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## IMPLICATION OF ETHIOPIAN LAND LEASE LAW ON PROMOTION AND PROTECTION OF INVESTMENTS AND WELFARE OF LOCAL PEOPLE: THE CASE OF ADAMA CITY ADMINISTRATION

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### ABSTRACT

*The FDRE Constitution Art 51(4) states that the ownership of land vests with state, and Peoples of Ethiopia. One of the functions and power of Federal government is to formulate and execute the country's foreign investment Policies and Strategies. It also enacts laws for the utilization and conservation of land and other natural resources as per Art 51 (5). Based on Federal laws the States have the power and functions to administer urban land and other natural resources law. In this case Government shall ensure the right of private investors to the use of Urban land lease on the basis of payment of compensation established by law The FDRE Urban Land Lease Proclamation No 721/2011, Oromia Payment of Compensation Proclamation No. 155/2005 and Oromia Urban Land Lease regulation No.182/2008 aim to satisfy the growing urban land demand resulted from a fast economic growth of the country. Adama City is administrations that investors are interested to come and invest due to its good climate conditions. Data collection mothed is by conducting interviews and discution with relevant government offices and investors and analyzing the pertinent laws, this reseach examines, the Oromia urban land lease law and practice of in Adama City. It is a non doctrinal or socio legal research.Sources of information may be categorized into primary, secondary. The researcher has identif Problem is lack of awareness creation to the society and investors, less controlling mechanism, lack of transparency, lack of co-ordination, Lack of transparency, corruption, and Lack of equal payment of compensation methods and legal procedures for upon implication of Urban land lease law in Adama city. In order to mitigate such problems, challenges and legal gaps the federal government is recommended to amend the constitutional power conflict to administer the land and empower the regional states to administer their investment land and Adama City administration should also provide awareness, change the controlling mechanism, be transparent, act impartiality, make co-ordination with stake holder, amend the legal procedure of payment of compensation upon implication of Urban land lease law on promotion and protection of Investment and welfare local people based on the socio-economic situation of Adama city.*

**Key Words:** Land ownership, Compensation, Land Lease Acquisition, Investment, Investors

### 1. INTRODUCTION

In Ethiopia country that the FDRE constitution declared that urban land and other natural resources are owned by the state and peoples of Ethiopia and thus cannot be owned privately.<sup>1</sup>

<sup>1</sup>Art.40 (3) of the FDRE constitution 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."

While 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<sup>2</sup> in Ethiopia, introducing and implementing a urban land lease 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.

Land Security will also explore on the implications of the relevant provisions under the Ethiopian urban land lease laws on property rights of individuals. So, the urban land lease system which creates and terminates urban land use rights and the urban land registration system which aims at ensuring tenure security are the subjects to be dealt with hereunder. Laws and policies governing on urban land lease are multifaceted. The competition over a plot of land in urban areas is very fierce, and it involves many stakeholders including the government to do business, build offices and apartments, construct infrastructures, bury cables and pipes, install poles and perform other activities.<sup>3</sup> Though complex and perplexing the urban land laws and policies may be, they should not stand against the constitution and grand land policies (land policies introduced by the constitution). They should not, particularly, set aside the very constitutional declaration that land belongs to the people and state of Ethiopia.<sup>4</sup> Urban land lease law administration system which ensures access to secured land tenure is vital to ensure sustainable development.<sup>5</sup> Urban land lease law system should also avoid uncertainties as they could hinder urban development.<sup>6</sup>

In any modern nation the realization of sustainable development requires the government to make available public facilities that ensure safety and security, health and welfare, social and economic enhancement, protection and restoration of natural environment<sup>7</sup>. In order to grasp this nations capacity to meet the growing demands and needs of its population may depends on the resource it could devote to increase and maintain the real capital stock<sup>8</sup> and the most important element in the chain of economic phenomena supposed to initiate economic growth is investment.<sup>9</sup> Thus, the acquisition of appropriate land for investment to initiate economic growth is the early and first step to do these things. In most of today's economic reform programmers of developing countries increasing savings and investment rates are among the central targets of development effort and indicators of the economic performance.<sup>10</sup> Access to industrial urban land lease acquisition for new factories and infrastructure has become a major economic and political issue in many densely populated developing and emerging countries striving for economic growth through industrialization.<sup>11</sup>

An important shift in the way lands are allocated to foreign investors came in 2009, when FDRE land investment Proclamation No.29/2001 enabled the federal government to carry out all aspects of foreign land investment for all lands over 5,000 hectare. Prior to this, each regional government was responsible for all foreign and domestic land investment.<sup>12</sup> This led to several problems including Lack of awareness creation to the society and investors, less controlling mechanism, lack of co-ordination, Lack of transparency, corruption, lack of standardized valuation and payment of compensation methods and legal procedures, limitation of the regional government power to govern land size more than 5,000 hectares for upon implication of Urban land lease law on promotion and protection of Investment and welfare local people.<sup>13</sup>

Land is a prime resource upon which all human activities are dependent and land is a surface of the earth that includes the fixtures on it such as buildings, fence, tree plants, and improvement to the land. Land provides the foundation for the social and economic activities of people. It is both a tangible physical commodity and a source of wealth.<sup>14</sup>

<sup>2</sup>Sisay Habtamu Tekle 2012, Urban Land Policy vis-à-vis Tenure Security and the Environment and Shlomo Angel, Davidde Groot, Richard Martin, Yohannes Fisseha, Tsigereda Taffese and Patrick Lamson-Hall 2013, Urban Expansion (Ethiopia):

<sup>3</sup>The FDRE Constitution Art 40(4)

<sup>4</sup>Article 40(3) of the FDRE Constitution

<sup>5</sup>Peter Dale, The importance of land administration in the development of land markets - a global perspective, University College London, England, 2000

<sup>6</sup>Thomas J. Miceli, C.F. Sirmans and Geoffery K.Turnbull, Land ownership risk and urban development, Journal of Regional Science, Vol 43 No. 1, 2003, pp 73-94

<sup>7</sup>Gulilat kebede, The New investment Law: Basic Features and Limitations and with reference to the industrial sector.

<sup>8</sup>Ibid.p.2

<sup>9</sup> Ibid. p. 3

<sup>10</sup>Ibid. p. 6

<sup>11</sup>Sarmistha Paland Zoya Saher, Land Acquisition and Corporate Investment in India-Impact of the Historical Land Ceiling Legislations, 2017 p.5

<sup>12</sup>Daniel, supra note 9 p.14

<sup>13</sup>Legislation governing land investment in Ethiopia

<sup>14</sup>Daniel W/Gebriel & Melkamu Belachew Land Law: Teaching Material prepared under the sponsorship of the justice and legal system Research Institute.

## 1.2. Research Methodology

The research has adopted a non doctrinal research as it examines whether the pertinent formal laws are being properly implemented and brought about the needed behavioral changes.<sup>15</sup> Because almost every modern civilized State perceives 'law' as an active instrument of socio-economic justice and thereby a vehicle of social engineering and it aims at high lighting the 'gaps' that exist between the 'law-in-the statute book' and 'law-in-action' and impact of law on the social behavior. The data collected by interview,<sup>16</sup> focus group discussion and non participant observation.<sup>17</sup>

## 1.3. Data Sources

Relevant qualitative data for the study was collected both from primary and secondary sources. As to the firsthand information, the necessary data has been gathered from key informants, consultative meetings and observation and sample survey on selected business enterprises by using structured and semi-structured questionnaires which contain queries relevant to the research. In-depth interviews/ discussions have also been made in clarifying the information or data collected during key informant interviews. Secondary data has been collected from published and unpublished materials, which are available in the form of books, journal articles, proclamations, policy briefs, federal and regional constitutions, laws, regulations, organizational structures, performance reports and pertinent Adama city administration documents. Particularly, data pertaining to fiscal and budget reports, land lease reports as well public service planning and implementation reports, periodic and statistical reports which have been crucial for analyzing and presenting of the findings has been collected from the federal, and the Ethiopia administration respective institutions they know more about the topic.

## 2. Conceptual Framework: Investment Land Lease Holding System and Implication

Researchers have developed a literature devoted to understanding and solving the problems associated with investment land leases. The neo-classical economic theory of land rights asserts that clearly defined individual property rights to land, secure and easily transferable land rights are necessary and sufficient conditions to boost economic agents' attempt in land-related investment.<sup>18</sup> At the other end of the ideological spectrum, the social aspect warns that individual rights to land are not inherently beneficial endeavor in all societies.<sup>19</sup> There might be adverse social consequences increasing unequal opportunities. This creates inequalities among the richer and the poorer societies when claiming their rights. This may result in a consequence of accumulation of land by less efficient operators, on non-equitable terms in the land market. It also may distort credit markets in favor of 'inefficient but wealthier' operators.<sup>20</sup> State ownership to land has been introduced as a reaction to the negative consequences of unrestricted private ownership to land by only a few. The literature indicates that to minimize the economic and political conflicts arising from land reforms, public officials in many former socialist countries have been practicing within a public leasehold system.<sup>21</sup> Supporters of a leasehold tenure argue that it allows state intervention if the tenant or investor fails to utilize the land or damages it by mismanagement. They find that unrestricted ownership of land offered by a freehold tenure is undesirable because it may also result in speculation, fragmentation, underutilization or damage to the land by irresponsible farming and investment practices.<sup>22</sup> Leasehold tenure has by in large become the dominant form of land holding. If existing institutions can credibly commit to lease investment land, giving investors (users) secure, transferable, long-term lease rights will permit the realization of most, if not all, of the investment benefits associated with higher levels of land holding security. In these cases, the award of long-term land leases with provisions for automatic renewal will be the most desirable option. If the leases awarded by state institutions are not credible, measures to increase tenure security or, alternatively, full privatization, will be required to give users sufficient security of tenure and the associated benefits. Many scholars have suggested that public transfer of land to investors' based on leasehold systems have advantages. The reasons mentioned for adopting public land transfer to investment based on leasing is that it has financial reason which has an advantages of appropriation of future land price increases by the public and distributing it to society. When a municipality grants the use of land under a leasehold system, to investors it reserves the right to claim a substantial proportion of future increments in the capital value of land at the

<sup>15</sup>Upendra Baxi, Socio-legal Research in India-A Program schrift (Indian Council of Social Science Research (ICSSR), New Delhi, 1975) Also reprinted in, S K Verma & M Afzal Wani (eds), Legal Research and Methodology (Indian Law Institute, New Delhi, 2nd edn, 2001), at pp 656-657

<sup>16</sup>Cannell and Kahn, the Collection of Data by Interviewing, in Leon Festinger and Daniel Katz (eds), Research Methods in the Behavioral Sciences (Amerind Publishing Co., New Delhi, 1953) 330-331

<sup>17</sup>Ibid p. 157

<sup>18</sup> Critical Analysis of Ethiopian Urban and rural Land Lease Policy Reform since Early 1990s, (6825)

<sup>19</sup> Ibid

<sup>20</sup> Ibid

<sup>21</sup> Proclamation No. 721/2011 Art 4

<sup>22</sup>Zelalem Yirga Adamu (USA) FIG Congress 2014 Engaging the Challenges – Enhancing the Relevance of Ethiopia urban land lease policy Reforms

end or in the middle of the contract and the second reason is that it has social benefits because the income generated by the leaseholds can be invested in urban and rural projects that are beneficial for all citizens.<sup>23</sup>

## 2.1. Principles of Land Lease

### 2.1.1. *Respects Rights, Livelihoods and Resources*

In January 2010, FAO, stated the International Fund for Agricultural Development (“IFAD”), the UN Conference on Trade and Development (“UNCTAD”), and the World Bank released a number of “Principles for Responsible Agricultural Investment that respect Rights, Livelihoods and resources.”<sup>24</sup> These indicate that the existing rights to land and associated natural resources are recognized and respected, investments do not jeopardize food security but rather strengthen it; Processes for accessing land and other resources and then making associated investments are transparent, monitored, and ensure accountability by all stakeholders; within a proper business, legal, and regulatory environment, all those materially affected are consulted; and agreements from consultations are recorded and enforced; investors ensure that projects respect the rule of law; reflect industry best practice are viable economically and result in durable shared value; investments generate desirable social and distributional impacts and do not increase vulnerability and environmental impacts due to a project are quantified and measures taken to encourage sustainable resource use while minimizing the magnitude of negative impacts.<sup>25</sup>

Notwithstanding the provisions of Proclamation No.455/2005 Art, 3/1, no land lease holding may be expropriated unless the lessee has failed to honor the obligations he assumed under the Lease Proclamation and Regulations or the land is required for development works to be undertaken by government.<sup>26</sup> When an urban land lease holding is expropriated prior to its expiry date, the lease holder shall, in addition to the compensation referred to under Article 7 of this proclamation and this Article, be provided with a similar plot of land to use it for the remaining lease period. The leaseholder shall also be allowed to use the new plot of land for a longer period if its rent is less than the former land or the holding did not want take the Land he can take the remain rent payment.<sup>27</sup> The urban lease policy has been built to address the urban poverty while it ultimately helps the government to satisfy only a few objectives of such tenure system. This paper considered the need for assessing and analyzing urban land lease policies from the perspective of principles, theories and international practices as an important factor to fill the existing literature gap. It attempted to review policies and to analyze problems and lost opportunities resulted from the urban land lease policy.<sup>28</sup>

### 2.1.2. Rule to Get to Win-Win principles

The rule to get to win-win principles are the ideas that need for investors to recognize and respect the land rights of local communities; the need for projects to be developed with the participation of local communities; the desirability of investors dealing with communities directly; the commitment of governments and investors to ensure that the investment will have a positive impact on local livelihoods, especially those of the poorest and most marginalized people and the critical importance of comprehensive agreements setting forth the rights and responsibilities of all parties.<sup>29</sup> The Heads of State of the countries of the African Union, including Ethiopia, recognize the centrality of land to sustainable socio-economic growth, development and the security of the social, economic and cultural livelihoods of their people.<sup>30</sup> The increasing demand from investors for farmland in developing countries is often met not through fair, voluntary transactions, but through government expropriation of the land being sought. These takings often violate the rights of those occupying the land, with heavy-handed expropriation, lack of due process, and little or no compensation. Local people usually have to resettle elsewhere, often causing a drastic disruption fraught with risks of poverty. The grievances of the displaced can threaten not only the stability of the investment project but the government itself. The African Development Bank has recognized the devastating impacts that can result from poorly managed expropriation of land: involuntary resettlement can cause a sudden break in social continuity and can result in impoverishment of the people who are relocated.

<sup>23</sup>Critical Analysis of Ethiopian Urban and Rural Land Lease Policy Reform Since Early 1990s, (6825)

Zelalem Yirga Adamu (USA) FIG Congress 2014 Engaging the Challenges – Enhancing the Relevance, Kuala Lumpur, Malaysia 16-21 June 2014 6/24

<sup>24</sup> Darryl vhuken, large scale commercial investment in land seeking to secure land tenure and improve livelihoods Haramaya law Review VOL. 1, NO.1 spring 2012 ISSN 2227-2178

<sup>25</sup> Darryl vhuken, large scale commercial investment in land seeking to secure land tenure and improve livelihoods Haramaya Law Review VOL. 1, No 1 spring 2012 ISSN 2227-2178

<sup>26</sup> Proclamation no 455/1 art.3/2

<sup>27</sup> Ibid art 8/6

<sup>28</sup> Zelalem Yirga ADAMU Critical Analysis Of Ethiopian Urban Land Lease Policy Reform Since Early 1990s

<sup>29</sup> Ibid, p. 16

<sup>30</sup> Id, p. 16



## 2.2. Urban Land Lease

Today, in Ethiopia, lease is the “cardinal” and “exclusive” land-holding system to transfer urban land to users in accordance with the master plans of each urban area. Hence, unlike the housing sector, urban land is governed by a special legislation, namely, the Lease Holding of Urban Lands Proclamation No.272/2002 and yet the civil code may be applied whenever necessary.<sup>31</sup> The scope of application of the law is “to an urban land held by the permit system, or by lease-hold system or by other means prior” to the coming of the proclamation as well as to an urban land permitted hereafter.” The Current Land lease is a serious challenge for the business community, which might be explained by lack of information and rampant bureaucratic red tapes. This is in fact backed by the sample survey conducted which revealed that more than half (60%) of the businesses considered have unsuccessfully attempted to acquire land through lease.<sup>32</sup>

## 2.3. Leasehold right

The leasehold right is a right to use the land for fixed period of time against payment of agreed amount of money.<sup>33</sup> The assumption is that any person who fulfills the requirements is entitled to get land by way of lease. The regional government may approve directive which allows urban dwellers to get land for housing free of charge, without negotiation etc. This is said because in practice this is happening in all urban centers of the country.<sup>34</sup>

Once a person gets land by one of the three mechanisms, he/she is entitled to get leasehold title deed. This is a certificate that proves the lessee’s rights to the land. Once if a person buys the lease right s/he has the right to construct a building of different nature (residential, commercial, industrial) as per the agreement and the master plan.<sup>35</sup> Hence the right of use and enjoyment is one right conferred on the lease right holder. Another right is that the lease right can be inherited, donated, or mortgaged provided that the beneficiary’s rights are limited by the period of the lease term.<sup>36</sup> The lease can be sold or exchanged to any person. Lease Holding of Urban Lands Proclamation No.272/2002 Article 24 of the proclamation provides the kinds of rights. As per sub-article 1 – 8 of this article “any lease holder may transfer, or undertake surety on (mortgage), his lease-hold; and he may also use it as a capital contribution to the amount of the lease payment he has made.”<sup>37</sup> It must be noted that this right shall be enjoyed so long as some form of construction/activity has been taken place.

## 2.4. Leasehold tenure-ship and its implication

Land tenure could be expressed as the possession and use of land by individuals or groups for limited or unlimited period of time.<sup>38</sup> According to Oxford dictionary (1998), tenure is defined as the condition or form of right or title, under which real property is held. Ethiopia has endorsed different tenure systems. In theory, public leasehold does appear to be a compromise because the system allows the state to remain as the landowner and lease the development.<sup>39</sup> The use rights of land go to private individuals. However, in practice, it does not matter who the landowner could be. It could be the government or private landlords who have real control over land but what matters would be depending on how lease conditions are constructed<sup>40</sup> has pointed the comparison of the land policies of China and western countries. The study has shown us a wide gap between what the laws promised and what they actually delivered in many instances. A case in point, one of the reasons of urban land lease policy is to finance infrastructure and service provisions. One of the tasks of the land administration agency of the city government is providing serviced land in an efficient way for the business community.<sup>41</sup>

## 2.5. Land lease on Investment Expansion and Land Allocation

The seat of the Federal Government and as the economic, social and cultural centre of the country, has to fulfill a national role and be equipped a comprehensive and integrated urban management system, detailing policy directives and strategic actions. Ethiopia is also expected to fulfill the demands of an international Ethiopia as a diplomatic center of African union and other international organizations. Social Services and infrastructure facilities should also be fulfilled and

<sup>31</sup> Lands Proclamation No. 271/2011 and civil code of Ethiopia

<sup>32</sup> Melaku Tanku Gebremariam A study on the impact of the current land lease law on business and investment expansion

<sup>33</sup> The urban landholding lease proclamation 272/2002 article 4

<sup>34</sup> The Addis Ababa lease regulation and lease legal framework shares with the proc. 47/1975.

<sup>35</sup> Proclamations no 272/2002 art 24/6

<sup>36</sup> Ibid

<sup>37</sup> Proclamation no 272/2002 art 24

<sup>38</sup> Proclamation no 721/2011 at 8/1(a-e) and 2

<sup>39</sup> Ibid

<sup>40</sup> Bourassa and Hung Hong 2003 and Chen (1990)

<sup>41</sup> Melaku Tanku Gebremariam A study on the impact of the current land lease law on business and investment expansion

provided to its dwellings. The Ethiopia should indeed be able to adequately contribute to the socioeconomic development of the nation.<sup>42</sup> Achieving efficient land use, encouraging investors and investment and realizing the cost of urban land and make an efficient use of it are some of the major national and regional goals in Ethiopia.<sup>43</sup> To achieve these goals, the government of Ethiopia has accepted urban land lease policy as an alternative land tenure system so as to provide a room for individuals and investors to benefit from land use rights through transferring from the state to land users through auction and allocation.<sup>44</sup>

## **2.6. Land lease Law protection of Investment and Welfare of Local people**

### **2.6.1. Land lease law and Protection of Investment**

The expropriation is one of land acquisition for the state. It is a procedure whereby the state takes away private owned land property for public interest without the consent of the owner and against payment of fair amount of compensation. The subject of expropriation is not only privately owned land and building but also leased land.<sup>45</sup> Expropriation of leasehold land may be effected during the expiry of the lease agreement<sup>46</sup> or before the expiry of the agreement as can be inferred from. The state may refuse renewal and take back the land when the land is needed for public purpose. The law also emphasizes that in such case compensation is not to be paid. Hence we can argue that the taking back of the land doesn't amount to expropriation. Only leasehold right which is active is compensable. The appropriate body may clear and take over an urban land which it decides it is necessary to commit for a public interest by issuing clearance order in writing to the concerned person. It shall also publicize the order through other alternative means.<sup>47</sup>

The point is that where a leasehold right has been taken away by the state for good reasons/public interest (such as to build hospital, roads, schools, etc), the state must compensate the leasehold possessor for the property on the land and the remaining lease rent.<sup>48</sup> The Payment of Compensation for Property Situated on Landholdings Expropriated for Public Purposes," provides the formula.<sup>49</sup> The current land lease law on business and investment expansion lack security of land which could directly or indirectly discourage the private investors to flourish.<sup>50</sup>

### **2.6.2. Land lease law and Protection of welfare of local people**

The law makes it possible in certain cases to regulate land use and to acquire land and property rights by compulsory purchase (expropriation). The property owners settle these matters among themselves through voluntary agreements in the market (Heilbrum).<sup>51</sup> The Efficiency and equity are two of the general criteria to be applied in comparing alternative (economic) policies (Heilbrum). To the economist, efficiency means the most productive use of resources to satisfy competing material wants. The term equity in economics usually refers to fairness in the distribution of income or wealth, or more broadly, "welfare." There is no doubt that in many respects that market operates quite excellently, but the system has shortcomings connected with both efficiency and equity. In order for the market to function efficiently, certain conditions have to be satisfied.<sup>52</sup>

There are the wider effects of the land use, effects which are not reflected in the market price and cost of the development.<sup>53</sup> Externalities are sometimes referred to as *spill-over* or *neighbourhood* effects and in the context of land use typically include visual intrusion, increased traffic, pedestrian and resident inconvenience and congestion of existing public facilities. Any organization created on the basis of state property... performs economic activity in conformity with the plan for the socio-economic development of the country, operating on the basis of economic accountability, and is a legal entity...the organization has a separate property...and is the holder of rights and obligation.<sup>54</sup> The role of government has paramount importance attached to public enterprise. The modern role of government is to act in commerce for the purpose of raising a living standard of its people. Hence, public enterprises are assigned "the operation of business with that of a government department aimed at promoting the public welfare".<sup>55</sup> The State is doing well

<sup>42</sup> The FDRE Constitution Art, 40(6)

<sup>43</sup> Urban land Proclamation No. 271/2011

<sup>44</sup> Ibid

<sup>45</sup> The lease proclamation 721/2011 articles 7(1), 15 (1) (b), and 16

<sup>46</sup> Ibid art, (7(1)), Article 15 (1) (b), and 16 (1)

<sup>47</sup> The lease proclamation 712/2011 Art 16:

<sup>48</sup> Regulation No.135/2007 art, 13

<sup>49</sup> Ibid

<sup>50</sup> Melaku Tanku Gebremariam A study on the impact of the current land lease law on business and investment expansion

<sup>51</sup> Source Land Law Teaching Material by Daniel W/Gebriel & Melkamu Belachew page 223

<sup>52</sup> Ibid

<sup>53</sup> Ibid

<sup>54</sup> Source Investment Law teaching material Tesfaye Abate page 189

<sup>55</sup> Investment Law Teaching material Tesfaye Abate page 190 and The FDRE Conist, no, 1 of 1995, art, 77,

especially in respect to good fortune happiness and wellbeing or prosperity of the society in Ethiopia. In other words, the promotion of public welfare is meant to improve the living standard of the society. Government invests “where the risks were too great for private capital, or too much capital was needed and private enterprise was unable.”<sup>56</sup>

Furthermore, the Constitution allows the Council of Ministers to issue decrees with respect to such special measures.<sup>57</sup> However, certain rights that cannot be limited, even when special measures are in place, such as the rights to life, personal security, and liberty. Ethiopia has a National Policy and Strategy on Disaster Risk Management,<sup>58</sup> and a number of directives exist to implement this policy.<sup>59</sup> However, neither the Policy nor its implementing directives specifically mention TIP or sexual and gender-based violence committed during a humanitarian emergency.<sup>60</sup> No legal restrictions are placed on the provision of emergency relief by foreign governments or organizations, except when the relief has to do with human rights advocacy, the promotion of equality of nations, nationalities and peoples, gender and religion, the promotion of the rights of the disabled and children’s rights, the promotion of conflict resolution or reconciliation, or the promotion of the efficiency of the justice and law enforcement services.<sup>61</sup> The current land lease law access to land is a serious challenge for the business community, which might be explained by lack of information and rampant bureaucratic red tapes.<sup>62</sup>

### **3. Land lease Law and practice to promotion and protection Investment and Protection of community**

The proclamation No. 721/2011 art 4 (1-4) and Oromia urban land lease regulation no 182/2008 stated that 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. As it has been seen so far, the Oromia regional state has adopted laws for urban land administration and land use legislation and regulations, Land lease regulations, investment regulations. However, while the federal government has adopted legislation governing Land administration, investment activities and Payment of Compensation upon investment land acquisition is governed by Proc. No.455/2005 and implementing regulation No. 135/2007, the Regional State has opted to apply the principles enshrined in these federal laws instead of adopting its own counterpart where investment land lease acquisition is conducted for investment. It has been argued that the federal law has been applied in Oromia for some reasons.

Federal urban land lease holding Proc. No.721/2011 and, establishment of Oromia bureau of land administration and Environmental protection Proc.No.147/2009, Oromia Urban land lease regulation No.182/2008 are applicable laws for land lease promotion and protection investment and welfare local community and FDRE proclamation No.455/2005 and Oromia Land lease payment proclamation No. 155/2005 are addressing problems related to land lease promotion and protection investment and welfare local community by payment of compensations.<sup>63</sup> This indicates that before the government needs to transfer investment land lease for different investment activities it has to pay compensation for land holders. It is unthinkable to transfer investment land lease without payment of compensation for land holder. Nevertheless, the law presupposes that land taking by regional government agencies will be governed by regional regulations. The absence of regional land expropriation and compensation Proclamation has resulted in the lack of standardized valuation and compensation methods and procedures which are causing different valuations by different land taking agencies, resulting in different compensation values for similar lands up on land lease promotion and protection investment and welfare local community. In the coming section, the pertinent land laws, land administration and land use laws, investment laws and compensation laws are being applicable in the Adama City will be analyzed in light of the practice prevailing there.

<sup>56</sup> Ibid.

<sup>57</sup> Id. at arts, 14-17

<sup>58</sup> FDRE, National policy and strategy on disaster risk management (2013), available at <http://www.preventionweb.net/english/professional/policies/v.php?> (last visited July 21, 2017)

<sup>59</sup> Ibid

<sup>60</sup> Ibid

<sup>61</sup> Proclamation to Provide for the Registration and Regulation of Charities and Societies, Proclamation No. 621 of 2009, available at <https://chilot.files.wordpress.com/2011/02/charities20and20societies20proclamation.pdf> (last visited July 21, 2017)

<sup>62</sup> Melaku Tanku Gebremariam A study on the impact of the current land lease law on business and investment expansion

<sup>63</sup> Payment of Compensation for Property of Land Holding expropriated for public purposes Council of Minister Regulation No.135/2007 Federal Negarit Gazeta, 13<sup>th</sup> year, No. 36

### **3.1. Jurisdiction of Land lease promotion and protection investment and welfare local community in Adama City Administration**

The 1995 enactment of the Constitution No.1/1995 affirmed state ownership of land. the Constitution, landholders have the right to transfer land and assets (under specific conditions), the right to compensation in case of investment land lease is acquired. Furthermore, under the Constitution, there is increasing recognition of pastoralist rights.<sup>64</sup> An important shift in the way lands are allocated to foreign investors came in 2009, when Federal investment land Proclamation No.29/2001 enabled the federal government to carry out all aspects of foreign land investment for all lands over 5,000 hect<sup>65</sup> by undermining the constitutional power and autonomous of the regional state. The ministry of agriculture and rural land development has empowered to transfer the Agricultural investment land to foreign investors. What if the domestic investors request land lease for investment more than 5,000 hectare is not stated by this proclamation. Prior to the enactment of this proclamation each regional government was responsible to transfer land lease for investment for both foreign and domestic investors. It should be noted that based on regulation No.283/2013<sup>66</sup> the Ministry of agriculture has established an Agricultural Investment Land administration agency. Art 2(2) of the regulation states the agency is empowered to in charge of administering the allocation of land above 5,000 hectares for investment purposes. The responsibilities given to the agency may bring about changes in the future provided that it works at full capacity. The agricultural investment land regulation No.283/2013 declares that the Agency is responsible to administer investment land lease for which it gets delegation from the regional states. In this case the reason for the regional government delegate the Federal government is not clearly stated. The purpose of regional state delegate investment land lease is not stated under the regulation. In addition, at both federal and regional levels, there are investment Agencies responsible for the registration and promotion of investment. The Regional states have also the jurisdiction to transfer investment land lease to investors where there is less than 5000 hectares of land lease and the regional government delegates their Constitutional power to administer investment land lease without good cause FDRE constitution No.1/1995 Art.52 (2/d). In urban areas, transferring public land lease to investors is managed by municipalities and city administration.<sup>67</sup>

### **3.2. The Law and Practice of Land lease Acquisition on Promotion and protection of Investment and welfare local community in Adama City**

Under this section, the paper devotes to seeing issues related to current Land lease Acquisition on Promotion and protection of Investment and welfare local community and its management in the research site of the study.

#### **3.2.1. Preparation and Identification of Land lease for Investment**

Urban Land lease to promotion Investment is the taking of land from land holders to investors. The FDRE Urban land lease pro.No, 721/2011 art, 12 and Oromia Regional National State Urban Land Administration and Use Regulation No.182/2008 Art.25 states that the Bureau shall undertake study and prepare land for investment based on the urban land lease use plan by creating awareness of people on investment and provide information to Oromia Investment Commission. Oromia Land Administration and Environmental Protection Establishment Proclamation No.147/2009 Art 5(7) also states that the Bureau studies and identifies land for various development work and service and submits to concerned body and give upon approval.

Interview made with public officials of Adama City administration and investment office reveals that firstly the applicant investor applies his land request to Oromia investment Commission. Oromia Investment Commission up on receiving investment request and identifying the type of investment and direct the application to Zonal or City administration; based on the decision of the investment Board. Once the Board decides on the application, it sends back the letter of application to Oromia Investment Commission and Oromia Bureau of Land administration and use. Similarly the Bureau of land administration and use distribute the letters of application to different Oromia Citys. From different Oromia Citys, Adama City is one of City found far away to Finfine at east direction 100 km.

Adama City land administration receive the letters of request land and look and identify the cluster of investment based on the master plan of the City; identify and prepare the site plan and send back to Oromia land administration Bureau. This is the process through which investment land is acquired to promotion investment. Adama City land administration officers identify and prepare land for investment based on the direction given from Oromia land administration bureau. They do

<sup>64</sup>Federal Rural Land Administration and Use Proclamation (Proclamation 89/1997)

<sup>65</sup>FDRE Land Investment Proclamation No. 29/2001 Federal Negarit Gazeta, 3<sup>rd</sup> year, No.54

<sup>66</sup>FDRE Agricultural Investment Land Administration Regulation No. 283/2013 Federal Negarit Gazeta, 19<sup>th</sup> year, No. 23

<sup>67</sup> Federal Ministry of agriculture Regulation No. 283/2013, Federal Negarit Gazeta, 19<sup>th</sup> year, No. 23



not prepare land for investment by their own initiation. They are waiting for the direction of the Oromia land administration Bureau. Unless the Oromia bureau of land administration gives direction they do not identify and prepare investment land for allocation.<sup>68</sup> Thus, from the above discussion one can understand that it is complex and not transparent for investors to land lease acquire to promotion and protection the investment and welfare local community.

### 3.3. The legal criteria that your organization flows to transfer land lease for investment

Land administration obviously presumes the availability of an information system to enable the determination of the legality of rights to claims on any land lease. It is understood, therefore, that without an information system, which is called land registry, no effective, leave alone efficient, land administration can be expected. Land registration is carried out with the prime objective of providing safe and reliable foundation for the land lease acquisition, utilization and disposal of rights on land. Effective and efficient land administration requires a land information system which can be defined as a system for acquiring, processing, storing and distributing information about land. This requires a formal registration system which is accurate, current and accessible to the public including online access.<sup>69</sup>

The Criteria that helps to transfer urban land lease for investment activities is stated under Proc. No.721/2011 art, 4/4/ states that subject to giving 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. Private investors that engage in development activities shall have the right to use urban land in accordance with investment policies and laws at federal and Regional levels.<sup>70</sup>

Interview made with Adama City public officials indicates that there is lack of awareness creation to investors where they come to invest; most of the investors who came and invest do not have information about the surrounding however, they identify and choose the site plan where they need to invest. The discussion between concerned public officials and investor is minimal.<sup>71</sup> Interview made with investors said that once the Oromia Bureau transfer land lease to promotion of investment application to Adama City administration, the land management team leaders show the site plan, without creation of awareness to the community.<sup>72</sup> From the above discussion one can conclude that Adama investment office do not give awareness to investors as well as the community as it is provided under Oromia Biro of land and Environmental protection establishment Proclamation No.147/2009 Art.5 (17) and Oromia Regional National State Urban Land Administration and Use Regulation No.182/2008 Art. 12.

### 3.4. Service Provided to enable investment land lease acquisition successfully accomplished

As it provided under urban land administration and use proclamation No.721/2011 Art.16 states that the Federal urban Development shall have the responsibility to implement this Proclamation by providing the necessary professional support and by coordinating the competent authorities.<sup>73</sup> In addition one-stop shop service to this investment proclamation No.769/2012 Art 30 sub art,4 (a) states the investment Agency shall provide service on behalf of investors i.e. execution of investors requests for land lease required for their investment projects. Urban land is also rented mainly for various business activities.<sup>74</sup> The administration of urban land lease Development allocates business/industrial land to foreign investors; the ministry provides supports ranges from providing information, technical support, and facilitation of other public services to private investors investing in agriculture. There is strong commitment from the government to avail the country's fertile land for investment.<sup>75</sup>

Oromia land lease administration and use regulation No.182/2008 of the same regulation states Kebele administration, Strengthen the awareness of the people to make the urban Land administration and use laws to be implemented.<sup>76</sup> This indicates that Kebele administration has the responsibility to facilitate land lease for promotion investment and provide

<sup>68</sup> Confidential Interview conducted with team leader Adama city of land registration of Administration on June, 9/2020, team leader of Adama city investment promotion of on June, 9/2020, controlling and auditing Adama urban land team leader of Adama city on June, 9/2020

<sup>69</sup> Melaku Tanku Gebremariam (MSc) and Eyasu Kumera Mailimo (MSc), A Study On The Impact Of The Current Land Lease Law On Business And Investment Expansion

<sup>70</sup> Federal Democratic republic of Ethiopia Urban land lease and use proclamation 721/2011

<sup>71</sup> Confidential Interview conducted with manager of East Africa tea industry; Manager of Hansa Horticulture; Manager of Adama Africa flour Adama City; Manager of Africa mocoroni.

<sup>72</sup> Confidential interview conducted with team leader of Adama city land lease registration; team leader of investment promotion, Team leader of Adama land controlling and Auditing, Team leader of Adama city investment land, An expert of legal officer of Adama city land lease administration and use

<sup>73</sup> Federal Democratic republic of Ethiopia urban land administration and use proclamation No 721/2011, Negarit Gazeta.

<sup>74</sup> Federal Democratic Republic of Ethiopia Investment Pro No.769/2011, Negarit Gazeta, 18<sup>th</sup> year, No. 63

<sup>75</sup> Ibid

<sup>76</sup> Oromia Region Rural land Administration and use regulation, Regulation No. 182/2008, Megeleta Oromia, 17<sup>th</sup> Year, No.182

service to the community up on investment land lease acquisition. Furthermore, the Ethiopian Investment Commission (EIC) has recently been restructured to provide a one stop shop service for issuing: an investment Permit, and to provide additional services on behalf of investors' request to process acquisition of land lease, utilities (water, electrical power and telecommunication services) and bank loan.<sup>77</sup>Oromia urban Land administration and use regulation No.182/2008 states that, City administration office shall have the duties and responsibilities to give necessary support in order to make urban land lease laws to be implemented properly and give necessary supports regarding preparation of land use plan, investment land study and preparation and other related activities.<sup>78</sup>This indicates that Adama city administration should provide proper timely support to investors on investment land lease acquisition. But Adama city administration office fails to provide one stop shop service to investors.

As interview conducted with Adama city public officials indicates that the service given to the investors is not one stop shopping; however it is important to deliver one stop shop service to the investor upon land lease promotion and protection investment and welfare local community. They responses that license and registration is made by investment commission based on investment laws while land is allocated or leased by Oromia bureau of land administration based on land administration and use proclamation which is separate laws and separate institution. The investors do not get appropriate service as it is stated under the investment proclamation No.769/2012 Art 30.<sup>79</sup>

Confidential interview conducted with investors also indicates that what is stated in the investment law not implemented by Adama City administration. Firstly each investor applies the land lease request to the Oromia investment commission; the Oromia investment commission takes the application to investment Board which contains different regional sectors in addition to the regional president. They see the investors' application detail and approve it. After approval or decision the Board sent letter to Oromia investment Commission and Oromia Bureau of land administration and land lease use and to concerned Oromia City, Woreda town and other sectors. One stop shop service is not implemented they get service in different sector. They said that Adama city investment officers do not give any support to investors for investment land lease acquisition; it is the invertors themselves flow their case from the beginning to the end. The investment office only does giving permeation and license.<sup>80</sup>Thus one can infer from the above discussion that, this indicates that providing service through one window is not practiced as it dictated under the law.

### 3.5. Apt Compensation for Land Holders up Land Lease Acquisition on Investment

Land use change resulting in selective loss of rights there is compensated<sup>81</sup>for; this shows that Compensation is paid for land holder upon investment land lease acquisition according to Expropriation Proclamation No.455/2005. Recorded right holders get compensation in accordance the legal framework. However, those rights lost due to change of land use and not recorded are not compensated. Land lease Acquired owners shall be compensated promptly. This Priclamation Article 5(2) and 13 (1) states that Compensation must be paid in advance (before people moved from their land and houses), and it can be effected either by the woreda/municipality or by the implementing agency itself.<sup>82</sup> If the implementing agency is a public body (administrative or enterprise), then, usually, it is the woreda that pays the compensation after the money is transferred to its account.

On the other hand, if the implementing agency is a private one, then, mostly, it is this body that pays the compensation directly, but in some regions, the woreda pays once the money is put in its account by the private investor.<sup>83</sup>One discrepancy that is detected is that the requirement of advance payment of compensation is not properly observed and the compensation provision is inculcated in different provisions of laws. Urban land lease holding Proclamation No.721/2012

<sup>77</sup>Practical investment Guide of Oromia Regional state, Published and commissioned by Embassy of the Kingdom of the Netherlands, Addis Ababa, Ethiopia In cooperation with Oromia National Regional State of Ethiopia July 2015.

<sup>78</sup>Oromia Region state urban land Administration and use regulation, Regulation No. 182/2008, Megeleta Oromia

<sup>79</sup>Confidential interview conducted with Team Leader, of site plan of 'A' Flower; Confidential interview conducted with team leader of Adama city investment promotion; Confidential interview conducted with team leader of ethics and Anti corruption of Adama city administration, Confidential interview conducted with team leader of grievance committee of Adama city on 10 June, 2020

<sup>80</sup> Confidential interview conducted with manager of Africa macoroni, in Adama City, Director of Ahimad flour in Adama city and production manager of Ethiopia development textile industry on 9 June, 2020.

<sup>81</sup>Zerfu Hailu (PhD), Land Governance Assessment Framework Implementation in Ethiopia Final Country Report Supported by the World Bank, 2016 p. 3

<sup>82</sup>Expropriation of Land Holdings for Public Purpose and Payment of Compensation Proclamation, (2005), Proclamation No.455/2005, Federal Negarit Gazeta, Year 11, No.43

<sup>83</sup>Ibid, Art 5(2)

Art 25 (1/b) states payment of compensation up on the termination of urban land for public interest; in this case the lessee shall be paid commensurate Compensation in accordance with the compensation laws.<sup>84</sup>

The FDRE Urban land administration and use proclamation No.721/2011 and Oromia Urban land administration and use regulation No.182/2008 states holder of urban land who is evicted for purpose of public use shall be given compensation proportional to the development he, has made on the land and the property acquired, or shall be given substitute land thereon.<sup>85</sup> Where the rural landholder is evicted by federal government, the rate of compensation would be determined based on the federal land administration law. Where, the rural land holder is evicted by regional governments, the rate, of compensation would be determined based on the rural land administration laws of regions. Where come to Oromia regional state constitution Art 40/6 states that, without prejudice to the public ownership of land the government of the region may grant use of land to investors on the bases of payments to be fixed by law.

The government of the region shall have the power to expropriate, in the public interest, private property and grant the land for investors.<sup>86</sup> In all such cases it shall pay compensation in advance commensurate to the expropriated property. This constitutional provision shows that compensation is paid for the private property on the land. But it does not state the payment of compensation for the land expropriated for land lease promotion and protection investment and welfare local community.<sup>87</sup> Ethiopia is implementing the land lease expropriation and compensation laws before transferring any land to private investors.

Interview with respondents of Adama City Administration and Adama land Administration officers indicate that the payment of compensation to land holders are not compatible with the current socio-economic situation of the country in general and Oromia regional state in particular. They state that the payment of compensation made by Adama City administration to land holders and farmers are not adequate and the payment of compensation is subjective which vary from place to place. There is no uniform payment of compensation for land lease promotion and protection investment and welfare local community; as legal officer of Adama City administration and use of land stated with the same place Adama woreda values one bonda of grass land with 70 ET. Birr while Adama City values one bonda of grass land with 45 ET Birr. The grass land valued found at the border of each Adama city both the grass land is found at border of each other the valued price is different. This indicates that the valuation of land property for compensation is not just and in advance, the time and method of valuation has not been taken in to consideration for land lease promotion and protection investment and welfare local community.

They states also that there is lack of experts on the proper valuation of compensation for land lease promotion and protection investment and welfare local community.<sup>88</sup> The researcher also made focus group discussion with farmers that they responds' the payment of compensation for investment land acquisition does not consider the current situation of the market value of the country up on land lease promotion and protection investment and welfare local community. From those respondents land holder Ato Abdi Hasan states that just and adequate compensation does not paid for farmers for land lease promotion and protection investment and welfare local community. He has also said that in 1995 the minimum payment of compensation was 10,000 and maximum compensation paid was 50,000 ET Birr.<sup>89</sup>

### **3.7. Transparency from the Public Officials upon Land lease promotion and protection investment and welfare local community**

Public land transactions are conducted in an open transparent manner up on land lease promotion and protection investment and welfare local community to attract both domestic and foreign investors for the economic growth of the country. Ethiopia promotes national and international investors to engage them in large scale investment in the areas of agricultural, hotels development, manufacturing industries and other investment dimensions. The federal and regional

<sup>84</sup>FDRE urban land lease holding proclamation, Proclamation No. 721/2011, Negarit Gazeta, 18<sup>th</sup> Year, No. 4.

<sup>85</sup>Federal Democratic republic of Ethiopia urban land administration and use proclamation No 721/2011 Oromia urban land regulation no 182/2008

<sup>86</sup>Constitution of Regional state of Oromia (1995) Proclamation No (1995) Megeleta Oromia year 3, No.1

<sup>87</sup>Ibid, Art 40/6

<sup>88</sup>Confidential Interview conducted with, team leader of Adama city land registration, on 10 June 2020 Confidential interview conducted with team leader of Adama city investment promotion, on 10 June 2020 Confidential interview conducted with, team leader of controlling and Auditing land on June 10 2020, Confidential interview conducted with, team leader of, Adama city land investment on 10 June 2020 and confidential interview conducted with an expert of legal officer of Adama city land administration on June, 10/2020.

<sup>89</sup>Confidential interview conducted with Farmers in Adama city Melka Adama Kebele on 9 June, 2020.

governments acquire land lease and transfer land to investor's.<sup>90</sup> Transfer of public land to private use follows a mix of practices mostly selection of investors for a promotion of investment in land lease is by a committee (composed of different experts who are different from urban) taking in to account predetermined selection criteria.<sup>91</sup>

In Oromia region the bureau of environmental protection land administration and use is responsible to screen and select potential investors and present it to the regional cabinet for approval.<sup>92</sup> In all stages of the selection process, minutes are prepared and signed.<sup>93</sup> In urban areas usually land is transferred by advertising lease tender in transparent manner.<sup>94</sup> However, each plot of urban land have a benchmark price which is determined on the basis of objective conditions of each urban center in accordance with regulations issued by the respective regions and city administrations.<sup>95</sup>

Therefore, during implementation there is a need to make the whole processes of investment land lease acquisition more appropriate and transparent. The FDRE Constitution and the Oromia regional state constitution Art.12/1 states the conduct of affairs of government shall be transparent.<sup>96</sup> The FDRE Constitution 1/1995 Art.52 (2) (d) stipulates that the power entrusted to regions to administer land and natural resources is to be implemented in accordance with the law to be enacted by the federal state<sup>97</sup>; one of the purpose of investment law is to make the system of administration of investment transparent and efficient proc. No. 769/2012.<sup>98</sup> In addition to this the fundamental principle of lease holding is to offer 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.<sup>99</sup>

The Oromia Bureau of land and environmental protection establishment Proclamation No.147/2009 Art.5(10) states that the Bureau shall study and identify land for various development work and service and submit to concerned body, and give up on approval<sup>100</sup>. This is to indicate that the Bureau shall be transparent to implement the land lease to protection investment and welfare local community. Oromia Regional state urban land Administration and use regulation No. 182/2008 also states that, it has become necessary to implement the rights and obligations of urban land administration and use in transparent and responsible manner<sup>101</sup>; Art. 15 of this proclamation states Oromia Urban land administration and use regulation Bureau give information about investment lands to the Oromia investment Commission and its offices found at different levels, give land and certificate of holding upon permission.<sup>102</sup>

Confidential interview conducted with public officials or Adama City administration officers indicates that there is lack of transparency on land lease to promotion and protection investment and welfare local community' the investors do not get clear information on land lease promotion and protection investment and welfare local community, it is the investor themselves go and ask Adama City administration. For instance, w/o Genet Boru is an investor; she brings her land lease request application from Oromia Bureau of land administration and Oromia investment commission to Adama City Administration. After examining all the necessary requirements the Adama land administration officer shows the land place where she invest and send back her application with draft site plan to Oromia Bureau of land administration for the last approval.

## 4. Conclusion and Recommendation

### 4.1. Conclusion

In most of today's economic reform programmers of developing countries increasing savings and investment rates are among the central targets of development effort and indicators of the economic performance. Investment can be conducted both in Rural and urban land lease. Land lease is a prime resource upon which all human activities are dependent. As it stated in Article 40 of the Federal Constitution, which relates to Right to Property provides 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. The

<sup>90</sup>Zerfu Hailu (PhD), Land Governance Assessment Framework Implementation in Ethiopia Final Country Report Supported by the World Bank, 2016

<sup>91</sup> Ibid, p. 26

<sup>92</sup> A proclamation to provide for the Establishment of Oromia Bureau of land and Environmental Protection, Proclamation No. 147/2009, Megeleta Oromia 17<sup>th</sup> year, No.5

<sup>93</sup> Daniel Weldegebriel Ambaye, Land Rights and Expropriation in Ethiopia ISBN 978-91-85783-36-6 TRITA-FOB-PHD 2013:5 p.47

<sup>94</sup> proclamation No.721/2011 article 11

<sup>95</sup> FDRE urban land lease holding proclamation, Proclamation No. 721/2011, Negarit Gazeta, 18<sup>th</sup> Year, No. 4

<sup>96</sup> Constitution of Federal Democratic Republic of Ethiopia (1995), Proclamation No 1/1995. Negarit Gazeta year 1, No. 1

<sup>97</sup> Ibid, Art 51(5)

<sup>98</sup> Federal Democratic Republic of Ethiopia Investment Pro No.769/2011, Negarit Gazeta, 18<sup>th</sup> year, No. 63, Art.13 and 14

<sup>99</sup> FDRE urban land lease holding proclamation, Proclamation No. 721/2011, Negarit Gazeta, 18<sup>th</sup> Year, No. 4

<sup>100</sup> A proclamation to provide for the Establishment of Oromia Bureau of land and Environmental Protection, Proclamation No. 147/2009, Megeleta Oromia 17<sup>th</sup> year, No.5

<sup>101</sup> Oromia Region urban land Administration and use regulation, Regulation No. 182/2008, Megeleta Oromia, 17<sup>th</sup> Year, No.182

<sup>102</sup> Ibid Art. 15



FDRE constitution No.1/1995 Art.52 (2/d) indicates that the regional state has the power to administer land and other natural resources in accordance with federal laws. Accordingly Proclamation No.456/2005 establishes a conducive system of rural land administration for encouraging individual farmers, pastoralists and investors. On the other side urban land lease proclamation No.721/2011 and Oromia urban land lease regulation No.182/2008 states that the aim of the proclamation and regulation as to satisfy the growing urban land demand resulted due to fast economic growth of the country.

Promotion of Investment on land lease acquisition is the taking of land lease for investment activities. Adama City investment office statistical data shows that 1700 hectares' of land lease size has already been given away for investment activities, from this manufacturing industry has consumed the first largest amount of land size, Industry has consumed the second largest land size, agricultural investment has consumed, the third largest land size, 120 hectares' of land size is under process, 115 hectares' of land size is taken away due to the failure from investors, 1600 hectares' of land size is asked by investors for manufacturing industries, Agricultural investment and Industry but denied. In order to examine investment by land lease acquisition in Adama City non doctrinal legal research was conducted by researcher and the data analysis employed for this study was that of qualitative analysis.

The data has being collected by interview and focus group discussion. Adama Investment officers, Adama land Administration officers, Adama land holders, legal department of investment officers, Oromia regional land Bureau and regional investment Commission officers and investors are interviewee informants. Oromia urban land administration proclamation No. 163/2003 and Regulation No.182/2008 art 27(7) states that Farmers, Pastoralists or semi-pastoralists may also use their holdings for investment. They can invest on their land by their own or by joint with other investor or can rent its land holding to other investors. According to the famous development agenda of the country, Economic growth and transformational plan one and two (GTP 1, 2) investment has been considered as an engine of growth and generates economic benefit. Since then major reforms, policies and institutional frameworks have been established to directly or indirectly promote investment in the country. This indicates that regional states have an autonomous to transfer land to investors but the Federal government snatch the constitutional right and power given to regional's by enacting regulation No.283/2013 that the Ministry of agriculture has established an Agricultural Investment Land administration. Thus, there is agency, which is in charge of administering the allocation of land above 5,000 hectares for investment purposes.

Interview conducted with public officials, land holders and investors' indicate that land is transferred for investment under after strict approval of Oromia land administration bureau. Investors do not provide sufficient information to allow rigorous evaluation of their proposed investments; lack of creation of awareness of people and investors on land lease promotion and protection investment and welfare local community; delays of investment land lease acquisition in Adama City. Inadequacy of payment of compensation to land holders upon investment land lease acquisition; Adama City administration and investment office do not co-operate to grant land lease for investors, no promotion, no preparation, no transfer of land for investment; lack of transparency and corruption upon land lease promotion and protection investment and welfare local community and Adama City administration officers denies land for investors when investors need land for expansion of existed investment and for other new applicant investors.

In Adama City some of urban land lease acquired by investors stay idle for couple of years while the farmers whose landholdings have been taken are displaced from their life due to inadequacy of compensation paid to them and partly for mismanagement of the money they acquired in the form of compensation. Thus, the researcher examines the issue of land lease promotion and protection investment and welfare local community in Adama City in relation to the law and practice

#### **4.2. Recommendation**

The Current land Lease acquisition law on promotion and protection of Investment and local community it for investment to promote economic benefit. Where there is inaccessibility of land in the country as well as in the region it is difficult for the government to conduct investment for the economic growth of the country and maintain food security, reduce unemployment and poverty reduction. Land lease acquisition to promotion Investment by the investor passes through different processes. In the legal process of implementation of land lease acquisition promoion and protection of onvestment and local community of the researcher made interview and focus group discussion with public officials and

inventors identify different challenges problems and legal gaps that shall be considered by the government. In order to mitigate the problems mentioned above the researcher recommends the concerned body with important point as follows,

- The Oromia Urban Land Administration and Use Regulation No.182/2012 should be considered that Adama City administration provides valuable awareness to the community and investors through conference upon land lease to promotion and protection investment and welfare local community. Where necessary provide support and advice to the investors as per of this law.
- Investment Pro. No 769/2012 Art. 30 should be taken in to consideration to provide one- stop shop service in relation to professional support and execution of investor's requests for land lease request for their investment projects.
- Based on the FDRE Constitution No.1/1995 Art. 55, the House of Peoples Representatives should enact laws for specific time to identify and prepare investment land so that, the Oromia regional state administer land and other natural resources and Adama City land administration transfers the investment land to investors on proper time.
- Oromia Bureau of land administration should control the activities of Adama City administration through their report and practical assessment and take legal measures upon failure to comply with their obligations up on land lease promotion and protection investment and welfare local community.
- Upon land lease promotion and protection investment and welfare local community of FDRE constitution 1/1995 Art 40 (8) should be taken in to consideration up on payment of compensation and the House of People Representatives amend that the payment of compensation regulation that benefit the land holders for life span upon their land acquired for investment based on the Current socio-economic situation of the country and the regional states as well.
- Corruption is one of the criminal acts which are punishable by 2004 FDRE criminal code and other substantive laws. Thus, Adama City administration should bring those urban land officers who fail to commit their obligation before court of law.

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