urban land governance in dire dawa, namely; Lack of information access and awareness, tenure insecurity, informal settlements, informal land markets, inequity, Weak administrative capacity, and Lack of transparency. Furthermore, the study assessed law and the practice with regard to amalgamation of old possessions. In this case, law and practice have some similarity as there is no mandatory conversion imposed on old possessors. However, there is discrepancy between law and practice in dire dawa in case when one of co-successors donated his share for co-successor, whether should convert to lease or not? The results of study revealed that the law is negative and the practice is affirmative, meaning that the law doesn't require conversion and practically it is subject to mandatory conversion.

5.2 Recommendations

Taking the above discussions and findings into account, the writer suggests the following recommendations.

- The government should table the issue of conversion of old possession to leasehold tenure and invite the public to discuss on it. As a constitutionally equal party with the government on land matters, the public needs to meaningfully participate whether conversion is necessary and the way it should be implemented.
- The current urban lease holding proclamation and the subsidiary lease holding laws should be amended to adopt accommodative urban land acquisition and transfer system which even, at times, allows the poor acquire urban land for free as land in Ethiopia belongs to the public at large and everyone should be enabled to access it.
- The government should provide those squatters whose possession is to be demolished because of the fact that it is not found to be in

conformity with the master plan of the urban centers, with access to substitute kebele housing or facilitated purchase of condominium housing unit based on humanity and social justice. Their settlement should not also be demolished within a short period of time until they get such alternative shelters. Moreover, considering the inevitability of squatting for the future, the government should primarily work a lot for a change in attitude towards squatting, squatters and squatter settlements.

- The government should also revise the discriminatory rules on regularization of illegal land holdings and conversion of old possessions. Regularized informal settlement should be administered under old possession, should not be subject to conversion as this entails the expropriation of poor peoples' urban land holding if they failed to carry out lease payment.
- The government should enact the law in the same federal city in the way that promote uniformity of law and should fill gap of law with regard to amalgamation of old possession.
- The following stipulation should be incorporated under article 8 of dire dawa regulation no. 8/2012. As sub-article 8 "Amalgamation of old possession". To be provided expressly as directive of Addis Ababa and article 8(3) of the same should be clarified.

As far as the practice concerned, the researcher recommends the following;

- The government should devise the mechanism to control the problem of illegal settlements and should offer the poor and low income people another options to get urban land at least for residential purpose.
- The government should make available, as much as possible, all information related to urban land and create awareness for peoples concerning lease and conversion of old possession to have basic knowledge about such sensitive issues of land.

- LDMB should employ well skilled personnel and sophisticated materials to facilitate the function of bureau especially collection of lease payment.
- The government should work hard generally to overcome the problem of urban land governance. For instance, to control informal settlements, rent-seeking and many other problems, cadastres and land use maps need to be efficiently implemented.
- DDCA and LDMB should implement the law as it is and should not practice against the express provision of law, Art.8(3) of regulation to provide lease holding administration of urban land, Regulation No.8/2012, with regard to conversion of old possession received from co-successor after payment of estimation cost.

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ANNEXES

Interview questions

Old possessors

 what are the implications of conversion of old possession on tenure security of old possessors?

Bankers

 What are the implications of conversion of old possessions on the banking Services?

Lease holders

 How do you see the new urban land lease holding proclamation with regard to conversion of old possession?

 What is its implications on lease holders?

Brokers

 How do you see the new urban land lease holding proclamation with regard to conversion of old possession?

 Is there any change in the housing market after the coming in to force of this
Proclamation?

Whom does this law with regard to conversion of old possession affect more?

Does it have any economic impact on brokers?

DARO Workers

 what does the transfer of title for houses before and after the coming in to force of the
New urban land lease holding proclamations look like in dire dawa?

The municipality

What is the feelings of peoples towards conversion of old possession in particular and lease in general?

What are the challenges encountered during implementation of lease proclamations and other subsidiary legislations?

 Has the regularization of informal settlements been started? Does it encourage illegal land grab?

What actions are taken to protect further informal settlements?

Questionnaire

DIRE DAWA UNIVERSITY

COLLEGE OF LAW

RESEARCH QUESTIONAIRES

The purpose of this questionnaires is to obtain data for a research project conducted by Dire Dawa university college of law student, ADEM ABDELA ADEM on the topic " conversion of old possession to lease hold and its implications on tenure security of land holders in dire dawa)", in partial fulfillment of the requirements for the award of LLB degree in law.

- **Please note that the researcher, in this regard, assure you that it is not a test of competency; and all the information you provide will be confidential & is to be used only for research purpose.**

Thank you in advance!

QUESTIONARIES FOR DIRE DAWA CITY LAND HOLDERS

Dear respondents we would like to thank you in advance for your active response about CONVERSION OF OLD POSSESSION TO

LEASE HOLD AND ITS IMPLICATIONS ON TENURE SECURITY OF OLD POSSESSOR.

Instruction:

- ✓ **You are not required to write your name**
- ✓ **Put tick(√) sign for the choice in the boxes provided**
- ✓ **Put tick (√) sign under your answer on the space provided in the table**

Part 1.Personal information

1. Sex: - Male Female

2. Age: - Under 24 25-34 35-44 above 45

3. Educational Qualification

A. Below grade 12 C. Diploma

B. Grade 12 complete D. First degree E. Masters

4. Marital status: A. Married B. Unmarried

C .Divorced

Questions related to land authority

No.	Questions	Agree	Strongly agree	Indifferent	Disagree	Strongly disagree
1	The proclamation					

	reduces corruption and land grabbing					
2	The proclamation with regard to conversion of old possession of lease system is fully implemented in dire dawa as it is desired					
3	The problem of tenure security is high in the dire dawa city administration					
4	The regulation and directives of dire dawa enacted to implement the proclamation no.721/2011 are covered all areas of conversion of old possession.					
5	Conversion of old possession to lease hold is indirect expropriation of holding right of old possessor.					

Questions related to Old possessors

N	Questions	Agr	Strongl	In	Disagre	Strongly

o.		ee	y agree	differe nt	e	disagree
1	Conversion of old possession to lease hold system jeopardize the tenure security of old possessor.					
2	Public discussion didn’t make sufficiently with people at the time of adoption of the new lease. proc.no 721/2011					
3	Old possession should not be converted to lease hold system and should remain exception.					
4	Lease system should not be the only mode of urban land allocation as the constitution did not dictate so.					
5	Proclamation no.721/2011 benefits the government and rich at detriment of holders of old possessions.					