

Converting Old Possessions into Lease System in Ethiopia: Decades of Unsuccessful Endeavors

*Taye Minale Belachew** & *Habtamu Sitotaw Semahagne***

Abstract

Dual urban land tenure arrangements have continued to exist in urban centers of the Ethiopia since the beginning of 1990's. However, despite the fact that the lease system began to be implemented for more than a decade ago, we are still witnessing the existence of urban land lease holdings and old possessions side by side. The attempt to have a unified tenure arrangement began with the current government following the enactment of the first urban land lease proclamation in 1993. However, this attempt has turned out to be unsuccessful so far, due to various reasons. Similarly, an unsuccessful effort was witnessed during the implementation period of the 2002 subsequent urban land lease proclamation. However, like its preceding urban land lease laws, even if the law aims to achieve otherwise, no feasible change has been observed in unifying the urban land tenure system after the coming into force of the existing Urban Lands Lease law in 2011. Using a doctrinal approach, this article aims to examine why the government is unable to start the process of implementing the law in unifying the urban land tenure system. More specifically, the major possible challenges the government may encounter in converting old possessions into lease holdings and the corresponding benefits that can be accrued to the lease holders, as well as the government, will also be addressed. Moreover, in order to substantiate the argument forwarded in this article, interviews were also conducted with relevant experts in the field from the two concerned authorities of Amhara region. Based on the primary data and analysis of various legal documents, the authors argue that if there is a need to have a unified tenure arrangement in urban areas of the country through converting old possession into lease holdings and if there is a need to rectify previous failures, especially after the enactment of an unambiguous and unequivocal regulation by the Council of Ministers, then a different approaches and strategies must be adopted.

Key Words: Old Possession, Lease System, Urban Land, Conversion

* LL.B (Bahir Dar University), MSc in Land Management, specialized in Environmental Built (Royal Institute of Technology, KTH Sweden), Lecturer at Bahir Dar University, Institute of Land Administration. The author can be contacted via t_minale@yahoo.com

** LLB (Wollo University), MSc Land Administration and Management specialized in Real Property Law (Bahir Dar University), Lecturer at Bahir Dar University, Institute of Land Administration. The author can be reached at habtamusit@gmail.com

1. Introduction

As is the case for many developing countries, land has a special place in the socio-economic and political life of Ethiopians. If we take the economic facet only, 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.¹ In relation to urban land, the country is witnessing rapid level of urbanization which is drastically changing the physical, social, economic, political and administrative structures of the cities.² After assuming power, in transforming the tenure arrangement, the Transitional Government of Ethiopia enacted a new urban land governing law in 1993³, where the first urban lands lease holding law was promulgated. Unlike the permit system that was operational during the Derg regime, this new urban land law has introduced a lease system and dating this moment, many towns in Ethiopia are now governed through this lease system.⁴

This first proclamation, however, was replaced by Proc. No. 272/2002.⁵ Since land and interests in it are dynamic in nature, the above proclamation could not govern some issues that occurred after its promulgation. Hence, at the end of 2011, the federal parliament (the HPR) enacted the current urban land lease proclamation.⁶ Apart from bringing all forms of land tenure systems outside of the lease system to an end, the legislation requires the conversion of all previous holdings in the form of permit system to

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

² Ibid

³ Proclamation No 80/1993, a proclamation to provide for the lease holding of urban lands, 1993 (hereinafter cited as Proc No 80/1993)

⁴ Daniel W/G, *Ethiopian land law text book*, Bahir Dar University, Institute of Land Administration, 2013, p. 77

⁵ A proclamation to provide for the re-enactment of lease holding of urban lands, Proclamation No. 272/2002, Federal Negarit Gazeta of the Federal Democratic Republic of Ethiopia, 8th year No. 19, Addis Ababa, 14th may, (hereinafter cited as Proc. No. 272/2002)

⁶ Federal Democratic Republic of Ethiopia, Proclamation No. 721/2011, a proclamation to provide for lease holding urban lands, Federal Negarit Gazeta (hereinafter cited as FDRE Lease Proc No 721/2011)

leasehold.⁷ Though these proclamations (Proc. No.80/1993 and Proc. No.721/2011) opt for the conversion of old possessions to the lease system, thereby, urban centers will be governed through uniform systems, this has been a difficult task since the laws are designed with vague expressions with reference to old possessions and there is always difficulty of implementation. Converting old possessions to the lease system was not an easy task in the first two land lease proclamations and is same is true in the present proclamation also. The conversion has been considered one of the measures that the new proclamation has introduced towards the uniformization process in the current lease proclamation and a challenging task with possible discontentment from the general public.⁸

Recently, due to little action taken by the government, the overall issue of old possessions has become a source of worries for urban landholders and a point of discussion for scholars from different disciplines. However, so far, there are few studies done by scholars concerning the basic issues associated with old possessions in the prevailing lease system in Ethiopia. The works have incorporated issues on conversion of old possessions into lease system though they far from comprehensively discuss the possible issues during conversion of old possessions to the lease system. In order to present the main ideas of this article and its approach to the issue, let us first overview some of the previous works on the issue. In this regard, Fikerabinet Fikadu's work titled, "Ethiopian Urban Land Policy and Laws; Constitutionality of Access and Land Rights", addressed issues related to the size of old possessions; expansion of old possessions; limitations and restrictions on transactions and mortgaging properties attached with old possessions and the manner of conversion of old possessions to the lease system. However, the discussions in his work did not extensively address the challenges of conversion of old possessions to the lease system; nor did it address how the conversion is treated under subsidiary legislation nor the possible benefits that may result from conversion and strategies to be adopted during conversion of old possessions to the lease system.

⁷ Yared Berhe, Conversion of Old Possessions to Leasehold and Its Implication on Tenure Security of Holders of Old Possessions, *Mekelle University Law Journal*, Vol.3 No. 1, 2015, p. 89

⁸ Belachew Mekuria, Overview of the Core Changes in the New Ethiopian Urban Land Leasehold Legislation, *Mizan Law Review*, Vol. 5 No. 2, Dec. 2011.

In Addition, Daniel W/Gabriel in his PhD Thesis, titled “Land Rights and Expropriation in Ethiopia”, discussed the fate of old possessions in a lease system, already adopted in Ethiopia, within a single page. The paper defined “old possession and the manner of transfer of old possessions to the lease system in pursuant to the new urban lands lease holding proclamation. Since the paper’s central theme was not to deal with the issue of old possessions, it left many issues untouched concerning old possessions.

Therefore, this article deals with the various benefits that the government, individual landholders and the entire community might acquire following the conversion of old possessions into the lease system; the possible challenges that may actively work against successful conversion of old possessions to the lease system (taking into account the experiences of the previous lease proclamation); the strategies that shall be adopted before the government enters into total conversion of old possessions to lease system if the Council of Ministers enacted the expected regulation to this effect; the position of subsidiary legislations in relation to providing rules modalities for conversion of old possessions to lease system and others.

Hence, this article examines the challenges and prospects in converting old possessions into the lease system primarily in the current Urban Lands Lease Holding Proclamation. Though the sources of data used in this article are both primary and secondary, it is generally a doctrinal legal analysis. Scrutiny of urban land governing laws of the past and the present with specific attention to old possessions; moreover, relevant information was also collected from various websites and different published and unpublished materials, journals, magazines and newspapers. Also, the authors interviewed pertinent experts on the field from Bahir Dar City Administration and the Amhara National Regional State Bureau of Urban Development. Finally, a descriptive method is employed in order to analyze the data obtained from the above sources.

To that end, this article is organized into four parts. Part one is the introduction; the second part is devoted to describe the manner in which the three urban land leasehold laws have managed the issues of old possessions. The third part is discusses issues relating to conversion of old possessions into lease system and, in this part, a particular emphasis is allotted to the currently governing urban land leasehold laws of the country. Furthermore, the

implications of conversion of old possessions and, in some cases, the reasons behind the hesitation of the government to have immediate action to handle the conversion including the possible challenges that can be encountered in the process and the possible benefits are considered. Lastly, concluding remarks and recommendations are provided.

2. Old Possessions in the Three Urban Land Lease Holding Proclamations

The urban land tenure arrangement of the country has gone through different changes during different regimes. The changes have been necessitated due to the prevailing socio-economic conditions of the country but it also swing along with the political ideology of the ruling government. For instance, Emperor Menelik II promulgated the 1907 decree, which had duly recognized private ownership of land that allowed wider rights in the use, inheritance and sale of urban lands. The edict was mainly declared by the emperor to give security of land rights and to authorize and enable those countrymen and foreigners to buy land in the town of Addis Ababa according to the law.⁹ Apart from private ownership of land during this era, there were also other systems of urban land ownership arrangements.¹⁰ The era of Emperor Haile Sellasie I also recognized private ownership of land. Article 24 of the 1931's Constitution guaranteed private land ownership rights of individuals and protected landholders from being deprived by anyone of their movable or land property unless for public purposes.¹¹ Private ownership of urban land was also recognized under Article 44 of the 1955 Revised Constitution and it was also expressly recognized under the 1960 Ethiopian Civil Code.¹²

Nonetheless, following the overthrow of the imperial regime in 1974 with the so called slogan "land to the tiller", the Derg Regime held the throne and took

⁹ Brightman Gebremichael, *Heartrending or Uplifting: The Ethiopian Urban Land Tenure System Reform of post-1991 and Its Reflection on Tenure Security of Permit Holders*, paper submitted to review, 2015, p. 3

¹⁰ These tenure arrangements may include government land, church land, communal land, rist and gult lands.

¹¹ See Article 27 of the constitution of the Empire of Ethiopia, *Negarit Gazetta*, 16 July 1931

¹² The Civil Code of the Empire of Ethiopia, Proclamation No.165/1960 *Neg. Gaz. Extraordinary*, year 19 No. 2 (hereinafter Ethiopian Civil Code), Art. 1126 & ff deal with the issues on private ownership of movable and immovable properties

different actions that radically altered the social, political and economic structure of the country. One such reform was with regard to the urban land tenure system. The slogan, though primarily seeking a change in the rural land tenure, the military government's action extended to reform the urban land tenure to which formally changed the nature of urban land rights.¹³

The proclamation was a new introduction in the urban centers; its central theme being nationalization of all urban lands without payment of compensation and promulgating public ownership of urban land.¹⁴ During this regime, the permit system was the prominent means to access urban land by the citizens who wished to build a dwelling. The lands distributed by the military government to individuals, in addition to the holdings acquired during the imperial regime, have been a continued base for the subsequent development of old possessions in the different urban land lease holding proclamations of both the transitional and the current governments.

2.1 Old Possession under Proclamation No. 80/1993

According to the preamble of this proclamation, the need for the coming into force of the law includes, the high rate increment of urban dwellers which resulted in unplanned expansion of urban centers which further complicated problems associated with the allocation of urban land; shortage of existing houses for residence purposes and the need to build houses expeditiously, and so forth. Concerning its scope of application, the proclamation rules that it shall not apply to urban lands previously utilized for building dwelling houses.¹⁵ Immediate application of the lease proclamation on possessions held in permit was not envisaged and in strengthening this fact, the Proclamation proclaimed the following:

“...the regulations of urban land holding for private dwelling houses which were in force prior to the enactment of the present

¹³ Brightman Gebremichael, 2015), supra notes 9.

¹⁴ Proclamation No. 47/1975, the "Government Ownership of Urban Lands and Extra Houses Proclamation, July 26, 1975, Arts. 3(1), 3(2) and 13(1) reveal that public ownership of urban land had been recognized and nationalization of all urban lands (without compensation) and extra-houses was made possible and if necessary another single business house. Due to the approaches adopted under the proclamation, an individual or family can no longer own more than a single dwelling house as all "extra" houses were taken by the government.

¹⁵ Proc. No. 80/1993, supra notes 3, Art. 3(1)

*proclamation shall continue to be in force, 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 holding system provided for in this proclamation”.*¹⁶

According to the above provision, transfer of old possessions, in any modality, to third party (save inheritance) will result to an immediate conversion of the entire possession into the lease system. Still, however, no clear information about what might happen when some part of the possessions is transferred to third parties, while the remaining parcel is held by its holder. It usually happens that landholders prefer to transfer part of their holdings to others; thereby generating money in return. In such a case, there were no clear rules to govern the status of the remaining/non-transferred land or the entire land at hand.

Concerning buildings that were built for a purpose other than dwelling houses, the proclamation further rules that *”any person who, prior to the coming into force of the proclamation lawfully holds an urban land other than that which is designated for the construction of dwelling houses, shall apply to the appropriate town administration within the time specified by the said administration in order to get for the urban land he holds a lease holding title document in accordance with Article 6 of the new proclamation.”*¹⁷

Hence, unlike lands used for dwellings, lands used for other purposes will be automatically changed to the lease system upon application of the landholder in accordance with Article 6 of the proclamation. Even if lease was the prime mode of acquisition of land after the coming into force of the proclamation, exceptionally, land may be given without lease arrangements if it is to be utilized for investment that the government encourages or for social services establishments or for other purposes which directly benefit the public.¹⁸ But the reading of various provisions in the proclamation does not clearly show whether these lands should be treated by the prevailing lease system or the permit system. Also, there was no clear indication regarding the manner of the

¹⁶ Ibid, Art. 3(2)

¹⁷ Ibid, Art. 15(1)

¹⁸ Ibid, Art.13

possible use of a land in an old possession as collateral; the proclamation did better in determining the use of a lease holding land as collateral.¹⁹ The proclamation was not able to attain wholesome conversion of old possessions into the lease system which was aggravated due to the absence of a regulation relevant to implement the proclamation.

2.2. Old Possessions under Proclamation No. 272/2002

Since Proc. No. 80/1993 failed to achieve objectives such as enhancing urban land revenue, ensuring transparency in land transfer, promoting economic development of urban centers through involvement of investors, and the need to widen the scope of the lease system to cover permit holdings (the conversion of old possession into the lease system), it was replaced with Proc No. 272/2002. As stipulated in its preamble, the objective to introduce this later proclamation was to provide market driven exchange value. It was also assumed to encourage investment, provide housing and infrastructure, control undesired expansion of cities, and combat speculation and non-transparent system of plot allocation. The prevalence of good governance is assumed to be a fundamental requisite for the development of an efficient, effective, equitable and well functioning market. With this system, the government was expected to collect enough money to run urban infrastructure and transfer all urban landholdings into the lease system.²⁰

Unlike its predecessor, this proclamation has a clear provision which declares that it will be enforced on old possessions as well. On this basis, the proclamation shall be applicable to an urban land held by the permit system, or by other means prior thereto, as well as to an urban land permitted thereto.²¹ Pursuant to this provision, the scope of application of the proclamation shall include urban lands held by the permit system. The essence here is different treatment of old possessions in isolation with leased lands was not envisaged and it opted to govern all the land in urban centers by the lease system.

¹⁹ Ibid, Art. 10

²⁰ Sileshi Tefera et al, *Land Lease Policy in Addis Ababa*, Produced and distributed by the Addis Ababa Chamber of Commerce and Sectoral Associations with financial support from the Swedish Agency for International Development Cooperation, Sida, 2009, p. 4

²¹ Proc No 272/2002, Supra notes 5, Art. 3(2)

The exception, however, is any urban land which has not been under a lease holds system, as per the time and conditions to be set by the concerned region or city government.²² That means based on the time and conditions to be determined by concerned regions or city governments, there will be some urban lands that will not be governed by the lease system. Also, the application of the proclamation for any town, which has not been under a lease hold system, would be as per the time and conditions to be set by the concerned region or city government.²³

Unless for either of the above scenarios (which are dependent or conditional upon the possible decisions of the city or regional governments), the proclamation will be applicable for urban lands held in permit too; this could be considered a deviation from its predecessor. Since, at least, permit holders shall effect payments for the lease price and enter into lease contracts with the government, this law seems to follow unfair treatment of possessions taken in permit as it allows them to be governed by the lease system. In fact, even during the periods where the previous legislation was in force, it was not an easy job to convert old possessions into the lease system. Taking the above stipulations into account, it could be argued that the following questions were not properly addressed in this proclamation.

- Does it mean the operation of the proclamation for old possessions is in reality automatic save the exceptional circumstances above given the fact that it was not possible to administer the entire land by lease system in the periods where proclamation No. 80/1993 was in force?
- Is it practically possible to employ similar principles for leased lands and permit possessions given these two holdings are different in various respects. Or do the provisions of the proclamation equally apply to old possessions and other lands alike (will similar principles shall apply for the two simultaneously)?
- Can we imagine the proclamation can properly administer the entire urban land without prior conduct of successful conversion

²² Ibid, Art. 3(2)(a)

²³ Ibid, Art. 3(2)(b)

of urban lands into the lease system? Or how can the proclamation be enforced on permit holdings without prior conversion of the holding into the lease system?

2.3. Old Possessions under the Current Urban Land Laws

In the present land tenure arrangement of the country, for urban lands, a leasehold system is introduced and for rural lands, a holding type of land use right for an unlimited time is applied. This shows that the rural and urban lands are independently administered and governed by different institutions. Concerning the status of old possessions, controversies exist when one looks at the currently governing proclamation which is enacted with various lease principles in a motive to ensure a unified land tenure arrangement in urban centers of the country.²⁴

2.3.1 What is an Old Possession?

Old possession is defined under the current proclamation as “*a plot of land legally acquired before the urban center entered into the lease hold system or a land provided as compensation in kind to persons evicted from old possession.*”²⁵ According to this definition, there are two types of holdings which are treated as old possessions. The first is related to those lands that were acquired before a certain urban center entered into a lease system; and the second is related to lands that an old possession holder acquired in the form of compensation for the lands taken away by the government through expropriation.

Thus, all land acquired and held during the imperial era, the Derg era, and after that, outside the lease system, is considered as old possession. Besides, replacement land given to owners whose land was expropriated may also be considered as old possession since the land was given without lease contract.

²⁴ FDRE Lease Proc No 721/2011, Supra note 6, Art 4 listed the principles of lease in Ethiopia. accordingly, the right to use of urban land by lease shall be permitted in order to realize the common interest and development of the people; the offer of lease tender and land delivery system shall adhere to the principles of transparency and accountability and thereby preventing corrupt practices and abuses to ensure impartiality in the process; tender shall reflect the prevailing transaction value of land; the urban land delivery system shall give priority to the interests of the public and urban centers to ensure rapid urban development and equitable benefits of citizens and thereby ensure the sustainability of the country's development.

²⁵ Ibid, Art. 2(18)

Although it is difficult to put the exact figure, the number of old possessions in Addis Ababa, for example, may constitute half of the total properties in the city.²⁶

But nothing is implicated in the proclamation concerning the status of those urban lands that were acquired outside the lease principles before the coming into force of this system in the country but allowed to continue in that state by an appropriate organ.

In the same fashion, the Amhara Regional State Urban Lease Implementation Directive defined old possession as:

“ነባር ይዞታ” ማለት የከተማ ቦታ በሊዝ ስርዓት መተዳደር ከመጀመሩ በፊት በሕጋዊ መንገድ የተያዘ እና ሊዝ ተግባራዊ ከሆነ በኋላ ለነባር ይዞታ ተነሿ በምትክ የተሰጠ ቦታ ወይም ሊዝ ከመተግበሩ በፊት የተያዘ ሆኖ እግባብ ባለጠላ አካል ከሊዝ ስራት ውጭ እንዲቀጥል በህግ እጠቅና የተሠጠው ቦታ ነው።”²⁷

This definition, similar to what is provided in the federal proclamation, recognized lands gained in permit, and those lands given as a replacement to the holders due to expropriation decisions, as possessions in permit. In addition to the federal proclamation’s definition, those urban lands, that were acquired outside the lease system before the coming into force of the lease system in the country, but allowed to continue in that state by an appropriate organ, are properly addressed and they are simply old possessions that shall continue in that state until conversion is made. Hence, in this legal instrument, old possessions are defined to encompass more lands above and beyond the federal proclamation’s definition.

The Addis Ababa city land lease regulation has defined old possessions in a similar fashion with the federal urban lease proclamation as follows:

“ነባር ይዞታ” ማለት ከተማው በሊዝ ስርዓት መተዳደር ከመጀመሩ በፊት በሕጋዊ መንገድ የተያዘ ወይም ሊዝ ተግባራዊ ከሆነ በኋላ ለነባር ይዞታ ተነሿ በምትክ የተሰጠ ቦታ ነው።”²⁸

²⁶ Daniel W/G, 2013, Supra notes 4, p. 77
²⁷ See the Amhara Regional State Industry and Urban Development Bureau Urban Land Lease Implementation Directive No. 1/2005, Art. 2(6)
²⁸ Addis Ababa City Administration urban land lease regulation No.49/2004, Art. 2(8)

From all the above definitions given to old possessions, it can be inferred that there is a huge area of lands obtained during the permit system and which is now falling to the fate of conversion to the lease system when the proposed guideline is enacted by the Council of Ministers for mass conversion.

2.3.2 The Scope of Proclamation No. 721/2011 in Governing Old Possessions

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

“Regional cabinets may specify urban centers to which this proclamation remains inapplicable for a certain period: provided, however, that such transitional period within which the proclamation remains inapplicable in any urban center may not be more than five years starting from the date of the coming into force of this proclamation.”²⁹

Hence, to the maximum of five years dating the introduction of the proclamation, there may be some urban centers where the proclamation will not automatically apply for which they will be governed through the permit system. In these towns, therefore, whatever kind of transfer is made on the land, it will not result the conversion of the old possession into the lease system. However, when the urban centers supply land in this transitional period, the delivery shall be through tender and the benchmark shall be the annual land use rent of the locality.³⁰ In general, dating the coming into force of this new proclamation, leasehold is the only means of land acquisition mechanism in Ethiopia as it is clearly stated in the proclamation that “without prejudice to the provisions of Article 6 of this Proclamation, no person may acquire urban land other than the lease holding system provided under this Proclamation”.³¹

²⁹ FDRE Lease Proc. No. 721/2011, supra notes 6, Art. 5(4)

³⁰ Ibid, Art. 5(5)

³¹ Ibid, Art. 5(6)

3. Conversion of Old Possession into the Lease System

3.1. Modalities of Conversion

In the current lease proclamation, it is said that the fate of converting old possessions into the lease system will be decided by the Council of Ministers upon a detailed study to be made in the future.³² In other words, all “old possessions” will not be converted in mass at once to leaseholds before the detailed study is conducted in the future. The proclamation, in the meantime, requires the conversion of old possessions into the lease system in one of the following events whether there is total conversion or not.

- Where a property attached on an old possession is transferred to a third party through any modality save inheritance (Article 6.3)
- Informal settlements that have been regularized pursuant to the regulations of regions and urban administrations (Article 6.4)
- Where an application to merge an old possession with a lease hold is permitted (Article 6.6)

The first modality for conversion of old possessions is when a property is transferred to a third party and property transfer in this case includes sale, exchange or donation, except for inheritance. It must be noted that since land is not saleable, the subject matter of “transfer” is not the land itself but the immovable on the land, i.e. building. From this perspective, whenever a house resting on old possession is sold, exchanged, or donated, the new owner shall possess the land on lease basis.³³

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

³² Ibid, Art. 6(I)

³³ Daniel W/G, 2013, *supra* notes 4, p. 78

settlements.³⁴ Hence, the regularized possessions will be governed as per the principles in the lease system. And the third possibility where an old possession will be converted to the lease system is where an old possession is to be merged or amalgamated with a piece of land already leased. Hence, even if these two parcels have been governed through different systems (one through the lease system and the other in permit), once they are merged or amalgamated, the entire possession will be converted to the lease system.

3.2. Issues on Conversion of Old Possession to the Lease System

Article 6 of the new proclamation is meant to govern the conversion of old possessions into the lease hold system. The rules for total conversion shall be made by the Council of Ministers upon a detailed study submitted by the Ministry of Urban Development and Construction.³⁵ Unlike Article 5(4) of the proclamation, which sets the maximum time limit of five years within which the urban centers may suspend the enforcement of the proclamation, Article 6(1) except providing the possibility that the Council of Ministers may come up with the urban land conversion modalities into a lease system, it does not set the time limit when the regulation would be issued. The provision also states that the process of enacting the regulation should not preclude the revision of the rental rate applicable to old possessions.

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

³⁴ Id

³⁵ See FDRE Lease Proc. No. 721/201, supra note 6, Arts. 6(I) and 2(22)

Moreover, when the provision indicates that “the modality of converting old possession into leasehold shall be determined by the Council of Ministers ...” it is confusing in terms of the type and nature of these modalities whether the Council of Ministers will adopt different modalities than those stated under sub Article 3 of the same provision. This is because sub Article 3 states that “where a property attached on an old possession is transferred to a third party through any modality other than inheritance, the person to whom the property is transferred becomes the possessor through lease holding” (*emphasis added*). By looking at the way the provision is framed, it appears restrictive. Thus it is not clear what can be introduced and determined by the Council of Ministers other than those modalities dealt with indirectly under the proclamation and explicitly under the Civil Code of Ethiopia.³⁶

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

In the meantime, taking into account the manner through which the lands in old possession were acquired, the proclamation requires a minimum lease price to be paid by the landholder whenever his/her land is converted into a lease system.³⁷ If the lease rent is much greater than the rent paid for the old possession, the payment can be perceived as a burden by the landholders. The Amhara National Regional State Urban Land Lease Holding Regulation has also confirmed the approach adopted under the federal proclamation in stating “without prejudice to the provisions indicated under Article 6 (3), (4) and 6 of the proclamation [referring to the federal proclamation], old possessions shall continue as they are until it is determined through public

³⁶ Ethiopian civil code, it has expressly dealt with how individuals may acquire various kinds of right over a certain property and at the same time it has also dealt with the modalities through which a person can transfer his ownership rights, usufructuary right through sale, donation/gift, rent. The property owner may also lose his ownership right through foreclosure etc.

³⁷ FDRE Lease Proc. No. 721/2011, Supra notes 6, Art. 6(7)

discussions and undertaking detailed study pursuant to Article 6 (1) of the proclamation”.³⁸

At this level, the Proclamation anticipates the entry point for conversion to be the incidents of transfer of property on old possession of land to a third party through any modality other than inheritance. In these transfer cases, the old possession shall be subjected to conversion to the leasehold system. Apart from transfers, the case of consolidating a leasehold land with a previously permit-based holding would also result in uniformalising the entire possession into leasehold.³⁹

The Amhara Regional State urban lease law provides a series of rules that shall be considered when a land held through permit system is converted into the lease system. Accordingly, service of the holding/land for a person to whom the holding is transferred shall be determined as per basic plan of the urban or development plan of the locality and its period of contract shall be on the basis of period of lease fixed for the service in the proclamation;⁴⁰ a contract shall be concluded on the basis of land use as indicated on basic plan of the locality;⁴¹ when it is to be transferred to a third party, it shall be made to a lease hold in accordance with size of the plot specified on the document submitted thereof .⁴² The law also stipulates different rules concerning what shall be done when the size of the land is increased or decreased. Accordingly, if the size of the plot obtained through site measurement is less than that of the size obtained in the document, it shall be determined upon the size of the plot obtained through field measurement, provided, however, that if the size of the plot obtained through site measurement is greater than that of the size obtained in the document, it shall be determined by directives.⁴³

³⁸ Regulation No.I03/2012, The Revised Amhara National Regional State Urban Land Lease Holding Regulation, Council of the Regional Government Regulation Zikre-hig of the council of the Amhara National Regional State in the federal democratic republic of Ethiopia, Bahir Dar 11th, September 2012 (here after Reg. No 103/2012), Art. 6.

³⁹ Belachew Mekuria, 2011, *Supra* notes 8

⁴⁰ Reg. No.I03/2012, *supra* notes 38, Art. 7(1)(a)

⁴¹ *Ibid*, Art.7(1)(b)

⁴² *Ibid*, Art.7(1)(c)

⁴³ *Ibid*, Art.7(1)(d)

The authors hold that the conversion of old possession into a lease system will not be an easy task and, in some cases, it may also come up with unintended consequences mainly for the following reasons:

- Even though Article 6 of the proclamation empowers the Council of Ministers to determine the modality of converting old possessions into leasehold on the basis of detailed study to be submitted by the ministry, there is no action, as far as the best knowledge of these authors, taken by any of the concerned bodies. Due to this reason, the old possessions will remain as they are for unforeseeable period of time. And this is in compromising every objectives of the lease system and in creating uncertainty on the part of the old possessors.
- Under Article 3(1) of Proc. No. 80/1993 it has been stated that the proclamation will be applicable on all urban centers except those holdings used for residential purposes. And under sub-art.2 of the same provision, transfer of any dwelling houses to a third party through any modality than inheritance will shift the old possession tenure into a lease system. Moreover, pursuant to Article 15 of same proclamation, holders of an urban land for any other purpose than construction of residential dwelling were expected to apply for the concerned organ within the time limit to be determined by the town administration for conversion of their holding from old possession into a lease system. Even though this approach could be considered as one lesson even for the upcoming regulation, it would have been more clear and practicable if the provision has also addressed as to what will happen if the landholder become unwilling to apply.
- Under Article 3(1) of Proc. No. 272/2002 as well it was stated that the proclamation shall be enforced on urban lands held through permit system, leasehold or by any other means. Moreover, Article 3 (2, (a)) also provides the authority to determine the timeframe when a certain old possession should be converted into a lease system and when a certain town to shift its urban land tenure arrangement into a lease. Nonetheless, currently with regard to the issues stated herein above, Article 3 proclaimed that, save those exceptional circumstances, the lease law shall be enforced on all urban centers in

Ethiopia without making any difference on the land use type. Therefore, except setting a certain time limit for adopting a lease system in a certain urban centers upon the decision of the regional cabinets under Article 5(4) and the four year period in order to regularize the possessions held without the authorization of the appropriate body as per Article 6(4) and (5), most of the provisions which deals with old possession are a redundancy of what has been said for more than a decade. Therefore, unless the council of ministers become pragmatic and committed in taking measures in adopting feasible and appropriate strategies and finally enacting the regulation, it will be once again rhetoric and is very difficult to see uniform urban land tenure system in the country in the near future.

- There is no specific time limit set for all urban centers within which they should convert permit holdings into lease holdings. In order to avoid the same mistake that has been made while enacting the proclamation i.e. the failure to set the time limit for the Council of Ministers to enact the regulation, while such regulation is finally formulated and approved, a specific time limit should have set for all urban centers with in which they should convert their old holdings into a lease system. Otherwise, the process of having a similar tenure throughout our urban centers will be remote.
- It is clear from the *acontrario* reading of Article 6(6) that when two adjacent old possessions of a person are merged, the newly created plot shall also continue in that state. Since the law requires that the holding shall be in a lease system if either of the plots to be merged is under the lease system or if both of them are under lease, for a stronger reason, when two old possessions are merged, they shall continue with same status. However, one of the reasons for the existing lack of success for conversion of old possession into lease during merger is related with the size of the lease holding to be merged and the ultimate consequences of the payment. This is to say that given the ultimate consequence of payment of lease rent for the

entire holding after conversion⁴⁴ and due to lack of awareness of the purpose and benefits of the lease system, the old possessors may not incline to merge and convert their possession into a lease system.

3.3. Payment of “Lease Benchmark Price” and Plot Size Determination upon Conversion

When an old possession is converted into the lease system, there is no guarantee that the old possession will be maintained as it had been in the past. This means the land use (residential, business, building height, etc), land size and shape, land rent/tax, initial land payment, and so on shall be determined based on the current or existing rules (such as structural and local plans, land lease regulations etc).⁴⁵ This, without doubt, will cause a fluctuation in land size (large size of lands may be reduced and small plots may be enlarged) and the lessee will be compensated for any fixture on the land in case his land is reduced, and he is obliged to make lease payment for the addition in case his possession is enlarged.⁴⁶

In line with the proclamation, it is also possible to say that the effect of transfer of land right or status of landholding in the event of the above three situations is that people will pay lease benchmark price,⁴⁷ 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.

The concerns of the general public are whether or not landholders [old or new] would pay for their holdings even though there is no transaction made on the land. In other words, could they be surprised by a load of debt of

⁴⁴ The payments for an old possession is very minimal and it is very tempting that the old possessors wants stick with it because currently for a person who is holding 300 m² of old possession, for instance, pays less than hundred birr per year. But if it is through a lease system, obviously even taking the minimum lease price the holder will pay much greater amount of money for the holding.

⁴⁵ See Daniel W/Gebriel, 2013, *Supra* notes 4, p. 79

⁴⁶ *Id*

⁴⁷ FDRE Lease Proc. No. 721/2011, *supra* notes 6, Art. 2(II) has been defined this term as “the threshold price determined by taking into account the cost of infrastructural development, demolition cost as well as compensation to be paid to displaced persons in case of built up areas, and other relevant factors”.

lease price without any activity of the above sort? The proclamation says that it should be decided after thorough research is conducted by the Council of Ministers. The years are now passing without concrete actions taken by the government to relieve the fears of the general public as to whether they have to pay for their holdings even in the absence of any transaction done on the land.

The question at this juncture is: would the person be required to pay the lease bench price (and generally comply with the mandatory lease principles) for the possession he has before and the additions? If the intention of the legislature favors for payment to the entire possession, that appears unfair to the possessor now since he had been complying with payment obligations during the permit system now and before (at least, taxes for his possession).

As has been indicated under sub Article 2 (a) and (b) of Article 6 of the proclamation, during conversion of old possession into a lease system, there is a possibility by which the holding size of the old possessor could be maintained as it is reduced or increased in line with guidelines to be stipulated under the regulation to be issued by the Council or City Administration. If the size is to be reduced, the holder will be entitled with compensation for the loss of properties attached to the land.⁴⁸ However, this particular approach begs a few questions i.e. what will happen if the plot to be reduced has no improvement? Should this particular plot be taken by the government without compensation of any sort? Does it not open the possibility of taking part of one's holding that would ultimately create tenure insecurity? What will be the maximum plot size of urban centers? What will be the base to determine such maximum holding size?

The issues of reducing the size of old possessors will create serious resentment towards the government. Especially since the regulation and all directives will be issued by the executive organ, unless various concerns are considered, it may provide unnecessary discretions for this branch of the government and it may also result in restricting individuals' constitutional rights of property. With regard to the issue of compensation, in almost all of

⁴⁸ Ibid, Art. 6(2)(a)

the existing rural land laws, any rural landholder who loses his holding for the sake of public interest shall be given compensation. Therefore it could be tenable to argue that this rule should also be equally enforced in the case of reduction of urban land during the conversion of old possession into a lease system.⁴⁹

Most likely, the size of their land might be reduced due to scarcity of land in most urban centers of the country. The land in the permit system could reach up to 500 m² but now in Addis Ababa city, for instance, the amount of land allotted for residential purpose is 75 m² and in Bahir Dar, it is 150 m². The controversy here is that holders are compensated only for the property removed from the land but not for the loss of the land itself. Though the existing land policy (public ownership of land) might be a defense on the side of the government, the writers argue in case of reduction of urban land, there must be a ground to strike a balance between the interests of the public and the landholders. In order to even strengthen our argument, since the law under sub Article (2)(b) of article 6 rules that in case there is any chance by which the holding of the old possessor increases, the holder will be required to pay a lease rent for the additional holding. Thus, if the law requires additional payment for the added holding, it will also be fair to provide the possibility of payment of compensation when the size of the holding is reduced during conversion.

Furthermore, in case there is increment, the holder will be treated in accordance with lease principles and will be required to effect payment. The payment to be made for the additional land obtained shall be treated in conformity with the relevant lease principles.⁵⁰ That means, the inherent principles in the lease system that would apply on those urban lands acquired afresh shall apply to holdings in permit whose size is increased as a result too. The holder should conclude lease contracts with the government,

⁴⁹ Pursuant to Art. 40/3 of the FDRE constitution, “*The right to own rural and urban land, as well as of all natural resources belongs only to the state and the people of Ethiopia. Land is an inalienable common property of the nations, Nationalities and peoples of Ethiopia*” If this is the case, even if the reduction of the urban land during conversion is not strictly for ‘public purpose’, so long as their holding is reduced, compensation should have been given for the reduced holding. Otherwise the urban landholder’s right to land guaranteed under the constitution will be at stake.

⁵⁰ FDRE Lease Proc No 721/2011, Supra notes 6, Art. 6(2)(b)

which shall include restricted lease period based on the purpose of the land and the urban center the land is located. And the holder shall conclude a contract of lease with the appropriate body that shall include the construction start-up time, completion time, payment schedule, grace period, rights and obligations of the parties as well as other appropriate details.⁵¹

In general, since there is population pressure in urban centers now, it is most likely that the land size of old possessors will be decreased as a result of conversion. In the major cities and other urban centers of the country the size of land being delivered to urban dwellers is continuously declining. In any case, a decision in favor of decreasing the size of land holding to a lesser extent will go against the landholder's property rights that are guaranteed under the constitution.

3.4. Conversion of Old Possessions under Subsidiary Legislations

According to Article 33 of the proclamation, regions and city administrations shall have the powers and duties to issue regulations and directives necessary for implementing the Proclamation. This being the case, the Ministry of Urban Development, Housing and Construction (now the name is changed to Ministry of urban Development and Housing) has prepared a model land lease regulation two months after the issuance of the proclamation. This document was submitted for discussion primarily in Addis Ababa, Dire Dawa and some regions. Though this model land lease regulation is not a binding document, it is expected that it will significantly influence the subsequent regulations to be issued by regions and city administrations.⁵²

According to the current lease proclamation, as a matter of principle old possessions, upon any dealings other than inheritance, should be converted into the lease system. However, depending upon the intention of the proclamation, pertinent provisions of the law are elaborated under various subsidiary legislations. In this regard, Article 8 of the regulation (i.e. the

⁵¹ Ibid, Article 14 and 16

⁵² See Ethiopian land law, *Ethiopian Legal Brief* <<http://chilot.me/tag/ethiopian-land-law/>>

model lease regulation of the FDRE Ministry of Urban Development, Housing and Construction) which is enacted to enforce the proclamation provides the exceptional scenarios by which old possession shall not be transferred into the lease system. While formulating these exceptional modalities, it is perceived that the ministry has based itself on the scope and intent of the proclamation which is enacted by HPR.

Though most of the modalities adopted under the regulation are consistent with the terms of the proclamation, the legitimacy of some of these exceptions must be questioned as it goes contrary to the hierarchy of law in the legal jurisprudence. In the well accepted hierarchy of laws, regulations are inferior laws that are to be promulgated with a purpose of implementing a certain proclamation on the issues similar to it. When the regulations attempt to govern issues that are contrary to the proclamations or include further illustrations that are not foreseen by the proclamation, at least to the extent of the provisions that go against the proclamation, it shall be made void. While the proclamation restricted the mode of conversion shall always be made upon any transfer save inheritance, the regulation shall only have the discretion to maneuver within the ambit of its superior law and it shall not contradict with the proclamation. According to Article 7 of the regulation, the following exceptional circumstances are set and the previous holder(s) of old possession shall continue to be within the old possession tenure arrangement;

- When an old possession is divided among heirs/legates upon their interest.
- When divorced couples who hold possession divide it in accordance with relevant laws.
- When one of the divorced husband and wife or some of the heirs/legates, *up on payment of its value* to the other/s agree to take over the whole of the old possession. (emphasis added)
- A replacement land provided to holders of old possession whose land was lost by expropriation.

- Holdings acquired before the coming into force of the lease system and decided by the administration to continue as an old possession in accordance with the law.
- Restituted holdings which were nationalized contrary to Proc. No. 47/2007.
- Holdings which were transferred to a third party due to different circumstances before the coming into force of the proclamation but whose title deed is issued in the name of the transferee.

As it can be easily observed from the above stated exceptions, it is possible to infer that most of the modalities are somehow consistent with the intent of the proclamation. However, in some cases, the regulation has gone a little further and has included some exception which might be perceived as a bird's-eye view of the issues. Nonetheless, in other cases, the regulation has also included few seemingly contrary exceptions. For instance, the third exception can be questioned in line with the intent of the proclamation. This is because if either of the heirs or divorcees have reimbursed the value⁵³ of the property, in effect such arrangement tantamount a transaction concluded between the heirs or the divorcees. Thus, if this circumstances result in the transfer of one's holding/property to another person especially based on pecuniary dealings, it seems that the modality is apparently contrary with the proclamation. Because the proclamation does not have the intent to include those monetary based transactions as an exception like the case of inheritance.

Most of the above stated exceptional scenarios are also adopted under The Revised Amhara National Regional State Urban Land Lease Holding Regulation No. 103/2002. However, the regulation has also provided further additional scenarios that favor for non-conversion of old possession into the lease system. Accordingly, among the various scenarios that will not result the conversion of old possessions into the lease system, it is provided that "non-documented holdings shall be caused to have a holding certificate in

⁵³ It is also confusing whether such value refers to the value of the property attached to the land or the land itself.

accordance with a directive to be issued by the Bureau.”⁵⁴ So does this mean that the regularizing of holdings held without authorization of the appropriate body shall remain as old possessions? Unlike what is stated under Article 6(2) of the Addis Ababa city administration urban land lease regulation No.49/2004, if this is the intent of the regulation, it may contradict with what has been stipulated under Article 6 (4) of the proclamation. Generally, the overall issue here is in contrary to what proc. No. 721/2011 stipulated, the above subsidiary laws, that repeatedly referred the proclamation, go beyond establishing those scenarios that shall not result conversion of old possessions into the lease system.

3.5. Benefits and Challenges of Conversion of Old Possessions into the lease system

Conversion of old possessions to the lease system will benefit not only the government, but also produce incentives to the individual landholders and third parties too. However, the conversion does not only entail benefits; rather, it has also its own challenges. The following sub-sections address these issues. Accordingly, if old possessions are totally/wholly converted to a lease system they may entail the following benefits:

A. Benefits

The benefits could be seen from the perspective of the government, the landholders and third parties. On the side of the government, there will not be two types of land tenure arrangements in towns (some part of the urban land administered under the lease system while the remaining land by old possessions). Uniform land tenure and simplified land administration will prevail in urban areas. A better land information system that will help for increased levy of tax since it will help to expand tax bases; and it will bring about coordination among stakeholders. Also it will generate revenue for the government so that the latter will invest much in infrastructure and other services. The tax collected from old possessions is not yet satisfactory. Accordingly, if one holds 300 m² land, the annual rent will approximately be 42 Birr. In case of a lease, however, the revenue to be collected would be

⁵⁴ Reg. No.I03/2012, *supra* notes 38, Art. 8(5)

incomparable. Furthermore, the government will easily control rent seeking behaviors and the problems of partiality since the lease system urges the need for proper information handling.

Also, from the landholders' perspective, conversion of old possessions to lease hold will have a multi-faceted advantages including, the right to mortgage lease rights since as it is provided in the proclamation, the lease holder can mortgage his rights to the extent of payment he has already made; the holder will get grace period concerning the lease price payment; the holder can safely transfer his lease holding rights so long as he completes half of the construction (in the old system, however, one need to complete/finish the construction before transferring it; landholders will benefit with better infrastructural services since supply of infrastructures may take the first step before land is delivered through the lease system at least legally speaking; better secured tenure wise, landholders will be provided with certificates that ensure the holder's holding on the land and protects from any form arbitrary eviction. Additionally, from the perspective of third parties, the right to sub-lease is conferred.

B. Challenges during Conversion

From the interview results that the authors have conducted with some experts on the field and from the general concerns of converting old possessions into lease system that have been confronted by the different lease proclamations so far, the following are considered as challenges during conversion.

- Rent seeking behaviors of different stakeholders: It exists in each stage of conversion scenarios and methods like during preparing legal cadastre, in preparing legal maps (certificates) for landholders, and transfer of holding rights. The problem could be exacerbated since professionals may not act responsibly and the checking mechanisms to curve from their misbehaviors are not properly implemented to the degree required. Also while zoning a certain land use, the prices there would be determined through ranges (just like zone A may be from 500-1000 birr). Here, professionals usually abuse the ranges to fix the amount either to

- the maximum or minimum range level based on their personal interests.
- The lease proclamation was not able to get the general public trust during its draft stage and even after it was officially promulgated. There was frustration on the side of the people; they were not aware of the possible advantage they will get if they opt for lease.
 - Conversion usually entails payment burden on leaseholders basically when there is a quest for expansion of holdings as one means of converting old possessions into lease system. The payment for the new added parcel will be summed up/added with the old one.
 - There are problems of coordination between and among stakeholders especially to properly administer lease payments.
 - Since converting old possessions to the lease system is a vast task, it needs various preconditions and efforts. Just like a well organized land bank, land preparation for the organ that will deliver land through lease principles and the like. However, in reality these channels are not properly organized.
 - Surveying instruments are not found in sufficient manner. It is not a doubt that the role of survey instruments will play in proper administration of land. Even if there are some important instruments, our professionals lacked the skills to use them to the required level possible. After people acquire land, there are cases where the size of the land will vary (increase or decrease).
 - Possible oppositions from old possessors: It should be noted that the essence of old possession as it is incorporated in the current lease holding proclamation might be opposed by old possessors in various occasions due to either of the following grounds:⁵⁵ on one hand, due to the restriction imposed by the law old

⁵⁵ Araya Asgedom, *Salient Features of the new Ethiopian Urban Lands Lease Holding Proclamation No.721/2011 and its Implications on the Ethiopian Economy*, LLM thesis, Addis Ababa University, January 2013, p. 129

possessors cannot sell their possessions for a good price, because buyers are subjected to two payments when buying old possessions. On this basis, absence of the freedom to sell their holding at better prices might hinder the possessors from solving their economic problems. On the other hand, old possessors cannot currently obtain a good amount of loan by mortgaging their old possession because location value will not be taken into consideration and banks are not sure how much lease will a buyer pay in case the debtor defaults. Also, as stated in the proclamation, after conducting a study, the Council of Ministers may approve the study and decide for mass conversion of old possessions to lease holdings. In consequence, such possessors might be subjected to payment of lease price which might be beyond their capacity. Also, if the Council decides for 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 increases without taking the capacity to pay for 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 into a huge debt.

3.6. What shall be done before Towns Convert Old Possessions into the Lease System?

As indicated above, the process of conversion of an old possession into the lease system is not an easy task. It may require multifaceted activities and involvements of various stakeholders. The process of converting old possession must also been made very cautiously because it may be wrongly perceived by the urban landholders and escalate the contentions that we have observed following the enactment of Proclamation No.721/2011. The proclamation and the model lease regulation are silent with regard to the kinds of preparatory tasks that should be carried out prior to the conversion of old possession into a lease system. However, the Amhara Regional State Lease Implementation Directive No.1/2005 provides the following as a prerequisite to be fulfilled before the commencement of the conversion. Accordingly, towns which are shifting their tenure arrangement completely into a lease system shall carry out the following tasks. They are required to

complete the allocation of their human resources, preparation of structural plan of the institution, prepare the land grade and make it approved and determine the initial lease price.

Generally the following strategies can be adopted in successfully converting old possession into lease holding:⁵⁶

- Awareness creation on the old possession holders about the benefits of converting their holdings into a lease system.
- Registration of entire holdings in the urban centers in order to identify the tenure arrangements of each plots, their size and rightful holder.
- Increasing the rent price of old possessions in comparison with the lease price or to narrow the gap between these two payments, to ease the existing resistant to pay the lease rent.
- To train involved governmental agencies to tackle existed corruption and rent seeking behaviors and in order to make accurate measurements of parcels.
- The entire land administration system must be built on the principles of accountability and transparency.

4. Conclusion and Recommendations

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

⁵⁶ Interviews with Mr. Swahle Abu, Amhara National Regional State bureau of urban development, land and land related property registration core process head, held at his office on 18/01/2008.

One of the challenges in converting old possession is lack of awareness on the part of the landholder about the benefits of the lease system. Moreover, lack of trust on the very purposes of the proclamation; payment burden on the landholders who intend to convert their holding into a lease holding; questionable readiness of the municipalities to convert old possessions into a lease system and their minimal role in creating the required awareness and failure of the council of Ministers to begin a thorough study and discussion on the expected regulation are among the identified challenges for converting old possession into the lease system.

In the process of conversion, various strategies shall be adopted by different stakeholders. Among others, awareness must be created to the society about the benefits of converting their holdings into a lease system; registration and adjudication of entire holdings must be carried out in all urban centers in order to identify the tenure arrangements of each plots, their size and rightful holders; increasing the rent price of old possessions in comparison with the lease price or to narrow the gap between these two payments, so as to ease the existing resistant to pay the lease rent and training involved governmental agencies so as to tackle existed corruption and rent seeking behaviors and in order to make accurate measurements of parcels.

Therefore, based on the above discussions the following recommendations are forwarded:

- ✓ The Council of Ministers shall come up with the detailed rules for converting old possessions into the lease system. Especially in tackling previously existed gaps in various urban land law with regard to conversion of old possession, this regulation should be framed in containing required specifics and it has to be also feasible and set the time frame for the conversion of old possessions into a lease system.
- ✓ The urban land lease model regulation has greater clarity on which possessions could not be converted into the lease system compared with the proclamation. However, legally speaking, in some cases it deviates from what the proclamation rules, therefore, the deviations must be rectified.

The issue of plot size determination and payment of lease price upon increase in size for the land one holds in permit shall be fair for the landholders. Whereas, during decrement of holding size, the landholder should be compensated for not only the loss of improvements but also for the land reduced, maybe by taking into account our approach of paying compensation for the loss of agricultural land.