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**Regularization of Informal Urban Landholding in  
Oromia National Regional State**

**By**

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## SIGNED APPROVAL SHEET BY THE BOARD OF EXAMINERS

This is to certify that the Thesis prepared by Mulugeta Fikadu entitled —Regularization of Informal Urban Landholdings in Oromia National Regional State, submitted in partial fulfillment of the requirements for the Degree of Master in Business Law complies with the rules and regulations of the University and meets the accepted standards with respect to originality.

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## DECLARATION

I hereby declare that this Thesis is my original work that has been carried out under the Supervision of Dr. Muradu Abdo, Associate Professor, of Addis Ababa University, School of Law, as part of the Degree of Master in Business Law in accordance with the rule and regulation of the University. I further declare that this work has not been submitted to any other University or Institution for the award of any degree or diploma and all sources of materials used for the thesis have been duly acknowledged.

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Regularization not only denotes policies aimed at awarding individual property rights, but also denotes procedures and processes that give a legal, written form to rights, rules, customs, institutions or land-use management systems.<sup>8</sup> It may also recognize popular practices, such as agreements concerning land that involve witnesses, local authorities and often government authorities.<sup>9</sup> It is also regarded as a panacea that can not only lift people out of insecure and informal tenure, but also resolve conflicts, stimulate investment and encourage economic growth.<sup>10</sup>

Regularizing informal economy in general and IULH in particular, in many countries, has clear, predefined objectives and purposes to attain. It may include establishment of law and order, increased government control, greater institutional integration, increased economic efficiency, increased tax revenue, and greater equality.<sup>11</sup>

In most of the cases regularization, though adopted as a task of certain period, experience of some countries shows, burdensome and time taking. For instance, United States before two centuries, in combating informal settlers, had faced serious of challenges, but able to cope with it through modifying its laws relating to informality.<sup>12</sup> The law gradually integrated extralegal arrangements to bring about peaceful order thereby demonstrating that the law must be compatible with how people arrange their lives.<sup>13</sup> In Peru, the regulations enacted for more than 30 years have not achieved its intended results.<sup>14</sup>

In Ethiopia though there has been, here and there in different towns, a practice to regularize informal landholding, the country for the first time in history of legislating urban land matters at

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<sup>7</sup> Durand-Lasserve, "Formalization of Land Rights and Obligations" (Summary of the conclusions of the seminar organized by the Technical Committee on Land Tenure and Development French Development Agency (AFD) and Ministry of Foreign Affairs 16 – 20 December 2013), p.5

<sup>8</sup> Id.

<sup>9</sup> Id.

<sup>10</sup> "Land Tenure and Development' Technical Committee, 2015, Formalising Land rights in developing countries: moving from past controversies to future strategies, Paris, Ministère des Affaires étrangères et du Développement international (Maedi), Agence française de développement (AFD), p.16

<sup>11</sup> Espen Sjaastad and Ben Cousins, "Formalisation of land rights in the South: An overview", *Land Use Policy* 26 (2008) 1–9, p.5

<sup>12</sup> De Soto Hernando, *The Mystery of Capital :Why Capitalism Triumphs in the West and Fails Everywhere Else* (2000), p.108-141.

<sup>13</sup> Id. p.111-112

<sup>14</sup> Zoila Z. Yi Yang, COFOPRI, *an Experience of Land Tenure Regularization in Informal Settlements in Perú Regularisation process at the Saul Cantoral Settlement: A case study* (<http://www.file.scrip.org>, (accessed on august 17, 2017, on 7:30 pm)

parliament level, came up with the concept of regularization under Urban Land Lease Holding Proclamation in 2011 (herein after called The Lease Proclamation.)

The Lease Proclamation in general is the governing legal framework for all urban land matters under incumbent regime and employed two sub articles concerning regularization in particular. Sub article 4 of article 6 empowers regions and city administrations to regularize urban landholdings held without authorization of appropriate body, provided that the possession should be acceptable in accordance with urban plans and parceling standard following the regulation issued by them. The time framework given by the Lease Proclamation to accomplish the task is four years-counting from 28<sup>th</sup> November 2011.<sup>15</sup>

The Lease Proclamation is applicable to all urban centers with regard to urban land<sup>16</sup> and states are empowered to administer land in all urban centers, issue regulations and directives necessary for the implementation of the proclamation.<sup>17</sup>

Accordingly, up on power given by the Lease Proclamation, the ONRS until recently has enacted different regulations, directives and manuals for the administration and implementation of the Lease Proclamation. Following the enactment of the Lease Proclamation, the first regulation Administrative Council of ONRS enacted was Regulation No.155/2013.<sup>18</sup> The regulation empowered OIADB to issue directive for the implementation of the regulation.<sup>19</sup> The Bureau then enacted a number of directives that regulates different matters including RIULH. Overall both the regulation and directives issued by the Regional Government are meant to implement and administer lease proclamation in general and it has incorporated some provisions relating to RIULH in concerned urban areas of the Region. The regulation and directives, when seen thoroughly, have not vested enough space for matters that ought to be covered in the regularization legislations. Moreover, these laws provide procedures and establish different institutions that take part in the process.

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<sup>15</sup>Urban Land Lease Holding Proclamation,2011,Proc.No.721,Neg.Gaz.Year 18 , no 4, art.6/5/

<sup>16</sup> Id.art.3

<sup>17</sup> Id.art.33

<sup>18</sup> Oromia Urban Land Lease Administration Regulation,2013,Reg.No.155

<sup>19</sup> Id.art.60

this date is not be regularized in any case regardless of the fulfillment of all the requirements of regularization. If anyone contravenes this, necessary actions like eviction, demolition and criminal action will be taken and no land is substituted. However, Regulation No.182/2016 ,which was enacted after the expiry of time framework provided by the Lease Proclamation, came with an exception. If the landholding and construction belongs to children of farmers, pastoralists and semi pastoralists there would be substitution of land.<sup>26</sup> Moreover, if demolishing construction on land acquired without proper authorization after time framework for legibility produces negative socio economic impacts, the Regional Administrative Council may decide on the matter.<sup>27</sup> Thus, the question would be how this exception is seen in light of the Lease Proclamation and urban land administration systems and the implication of doing so will be under scrutiny in the research.

### **1.3. Objectives of the Thesis**

The general objective of the study is to critically assess RIULH of ONRS

The study also has the following specific objectives;

- To explain and examine regularization process of ONRS, the purposes of RIULH and to check whether the purposes are met so far.
- To identify the existing legal and practical problems in the implementations of laws and it's adequacy in addressing the issues in RIULH of ONRS.
- To assess gaps of the laws and practical problems associated with it.
- To assess institutions designed to implement the laws and their efficiency.
- To propose recommendations based on findings of the research.

### **1.4. Scope of the Thesis**

RIULH is implemented overtime and involves different fields such as urban management, planning, geography, surveying and engineering. This study however, largely, focuses on the legal aspect of regularization. It assesses the regulations, directives and manuals issued by ONRS concerned organ since the program was embarked on and problems in the implementation of the same.

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<sup>26</sup> Regulation No.No.182/2016 , cited above at note 20,art.9(12)

<sup>27</sup> Id.art.9(13)

Geographically, the study covers only RIULH of ONRS. Beside literature and legislations all relevant information for the study is deemed available at regional level which is assumed to represent all the urban centers of the ONRS. However, in order to corroborate arguments and claims in the study, references could be made to experience of some other regions in the country or elsewhere in the world.

### **1.5. Significance of the Thesis**

The research will be helpful to the ONRS law making body (the Regional Administrative Council) in the forthcoming amendment of Urban Land Lease and Administration Regulation with the respect to problems at hand. It helps institutions that implement the RIULH to fully understand the matter and execute the same in effective and efficient way.

It will help academicians and any interested person in academic spheres as reference to their duty and/or study.

### **1.6. Limitation of the Thesis**

Regularization of informal economy in general and that of the land in particular is relatively a recent phenomenon that the area is not well developed and therefore it is hardly possible to get well defined literature. Particularly the legal aspect of it is insufficiently available in Ethiopia. Moreover, participants in the research may not cooperative in providing or giving accurate information as they might feel the subject matter under study is not devoid of politics. However, by persuading the participants that the research is free of any bias that even the outcome of the research could be very helpful for the government in tackling the problem. Time is also another constraint.

### **1.7. Methodology**

The methodology employed is qualitative approach. To this end the researcher uses primary and secondary data. The 2011 Urban Land Lease Holding Proclamation, Oromia Urban Land Lease Administration Regulation, Oromia Urban Land Lease directives, rules, manuals and other laws such as Urban Land Planning Proclamations, Urban Land Registrations Proclamation would be critically analyzed.

As a secondary data, related literatures concerning regularization of land tenure and foreign best practice would be used.

Information concerning the progress of the program (regularization program), different statistical data concerning status of IULH and actions taken thereof are available at Regional level. The overall activities of urban centers of the ONRS concerning regularization are controlled and given direction from the center (regional level). The lower organs are also expected to make timely report to the region on the matter as the trend shows. Thus, necessary data unpublished documents, reports, articles and bulletin available at organs mandated with urban land administration of the region were analyzed and used. Court decisions served as supplementary source.

Interviews and group discussions with concerned officials and urban land management experts were conducted. In selecting concerned organs and persons purposive sampling technique was adopted which is based on experience, position, expertise, education, and other attributes so as to acquire information capable of addressing the research questions of the study.

### **1.8. Structure of the Thesis**

The Thesis is structured into five chapters. Succeeding this introduction, chapter two briefly discusses concepts of regularization and IULH. It particularly discusses what purposes and objectives do RIULH serves, effects of RIULH, policies of regularization, the process and regularization laws. Chapter three is about legal and institutional frameworks of RIULH in ONRS. With this respect, it assesses laws pertaining to regularization of IULH. Particularly, regulations and directives issued by ONRS were critically assessed. Institutions vested with implementation of RIULH by the regulations and directives are also seen under the chapter. Chapter four assesses implementation of RIULH of ONRS and some problems associated with it. Accordingly, the current status of IULH and the progress of the implementation are discussed. The problems seen in the implementation of RIULH such as delay on regulating and implementing regularization program, absence of clarity on the purposes of laws, burdensome requirements adopted by directive, lack of fairness on the legibility requirements, inconsistencies and gaps of the laws are assessed. The final chapter, chapter five, presents finding and recommendations of the Thesis.

## Chapter Two

### Regularization of Informal Land Tenure in General

#### 2.1. Introduction

Millions of people, both rural and urban population, across the globe live and work on land that they do not legally own in accordance with enforceable law of the state.<sup>28</sup> The denial or absence of recognition by the state affects tenure security which in turn impinges on people's social-economic security and impedes development. People who are not secure in their property rights will not invest labor and other resources in the fertility and productivity of their agricultural land, the improvement of their houses built on the land, and the infrastructure of their neighborhood.<sup>29</sup> On the other hand, considering informality as chronic problem to legal order, the trend by many countries before adopting and implementing regularization were commonly eviction, demolition of developments on the land and extreme marginalization of societies or groups living in such areas. However, as time passes such action produced several unwanted consequences and therefore countries began to integrate such kind of tenure into the formal one through the system of tenure regularization. Over the last decades then, structural adjustment policies of the government started promoting the regularization of land tenures (giving them written and legal form) as a condition for economic development, and sometimes as a way of resolving the legal duality.<sup>30</sup>

This chapter begins with addressing concepts in the title, "regularization" and "informal urban landholdings". What is regularized is informal landholding. Regularization of informal economy in general and informal landholding in particular is relatively a recent phenomenon that it requires one to know these terminologies and its contents before adopting and working on the matter.

When the government decides to regularize IULH, it is done in accordance of given policy and laws with pre determined purposes and objectives. What are contents of these policies? What

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<sup>28</sup> Janine M. Ubink, Andre J. Hoekema, Willem J. Assies, Legalising Land Rights: Local Practices, State Responses and Tenure Security in Africa, Asia and Latin America, (Leiden University Press, 2009) p.7

<sup>29</sup> Id. P.7

<sup>30</sup> Land Tenure and Development' Technical Committee, cited above at note 10, P.17.

objectives and purposes do regularization serve are questions that are going to be addressed by this chapter.

Regularization on the other hand is the process, the process by which informal landholdings are integrated into the formal one. Thus, this chapter briefly addresses the process of regularization and some other issues pertaining to the same. .

## . 2.2. Concepts of Regularization and Informal Urban Land Holdings

### 2.2.1. Regularization<sup>31</sup>

Regularization is the process by which acts, situations, persons, and entities that are not recognized by law or formal channels, obtain such recognition.<sup>32</sup> With the respect to land thus, is a process by which informal tenure is integrated into a system recognized by public authorities.<sup>33</sup>

It is a process which involves a range of different components, managed over time and involves planning, services and infrastructure, information, land administration, dispute resolution, community participation, community capacity building, funding and cost recovery, and housing.<sup>34</sup> The way the matrix of components has been approached varies in different projects, and in different countries.<sup>35</sup>

It can finally be achieved through different means. The first and the most popular one is through land titling. After sorting out holdings that are qualified for the recognition, the state confers to the holder (It is the delivery of real property rights). These rights include freehold titles, surface rights, and registered long-term leaseholds.<sup>36</sup> This type of regularization provides rights that are authenticated and guaranteed by the State.<sup>37</sup>

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<sup>31</sup> The term “regularization” in different literature is used interchangeably with “Formalization”. Hence, whenever the reader comes across the term formalization notice should be taken that it is to mean regularization.

<sup>32</sup> Nilva Karenina cited above at note 1, p.248

<sup>33</sup> Durand -Lasserve and Harris Selod , “The Formalization of Urban Land Tenure in Developing Countries” ( paper prepared for the World Bank’s 2007 Urban Research Symposium, May 14-16, Washington DC.) p.7

<sup>34</sup> UN Habitat, *Hand Book on Best Practices, Security of the Tenure and Access to Land*, UNITED NATIONS HUMAN SETTLEMENTS PROGRAMME, 2003, (<http://www.gltm.net>) ,(accessed on august 15,2017 at 3:00 pm)

p.40

<sup>35</sup> Id.

<sup>36</sup> Durand, Cited above at note 33, p.8

<sup>37</sup> Id.

The other means of regularization is up-grading the informal settlement. This of course, may not be an action directly taken on the land tenure. It mainly concerns improving the physical environment of the informal land holders. This includes improving and installation of basic infrastructure like water, sanitation, waste collection, access roads, footpaths, storm water drainage, lighting, public telephones.

Regularization could also be made through redevelopment. This happens when all dwellings and structures on the landholdings are cleared after moving the residents to an interim camp.<sup>38</sup> Shelter and a layout that matches the master plan (and planning laws) are then built and the people returned to the area.<sup>39</sup> Thus redevelopment is usually preferable to match the master plan with informal holdings.

Regularization can also form part of the process of acknowledgement by States of the diversity of legal relationships which the different groups or communities have with each other. Formalization can then be defined as a way of "formatting" existing situations in which rights are unwritten".<sup>40</sup>

However, it is worth noting that there is no consensus as to component and exact conceptual meaning of regularization with the respect to land. Some have only proposed the upgrading of the informal areas; others have focused merely on the legalization of the areas and individual plots.<sup>41</sup> However, ideally there is general consensus that regularization programs should combine several dimensions so as to guarantee the sustainability of the public intervention: physical upgrading; legalization; socioeconomic programs aiming at generating income and jobs; and cultural programs to overcome the stigma strongly attached to the residents and to the informal areas.<sup>42</sup> Thus, it can be concluded that regularization involves not only mere recognition but a wide range of actions towards the full meaningful recognition of property right.

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<sup>38</sup> Un Habitat, Cited at note 34, p.46.

<sup>39</sup> Id.

<sup>40</sup> Durand-Lasserve, cited above at note 7, p.3

<sup>41</sup> Edesio Fernandes, "Urban Land Regularization Programs: State of Knowledge" p.185

<sup>42</sup> Id.

## 2.2.2. Informal Urban Landholdings

Informality with the regard to urban land tenure<sup>43</sup> is not easy task to define and even sometimes, its distinction from the formal one is blurred.<sup>44</sup> A given settlement type with particular characteristics regarding land tenure, urban planning, and housing can be considered either formal or informal depending on the local context and public authority interpretations.<sup>45</sup> Thus, in the following section, focusing on urban tenure, we deal with some points that generally have common acceptance.

### 2.2.2.1. Definition of Informal Urban Landholdings

One can hardly find the exact definition of IULH in existing literatures. However, it is possible to infer it from definitions and explanations given to informal land tenure in general and some other concepts that are related to land and informal settlement.

Informal property rights are those that lack official recognition and protection.<sup>46</sup> In some cases, these are illegal, i.e., held in direct violation of the law. An extreme case is when squatters occupy a site in contravention of an eviction notice.<sup>47</sup> In other cases informality may be raised because of inappropriate laws like subdivision of land below standards provided by law.<sup>48</sup>

According to Wehrmann, informal landholding comprises illegal and semi-legal landholding. The first one violates existing ownership as well as rules and regulations. The second one only offends against - building and planning - norms.<sup>49</sup> Both forms are most often non-conformist but rarely illegal. Thus, according to him, it seems that informality comprises two scenarios, legitimacy (non-conformity) and criminality (illegality).

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<sup>43</sup> Land tenure designates the rights individuals and communities have with regard to land, namely the right to occupy, to use, to develop, to inherit, and to transfer land according to Alain Durand-Lasserve and Harris Selod (Cited above at note 7,p 6). Thus, the concept "urban land tenure" includes subject under discussion- Informal urban landholding.

<sup>44</sup> Durand ,Cited above at note 7,p.6

<sup>45</sup> Id.

<sup>46</sup> Jan Michiel otto and Andre Hoekema, Fair Land Governance:How to Legalize Land Rights for Rural Development,( Leiden University Press ,2012) p.7-30

<sup>47</sup> Id

<sup>48</sup> Id.

<sup>49</sup> Babette Wehrmann "Coping with Informal Land Management in Human Settlements- An Overview of the Status Quo" P.(n-aerus.net>sat>papers ) (accessed on 3<sup>rd</sup> September,2017 at 3 :00 pm )

The other form of informality, which of course is not very common in urban areas, is when peoples have rights in land on the basis of customary law. When customary law and customary rights are not recognized by the state, this creates an extra-legal/informal situation (according to state law).<sup>50</sup>

IULH is usually frequent in the peri urban areas of cities and to a lesser extent within city centers in developing countries.<sup>51</sup>

In summary, there is no definite and single definition for informal urban landholding. It depends on local context and interpretation given by public authorities. However, it can generally be said that informal urban land holding is land held/occupied without recognition/authorization of the owner and/or held in contravention of existing planning and building laws

#### **2.2.2.2. Contributory factors of Informality**

Although causes of emergence and development of IULH varies from country to country, it is possible to draw some common causes by looking into empirical researches made in different countries, particularly third world countries. Lack of formal options resulting from the nature of land, urban, housing, and fiscal policies; the exclusionary dynamics of formal land markets that do not cater to the urban poor; the long-standing political manipulation of the people living in informal settlements through renewed clientelistic practices; the elitist and technocratic planning systems put in place by local administrations, which fail to take into account both the socioeconomic realities determining the conditions of access to urban land and housing, and the capacity of local administrations to act to implement urban legislation and the obsolete nature of the legal and judicial systems prevailing in many developing and transitional countries are some common causes for the emergence and development of informal urban landholding according to Edesio Fernandes.<sup>52</sup>

Thus, it is possible to say that the contributory factors mainly are attributed to the system. The inability of the formal system to accommodate all citizens in accessing urban land for housing or other purpose pushes to look for informal system. In Africa and Asia, these exclusion processes

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<sup>50</sup> Janine, cited above at note 28,p.7

<sup>51</sup> Durand, Cited above at note 7,p.6

<sup>52</sup> Edesio, Cited above at note 41, p.182.

are fuelled by rural-urban migration and urban population growth.<sup>53</sup> On the other hand, a dysfunctional legal system could also be one cause for prevalence of IULH. Failure to strictly apply the existing legal system, inefficiency of institutions implementing those laws will be an encouragement for increment of informal landholders. In such scenario, for instance, it is not only poor section of the society but others who enrich themselves from illegal transaction of land would run for settlement.

Once the holding is acquired it has multidirectional consequences. From view point of the informal landholder, the first consequence is feeling insecurity of the holding. Since people, in most of the cases, occupy government land they live in perpetual state of fear that one day the government would evict them from the area. Hence they tend to make no investment on the houses or the land which leads again to poor condition of living and environmental deterioration.<sup>54</sup> The poor particularly feel the full force of insecurity, and it undermines their incentives to invest and produce as well as the possibility of gaining better access to medium- and long-term mortgage credit through use of land as collateral.<sup>55</sup> There are also other consequences such as health and infrastructure problems which would in turn raise questions on state's duty on protecting citizen's rights.

From the view point of the state beside its impact on proper functioning of urban administration systems, it will deprive state revenue from property and income tax which in turn leads to lack of basic services for the holders.

### **2.3. Historical Aspect of Regularization of Informal Land Tenure.**

Regularization of informal property rights has its own history. Hernando De Soto in his book "The Mystery of Capital- Why Capitalism Triumphs in the West and Fails Everywhere Else" says ,even western countries in their past , had made transition from dispersed ,informal arrangement to an integrated legal property system.<sup>56</sup> According to him, western countries were

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<sup>53</sup> Durand, Cited above at note 7 p.6

<sup>54</sup> Daniel Weldegebriel Ambaye, "Informal Settlement in Ethiopia, the Case of two Kebeles in Bahir Dar City" (FIG Working Week 2011 Bridging the Gap between Cultures Marrakech, Morocco, 18-22 May 2011), ([www.fig.net/pub/fig2011](http://www.fig.net/pub/fig2011)) accessed on August 23 2017, at 10:30 AM)p.9

<sup>55</sup> John W. Bruce et.al. "Land and Business Formalization for Legal Empowerment of the Poor: Strategic Overview" (UN High Commission – Legal Empowerment of the Poor, under Global - Management, Organizational and Business Improvement Services) (<http://www.ardinc.com>)(accessed on September 30,2017 at 3:30 pm)p.16

<sup>56</sup> Hernando de Coto, cited above at note 12,p.109

able both to acknowledge social contract born outside the official law were legitimate source of law and to find ways of absorbing these contract.<sup>57</sup>In each country lawlessness was not about crime but collusion between rule making at the grassroots level and rule making at top level.<sup>58</sup>

For his claim he took what United States of America did for many years to address problem of law and disorder of migrants, squatters and the like. Starting from early 15<sup>th</sup> century, in different states of the country at different times, there was big fight and revolutions between migrants/squatters on the one hand and government on the other side. Violence including shooting of sheriff, and disobedience to settlement laws where mainly some responses among others by the settlers. The harsher laws government where enacting and implementing same to stop illegal settlement, the result were increment of illegal settlers. But, by the end of 19<sup>th</sup> century, through enacting and reenacting regulations, the government managed to integrate extra legal settlement into formal system.<sup>59</sup>With this, Desoto concludes, by ultimately embracing many of the extralegal arrangements of the settlers, formal law had legitimized itself by becoming the rule for most people in the United States rather than the exception.<sup>60</sup>

However, regularization of informal economy in general and informal land tenure in particular, with full awareness of purpose for doing so, began to be implemented in the midst of 20<sup>th</sup> century. The main reasons among others were, to slow down the process of the formation of informal settlements that have resulted from rapid growth of urbanization.<sup>61</sup> Since the growth of informal settlements in urban areas was rapidly increasing and since there was an evident shortage of public housing policies at the national level, international researchers and organizations began to work on strategies that aimed at regularizing informal settlements instead of demolishing them.<sup>62</sup>

The idea especially since 1980s was greatly fostered by De Soto, who has deeply researched the subject matter and benefits for regularizing informal economies. He propagated that through providing land titling it is possible to reduce urban poverty in the global south. His theories

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<sup>57</sup>Id.P 109-110

<sup>58</sup> Id.P.110.

<sup>59</sup> Id.P.108-156.

<sup>60</sup> Id.p.156.

<sup>61</sup>Fontana, C. "Hernando de Soto on Land Titling: Consensus and Criticism" plaNNext – next generation planning. Vol 3,(2016) p. 36-48.

<sup>62</sup> Id.P.42

supported by huge international organizations like, UN-Habitat, World Bank and other NGOS ,the program has been accepted and implemented by many in the south. This pressure has mounted since the mid-2000s, with greater liberalization of land markets and repeated attempts to unify them in a single legal framework, the promotion of individual private titles, the commodification of all means of access to land for housing, and growing pressure on land in both rural and urban areas.<sup>63</sup>

Many countries across the globe, particularly the south, have been able to regularize informal landholding for different reasons and the program has been continued to be an assignment in land policy reform of many countries.

## **2.4. Policy and Objectives of Regularization of Informal Urban Landholdings**

### **2.4.1. Policy of Regularization of Informal Urban Landholdings.**

Regularization has its own policy in most of the countries that have implemented the program. These policies sometimes emanate from their general land policy or come as a result of land reforms.

The term regularization itself denotes policies aimed at awarding individual property rights, but can also, in a less restrictive sense, denote procedures and processes that give a legal, written form to rights, rules, customs, institutions or land-use management systems. Depending on circumstances, they can include various regulatory schemes implemented by different authorities and stakeholders (State, local government, customary authorities and communities).<sup>64</sup> These policies may recognize popular practices, such as agreements concerning land that involve witnesses, local authorities and often government authorities.<sup>65</sup>

Regularization policies deal with complex socioeconomic and urban-environmental realities and involve multiple aspects of land, registration, financial, urban, and environmental laws.<sup>66</sup> Formalization policies according to Durand can recognize: (i) de facto situations (settlement, development, etc.) ; (ii) individual or collective rights recognized by governments or

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<sup>63</sup> Land Tenure and Development' Technical Committee, Cited above at note 10, p.24

<sup>64</sup> Durand, Cited above at note 7, p.5

<sup>65</sup> Id.

<sup>66</sup> Edesio Fernandes, Regularization of Informal Settlements in Latin America, 2011, (Lincoln Institute of Land Policy ) p.19

recognized locally and giving rise to agreements between people; (iii) changes of ownership and transfers; (iv) tenancy arrangements; and (v) authorities and institutions.<sup>67</sup>

Defining a realistic implementation strategy, which recognizes that the key issue is establishing effective and transparent governance and/or administration of land rights, and that this is a medium- or long-term process; progressive implementation that leaves room for learning, experimentation and adjustment; ensuring from the outset that the land services will be financially viable, and putting in place mechanisms to fund them are also elements that contribute to successful, inclusive and sustainable formalization policies.<sup>68</sup>

Regularization policy, particularly when revised or reconsidered, also addresses issues like; evaluation of the performance of regularization ,customizing policies and programs, participation of both men and women to avoid building gender bias into the process and to increase its long-term effectiveness, Make regularization more self-sustaining financially through property taxes; charges on urban infrastructure and service improvement, Supporting more research and analysis to determine if the situation is improving or worsening in particular cities and to prevent the establishment of additional informal settlements, particularly when they are thought to be caused by regularization programs themselves.<sup>69</sup>

#### **2.4.2. Objectives of Regularization of Informal Urban Landholdings.**

As policy of RIULH varies from country to country, objectives of the same also differs accordingly. Usually regularization objectives emanate from the policy. Thus, the general and specific objectives of regularization are set in such a way that attains goals provided in the policy document.

The most commonly accepted objective of regularization as we have seen under previous sections is to guarantee secure tenure for the concerned population.<sup>70</sup> This avoids evictions and helps the holders to invest more on their holdings. Moreover, as we have seen under previous

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<sup>67</sup> Durand, Cited above at note 7, p.5

<sup>68</sup> Land Tenure and Development' Technical Committee ,Cited above at note 10,p.12

<sup>69</sup> Edesio,cited above at note 66,p.3

<sup>70</sup> Alain Durand-Lasserve, Val'erie Clerc. Regularization and integration of irregular settlements: lessons from experience. UNDP, UN-Habitat, World Bank, Urban Management Program (UMP), Working Paper n6, 113p., 1996, Urban Management and Land, <<http://ww2.unhabitat.org/programmes/ump/documents/wp6.pdf>>. <halshs-01186713> p.27

sections these holdings are characterized by absence of services and different infrastructures. Thus, the objective to do so includes setting up primary facilities (basic infrastructures and social services) which is one of the basic duties of governing bodies in modern era.

Objectives may include establishment of law and order increased government control, greater institutional integration, increased economic efficiency, increased tax revenue, and greater equality.<sup>71</sup>

In general, the objectives could include securing rights of occupancy and improving the security of investment, reducing the number and intensity of disputes, helping the poor to escape from what they are in and establishment of law and order.

### **2.5. Effects of Regularization of Informal Urban Landholdings**

Empirical studies in many developing countries show that regularization has a potential to produce negative and positive effects. Critics also cast doubts on some positive effects claimed by proponents of regularization. In the following we shall deal with some effects of regularization both in theories and practice.

The potential positive effect according to Durand-Lasserve and Harris Selod is, it can be an efficient tool to reduce poverty and promote economic development and growth. RIULH increases tenure security. If tenure security is increased, individuals with informal holdings devote much of their time on work than staying in the home for the fear of demolition, they invest in their houses. Increased tenure security also addresses a market failure by providing a savings opportunity to the poor in the form of own-housing stock investment.<sup>72</sup> Through regularization informal landholder is provided with property titles. This property titles enable him/her to use their property as collateral in order to obtain credit—or improve the value of their house as collateral, or enable to borrow under lower interest rates. This in turn makes contributions to economic development and growth.<sup>73</sup>

However, this is not always the case as some times regularization may even be a threat to tenure security. This could happen for instance when in the process of regularization the poorest

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<sup>71</sup> Espen cited above at note 11,P.5

<sup>72</sup> Durand ,Cited above at note 33,p.10-13

<sup>73</sup> Id.

households may just not be entitled or eligible for tenure regularization or provide all the required documents to be entitled to tenure regularization. Moreover, newly regularized households may agree to sell their property to developers under adverse conditions and terms or may sell regularized plot. In all of such cases, since tenure security is at stake, regularization would not promote economic development and growth.<sup>74</sup> In such scenarios therefore, it is possible to say staying informal could not be a threat to tenure security.

The other positive effect is, it plays a role in creating incentives for the efficient management of public land assets.<sup>75</sup> It facilitates planning and administration, ensuring better and cheaper access to basic services at a lower price and/or of a better quality than those possibly provided by the informal market. Government receives a number of benefits from having more of the economy formalized including a broader tax base and better information and facilitated statistical collection to inform their policy decision making.<sup>76</sup>

On the other side, experience of other countries shows that regularization if not managed carefully it has the capacity to produce unintended negative consequences. When conceived in isolation from the broader set of land development, urban, housing, and fiscal policies, regularization policies have borne little relation to other issues such as vacant land, underutilized properties, and available public land.<sup>77</sup>

Care should also be taken as to who should be the beneficiaries of the regularization. This is because regularization has the capacity to produce new settlement of informal holding in the expectation that they will be legalized.<sup>78</sup>

It can moreover, be a means of land grabbing by the powerful; enable significant and politically explosive shifts in ethnic balances of land holding if some groups are better situated to purchase land; can disadvantage women if it gives a marketable title to the male head of household.<sup>79</sup>

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<sup>74</sup> Id P.11

<sup>75</sup> John, Cited above at note 55, p.2

<sup>76</sup> Alphonse Gabriel Kyessi, "Formalizing Property Rights in Informal Settlements and Its Implications on Poverty Reduction: The Case of Dar es Salaam, Tanzania", *Journal of Business and Economics*, Volume 5, No. 12, p.2361

<sup>77</sup> Edesio, Cited above at note 66, p.35

<sup>78</sup> Id.P.36

<sup>79</sup> John, Cited above at note 55, p. 2-3

It is worth noting however that these problems can be solved by revising the existing regularization framework and implementing more sustainable processes. They need to be reconceived within the broader context of preventive land, urban, housing, and fiscal policies that effectively widen the conditions of access to serviced land and housing.<sup>80</sup>

## **2.6. Regularization Processes and Laws.**

### **2.6.1. Regularization Process in Brief**

In previous section we repeatedly noted that there is no one size fits all regularization system. It is hardly possible to find simple, easily manageable and perfect system. Designing and implementing inclusive regularization policies constitute an extremely demanding process that depends on a whole set of political, institutional, technical and financial parameters.<sup>81</sup> However, in a one that supposed to be good, it is possible to draw some points that are considered essential.

Before embarking on regularization, it takes one to have a historical perspective, a sound knowledge of the political and institutional context and reliable data to support implementation over the long term.<sup>82</sup> The procedures and actions involved are large, complex, costly and long lasting.

Taking South East European Countries as an example let me elaborate the process in brief. There is a model adopted by Network of Associations of Local Authorities of South East European Countries.<sup>83</sup> The model proposes a gradual process, divided into several stages. The results of each stage can be formalized into individual documents. It is possible to follow the progress for each individual case, each settlement, municipality or region.<sup>84</sup> In the preparatory stage all respective institutional bodies are established, strategic documents adopted, laws drafted and passed, detailed by-laws, guidelines and manuals prepared and promotional campaign launched.<sup>85</sup> The procedure for compulsory expropriation for public interest reasons and the public authority capable of obliging the holder to relinquish his or her right and the judicial

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<sup>80</sup> Edesio, Cited above at note 66, p.37

<sup>81</sup> 'Land Tenure and Development' Technical Committee, Cited above at note 10, p.51

<sup>82</sup> Durand, Cited above at note 7, p.8

<sup>83</sup> Djordje Mojovic, Challenges of Regularization of Informal Settlements in South East Europe: Overview of the Relevant Urban Planning and Legalization Laws and Practice, 2011, (Network of Associations of Local Authorities of South East Europe (NALAS))

<sup>84</sup> Id. P.139

<sup>85</sup> Id.

authority responsible for settling any disputes relating to the property, the right and the compulsory expropriation procedure need to be addressed at this stage. In the mean time participation of community and stakeholder is necessary and the feedback taken would be addressed in the laws.

The next step could be identification of the informal holding at which the Program implementation starts; focus of activities is transferred to the local level and all the key local stakeholders are in place, the areas and informal holdings are identified, sub-project for particular settlements are launched and all individual cases are identified and registered in the program database.<sup>86</sup> Subsequently, screening and making arrangements with land owner is made. The final would be signing, for instance lease contract or titling according to the circumstance of cases.<sup>87</sup> Success may not come at once and therefore, the effectiveness of the process needs to be rechecked and evaluated which helps to rethink of the scenarios.

Thus, one can understand that regularization as the process takes a huge resource that is implemented over long time. In the mean time, evaluations and readjustments are made. Then only, it is through such process that regularization could become effective.

### **2.6.2 Regularization laws**

All the concepts, relations, institutions, processes and programs of regularization is defined and governed by laws meant for it. In the course of regularization, specially adopted as a new program, there are considerations that must be taken into consideration at the outset in making the laws. It is also worth thinking about the new legal and institutional framework and how it will translate into a set of laws, decrees and regulations, to ensure that they are coherent and avoid decrees that drag on or are simply never published.<sup>88</sup>

It needs to reform existing laws including the elimination of laws that actually prohibit regularization or protect the monopoly of formality by certain interest groups in the economy.<sup>89</sup> Reforming regulations and institutions to eliminate obstacles and impediments to regularization (lowering some fees and eliminating others, simplifying procedures, and generally mitigating

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<sup>86</sup> Id, p.141

<sup>87</sup> Id. p. 144-146

<sup>88</sup> Land Tenure and Development' Technical Committee ,Cited above at note 10,p.59

<sup>89</sup> John, cited above at note 55,p.24

costs), making it easier for landholders to opt for movement into the formal sector.<sup>90</sup> The reforms of these laws must ensure more democratic decision-making and greater transparency and accountability.

After devising a mechanism through which regularization policy is implemented and necessary considerations and public consultation is made, it needs to come up with special comprehensive law.

Currently, it is hardly possible to find literature or laws having complete content of regularization provisions than simply providing the general guidelines. However, few institutions and experts recommend some. Thus, it is relevant for issue under discussion to look into some experts proposals.

A group of experts, in their study of South East Asian informal settlement, propose the following on the content of laws of regularization of informal tenure/settlement.<sup>91</sup>

These are; definition of all specific terms recognized in the legalization procedure; identification of the key public institutions involved in the process and detailed definition of their role; definition of the subjects of legalization with all the cases where legalization will not be possible(listed and explained in detail);detailed definition of the legalization procedure with description of all activities, responsibilities, decision and approval procedures, required documents and exact names of the template documents and forms that will be produced by the responsible institution; definition of all the data and sources of their official collection required for establishment of the comprehensive database of the legalization program, including GIS; detailed operative terms for the realization of a particular legalization project (a single informal settlement) and overall deadlines for implementation of the legalization program in the whole country; appealing procedure and sanctions for delays in administrative procedures; monitoring instruments at all levels for controlling implementation of the legalization program; reporting procedures, documents and responsibilities of the key implementing partners; clear description of sanctions for further violation.

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<sup>90</sup> Id.

<sup>91</sup> Djordje, cited above at note 83,p.133

## 2.7. Chapter Summery

Millions of peoples across the world occupies and lives on IULH. These are holdings that lack official recognition and protection; acquired without authorization of the owner and/or held in contravention of existing planning and building laws. The occurrence of this phenomenon which mainly caused by faults not attributed to holders, has been a threat to tenure security of the holders on the one hand and producing negative impact on proper functioning of urban administration systems on the other hand.

Thus, to curb these problems and attain many other goals, RIULH has been implemented in many countries.

RIULH, a process by which informal tenure is integrated into a system recognized by public authorities, comprises not only mere recognition but also a wide range of actions towards the full meaningful recognition of property right. It includes Physical up grading of the area, legalizing the plots, implementing socioeconomic programs aiming generating income and jobs; and cultural programs to overcome the stigma strongly attached to the residents and to the informal areas.

Regularization has policy and predetermined objectives to attain. The policy is aimed at awarding individual property rights in general and can also include recognizing popular practices and various regulatory schemes implemented by different authorities and stakeholders. The objectives include securing tenure rights, improving investment, enhancing the lives of the poor. Objectives may also includes, establishment of law and order, greater institutional integration, increased economic efficiency, increased tax revenue, and greater equality.

RIULH is not a onetime job. It is the process managed over time and requires timely assessments of effectiveness of the program. Detailed definition of regularization procedure with description of all activities, responsibilities, and decision and approval procedures must be provided at the outset. In the process some common problems such as resistance and overlapping in land administration, funding problems, institutional capacity and corruptions could be encountered.

All concepts, relations, institutions, processes and programs of regularization is defined and governed by laws meant for it. These laws must ensure more democratic decision-making and greater transparency accountability.

Having said this, in the next chapter, I shall address legal and institutional framework of regularization in the Region. I particularly assess how RIULH is dealt, its purposes and objective, what are considered as 'informal urban landholdings', the processes and institutional set up for regularization. For this, different laws of the region pertaining to regularization will be scrutinized and some conclusions would be derived.

## Chapter Three

### Legal and Institutional Frameworks for Regularization of Informal Urban Landholdings in Oromia National Regional State.

#### 3.1. Introduction

The 2011 Lease Proclamation<sup>92</sup>, which is a source of urban landholding administration laws of the Region, under article 6(4) provides the general condition and time-frame for the regularization of urban landholdings held without the authorization of the appropriate body. Accordingly, landholdings which have found to be acceptable in accordance with urban plans and parceling standard following the regulation to be issued by the regions and city administrations shall be administered by the lease holding.<sup>93</sup>The proclamation moreover, provides that the regularization should only be effective within four years from entering in to force of the same.<sup>94</sup>

The Region thus, in order to implement the lease proclamation in general, issued different regulations at different times. This chapter assesses provisions pertaining to RIULH provided under those regulations. It particularly assesses the first regulation, Regulation No.155/2013, issued following the enactment of the 2011 Lease Proclamation and a directive for the implementation of the regulation. The reenacted regulation, Regulation No.182/2016, and its implementing directive is also be under scrutiny. In the mean time, the writer tries to compare these regulations and show major improvements made by the reenacted regulation. This will help us understand how the regularization of ONRS look like and its process, which in turn contribute much in settling specific research question number pertaining to what the law of ONRS on the RIULH says and how it is being implemented. It has also contribution in identifying the very purpose and implications of regularization laws of ONRS.

The chapter also discusses requirements for RIULH and the processes provided by the laws. In the mean time, the types of IULH recognized or rejected by the laws would be seen. This would help research question relating to what types of IULH are recognized by the laws. The re-enacted regulation, Regulation No.182/2016, was enacted after expiry of four years requirements

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<sup>92</sup> The Lease Proclamation, cited above at note 15.

<sup>93</sup> Id.Art.6(4)

<sup>94</sup> Id.Art.6(5)

provided by the Lease Proclamation. The chapter discusses additions and deviations from the general requirements provided by the Lease proclamations. The Purpose for doing so and objectives behind it would also be considered.

Moreover, institutions designed by the laws for the RIULH and their powers and duties would also be under discussion. Doing so has contribution in addressing research question relating to failure of the region in accomplishing regularization task within timeframe.

The other point worth nothing is that, the relevant legal instruments under discourse uses the terminology “possession” which indeed, is equivalent to “holding”. Thus, in order to make consistency throughout the writing of this thesis the writer opts to use the latter one.

### **3.2. The Legal Framework for Regularization of Informal Urban Landholdings of Oromia National Regional State.**

Laws governing the RIULH of ONRS are basically regulations issued by the Regional Administrative Council and directives issued by concerned authority following these regulations. These regulations, of course emanates from the Lease proclamation. Thus, first we need to look into the lease proclamation on regularization issue before dwelling on the regulations and directives.

#### **3.2.1. The Lease Proclamation**

Under incumbent government urban land tenure system is lease hold system, with which all urban land is a public property and transfer will only be carried out through the system. The government of Ethiopia had been taking urban land lease system as one of the policy measures aiming to enhance the transfer of land use rights, value the urban land and to encourage investment and the provision of social services to the residents.

Since 1991, three lease proclamations have been enacted. These are, Proclamation No. 80/ 1993, Proclamation No. 272/2002 and the one which is currently in force, Proclamation No.721/2011. All the three proclamations have similarities in common and their own peculiarities. Acquiring urban land, under the three Proclamations, is possible only through official recognition and given procedures set by the laws. This means that any urban land acquired outside this norm is not recognized and hence considered illegal.

However, for the first time in the history of making urban landholding legislation(at proclamation level), the 2011 Lease Proclamation,(hereafter, the Lease Proclamation)<sup>95</sup> came up with the concept of regularization of landholding held without authorization of appropriate body.<sup>96</sup>The Proclamation provided qualifications and general framework with which all urban landholdings held without authorization of appropriate body are to be regularized by the regions.

Sub article 4 of article 6 of the Lease Proclamation reads: *“in order to regularize possessions held without the authorization of the appropriate body, the possessions which have found to be acceptable in accordance with urban plans and parceling standard following the regulation to be issued by the regions and city administrations shall be administered by the lease holding.”* Thus, in order to regularize holdings held without authorization by concerned authority of the region, it should be acceptable by/conform to urban plans and parceling standard. The regularization to be undertaken by the region and city administrations shall only be effective within four years of the coming into force of the Lease Proclamation.<sup>97</sup> The Lease Proclamation came into force is 28th Nov.2011; hence the time framework given by it to finish the regularization is considered to be 28th Nov.2015.

Even though the law is the federal law, the power of implementation through subsidiary legislation is given to regions and city administrations.<sup>98</sup>

Thus, the Lease Proclamation is the source of power for the regularization and following it, ONRS has enacted different regulations, directives and manuals until 2016.

### **3.2.2. Oromia National Regional State Urban Land Lease Holding Administration Regulation.**

The Region, in order to implement the Lease Proclamation and regulate urban land, issued Regulation No.155/2013<sup>99</sup>(Regulation No.155/2013) The regulation in general was to implement

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<sup>95</sup> The Lease Proclamation, cited above at note 15.

<sup>96</sup> However it does not mean that regularizing informal land in Ethiopia has never been practiced. For instance, Addis Ababa City Administration, in the midst of 1990's, has enacted different regulations to regularize informal settlement in and at peri areas of the city. See Meine Peiter Van Dijk, Formalization and Informalization Process in Urban Ethiopia:Incorporating Informality formalizing the informal (Shaker publishing, Maastricht 2010.),p.83and 84

<sup>97</sup> The Lease Proclamation, Cited above at note 15,art.6(5).

<sup>98</sup> Id.art. 33

<sup>99</sup> Regulation No.155/2013, cited above at note 18.

the Lease proclamation in ONRS and governs urban lands specified under article 4 of the regulation. Pertaining to IULH, both the Lease Proclamation and Regulation No.155/2013 do not directly use the expression “informal landholding”. It is one specific research question addressed under this chapter.

Regulation No.155/2013, under article 9 puts “unlawful holding”(herein after UULH) as the title and enumerates 9 sub articles under it. UULH, as per it, is a holding held (occupied) without authorization of concerned authority.<sup>100</sup> The whole purpose of the provision seems to focus on demolition of unlawful construction and thus empowered urban administrations to take lawful action against perpetrators; who deserve neither compensation nor a replacement land.<sup>101</sup> Demolition of constructions on UULH land is the principle according to this provision.

Sub article 3 and the following sub articles provide exceptions to the principle and addresses matters pertaining to regularization of UULH. Accordingly, holdings acquired unlawfully for the dwelling purpose which are found to be acceptable in accordance with urban plan shall, for a single term, become legal and come under lease system in accordance with standard requirements set by the directive to be issued.<sup>102</sup> UULH acquired for purposes other than dwelling purpose shall also be converted into lease holding tenure provided that it is acceptable by parceling standard.<sup>103</sup>

Where UULH a house has been constructed thereon is made legal in accordance with urban basic plan, local development plan and parceling plan and converted into lease system; the landholder shall be made to conclude lease contract in accordance with lease period specified for the service by effecting local benchmark lease value of the land as per the type of service of the urban plan. The contract period shall be from the date of the conclusion of contract.<sup>104</sup>

The other point worth nothing under this regulation is that, the regulation has provided the eligibility requirement for UULH to be regularized or become under lease tenure system. Any unlawful holding acquired and constructions developed after the date of enactment of Regulation No.155/2013(1<sup>th</sup> day of February 2013) cannot be regularized regardless of fulfillment of the

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<sup>100</sup> Id.art. 2(9)

<sup>101</sup> Id.art. 9(1)(2)

<sup>102</sup> Id.art. 9(3)

<sup>103</sup> Id.art.9(4)

<sup>104</sup> Id.art.9(7)

requirements provided in the regulation.<sup>105</sup> If anyone contravenes this, necessary actions like eviction, demolition and criminal action will be taken.<sup>106</sup>

In nutshell, Regulation No.155/2013 was meant to implement the 2011 Lease Proclamation in general and regulate urban land administration of ONRS. It has provided some basic requirements concerning regularization. UULH acquired and unlawful constructions constructed before 1<sup>st</sup> day of Feb.2013 are legible for regularization; provided that it is acceptable by urban parceling and planning standard. Landholding unlawfully acquired after this date cannot be tolerated by any means and consequence of contravening this ban would be demolition, eviction and criminalization of the act. The regulation has not opened any lee way for the future unlawful land occupancy. The regulation albeit, its deficiency on covering all matters pertaining to regularization, it is possible to say that regulation has paved the way for next improvements made by ONRS in this regard.

### **3.2.3. Oromia National Regional State Urban Land Lease Administration Directive.**

Just a month after the enactment of Regulation No.155/2013, the concerned organ of ONRS, UIUDB, issued Directive No.9/2013.<sup>107</sup> The directive has come with detailed provision concerning all matters addressed in the Regulation No.155/2013 and the Lease proclamation.

With the respect to matters under research, it has addressed under section 10 of the Directive with the title “Administering old landholding and unlawful landholding with lease system”

The Directive embarks on the matter by establishing committees vested with power to screen out (SC) and take a legal action on UULH and unlawful construction in the urban and peri -urban areas.<sup>108</sup> These committees are established at two levels, urban administration and kebele level with similar powers and duties.<sup>109</sup> These committees are composed of six persons from different administrative office vested with land administration, planning or surveying expert, law expert /officer, representative from peri urban area and women association representative.<sup>110</sup>

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<sup>105</sup> Id.art.9(9)

<sup>106</sup> Id.art.9 (1)(2) and articles 63(3),59(2).

<sup>107</sup> Oromia Urban Land Lease Administration Directive,2013,Directive No.9

<sup>108</sup> Id.art.61(1)

<sup>109</sup> Ibid

<sup>110</sup> Id.art.61(2)

The two levels of committees are composed of six members each and have the power to; *screen unlawful constructions undertaken in the urban and peri urban areas and thereby make legal action to be taken*; it make register all the UULH and construction that took place before the issuance of Regulation No.155/2013.<sup>111</sup>

The committee at an urban administration level shall arrange and analyze all the registered UULH. It shall distinguish UULH and constructions that meet the requirements set in the Regulation No.155/2013 and directive and take the same to the Mayer Committee or Municipal Management Committee for decision.<sup>112</sup>

The final decision, whether to regularize or demolish, is given by Urban Administration up on decision of Mayer committee or Municipal Management committee of urban Administration who base their decision on the findings of the two screening committees.

Those UULHs and constructions, decided by the Mayer Committee or Municipal Management committee to be demolished is carried out by other committees established at kebele and urban administration level. These committees are called law implementing committees (hereinafter LIC). Like SC, these are established at both kebele and urban administration level, and their main duty is to evict and demolish following proper procedure provided in the Directive.<sup>113</sup>

### **3.2.3.1.Requirements of Regularization.**

Article 63 of Directive No.9/2013 specifies requirements for the regularization not only of UULH, unlawful constructions on the holding. This provision, concerning regularization of unlawful holdings, it simply refers to the Regulation No. 155/2013 by stating “regularizing of unlawful holding is carried out in accordance with article 9 of the regulation”.<sup>114</sup>

The following sub provisions deals with constructions on unlawful holdings. If the constructions on the unlawful holdings are not in conformity with urban plan, the holding cannot be regularized. However, if the standard of the construction is below what is required by the plan, the owner is required to submit his construction proposal (which requires him to conform with

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<sup>111</sup> Id.art. 61(1ab)

<sup>112</sup> Id. 61(4c)

<sup>113</sup> Id.art.62

<sup>114</sup> Id.art.63(1)

the plan) within one year from conclusion of lease contract. If he fails to do so within given time, the concerned body terminates lease contract. If the urban center have no urban plan, unlawful holdings would stay registered until such time that urban center gets the plan.<sup>115</sup>

The directive puts further requirements. The holder should not have other house or land with similar purpose elsewhere in the same town with his name or his spouse's name. If the person who carried out construction on UULH is less than 18 years of age, the recognition is not accorded.<sup>116</sup>

In order for construction on the unlawful holding to be regularized, a person is required to produce one of the following evidence:-If it is proved by kebele Administration that the holding is in the name of the holder ;if the construction is acquired through arrangement, local written evidence showing the same; a receipt given for the service of infrastructure like electricity ,water or telephone.<sup>117</sup>

Beside unlawful holding and constructions Directive No.9/2013 also deals with undocumented landholding. Undocumented landholding is a holding seized legally or recognized by various government structure and has no holding certificate provided by appropriate organ.<sup>118</sup>In order to acquire holding certificate the holder must satisfy requirements provided under article 64 of the directive.

In summary, as the first legal document following the enactment of the Lease Proclamation they have not specifically addressed the purpose and objective for RIULH. The laws limited itself to unlawful holdings and constructions and has not as such widely covered what pertains to be informal landholding albeit undocumented holdings. It mingled illegal construction and unlawful holdings. The regularization is done for a single term and covers only those unlawful holdings and constructions that have been taken place just before the enactment of the Regulation No.155/2013, 1<sup>th</sup> day of February 2013.The law has not put any restriction on starting date that all unlawful holdings and constructions undertaken before this day can be regularized, provided that they fulfill the conditions. Moreover, holdings that are going to be regularized could cover

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<sup>115</sup> Id.art.63(2-5)

<sup>116</sup> Id.art.63(7and 8)

<sup>117</sup> Id.art.63(13)

<sup>118</sup> Id.art.2(28)

any urban holding that are being used for different purpose such as residential housing, industry, commerce and even urban agriculture. Any holding and construction taken place after this time cannot be tolerated in any way and the consequence is demolition and criminal accountability. Regularization process undertaken by the region shall only be effective within four years of the coming into force of the Lease Proclamation.

#### **3.2.4. Oromia National Regional State Urban Land Lease Holding Administration Reenacted Regulation.**

This Regulation, which was issued on 24<sup>th</sup> may 2016, is an amendment of Regulation No.155/2013.<sup>119</sup> Though the regulation claims it is an amendment of Regulation No.155/2013, one may however contend that it is a total replacement with some modifications and alterations. It was relatively framed in orderly manner.

Matters pertaining to RIULH are covered under section two of the regulation. This time Regulation no. 182/2016 widened the scope of landholdings that are going to be recognized/regularized as IULH.

Article 8 talks about OULHLS. Accordingly, OULHLS old landholdings are landholdings that have houses built on it and acquired through lawful means but have no landholding certificate given by appropriate body. It also includes holdings held by farmers, pastoralists and semi-pastoralists for dwelling purposes which has become under administration of urban centers as a result of expansions and recognitions of the areas as urban centers.<sup>120</sup> Thus, according to this definition one can deduce that there are two types of OULHLS. One, holdings which actually have been held by permissions of previous government organs but due to different reasons, lacks holding certificate. The second one occurs as a result of expansions of urban centers to the peripheral areas where farmers, pastoralists and semi pastoralists live or it occur as consequence of birth of new urban centers. Article 8 provides detail requirements for the regularization of both kinds of holdings.

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<sup>119</sup> Regulation No.182/2016, cited above at note 20.

<sup>120</sup> Id.art.2(16)

The content and provisions of Regulation No.182/2016, unlike its predecessor, is articulated in coherent and orderly manner. Provisions concerning unlawful holdings and unlawful constructions have not been blended.

Article 9 embarks on by stating the principle for regularization of unlawful land holding. Unlawful holding acquired and used for different services<sup>121</sup> before coming in to force of Regulation No.155/2013(1<sup>th</sup> day of February 2013) will be regularized for a single term and come under lease system provided that it is found acceptable by urban plan. The size of land to be legalized is the minimum parceling size set under each service. However, if the landholding is above minimum parceling size and cannot be used for any other services in accordance with standards for that specific town, such extra holding would be transferred to the holder with reasonable price.<sup>122</sup>

Regulation No.182/2016 has come with some additions concerning landholdings that are considered to be informal. It is called semi legal holding. Semi legal landholding has not been addressed in previous regulation and directive.

Semi legal landholding,(SLH) according to Regulation No.182/2016 happens where the holder holds beyond what he legally acquired. Such extra plot of land, which the holder possesses unlawfully, can be recognized if it conforms to the plan. The size to be regularized for dwelling service, together with land held legally, should not be greater than 500 m2. For other services, extra land to be allowed should not be greater than double of minimum size standard set for such particular service. After all these are executed, if there is still extra plot of land is left, such land would be transferred to land bank.<sup>123</sup>

As a matter of principle, like Regulation 155/2013, Regulation No.182/2016 provides the time after which any recognition may not be accorded for unlawful holding acquisition. Any unlawful holding acquired after coming in to force of Regulation No.155/2013, no matter how it fulfills all the requirements set in the regulation, would not be regularized by any means. Concerned urban

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<sup>121</sup> These services according to the same regulation could be for different purposes, such as for business, dwelling, government offices, religious purposes.

<sup>122</sup> Regulation No.182/2016, cited above at note 20, Art.9(2-4)

<sup>123</sup> Id.art.9(7)

administration takes legal measures on such holdings and UULH that do not meet the requirements provided in the regulation for regularization.<sup>124</sup>

There is neither compensation nor substitution of land is to be given if decision by urban administration is demolition of properties on UULH. But, Regulation No. 182/ 2016 has come with an exception to this principle. If property to be demolished belongs to the children of farmer, pastoralist or semi-pastoralist living in the urban or peri urban areas, there would be substitution of land.

The other path breaking exception the Regulation has introduced is the one provided under Article 9(13).If the demolition of unlawful constructions likely brings huge socio economic impact, the Regional Administrative Council may decide on the matter.<sup>125</sup> There are no parameters provided under Regulation as to what the “huge socio economic impact” could mean.

In general Regulation No. 182/2016, which was enacted after expiry of four years time framework provided by the Lease proclamation concerning regularization, compared to the previous one, is niftily arranged and came with some new provisions which might offer hot debate on the RIULH. Under Regulation No. 155/2013, no land is substituted if it is decided to demolish the constructions on the unlawful holding. This time however, Regulation No.182/2016 has made modification on this that if the property to be demolished belongs to the children of farmers, pastoralist or semi pastoralist, there would be substitution. The regulation even goes to the extent that if demolition brings huge socio economic negative impact, the Administrative Council of regional state may consider the matter.

### **3.2.5. Directive for Undocumented Urban landholding and Regularization of Unlawful**

#### **Construction**

Following the enactment of Regulation No.182/2016, the Region via concerned organ issued different consecutive directives to implement the Lease Proclamation and Regulation No.182/2016. Directive No.5/2016,<sup>126</sup> which has come in to force on 18<sup>th</sup> July 2016, exclusively

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<sup>124</sup> Id.art.9(9-10)

<sup>125</sup> Id.art.9(13)

<sup>126</sup> Directive for undocumented urban landholding and Regularization of Unlawful Construction,2016,Directive No.5

deals with undocumented landholding and regularization of unlawful holding and constructions. The title of the directive of course, seems to deal with unlawful construction, but when the content is seen unlawful and other related holding has also been addressed in it.

The directive, under its preamble recognizes that there are huge numbers of holdings that are given in different times by concerned authority but lacks holding certificates. The absence of certificate then, highly affected the right to use, enhance and transfer their property owned on the holding. Thus, such holding needs to be recognized in order to assure tenure security and economic rights of the holders.

On the other hand concerning UULH, reasons for embracing those unlawful holdings and constructions into economy are; ensuring rights of citizens, prevention of prevalence of unlawful construction and taking corrective measures.

Section two of the Directive No.5/2016 provides a general principle that applies to all urban landholding that have no urban landholding certificates.

Urban landholdings that are legible to have certificates in accordance with Regulation No.182/2016 and the directive are; OULHLS, UULH acquired before enactment of Regulation No.155/2013, extra plot held beyond legally acquired, and other holding acquired for different purposes such as holdings which houses administered by government bodies are built on before enactment of Regulation No.155/2013 and spiritual places.<sup>127</sup> Thus, it is possible to summarize that these are urban landholdings of ONRS considered as informal.

Moreover, these holdings must have constructions on them except for those held for urban agriculture purposes and should be owned by claimant.<sup>128</sup> The directive also lists out types of evidences which may be used in the process of identification for holding certificate.<sup>129</sup>

Concerning OULHLS, the following could be used as source of evidence. Files available, if any, in the name of holder at kebele Administration or Urban Administration, archives concerning green card(holding right certificate given to rural landholder), evidence showing the area has become under urban administration, receipts showing payments made for infrastructure services,

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<sup>127</sup> Id.art. 7

<sup>128</sup> Id.art.8

<sup>129</sup> Id.art. 9

holding certificate given before Proclamation 47/1967 and provided that the house was not nationalized by the Government, evidence in the file showing that the holding was given in accordance with the then laws and etc.<sup>130</sup>The Directive goes on dealing with some other items of evidences that could be brought before relevant authority and the size of holdings to be regularized for each service.

OULHLS ,as we have seen under Regulation No. 182/2016,includes not only holdings acquired long time ago but also holdings held by farmers and pastoralists and semi pastoralists whose holdings have fallen under the administration of urban centers. Hence, the directive provides different alternatives for each kind of holdings as to what kind of evidence could be produced.

Coming UULH, it is dealt under section five of the Directive. Unlike previous Directive (Directive No.9/2013) which focused on demolition of unlawful construction, this Directive under article 24, embarks on by providing the principle stated under Lease Proclamation Regulation No.182/2016.UULH acquired before coming into force of Regulation No.155/2013 and found acceptable by plans, shall be given landholding certificate in accordance with standards provided by the directive.

It also has included some more requirements for regularization of unlawful landholding. It must be proved by Kebele Administration that the holding was acquired and have construction on it before 1<sup>th</sup> day of February 2013, the holder must be resident of the town at the time when unlawful construction has taken place and he must be above 18 years old, if the holding is for dwelling purpose the holder must be living in it, the holder should not own/have other house or land with similar purpose elsewhere in the same town in his name or his spouse's name.<sup>131</sup> The fulfillment of these requirements is checked by Kebele Administration and community representatives who have not participated in unlawful construction. Their findings serve as evidence in giving or denying the legal status.<sup>132</sup> Furthermore, the Directive requires the holder to produce some admissible evidence such as receipts showing the payment of electric or water services in the name of holder before Feb.1<sup>st</sup>, 2013.<sup>133</sup>

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<sup>130</sup> Id.art.12

<sup>131</sup> Id.art.25

<sup>132</sup> Id.art.26(3)

<sup>133</sup> Id.art.26(1)

Landholdings held beyond what is legally held are also considered under article 29 of the Directive. If extra holding occupied unlawfully cannot be used for any other service, it would be combined with the lawful one and administered accordingly. Even so, there is maximum standard to be allowed for each service. Holdings unlawfully acquired beyond what is provided in the directive would be deposited in the land bank.<sup>134</sup>

All IULH acquired after the time line, Feb. 1<sup>st</sup> 2013, would not be given any recognition and the constructions developed thereon would be demolished by Urban Administration. The same is true for those holdings which do not confirm with parceling plan. Neither compensation nor substitution of land is given<sup>135</sup>, except the exception introduced by the Regulation No.182/2016.

The directive finally, under section six deals with powers and duties of different institutions that screen holdings with different status and take necessary actions. We shall deal with it in the next section.

### 3.2.6. Other Laws

As we have previously discussed urban landholding belongs to state and peoples of Ethiopia. The acquisition of holding right is in accordance with prescribed laws and regulations. Any means is considered as illegal/unlawful. The writer has assessed whether any other laws, of ONRS or Federal, have given any recognition to IULH or not.

What is rather one can find is that some laws treats informality as a threat. For instance, Urban Land Holding Registration Proclamation provides that: Landholding adjudication may be carried out only in landholding adjudication neighborhood having local development plan and in which regularization of illegal holdings are fulfilled and completed.<sup>136</sup> Moreover, no adjudication of land rights is taken beyond what is legally acquired.<sup>137</sup> This implies that IULH are not considered in any juridical act concerning urban land unless it is regularized.

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<sup>134</sup> Id.art.29(5)

<sup>135</sup> Id.art.31

<sup>136</sup> Urban Landholding Registration Proclamation,2014,Proc.No.818,Neg.Gaz.Year 20, No.25, art.10(10)

<sup>137</sup> Id.art.14(6)

### **3.3. Institutional Framework**

#### **3.3.1. Institutions Responsible for Regularization.**

RIULH, as the process of course, requires involvement of different institutions. Some among others are, different urban land administrative institutions ranging from lowest administrative structure to bureau level, planning institutions, communities. Under this section I am going to spotlight only those which are relevant for topic under study and directly vested with the power to regularize and take responsibility thereto.

##### **3.3.1.1. Urban and Housing Development Bureau**

The Bureau is one of the executive organs of the Regional State which is vested with administration of urban land and housing matters.<sup>138</sup>Its powers and duties are listed out under article 19 of the Proclamation No.199/2016.

The Bureau focuses on policy and strategic matters concerning urban land and housing. More specifically, it prepare urban land development and management policy and strategy; implement up on approval; cause to be implemented. It also issues directives and work procedures so as to ensure that urban lands be used economically for greater benefits with due respect of the plan of the urban center, cause to be implemented; follows up and control same. Moreover, it issue directives and work procedures which help to avoid expansion of illegal constructions in the urban centers and on their boundaries; follows up and control its implementation. With the respect to data, it Coordinate data of land and land related properties in the urban centers to be handled and organized in cadastre system; follow up; control same.<sup>139</sup>

It also makes the urban centers to construct various infrastructure services such as electricity, water, telephone, roads and sewerage lines; follow up; support; work with concerned body for the expansion of infrastructure developments.

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<sup>138</sup>A Proclamation Enacted to the Reorganization and Redefinition the Powers and Duties of Executive Organs of Oromia National Regional State,2016,Proc.No.199 ,Megeleta Oromia Year 25, no.2

<sup>139</sup> Id.art.19

It conducts study on the ways of expanding the participation of the society on all the activities performed in the urban centers; implement same.

In general, the Bureau has a mandate to initiate policies and strategies that it may consider useful for effective management of urban centers and better living standards of the citizen; it also monitors and controls its lower organizational structures.

### **3.3.1.2. Urban Land Development and Management Agency.**

The Agency was established as a legal entity in 2013 with the objective to enhance transparency and accountability in urban land use that is guided by urban plan to bring basic change in socio-economic of urban society as well as, fast growth and development of towns by creating organized urban land development and management system.<sup>140</sup> It is accountable to OUHDB<sup>141</sup> and has its own structures at zonal and urban levels.

The powers and duties of the Agency are provided under both its establishing proclamation and proclamation that provides powers and duties of executive organs of the Region. However it is worth noting that the establishing proclamation, Proclamation No.179/2013, is repealed by proclamation that provides powers and duties of executive organs ONRS, proclamation No.199/2016. The Agency thus, is reestablished as one of the executive bodies of ONRS and powers and duties are given accordingly. Among other functions, it implements or causes the implementation of the policy and strategy of urban land management; follows-up and supervise same. Furthermore, it implement lease and other laws related to the development and management activities of urban lands; follow-up its implementation; supervises same.<sup>142</sup>

It works with the concerned body for the avoidance of unlawful construction in the urban centers and on their borders; implements the directive and work procedure prepared; follows-up its implementation, supervises; takes legal measure; causes same to be taken.<sup>143</sup>

It is understandable form the provisions enumerated under Article 50 of Proclamation 199/2016 that the Agency carries out its duties in collaboration with other organs of the governments such

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<sup>140</sup> “A Proclamation to Establish Urban Land Development and Management Agency, 2013, Proc.No.179, Megeleta Oromia ,year 21,no.5 , art.4

<sup>141</sup> Proclamation No. 199/2016, cited above at note 138, art.13(2)

<sup>142</sup> Id.art. 50(1,3)

<sup>143</sup> Id.art. 50(18)

as Administrative Council of the Region, Planning Institution and. It also plays a coordinating role concerning collection and organization of data relating to urban land which helps pass necessary decision by concerned body.

OULDMA administers controls and supervises its lower structures at zonal and urban level. It collects, organizes and gives necessary directions on timely bases concerning informal land holdings and constructions in urban centers of ONRS.

Before coming in to force of Proclamation 199/2016, the power to issue directives concerning urban land was given to the agency. This power later, however is given to OUHDB pursuant to Proclamation No.199/2016.<sup>144</sup> The role of the Agency is therefore, implementing these directives and follow up the same. It executes its mandate through its own structures at urban level and different *ad hoc* and permanent committees established either by directive or by management decisions. RIULH and taking necessary measures with respect to it is thus, primarily the responsibility of the Agency.

### **3.3.1.3. Regularization Committees at Urban and Kebele Level**

In order for ULMDA to carry out its duties, Directive No.5/2016 establishes two types of committees vested with power to screen out and take necessary actions on IULH and constructions.<sup>145</sup> These institutions are nearest bodies to the grass root levels that make a huge impact on the landholdings that are considered to be out of legal ambit. These committees are UHSC and LIC. Both Committees are established at urban and kebele Level.

#### **3.3.1.3.1. Unlawful Holding Screening Committee**

This committee as we noted above is established at urban and kebele level. The members of the Committee are three in numbers at both levels; head of urban land management and development agency of the town, planning implementation and follow up process owner and one employee at urban level; kebele administrator, kebele manager and an employee who is representative of the agency at kebele level are members of the committees. Depending on the work load, number of the members could be increased up to 5.<sup>146</sup> Under this Directive, unlike Directive No.9/2013,

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<sup>144</sup> Id.art.19

<sup>145</sup> Id.art 33.

<sup>146</sup> Id.art.33(1)

planning or surveying expert, law expert /officer, representative from peri urban area and women association representative are not included in the committees.

The committees, at both levels, follow up and screen out unlawful holdings and constructions; present the same with decision proposal to the cabinet of the town through ULDMA; if there is no agency, through the Mayor for the decision. It moreover, collects and organizes data concerning unlawful holding and constructions in the urban centers.<sup>147</sup>

Thus, one can understand from the reading of Article 33 that the decision whether to regularize or not is finally given by cabinet of the concerned town. Here also, one can notice that modification is made by this directive as to who gives the final decision on the holdings and constructions. The cabinet of the urban center decides up on recommendations of ULDMA that bases its recommendations on the proposal of screening committee. This shows that regularization issues are becoming more political than being an ordinary civil matter.

#### **3.3.1.3.2. Law Implementing Committee**

This Committee, like UHC, are established at urban and kebele level. Its members at urban administration level are mayer of the town, head of ULDMA, head of Police, planning implementation and follow up process owner, justice office, Pease and Administration Office, Government Communication Office. At the kebele level, the members are three; Kebele Administrator, one worker who is representative of Urban Land Development and Management Agency and kebele Manger.<sup>148</sup>

The powers and duties of these committees mainly are making public awareness on avoiding unlawful constructions and execution of decisions passed by the cabinet. It demolishes illegal constructions pursuant to the decision.<sup>149</sup>

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<sup>147</sup> Id.art.33(2)

<sup>148</sup> Id.art.33(3)

<sup>149</sup> Id. art. 33(4)

### 3.4. Chapter Summary

The chapter assessed regularization laws of ONRS. The laws tried to address frameworks by which RIULH of ONRS carried out.

It is possible to deduce that the ONRS Regularization law recognized four types of urban landholding that needs to be regularized, which the writer opted to put them as ‘informal landholding’. These are: UULH acquired before enactment of Regulation No.155/2013, semi – legal holding (extra plot held beyond legally acquired), OULHLS, and other holding acquired for different purposes such as holdings which houses administered by government bodies are built on before enactment of Regulation No.155/2013 and spiritual places. OULHLS are again divided into two. These are holding that lack holding certificate but acquired at different times by concerned authority and holding belonging to farmers, pastoralists and semi-pastoralists. Thus, it is possible to summarize that these are urban landholdings of ONRS considered as IULH. The purposes for which the land is being used can be dwelling, urban agriculture, businesses

The Laws puts the general conditions and other detailed requirements for regularization. It should be those holding acquired before 1<sup>st</sup> day of February 2013 and provided that it is acceptable by urban plan. UULH acquired after this date and those holding that fail to fulfill the conditions cannot be tolerated by any means and consequence is demolition, eviction and criminalization of the act. There is neither compensation nor substitution of land is to be given save the exception introduced by Regulation No.182/2016. According to the laws even if the holder meets time and planning conditions there are further evidences that must be produced or needed to show whether requirements and preconditions in the regulations and directives are fulfilled or not.

Regulation No.182/2016 and Directive No.5/2016, which are enacted after lapse of time given by the Lease Proclamation for regularization, has made some improvements and modifications to their respective predecessors. Regulation No 155/2013 and implementing Directive are blurred on regularization and have not made clear distinction on purposes and objectives of regularization. They mingled unlawful holding and constructions and have mainly focused on activities relating to eviction and demolition. The later laws however are somehow arranged in orderly manner. Even though none of the laws have defined regularization, they have provided the procedure and requirements through which IULH could be given recognition. Though

inconsistent with its content, Directive No.9/2016 under its preamble, tried to address the purpose and objective of enacting separate piece of law regarding RIULH.

Substituted land would also be given if UULH taken away belongs to the children of farmer or pastoralist or semi pastoralist. Moreover, if the demolition of unlawful constructions likely brings huge socio economic impact, the Regional Administrative Council may decide on the matter.

Other laws regarding urban land matters in ONRS do not take IULH in to account; rather these laws consider IULH as a threat.

The institutions taking part in the regularization processes ranges from the one that issues different directives and working procedure to different committees at lower level that participates in screening and making proposal on IULH. The primary duty to implement directives and implement the same indeed belongs to the Agency, particularly at urban level. The Committees established at two levels under the agency screen out IULH, particularly UULH and semi legal holdings, and present proposal to the latter. ULDMA, which of course has a duty to work with different public authorities and have no exclusive power to give decision on the subject matter brings proposal to the Cabinet of the town. The Cabinet then decides either to regularize or the otherwise.

Having this in mind we shall go to chapter four and examine some provisions of the laws and practical problems seen in the implementation of the laws.

## Chapter Four

### Implementation of Regularization of Informal Urban Landholdings of Oromia National Regional State and Some Problems Associated with it.

#### 4.1. Introduction

This chapter first shows the status of RIULH since its very start. By engaging into analysis of the laws pertaining to it and applying chosen methodology, the research identifies the purposes of RIULH of ONRS and to what extent these purposes are met. The chapter considers the fairness, inconsistencies and gaps of the laws particularly with the respect to UULH as well as practical problems encountered in the implementation of the laws.

#### 4.2. Implementation of Regularization of Informal Urban Landholdings of Oromia National Regional State.

The implementation of RIULH of ONRS started too late from the time it ought to have done the same. The source of power for regularization, the Lease Proclamation, under article 5 orders that the regularization process to be under taken is only be effective within four years from entering into force of the same Proclamation. The Lease Proclamation entered into force on 28th November, 2011. Whereas, the first regulation incorporating informal landholding regularization matters, Regulation No.155/2013 came into force on 1st February 2013; which is more than a year after coming in to force of the Lease Proclamation. The work on the ground obviously starts long after this time.

Yearly plan and respective report over the last four years, including this year, indicates that even half way has not been gone so far. The following table indicates the yearly plan for regularization of unlawful landholding and old holdings lacking holding certificate.<sup>150</sup>

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<sup>150</sup> Yearly work plan and report of the years 2013 -2018 of Oromia Urban Land Development and Management Agency, Planning and Monitoring Department (Unpublished ), Addis Ababa.

**Table 1-Yearly plan and execution of Regularization of Informal Urban Landholdings of Oromia National Regional State.**

Year	No. of UULH to be given holding certificate			No. of OULHLS		
	Plan	Execution	%100	Plan	Execution	%100
Jul.2013- Jun.2014 (2006 E.C.)	-	-		134,172	34,405	25.64%
Jul.2014- Jun.2015 (2007 E.C.)	49,753	-	0%	209,178	79,112	37.82%
Jul.2015- Jun.2016 (2008 E.C.)	38,420	-	-	149,526	-	18,972(execution of both types of holdings) 10.05%
Jul.2016-Jun. 2017 (2009 E.C)	58,606	1594	2.7%	256,752	37,246	13%
Jul.2017- Jun.2018 (2010 E.C.)	17,936	8,955	49.9%	99,642	49,638	49.8%

The table clearly shows that the performance of RIULH particularly UULH is very poor. In all five years report, the execution is very unsatisfactory and the work is still underway.

On the other hand, as we previously discussed, UULH that do not meet the requirements set in Regulation No.182/2016, particularly those holding that are not acceptable according to the planning standard and unlawful holding acquired after Feb.2013 are to be taken away and the constructions on the holding would be demolished. These are commonly called "ijaarsa seeraan alaa", which more or less is synonymous with the term "unlawful construction".<sup>151</sup> Contextually

<sup>151</sup> The definition given to "unlawful construction" under article 2(17) includes construction built on unlawful Urban Landholding and construction built on lawful holding without construction permit from appropriate body.

in the regulations and directives, it denotes both unlawful landholding and the construction built on it. The following table thus shows the last three years status of unlawful construction and action taken thereto.<sup>152</sup>

**Table-2-status of unlawful construction and action taken thereof**

Year	No of holding identified as unlawful construction	No. of demolished constructions	The rest(either transferred to the next year or left as backlogs)	Remark
Jul.2015- Jun.2016 (2008 E.C.)	40,096	15,889	24,207	Identified No. includes data transferred from the previous year.
Jul.2016- Jun. 2017 (2009 E.C)	30,748	19,404	11,344	
Jul.2017- Jun.2018 (2010 E.C.)	67,605	18,705	48,268	The rest are in the process of screening according to the Agency.

The above two table shows regularization of landholding has continued to be endless work. It has neither fully regularized, nor has able to stop the expansion of unlawful acquisition of the land and construction. Those holding which are considered acquired before Feb. 2013 are still pending. On the other hand, acquisition of IULH and unlawful construction has continued after the time, albeit demolition action taken on some of it.

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Practically however, concerned government institutions and workers thereto refers “ijaarsa seeraa alaa” as constructions built on unlawful urban landholding together with unlawful landholding according to the researches informants.

<sup>152</sup> Yearly work plan and report, Cited above at note 150. However, it should be noted that data concerning the first two years is unavailable at OULDMA

### **4.3. Problems in the Implementation of the Regularization Laws and program**

Under the previous topic we have seen that RIULH in ONRS has lasted as unfinished job. Since its introduction until now, there are serious problems that are identified by the research. Thus, we shall begin examining the laws and goes through the chapter by discussing problems encountered in practical application of the same.

#### **4.3.1. Delay on Regulating and Implementing Regularization program**

The Lease Proclamation under article 6(5) provides that the regularization process to be undertaken is only be effective within four years of the entering into force of the proclamation. The Lease Proclamation entered into force on 28<sup>th</sup> Nov.2011. Regulation implementing the Lease Proclamation in general and incorporating regularization provisions in particular, Regulation No.155/2013, has come into effect on 1<sup>th</sup> day of February 2013.This period, when calculated, is about a year and one month. When seen in light of time given by the Lease Proclamation, it obviously has negative impact on the effectiveness of the program.

This has been practically fuelled by different practical problems on the ground. With this regard, the writer has made an interview with Ato Alemayehu Teferi, Head Department of Urban Land Reform and Law, at OULDMA as to why the ONRS has become ineffective in RIULH.<sup>153</sup> According to him, among other reasons, commencing the program without making sufficient planning and awareness on the regularization process is the main reason for such failure. The program started with not fully understanding the regularization process and without preparing institutions, relevant information and man power that enables to give appropriate decision.<sup>154</sup> This fact is attested by the fact that institution largely vested implementation of regularization, OULDMA, was established six months after the coming into force of Regulation No.155/2013. OULDMA on its part fully commenced its job after July 2014.<sup>155</sup> One can thus deduce that implementation started belatedly from intended time. Hence, the problem at the very start, in turn has a great impact on the efficiency and effectiveness of the regularization. After the implementation have started, according to Ato Alemayehu, the complex procedure provided by the regulations and lack of clarity therein, resistance and incapacities of institutions

<sup>153</sup> Interview Conducted with Ato Alemayehu Teferi Robi, Current head Department of Urban Land Reform and Law at OULDMA on 24 July 2018.

<sup>154</sup> Id.

<sup>155</sup> Yearly plan and report ,cited above at note150,2015/2016 yearly plan p.3

implementing the regulations and other reasons such as corrupt practices at the lower structure, lack of awareness on the part the public on regularization, unlimited land invading practices, have also contributed to the ineffectiveness of the regularization.<sup>156</sup>

#### **4.3.2. Absence of Clarity on the purposes of laws**

Any regularization program, as we dealt under chapter two, has defined purposes and objectives to attain which clearly are set in the laws regulating it. The purposes of the regularization could be increasing tenure security which will in turn help the holder to invest more on his holding and thereby gain economic benefit. It avoids evictions and helps the holder to invest more on his holding. The objective could also be establishment of law and order through increasing government control.

When laws which we have seen under chapter three are cumulatively seen, one can see contradictory ideas. This particularly is seen when we read the preambles of the laws with their contents and the inferior laws with the superior laws. The Lease Proclamation under its preamble provides broader justifications for having legal framework of urban landholding administration. The need to be responsive for increasing urban land demand, ensuring development of efficient, effective, equitable and well functioning land market, building transparent and accountable land administration system are some justifications among others. Similar justifications are provided under the preambles of the Regulation No.155/2013 and Regulation No.182/2016 except the need to implement the laws by taking special feature of ONRS into consideration. When seen in light of these broader justifications, one thus can deduce that, one of the purpose of regularization law of ONRS is to be responsive to land demand of the citizen. This in turn helps the holder to invest more on his landholding and thereby exercise economic right. A threat to tenure security is positively enhanced accordingly.

Coming to specific directive dealing with RIULH, Directive No.5/2016, as we have seen under Chapter 3 treats different kinds of informal landholdings. Looking into the preamble, one can notice that different types of IULH are treated differently. Equal weight has not been given. The preamble starts with recognizing existence of large number of OULHLS in ONRS and then goes on dealing about the need to recognize these holdings. Accordingly, the absence of certificate

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<sup>156</sup> Interview with Ato Alemayehu, cited above at note153.

highly affected the right to use, enhance and transfer their property owned on the holding. Thus, such holding needs to be recognized in order to assure tenure security and economic rights of the holders.<sup>157</sup> Concerning UULH however, tenure security and economic rights of the holder has not specifically been addressed.<sup>158</sup> It simply states “...ensuring citizens right through embracing unlawful constructions into economy.....” Moreover recognition for such holding is given only once and it is done in a way that does not affect future of towns. The preamble also raises the need to prevent prevalence of unlawful construction and taking corrective measures. Thus, from the preamble of this directive, it is possible to summarize that equal weight is not given to UULH like that of OULHLS. Economic right and tenure security of individual holders of UULH is given less emphasis. The focus tilts more on the eradication of already existing UULH and prevention of its prevalence rather than recognizing them.

The other point indicating ignorance of tenure security of UULH is the stringent conditions put on the requirements for regularization. The requirements for regularization of unlawful holdings, particularly of individual holders for dwelling purpose are very narrow and stringent. In order for the UULH to be recognized, the holder, either with his own name or spouse’s, should not own land holding and construction elsewhere with similar purpose,<sup>159</sup> he/she should be age of above 18 years old and must be resident of the town before Feb.2013<sup>160</sup>.The holder must have been living on the holding.<sup>161</sup>Moreover, the holding should concur with parceling standard and land use planning.<sup>162</sup>The directive also goes to the extent types of evidence that must be produced for the proof of requirements listed under article 25.<sup>163</sup> The prohibition concerning owning construction elsewhere with similar purpose is clearly against the right own property guaranteed under article 40(7) of the constitution. These are very strict requirements that only few can fulfill the conditions.

I conducted a focus group discussion with experts at OULDMA as to what really the purpose of RIULH is and how far this purpose is achieved. The response and summary of the discussion disfavors RIULH. According to them, unlawful construction in urban areas of ONRS is so

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<sup>157</sup> Directive No.5/2016,cited above at note 126,preamble.

<sup>158</sup> Id.

<sup>159</sup> Id. art. 25(6)

<sup>160</sup> Id.art.25(3,4)

<sup>161</sup> Id.art.25(5)

<sup>162</sup> Id.art.25(7)

<sup>163</sup> Id.art.26.

prevalent that, regularizing these IULHs would mean instigating and promoting others to opt for unlawful way of getting urban land. The trend over the last few years shows to this effect. Unstoppable nature of informal settlement and unlawful construction is the effect of allowing regularization.

Moreover, according to informants, due to the geographical location of ONRS, unlawful construction is so prevalent that the need to focus on prevention is more important than regularization. Many of these holdings originally are bought from our farmers. Recognizing the same would mean legalizing their evictions. Hence, they conclude, regularization should in principle be discouraged.<sup>164</sup>

Why then the ONRS has come this long way and has regularized, though little portion, IULH is the next question dealt up on. The purpose was, by pardoning those who genuinely acquired the land for shelter, it was for once and for all to get rid of development and prevalence of unlawful construction. But, this has invited a lot of problem into our land administration. It has produced lawlessness and unlawful land invading and maladministration.<sup>165</sup>

On the other hand, however, drafters of Regulation No.155/2013 and Regulation No.182/2016 have slightly different view as to the purpose of RIULH of ONRS. One of the drafters of these regulations says the following.

“When we drafted and deliberated on both regulations, we had in mind, existence of huge number of IULH in ONRS. Disregarding this much number of holding and talking demolitions and evictions have played a considerable role in absence of peace and order over the last few years. Majority of these holdings have developed because of failure of accommodation of our formal land transferring system. Tender system is highly unaffordable on the one hand and allotment is allowed only for few public institutions on the other hand. These people have had little option than acquiring land belonging to people and government in order to fulfill their shelter need. Thus one purpose of these regulations is to make them have home and thereby live without fear of eviction. The law that does not serve the interest of the society should not be there. On the other hand the

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<sup>164</sup> FGD made with four senior experts under Department of Urban Land Reform and Law at OULDMA, conducted on 26<sup>th</sup> July 2018.

<sup>165</sup> Id.

threat that it promotes expansion of unlawful construction and promotes lawlessness is not the problem of regularizing the informal landholding. Rather it is due to lack of resistance and effectiveness of institutions implementing the regulations.”<sup>166</sup>

As it is clearly seen from the above two type of informants, there is clash and blurred of ideas. It shows there is misunderstanding between makers of the law and implementers. However, when ideas forwarded by informants is analyzed with requirements and conditions put in the directives, it is possible to deduce that RIULH of the ONRS has basically two purposes.

The first one is increasing government control and preserving law and order. The Constitution of FDRE provides that land is common property of the Nations, Nationalities and Peoples of Ethiopia and shall not be subject to sale or to other means of exchange.<sup>167</sup> It shall only be held by leasehold system through the modality of tender or allotment.<sup>168</sup> This is the underlying principle and any means of acquisition of land outside this system is unlawful. Thus, restriction, prohibitions and preconditions set in these regulations and directives are meant to achieve this purpose. The resistances, practices and problems we have dealt above implicitly show the greater purpose of ONRS regularization law is preserving the existing land transfer system.

The second purpose but very restricted is ensuring tenure security of informal landholders and thereby protect their social and economic interest. The very restrictions provided under Directive No.5/2016, the resistance by implementing institutions under the guise of prevention of lawlessness highly hampered the second purpose. However in both cases both purposes has not been achieved so far as there is still large number of IULH informal exists unrecognized and the development of unlawful construction continued to be a threat to land management system.

#### **4.3.3. Burdensome Requirements Adopted by the Directive No.5**

The principle for RIULH as we repeatedly discussed under previous sections is that it must be those holding that are acquired before Feb.1<sup>st</sup> 2013 and acceptable according to planning standard. In addition to these general requirements, Directive No.5/2016, particularly for UULH,

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<sup>166</sup> Interview conducted with Ato Hajji Arse, Head legal Drafting Department at Oromia Justice Bureau on 27<sup>th</sup> July 2010

<sup>167</sup> The Constitution of Federal Democratic Republic of Ethiopia, Art. 40(3)

<sup>168</sup> The Lease Proclamation, cited above at note 15 ,art.7

sets additional requirements that must be fulfilled before further processing. These requirements are:-

1. The holder should clearly be known and verified according to the directive.<sup>169</sup>
2. There must be completed and service giving house built on the holding.<sup>170</sup>
3. Holder requesting for the landholding right must produce that the house built on the holding belongs to him from concerned authority.<sup>171</sup>
4. The holding and construction built on it should have been in the hand of the holder.<sup>172</sup>  
If unlawful construction is for dwelling purpose he/she must be living in the house.<sup>173</sup>
5. He/she must have been resident of the town before Feb.1<sup>st</sup> 2013 and age of 18 and above years at the time.<sup>174</sup>
6. There should not be another landholding or house elsewhere by his name or spouses name with similar purpose.<sup>175</sup>
7. The holding should concur with parceling standard and land use planning.<sup>176</sup>

Kinds of evidences that may be produced to proof the above requirements are also enumerated under article 26. Receipt for the payment of water or electricity service before Feb. 1<sup>st</sup> 2013, print and verified pictures of the construction that were taken before Feb.1<sup>st</sup> 2013(if there is any) are admissible evidences. Nothing has been provided either any other evidence is admissible or not. Moreover, all the above listed requirements, except No.7, evidences have to be approved by kebele Administration and structure below it. Elected representatives from different groups of the society who have not participated in unlawful construction are also members of this approving body. Bear in mind that this body is different from screening committee established urban and kebele level. On top of this, requirements No.6 and No. 7 are approved by concerned ULMDA.<sup>177</sup>

<sup>169</sup> Directive No.5/2016 ,Cited above at note 126,Art.6(2)

<sup>170</sup> Id.6(3),8(1), Art.25(1) comm..25(1)

<sup>171</sup> Id.art.8(2)

<sup>172</sup> Id.art.11(2)

<sup>173</sup> Id.art.25(5)

<sup>174</sup> Id.art.25(3,4)

<sup>175</sup> Id. art. 25(6)

<sup>176</sup> Id.art.25(9)

<sup>177</sup> Id. Art.26(4)

When these requirements are seen, some of it lacks clarity and are open to subjectivity. The requirement that *the holder should clearly be known* is not clear. To what extent should he be known to the people in the locality? He/she is also obliged to bring from concerned authority that the house built on the land belongs to him. No institution is legally established to authenticate unlawful constructions. So this *concerned authority* is something blurred. The numbers of individuals involved in the approval of the land holding, which part of the society are they from and how they work is not provided in the directive.

These requirements, according to participants in the group discussions, are burdensome to both governments and the holder himself. He should pass through all the above requirements in addition to other administrative bureaucracies. When seen from the angle of governments, we have sorted out that these all processes cost us a lot. The government has benefited nothing from the work than simply incurring costs. Those who approve the legibility of the landholding and different committees at kebele level vested with this duty are not willing to carry out the job due to absence of wage and any other incentive. The process is very burdensome and should be reconsidered.<sup>178</sup>

#### **4.3.4. Lack of fairness on the Legibility requirements**

Under previous sections we have seen different requirements and preconditions that must be fulfilled for regularization. Now, by taking some of these pre-conditions and requirements, I would argue that they are unfair and hence must be reconsidered.

UULH cannot be regularized if it does not conform to planning and minimum parceling standard. The land is taken away and the construction on it would be demolished. There is neither compensation, nor substitution of land. Contrary to this however, if the UULH belongs to children of the farmers, pastoralists or semi pastoralist living in the town or peripheries of the town there would be compensation and substitution of land.<sup>179</sup> Similarly there is a substitution of land for the OULHL and compensation for any construction on it.<sup>180</sup>

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<sup>178</sup> FGD, cited above at note 164.

<sup>179</sup> Id.art.9(12)

<sup>180</sup> Id.art.8(6)

It is true and convincing that there must be a rectifying action taken if the UULH and the construction does not conform to the planning and parceling standard to ensure standardized quality of towns in every aspect. But the distinction as to who should get substitution of land and who should not is totally unfair. Anyone who is involved in unlawful land acquiring and construction from the outset may not be selective as to the place and manner of his/her acquisition. Making legibility based on conformity to planning thus, would expose the decision based on fate. This in turn creates feeling of discrimination among informal landholders. Something unlawful is always unlawful; there is no priority among itself. Thus, denying substitution of land for illegible unlawful landholding for some and allowing for others is clearly against article 25 of the constitution. In fact Regulation No.82/2016 provides that if the demolition of unlawful constructions likely brings huge socio economic impact, the Regional Administrative Council may decide on the matter.<sup>181</sup> This, however, as plainly clear from the wording of the provision, it does not include individual holders. Moreover, “huge socio economic impact” is very general and unclear.

The other restriction put on the holder is that he/she may not possess another landholding or construction with similar purpose elsewhere in the same town with his/her own or spouse's name. Husband and wife are two separate individuals in the eyes of law. They have their own distinct interest and common interests as well. Thus, restriction with this regard clearly violates individuals the right to own property equality before the law, rights of women enshrined in the Constitution.<sup>182</sup> Any law which contravenes the constitution has no effect.<sup>183</sup>

#### **4.3.5. Inconsistencies and gaps of the Laws**

##### **4.3.5.1. Inconsistencies**

The first and straightforward inconsistency identified by the research is Regulation No.182/2016 and subsequent directive, Directive No.5/2016, are enacted and being enforced outside time framework provided by the Lease Proclamation. The lease Proclamation states that the regularization to be undertaken by the states is only effective within four years from 28

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<sup>181</sup> Id.art.9(13)

<sup>182</sup> Ethiopian Constitution Article 40(7) ,Art.25 ,Art.35 and Art.9(1)

<sup>183</sup> Id. Art. 9(1)

Nov.2011.<sup>184</sup> The enactment regulating regularization, Regulation No.182/2016, however came into force out of this timeframe work late alone thinking about the effectiveness. This would in turn pose question on the legality of these laws.

The other inconsistency identified by the writer is the conflicting provisions concerning number of landholding allowed to be given recognition. Article 17(9) of the Directive No.5/2016 provides that if an individual has more than one OULHLS or UULH and fulfills requirements provided by Regulation No.182/2016 and Directive No.5/2016, she/he would be given landholding certificate with moderate lease price. On the other hand as we have seen under Sub-Section 4.3.3, having another landholding or construction with similar purpose within the same town disqualifies the recognition that is going to be accorded.<sup>185</sup> This is completely conflicting that it should be reconsidered.

#### 4.3.5.2. Gaps of the laws

RIULH, is not only about mere giving of titles but, it also includes improving and installation of basic infrastructure like water, sanitation, waste collection, access roads, footpaths, storm water drainage, lighting, public telephones. When the government transfers landholding in case of formal system, prior to advertizing urban land prepared for tender, appropriate body shall ascertain that the lands have access to basic infrastructure and are prepared inconformity with the urban plan.<sup>186</sup> In this case infrastructure is already there before an individual becomes a holder. Both Regulation No.182/2016 and Directive No.5/2016 have nothing to say with this respect. Regulation No.182/2016 simply states landholdings that fulfills the conditions will be legalized and enter the lease system.<sup>187</sup> Nothing about infrastructure is provided either before or after regularization. The law focuses only in granting leasehold certificate. The absence of these requirements will not make regularization full.

The other gap identified by the research relates to exception adopted by Regulation No.182/2016.The final decision given by the Cabinets of urban administration is either to regularize or demolish the unlawful construction and retake the holding. Decision to the effect of demolition is given in two scenarios; when the holding acquired before Feb 1<sup>st</sup> 2013 does not

<sup>184</sup>The Lease Proclamation, cited above at note 15,art.6(5).

<sup>185</sup> Directive No.5/2016 ,cited above at 126,art..25(6).

<sup>186</sup> The Lease Proclamation ,Cited above at note 15,Art.8(1)

<sup>187</sup> Regulation No.182/2016 ,Art.9(1)

fulfill the requirements and conditions provided in the laws and any landholding unlawfully acquired after this time regardless of fulfillment of the same. Article,9(11) of the Regulation No.182/2016 thus, says “if Urban Administration decides demolition of unlawful construction built on unlawful holding ,there would be neither compensation nor substitution of land”. If the house built decided to be demolished belongs to children of farmers, pastoralists or semi pastoralists, substituted land would be given to them according to first exception, article 9(12) of Regulation No.182/2016. In this case the exception is clear that the decision of urban administration is executed accordingly but, the holders would get substitution by the mere fact that they are children of farmers, pastoralists or semi pastoralists. The problem however comes into picture when one looks in to second exception. It reads: “notwithstanding sub article 11 of this article, if demolition of unlawful constructions likely brings huge socio economic impact, the Regional Administrative Council may decide on the matter”.<sup>188</sup>What could the decision given by the Regions Administrative Council be? Is it reversal of urban administration’s decision or to confirm the decision of demolition under the condition of substitution of land? If the decision is reversing urban administrations decision, it would be against the zero tolerance and stringent system adopted by the regulations on newly acquired unlawful landholding.

On the other hand “huge socio economic impact” is unclear and exposed to subjectivity. It is very difficult to ascertain what huge socio economic impact could mean. Ato Lelisa Wakwaya, the Former Vice Head of OULDMA, said that no case has been presented to the government so far with this respect.<sup>189</sup>He further said the decision seems political than legal.<sup>190</sup> As to the writer however, the provision put as an exception has a lot to do with rights and duties of both the informal land holders and the government itself. As we have seen under Sub-Section 4.1 of this chapter, there are large numbers of IULH that are yet unrecognized. The issue of future reality is also there. If then, what ‘huge socio political impact’ is not specified into certain parameters, it would be subject to uncertainty and imprecise decisions. There has to be a provision requiring specifics to be addressed by the directive.

The other gap identified by the research is about the time within which RIULH is completed. It is identifiable from the Lease Proclamation and Regulation No.182/2016 that the RIULH is

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<sup>188</sup> Directive No.5/2016,cited above at note 126,art.9(13)

<sup>189</sup> Interview Conducted with Ato Lelisa Wakwaya, former vice head at OULDMA ,conducted on Aug.1, 2018

<sup>190</sup> Id.

launched as a project. The four years requirements provided under article 6(5) of the Lease Proclamation implies this effect. Moreover both Regulation No.155/2013 and Regulation No.182/2016 provide that regularization is carried out once, save the exception provided by the latter regulation. My informants with this respect have the view that failure to provide the time within which regularization is completed has resulted with uncontrolled process. Let alone finishing the job within a given time, our urban administrations and concerned organs cannot properly address the matter in yearly plan.

#### **4.3.6 Institutional problems**

Under this section we are going to discuss some major institutional problems identified by the research. To identify those problems I have conducted different focus group discussions, interviews with concerned officials. I have also assessed yearly plan, reports and court cases. Directive No.5/2016 has also been considered. Thus, the followings are major institutional problems identified by the research.

##### **4.3.6.1. Lack of Transparency**

RIULH cannot be effective unless it ensures transparency and public participation. As can be seen from the preamble of the Lease Proclamation one of its purposes is to build transparent and accountable land administration system. Any law or program when initiated and implemented must ensure transparency and public participation. Of course, ensuring public participation is one aspect of transparency. It is also constitutional duty.<sup>191</sup>

Transparency both in the process of enactments and implementation of laws, regulations and directives pertaining to RIULH until recently is very minor according to informants of the research.<sup>192</sup> The public at large, particularly on whom the law applies are very little aware of the process of RIULH.<sup>193</sup> The primary duty of creating public awareness vests in the OULDMA and its lower structure, particularly at town and kebele level. From our experience and reports says the informants, the focus is entirely on the demolition of unlawful constructions, not creating public awareness on the process of regularization and rights of the informal holders.<sup>194</sup> The

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<sup>191</sup> FDRE Constitution Art.12(1)

<sup>192</sup> FGD, Cited above at note 164.

<sup>193</sup> Id.

<sup>194</sup> Id.

writer ascertained this fact from yearly plan of the Agency. For instance, in the year 2008 OULDMA planned to give public awareness to 641,716 individual in 629 towns on the implementation of lease laws, preventing unlawful construction and on, importance of registration of lawful holdings.<sup>195</sup> Similar fashion has been followed over the last two years. None of these plans clearly specifies about RIULH. When one looks into power and duties of organs established by Directive No.5/2016 and their structure one can easily identify that the ultimate goal is demolition of unlawful construction.

#### **4.3.6.2.Lack of capacity at lower structure**

Under previous chapter we have seen that laws pertaining to RIULH give different powers to various organs. Making policy decisions, issuing directives, controlling and supervising go to the upper organs such as OUHDB and OULDMA.

Directive No.5/2016 under article 33, establishes different committees. These committees as we have seen under chapter three are, UHSC and LIC established both at Urban and kebele level.<sup>196</sup> The former have the power to screen out UULH that are legible for recognition and forward the same to concerned organ for further process. The latter has power to give awareness on the impact of unlawful construction and to take measures on the landholdings and unlawful construction that does not fulfill the requirements provided in the regulations and directives.

Setting up land administration at local level (municipalities and village authorities) is crucial in regularization operations<sup>197</sup> and the process would be effective when it involves participation of different actors in a decentralized way. With this respect the ONRS took exemplary measure in arranging the structure and composition of the committees vested with screening, deciding and executing powers.

The informant of the research however says, these committees in most the areas in the region have no capacity in carrying out their duties.<sup>198</sup> The work requires collection and weighing of evidence, conflict resolving techniques, surveying and the likes. With this respect the composition made by the directive on the one hand and practical reality on the ground have

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<sup>195</sup> Yearly plan ,Cited above at note 150

<sup>196</sup> Directive No.5/206,art.33(1-4)

<sup>197</sup> Durand, cited above at note 7,p15.

<sup>198</sup> FGD, cited above at note 164

problems.<sup>199</sup> Beside this, they in most of the time are busy with some other job. They perform the duty without payments and the duty by itself is highly cumbersome.<sup>200</sup>

The writer also observes that the power between the committees at both level have not been delimited under the directive, except the requirement that the committee at urban administration level gives professional assistance to committees at kebele level. This, in the exercise of power, could create confusion and be obstacle effective regularization.

#### **4.3.7. Problems in Handling Grievance**

An IULH after passing through serious of procedure would finally be given either recognition or denial. In either way there is a decision. As we have seen under chapter three Sub-Sections 3.3.1.3, the final decision is given by Cabinet of concerned town. The cabinet makes its decision based on proposal given by ULDMA of the same town. Here the writer wondered whether there is a clear working procedure/manual by which the Cabinets confirms or rejects the proposal presented before it. My informants say; “there is no such thing as working procedure or guidelines by which the Cabinet makes its decision. A kind of meeting will be conducted, there is a minute taken and finally decision is rendered. In most of the time Cabinets cannot display the result immediately. They seek saying on the decision from upper government structures and officials. Finally list of holders legible for recognition is displayed and nothing is said about the rest.”<sup>201</sup> From this, we can understand that there is no clear guideline on which the Cabinets give decision. Moreover, there is no procedure by which holders of illegible informal landholder can submit his/her grievance until he is served with notice of clearing order. All the way, starting from registration up until the display of the lists legible for regularization, there is no formal lieu way for application of the aggrieved person.

Related to the abovementioned problem, the other problem identified by the research is pertaining to organs that receive and render decision on the compliant. If the cabinet does not recognize informal holding, the ultimate consequence, as per the Directive No.5/2016 is demolition of construction and retaking the land. An aggrieved individual who is served with clearing notice may, within seven days , submit his grievance to ULDMA where the clearing

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<sup>199</sup> Id.

<sup>200</sup> Id.

<sup>201</sup> FGD, cited above at note 164

order has been given with evidence substantiating his cause.<sup>202</sup> The Agency then after properly examining grievance submitted to it, it notifies its decision to the applicant in writing. Where the application is found to be unacceptable the decision shall state the reason thereof.<sup>203</sup> Head of legal department at OULDMA told that there is no detailed procedure as to how ULDMA hears and dispose the case. In some circumstances heads or deputies of the Agencies, in their absence department heads, simply write letter to the applicant that his application is unacceptable. It simply specifies unlawfulness of the construction. Focus is more given to those whose land is taken away for public purposes. Majority of the complaints even do not come to ULDMA. Once they are served with clearing notice, they prefer to go to courts.<sup>204</sup> From this, one can understand that once the decision to demolish unlawful construction is given by the Cabinet, the procedure and mechanism of rectifying the wrong is not clear.

Beside this, the way grievance mechanism is designed by itself has the problem. Initially decision is given by the Cabinet of a given town. The Cabinet is organized and works under urban administration. It is presided by mayor or district administrator. The agency on the other hand is separate entity and its role is presenting proposal to the Cabinet of the town. It does not give final decision. Hence, making application to a body that has not given the initial decision is absurd. Whether the agency, brings the complaints before cabinet or not is not clear on the other hand.

Concerning appeal, a person dissatisfied by the decision of ULDMA may appeal to Appellate Council.<sup>205</sup> However, there is no such council established yet in the Region. Surprisingly, article 59(2) of Regulation No.182/2016 provides: “until appellate council is established in the Region, the appeal will be seen by the agency following the procedure provided in the Regulation” How can the same agency which rendered the decision (if any) see the appeal by itself? This shows that what is done is simply something taken as administrative issue, not as matter of giving decision on respected rights of individuals. Now let us go to see how the courts entertain such matters.

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<sup>202</sup> Regulation No.182/2016,cited above at note 20, art.58(2)

<sup>203</sup>Id. Art. 58(3)

<sup>204</sup> Interview with Ato Hailu Margaa, current head of legal department at OULDMA ,conducted on Aug.3 2018,Addis Abeba .

<sup>205</sup> Regulation No.182/2018, cited above at note 20,art.59(1)

With this regard, the writer has assessed some files seen at Oromia Supreme court. I have also conducted group discussion with one High court and two Supreme Court judges. What is understandable from this is that all matters pertaining to RIULH do not come to court. Mostly, cases come to court either when notice of clearing order is given or after demolition has taken place. Let us see some court files with this respect.

In all the cases, the issue is with the regard to jurisdiction of courts. In a case between applicant W/ro Yeshareg Dagneu vs Respondents kebele 08 of Bishoftu Town(6-respondants ) OSC Cassation Division reversed the decisions of the lower courts and remanded the case in accordance with article 341(1) of the Civil Procedure Code. At the very start, the applicant brought an action against the respondents in Eastern Shewa Zone High Court claiming that the respondent together with other 5 respondents, without any court order, demolished my house and fences situated in Bishoftu town on the day 26/03/2015. She claimed restitution of land and compensation amounting to 60,000 birr. All the respondents under their statement of defense, rose that they did the act based on article 9 of Regulation No.9 and article 35(3B) of Directive No.9/2013 due to the reason that the construction has taken place on land belonging to the state. Therefore, since the land holding construction is unlawful, the court has no jurisdiction to see the case. On oral litigation the applicant claimed that she has construction permit plus the construction took place on the old holding belonging to her. The High court on the date 04/11/2015, file no.41755 dismissed the case for lack of jurisdiction by stating;

“...the case at hand requires to resolve issues concerning whether construction built by the plaintiff is legal or illegal? The power to see such issue according to the Lease Proclamation 721/2011 article 26 and 27 is appropriate body. Any aggrieved party therein may present his grievance to appellate tribunal according to article 28 and 29. Therefore this court has no jurisdiction to see the case...”

The OSC Eastern Bench confirmed the decision of High court on the date 10/5/2016 ,file no.235717. The Supreme Court cassation bench then reversed decisions of lower courts stating:-

“... Procedure has not been observed by the respondents that the applicant had not get an opportunity to present her case before appropriate body. Any individual whose

right is breached by unlawful procedure has the right to bring his case to the court pursuant to article 37 of the constitution...”<sup>206</sup>

Similar decision was given by the supreme on the case of Applicant Biranu Tesfaye vs Respondents Bishoftu Town Administration (9 respondents).<sup>207</sup>

In another case that was seen at Eastern Shewa Zone High Court, the court held that it has jurisdiction to entertain the matter. The reason stated in the judgment reads as

“...concerning the jurisdiction, as provided in the laws, what is seen before appropriate body is not about unlawful construction but it is about compensation. Therefore, the court is not banned to see about unlawful jurisdiction ...”<sup>208</sup>

The ruling was confirmed at Supreme Court Cassation decision.<sup>209</sup>

We can deduce from the above cases that lower courts rejects claims concerning demolition of unlawful constructions by the reason of lack of jurisdiction. Moreover, there is no common understanding among judges as to who see the cases involving UULH and construction. With this regard the writer has conducted focus group discussion with three judges; two from OSC, one from high court. The informants view is that cases involving IULH usually come to court when the urban administration or the agency demolishes the construction under the guise of unlawful constructions. But, most of the lower courts reject the cases under lack of jurisdiction and only few assume it. Rejecting is totally unfair. What is seen from the cases in most of the time is that bodies/individuals taking part in demolition cannot follow appropriate procedure; they cannot make necessary inquiries so as to distinguish the legality or illegality of the holding and constructions. One can witness a lot of infringement of rights. Moreover, those institutions

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<sup>206</sup> Oromia Supreme Court Cassation Division , W/ro Yeshareg Dagneu vs kebele o8 of Bishoftu Town(6-respondants) ,Application file No. 247818 decided on 05/06/2017 (unpublished)

<sup>207</sup> Oromia Supreme Court Cassation Division Biranu Tesfaye vs Bishoftu Town Administration(9 respondents).Application File No. 236843 ,decided on,13/04/2017(unpublished)

<sup>208</sup> Eastern Shewa Zone High Court ,Lijalem Demissie vs Bishoftu Urban Land Development and Management Agency ,Civil File No.42582, ruled on 25/02/2017 (unpublished)

<sup>209</sup> Oromia Supreme Court Cassation Division, Bishoftu Urban Land Development and Management Agency, Application File No. 255205, decided on 09 /08/2017.(unpublished)

indicated in the Regulation No.182/2016 do not exist on the ground. If there is any, it is not functioning.<sup>210</sup>

#### 4.4. Chapter Summery

RIULH is partly ineffective so far. The program started with not fully understanding the regularization process and without preparing institutions, relevant information and man power that enables to give appropriate decision. In the implementation stage resistance and incapacities of institutions implementing the regulations and other reasons such as corrupt practices at the lower structure, lack of awareness on the part the public on regularization, rampant land invading practices, have also contributed to the ineffectiveness of the regularization.

On the other hand different purposes of RIULH of ONRS have not been well understood by implementing institution. The main purpose of the RIULH is to strength government control and maintains law and order. The second purpose is ensuring tenure security. This second purpose however is highly restricted and subjected to different unfair and burdensome requirements. Either purpose has not been achieved yet, as there still exists huge number of IULH on the one hand and unlawful acquisitions of landholdings continue unabated, on the other hand.

Conditions set in the Directive No.5/2016, particularly concerning UULH are highly restrictive and some of them are clearly unfair and against fundamental rights enshrined in the Constitution. The requirements provided by the directive highly hamper the intended purpose adopted by the Lease Proclamation. There is also lack of transparency in the implementation of program beside absence of clear and transparent grievance mechanism and procedure. With this in mind, we shall conclude and forward recommendations for problems identified by the research in the next chapter.

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<sup>210</sup> Focus Group discussion with three judges, conducted on 13th Aug.2018.

## Chapter Five

### Findings and Recommendations

#### 5.1. Findings

Large number of urban population in the Global South lives on IULH. IULH is one form of land tenure system. This system includes wide range of categories with varying degrees of legality or illegality. It includes least formal one such as pavement dwelling, illegal occupation of land belonging to other person, customary landholding, legally acquired land that is not developed in accordance with official norm, unauthorized sub division on legally owned land and various forms unofficial rental arrangements.

IULH tenure system however is susceptible to ever present risk of housing demolition or forcible eviction. Where the informal land tenure system is not recognized by the authorities they do not provide sufficient tenure security to informal landholders. The degree of confidence held by informal landholders that they will not be arbitrarily deprived of the land rights enjoyed and/or of the economic benefits deriving from the land is low. Their tenure security therefore is at stake.

Thus, urban land management system that addresses informality has to be in place. With this respect land management system, particularly in the Global South, that accommodates systems of access to land and housing for the urban poor and vulnerable groups has evolved over the past few decades. It entails improving the quality of life of informal landholders by providing tenure security on land and housing, as well as providing access to basic services with an acceptable standard.

RIULH has been taken as best option in addressing informality under urban land management system. Regularizations are being increasingly used by national and local governments to ensure tenure security of informal urban landholders. It has the potential to improve the security of tenure of residents by providing them with legal protection from forced eviction. The consequently reduced risk of housing demolition can thereby motivate low income group households to spend money on improving their housing.

Different approaches of regularizations are used in addressing informality. The most commonly used approach emphasizes formal tenure regularization at settlement level. Regularization

policies are generally based on the delivery of individual freehold and/or leasehold titles. The assumption is that formal titling would raise property values. In turn, residents would be able to use the enhanced value of their properties as collateral to obtain formal credit, improve their properties, and invest in a business to lift them out of poverty. This approach usually aims to forge link between the formal and informal land management systems. It bases the view that government-sanctioned, designed and imposed land title systems that leverage the coercive power of the state as a source of greater certainty and stability for defining and enforcing property rights. This regularization processes often require legal, administrative and/or technical adjustments to the formal and administration system. With this, in adjusting informal to formal system, approaches such as dealing with already acquired IULH and avoiding future acquisition are used in most of the cases.

Throughout the Thesis an attempt is made to explore RIUL of ONRS with the view to address question pertaining to what the purpose of RIULH of ONRS is and how far the purpose is achieved so far. With this, the general concepts of RIULH, its purposes and procedures therein have been seen. The legal and institutional frameworks of RIULH of ONRS and major problems in the implementation of RIULH have also been examined.

The writer in conducting the Thesis has adopted different methodology. Analysis of laws pertaining to RIULH, interviews with concerned official and focus group discussions have been made. Secondary data such as court judgments, pertinent documents at relevant authority and literatures concerning RIULH have also been used.

Accordingly, the followings are findings of the Thesis.

1. The Thesis has identified that RIULH of ONRS has basically two purposes.

The first one is to increase government control and maintain law and order. Land, be it urban or rural, is the common property of peoples of Ethiopia. Transfer of urban land is only through those modalities provided by the Lease Proclamation.

However, for different reasons, large numbers of people are living on land which they have not acquired through modalities provided in the Lease Proclamation. Disregarding this huge number of people living on the land they have not acquired through modalities provided by the law have resulted in chaos and lack of peaceful coexistence. Hence, the main purpose of RIULH

of ONRS is by pardoning those holding which fulfills the requirements provided in the regulations and directives that are acquired before Feb.2013:- it is to get rid of such modalities (or prevalence of the same) for once and for all.

Banning acquisition of such urban landholding after this time and criminalizing the act, strict requirements and burdensome procedures adopted by Directive No.5/2016 implies the main purpose is to maintain the existing land transfer system.

The second purpose is ensuring tenure security of IULH. This purpose, however, is highly hampered and restricted by the Directive No. 5/2016. Delay in regulating the matter, embarking on the project without necessary and enough preparation and information, strict requirements and preconditions for regularization, putting blurred and ineffective grievance mechanisms and procedure shows that this purpose is highly disregarded and very secondary. Moreover, practical implementation has not been fully understood among implementing institutions.

Both purposes have not been met so far as there still exists large number of IULH and unlawful construction and landholding continue unabated.

2.The Thesis identified four kinds of urban landholding that are considered to be IULH given recognition by regularization law of ONRS. These are; UULH, semi-legal holding ,OULHLS and other holding acquired for different purposes such as holdings which houses administered by government bodies are built on before enactment of Regulation No.155/2013 and spiritual places. OULHLS again is of two types. Old holding that were given by different authorities but lacks holding certificate and landholding held by farmers, pastoralists and semi-pastoralists. The purposes for which the land is being used can be dwelling, urban agriculture, businesses.

Out of the three types of IULH, the requirements for the recognition of UULH are burdensome and lack fairness. Beside the general condition put under the Lease Proclamation and Regulation No.182/2016, Directive No.5/2016 requires the holder to pass through stringent requirements. He/she is also required to fulfill evidence requirements that are beyond his reach. This is burdensome to both government and the holder. The condition that requires the holder not to have other landholding or construction in his or spouse's name is clearly against right to equality and own property guaranteed under Constitution.

Directive No. 5/2016 also treats citizens differently based on their status. If demolished unlawful construction on UULH belongs to farmers, pastoralists or semi pastoralists living in urban center farmers, pastoralists or semi pastoralists living in urban center, there would be substitution of land. Whereas, others particularly genuine and needy holders that cannot fulfill the requirements and conditions provided in the laws have no such right. This could defeat the purpose intended at the very start.

3. There are some inconsistencies in the Laws. The first visible inconsistency is both regularization part of Regulation No.182/2016 and Directive No.5/2016 are enacted and operating outside time framework given by article 6(5) of the Lease Proclamation. This would pose question on the legality of the laws.

On the other hand, article 17(9) and article 25(6) of Directive No. 5/2016 are clearly conflicting. The former provision allows unlawful landholder to have another landholding or construction with similar purpose. According to the latter provision, holding another landholding or construction elsewhere in the town with similar purpose disqualifies recognition.

4.Regulation No.182/2016, under article 9(13) came up with exception that if the demolition of unlawful construction is likely produce huge socio economic impact, the ONRS Administrative Council may decide on the matter. This exception on the one hand seems to contradict the adamant position held by the ONRS on the need to regularize IULH. On the other hand, “*huge socio economic impact*” lacks clarity.

Moreover, what kind of decision to be rendered and scenarios in which such decisions are given is not clear both from Regulation No.182/2016 and Directive No.5/2016.

5. The Thesis has also identified institutional problems. The ONRS started the project belatedly. Even so, enough study and preparations before embarking on the matter have not been carried out. The process of enacting the laws and implementations of the same lacks transparency. Lack of implementing capacity of lower institutions, the overlapping of duties therein and absence of clear grievance handling institutions are also problems identified. These reasons have highly contributed to ineffectiveness of the RIULH of ONRS.

Other reasons such as corrupt practices at the lower structure lack of awareness on the part the public on regularization, unlimited land invading practices; have also contributed to the ineffectiveness of the regularization.

## 5.2. Recommendations

In order to address problems identified by the Thesis, the writer suggests the following recommendations.

❖ To address problems relating to purposes of RIULH the ONRS must come up with policy of RIULH.

1. The policy should be set within the context of the general land use and management system of the country.
2. The policy should set clear purposes and objectives of RIULH
3. The need to recognize and enhance tenure security of the existing IULH must be addressed.

❖ After putting regularization policy, the ONRS should come up with separate piece of regulation of IULH.

1. The regulation should clearly put objectives addressing tenure security of existing IULH
2. The regulation should continue the approach of recognizing the existing IULH and avoiding future development of IULH. As the Thesis explicitly identified there exists huge number of IULH. Disregarding this number of holding amounts to invitation for chaos and disorder. Hence, the ONRS must set another legibility time and also ban future expansion just like the existing trend. Based on time provided, the ONRS should strictly adhere to regulation and be able to implement without any hesitation as to future expansion. The time within which the whole process is completed should also be provided.
3. While avoiding future development of IULH, a system that accommodates needy people that may not afford formal system must also be in place. Provision requiring special treatment such as accessing the land with fair price or provision of housing by the government could be included in the regulation.

4. The regulation and following directive must ease the burdensome and bureaucratic requirements. The burdensome and bureaucratic requirements obviously have negative impact both on the individual holder and government as well. This would in turn, contribute to curb ineffectiveness of RIULH.
5. In recognizing the existing IULH the following must be considered.
  - a) The Thesis shows that large number of IULH and unlawful construction has emerged after Feb. 2013. Significant number of people still lives on the land they have not secured tenure right. This partly is attributed implementing capacity of institutions. Accordingly, the coming regulation must set another time that consider the existing IULH into account.
  - b) Both Regulation No. 182/2016 and Directive No. 9/2016 are good in addressing all types of holdings that are considered to be IULH. However, there is unfairness in recognizing all the types of IULH. The writer admits that there must be priorities in addressing different kinds of informalities differently. However, the gap must not be that much big. Therefore, the following must be addressed in the regulation.
    - The requirements for recognition of UULH should not be burdensome. Particularly provisions requiring the UULH holder to pass through stringent requirements and bureaucratic evidence requirements must be avoided. To this end a provision requiring different source of evidence, article 26 of Directive No 5/2016, must be avoided.
    - The condition that requires the holder not to have other landholding or construction in his or spouse's name is clearly against right to equality and own property guaranteed under the Constitution of FDRE. It must be avoided accordingly.
    - Treatment based on status must be avoided. Like that of OULHLS, there must be enabling provision, particularly for genuine and needy holders, as to substitution of land of the UULH does not fulfill legibility requirements.

- The possibility of making inconsistencies between the Lease Proclamation and coming regulation should be avoided. To this end, the ONRS concerning body must pursue relevant authorities at the Federal level to amend provisions of the Lease Proclamation pertaining to regularization.

5. The regulation should abstain from incorporating vague and subjective provisions. A particular provision we have seen under the research is provision pertaining to exception put under article 9(13) of Regulation No.182/2016. Protecting the interest of the public at large with such general idea is appreciable. However, when it comes to specifics the matter gets complicated and would be subject to abuse. At least, there should be provision in the regulation requiring objective parameters to be incorporated in directives or manuals.

❖ Concerning institutional problems the following are suggested.

1. ONRS, before starting practical regularization process, in addition to what it has on hand by now, should have relevant information, well equipped implementing institutions with sufficient budget and human resource.
2. The reenacted regulation must put institutions that efficiently handle the regularization. To this end the following must be in place.
  - The power of implementing RIULH should be, with full accountability, given to a single institution. There should not be overlapping of power.
  - On the other hand, each segment in the process is full of decisions. The breach of rights is inevitable. Therefore, clear and transparent mechanism for grievance handling should be installed.
  - Effective regularization procedure should bring court proceedings in cases of abuse of power, corruption or misappropriation or breach of fundamental human rights. Hence, there should be requirements for involvements of courts in case of such breach of rights.
3. The Thesis found that the whole process lacks transparency. Thus, the following should be done accordingly.

- Both at the stage of reenacting the regulation and implementing, it must secure public participation, particularly part of the society the regulation affects.
- Mechanisms of giving continuous public awareness on negative impact of prevalence of IULH and unlawful construction on individuals and societal level should be put in place. This would have contribution in curbing future development of IULH.

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## Annex I: Interview and Focus Group Discussion Guide

1. What are the main purposes of regularization of informal urban landholding of the region?
2. If there is more than one purpose, have these purposes been achieved so far?
3. If the purpose includes economic empowerment of the informal landholder, why the regulation prohibits recognition of more than one holding for similar purpose?
4. The ONRS has not finished RIULH within time framework given by the Lease Proclamation. Why?
5. What are the main obstacles and problems encountered while implementing, regulations and directives concerning RIULH in ONRS?
6. Is there transparency in the process of RIULH?
7. Has awareness, both to the public in general and informal landholders in particular been made on the purposes, process of regularization and preconditions and requirements of the same?
8. The regulations and Directives guiding the regularization of informal urban land holdings set different preconditions and requirements. How would you see these preconditions and requirements (too narrow or accommodative enough)? Are these preconditions ensuring fundamental rights such as right to equality?
9. After passing the time, parceling and planning standard preconditions the holder is required to produce evidences on how he/she acquired informal land and unlawful construction there on. Is it fair?
10. How much is the process clear, easily manageable and cost effective?
11. Final decision whether to regularize or otherwise is to be given by the ONRS Cabinet that bases its decision on recommendation of the Agency. Is there any rule or guidance through which the ONRS Cabinet exercises its power?
12. Are institutions designed for screening informal land holdings efficient in carrying out their duties?
13. Regulation No.182/2016 article 9 (13) provides that if demolition of unlawful construction on informal landholding is likely to bring huge socio-economic impact the ORS Administrative Council may decide on the matter. What is the justification for doing so? Is there a parameter for what “huge socio economic impact” could mean as used in that law?
14. Is there grievance mechanisms, including appeal right, been in place?