

URBAN LAND ACQUISITION AND SOCIAL JUSTICE IN ETHIOPIA

Legesse Tigabu Mengie*

Abstract

As urban land could be used for manifold purposes, urban residents look for such land enthusiastically to serve their enormously diverse interests. Thus, urban land use laws and policies should be flexible, apt and transparent to respond to such various and complex land demands. An inflexible form of land transfer and management system may drive some section of the society out of the land deal and an extremely flexible urban land permission and use system could result in a pervasive corruption and that in turn could lead to bad governance. In this work, the author argues that the existing urban land acquisition system of Ethiopia has resulted in social injustice by denying the poor from access to urban land; and creating discriminatory environment while enforcing the new lease system.

Keywords: access to land, land lease, social justice, tenure security, urban land policy

I. INTRODUCTION

Man's life cannot be thought of in the absence of land. Land is everything for a person. Land laws, policies and strategies should be framed in a way that they could accommodate the land related interests of all sections of a society.¹ The right to privacy, freedom, full development of one's personality and the very existence of a person, in one way or another, depend on land as land and improvements overland are so important in maximizing human satisfaction. Hence, the right to access to land cannot be seen separately from other basic rights. It is overwhelmingly interrelated with other fundamental rights of individuals as full realization of these rights is impossible without real properties (land and buildings)². Access to urban land, in particular, needs special consideration as urban land is so scarce and the competition over it is so stiff.

As Matthew Robinson put it correctly, social justice embraces virtues including "share of common humanity by all people, having a right to equitable treatment, support for human rights and fair allocation of community resources."³ McCarrick and Darragh have also considered the fair allocation of common resources as one of the core elements of social

* LL.B (Haramaya University), LL.M in Comparative Constitutional Law (Central European University), LL.M Candidate in International and European Public Law (Erasmus University), Senior Lecturer in Law, College of Law and Governance, Jimma University, legesstigabu@yahoo.com/ or legeselaw@gmail.com/ P. O. Box 3011VR. The author is very grateful to Jimma University which has generously funded this work.

¹ IFAD, IMPROVING ACCESS TO LAND AND TENURE SECURITY, (2008) Palombi e Lanci, Rome, at .1-10

² Wickeri, Elisabeth & Kalhan, Anil, Land Rights Issues in International Human Rights Law, (2010) Institute for Human Rights and Business. Available at http://www.ihrb.org/pdf/Land_Rights_Issues_in_International_HRL.pdf

³ Robinson, Matthew. 2016. What is Social Justice? Department of Government and Justice Studies Appalachian State University. Available at <http://gjs.appstate.edu/social-justice-and-human-rights/what-social-justice>

justice.⁴ Needless to say, the widely accepted conception of social justice requires objective distribution of wealth, privileges, responsibilities and opportunities within a society. This work endorses such conception of social justice and approaches it through analyzing the existing system of allocation of urban land in Ethiopia.

Contemporary literature on Ethiopian urban land lease system has unearthed most of the salient problems with the existing urban land allocation system. Zelalem Yirga has, for example, identified some of the bottlenecks in the existing lease system including those related to land valuation, registration, transfer and compensation.⁵ Zemene Haddis has approached transaction of land use rights in Ethiopia from the perspective of sustainable development and social justice.⁶ Nonetheless, his work focused on rural land transaction in general and rural land lease in particular. Takele Necha, Kwame Serbeh and Melese Assefaw have, on the other hand, asserted that lack of effective implementation is among the worth considering problems with the existing urban land lease system while they parenthetically indicated that the lease system is formulated in a way to ensure the benefit of the government and the rich. One can, however, hardly find a scholarly work which has directly embarked on acquisition of urban land and social justice in Ethiopia. This work aims primarily at filling this gap in scholarship. It will also address related issues including the Ethiopian Integrated Housing Development Program (IHDP) in urban centers, regularization of illegal holdings and conversion of old possessions to the lease hold system.

For better understanding, this work is designed to have five sections. Section one provides general explanation on urban land policy and social justice. Section two examines the Ethiopian urban land lease system, the Integrated Housing Development Program and social justice. Section three addresses conversion of old possession to the lease holding system and its implication on social justice. Section four addresses regularization of illegal holdings and the treatment of land holders. Finally, section five provides concluding remarks.

This work has concentrated on analyzing the relevant laws with some account of the practice to examine the implications of the Ethiopian urban land acquisition system on social justice. It is, therefore, primarily research in law than reach about law (law in context).

II. OVERVIEW: URBAN LAND POLICY AND SOCIAL JUSTICE

Ethiopia has not so far adopted a single and unified land use policy. One has to look into the different land legislations and development related policies to fully understand the country's land policy. However, as long as urban land is concerned, the country has introduced urban land development and management policy in 2011 before the adoption of the existing lease system in October 2011. Among the major objectives of this policy are ensuring access

⁴ Pat Milmoie McCarrick & Martina Darragh, *A Just Share: Justice and Fairness in Resource Allocation*, Bioethics Research Library, the Joseph and Rose Kennedy Institute of Ethics, Georgetown University, USA (1997), available at <https://repository.library.georgetown.edu/bitstream/handle/10822/556888/sn32.pdf?sequence=1>

⁵ Zelalem Yirga, *Critical Analysis of Ethiopian Urban Land Lease Policy Reform Since Early 1990s*, FIG Proceeding, on Engaging the Challenges—Enhancing the Relevance, Kuala Lumpur, Malaysia 16-21 June 2014. (2014). Available at http://www.fig.net/resources/proceedings/fig_proceedings/fig2014/papers/ts07k/TS07K_adamu_6825.pdf

⁶ Zemene Haddis, *Towards improved land use transactions in Ethiopia*, Annual World Bank Conference on Land and Poverty (2013), at 1-12.

to urban land to the poor; and fostering sustainable urban land use.⁷ The laws enacted later have, however, overlooked these objectives as will be explained in this manuscript.

Ordinary citizens, business men, associations, governmental organizations, NGOs and other forms of institutions eagerly look for urban land for different purposes. There are different sections of the society with different interests in urban areas would mean that the urban land use laws and policies should be accommodative and responsive to various land demands. A rigid form of land transfer and management system may force some section of the society out of the land market and a tremendously flexible form of landholding permission may result in endemic corruption and that in turn could result in bad governance.

Flexible and appropriate urban land laws and policies would allow the poor to participate in land development and this in turn can minimize illegal settlements and foster sustainable urban land development. On the other hand, inflexible and non-holistic urban land administration⁸ may encourage illegal settlement and is a threat to sustainable land development. As UN-Habitat explained it, non-accommodative and rigid urban land administration systems would result in unauthorized settlement.⁹

Well advanced urban land administration system may ensure tenure security as it can provide integrated land information system through cadaster and land register. But such tenure security will not, by its own, reduce poverty and bring about sustainable development.¹⁰ Providing both access to land and tenure security are the two preconditions that should be met to achieve efficient and equitable urban land development. Tenure security is an incentive for urban residents to bring about perpetual and valuable improvements over a piece of land as no one dares to invest a lot on a plot of land in vain. Hence, efficient urban land development cannot be ensured in the absence of tenure security. Tenure security makes no sense in the absence of access to land. Nor access to land in the absence of tenure security. Urban land development could not be equitable unless it is inclusive and it could not be inclusive so long as urban land is not accessible to the public at large. Sustainable urban land development, therefore, requires both tenure security and inclusive land acquisition system. UN-Habitat has rightly explained the importance of both tenure security and access to land stating that there has to be commitment to:

providing legal security of tenure and equal access to land to all people, including women and those living in poverty; and undertaking legislative and administrative reforms to give women full and equal access to economic resources, including the right to inheritance and to ownership of land and other property, credit, natural resources and appropriate technologies.¹¹

⁷ Urban land development and management policy of Ethiopia, May, 2011, Addis Ababa. This policy was introduced before the enactment of the Ethiopian urban land lease holding proclamation No. 721/2011 to guide the adoption process of this proclamation. Yet, a number of provisions under the proclamation stand against the objectives set under the urban land policy.

⁸ Non-holistic urban land administration system directly or indirectly excludes a significant portion of a society from getting access to urban land and land related services.

⁹ Dale, Peter. 2000. *The importance of land administration in the development of land markets - a global perspective*, University College London, England, at. 35.

¹⁰ Ibid.

¹¹ Ibid.

Thus, providing tenure security and making land accessible to all - including people who are in economically disadvantageous position like the indigent and women - would be exceedingly important in fostering sustainable urban land development. The principle for urban land transfer is tender¹² which makes land unaffordable to the lower class and the exceptions under the lease holding proclamation No. 721/2011 too do not favor the poor except in case of condominiums.¹³ This may signify that the urban land lease reform is not responsive to the demands of the poor in urban areas.

III. ETHIOPIAN URBAN LAND LEASE SYSTEM AND SOCIAL JUSTICE

Social justice in land administration requires participatory land transfer and use system. Whatever the form of land tenure system a country may have adopted, an equitable land market system is indispensable to ensure access to land to everyone. Ensuring social justice in urban land allocation is imperative these days.¹⁴ South Africa, for example, has gone through many urban land policy reforms to rectify the past segregations, ensure tenure security and bring about sustainable development.¹⁵

The FDRE constitution obliges the government to enact laws which “guarantee to all persons equal and effective protection without discrimination on grounds of race, nation, social origin, color, property...or other status”¹⁶ and formulate policies which ensure that “all Ethiopians get equal opportunity to improve their economic conditions”.¹⁷ All resource related laws, policies and measures introduced by the government are expected to be in light of these grand constitutional principles. A legislation which apparently treats individuals equally may indirectly discriminate against a section of the society for it fails to consider prevalent facts and this might have detrimental effect on the livelihood of those discriminated against. ‘Equal and effective protection’ would require laws, policies and measures which give due attention for substantive and not formal equality.

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

Though the existing urban land lease system has made the land acquisition system transparent and accountable, the substantive rules governing acquisition of land have actually

¹² See Art 7, 8 and 12 of the Ethiopian Urban Land Lease Holding Proclamation No. 721/2011. Cumulative reading of these provisions leads to the conclusion that urban land is unaffordable to the poor as they have to compete with the rich through tender procedures and they rarely acquire urban land through allotment proceedings set under art 12 of the lease proclamation.

¹³ Ethiopia, Urban Lands Lease Holding Proclamation No. 721 /2011. FEDERAL NEGARIT GAZETA, 18th Year No. 4, 28th November 2011, Addis Ababa [Urban Land Lease Holding Proclamation No. 721/2011 hereafter]

¹⁴ Paul Hendler & Tony Wolfson, *The planning and “unplanning” of urban space, 1913-2013: Privatized urban development and the role of municipal governments*, (2013) at. 29.

¹⁵ KAROL BOUDREAU, LAND REFORM AS SOCIAL JUSTICE: THE CASE OF SOUTH AFRICA, Institute of Economic Affairs: Economic Affairs, March 2010, (2010), pp. 13-20. Blackwell Publishing, Oxford <http://www.iea.org.uk/sites/default/files/publications/files/upldeconomicAffairs343pdfSummary.pdf>

¹⁶ Constitution of the Federal Democratic Republic of Ethiopia Proclamation No. 1/1995, FEDERAL NEGARIT GAZETA, 1st Year No.1, ADDIS ABABA – 21st August, 1995, (FDRE CONSTITUTION hereafter), Art 25.

¹⁷ See Art 89 of FDRE CONSTITUTION.

made a significant portion of the society incapable of accessing urban land. This is evident when we see the urban land lease hold rules which prohibit acquisition of land other than through the lease system and the rules on tender which is the principle in the urban land lease and allotment which is open in exceptional cases.

Individual citizens who do not have the financial means to compete in lease tenders nor can make use of the modality of allotment to access urban land (as this is allowed in exceptional cases) are denied equal opportunity with others in distribution of the most important national wealth - land. Those who have been rent seekers and got rich overnight manipulating the previous lease system are now financially capable of offering highest prices in tender procedures and can easily drive out the majority whenever the government offers land lease bids. What is worse, there is no limitation on the number of lease bids an individual may participate in. As long as an individual is competing for different plots, there is no any limitation on the number of bid documents he/she may buy and this allows the rich to push out the lower class in each and every offer. All these would mean that the dealing over the cake is between the rich and government. Thus, the government has failed to adhere to the constitutional economic objectives of the country.

Making urban land unaffordable to some section of the society would have serious implications on social rights¹⁸ of those who cannot access land and this becomes an impediment to progressive enhancement of citizens' access to housing and social security. Thus, the existing urban land lease law, by failing to set an accommodative land acquisition system, has defeated the grand social objectives under the constitution. Though the government claimed to have helping the poor by providing land for free for the construction of condominium houses, the number of individual who benefit from such government controlled scheme are too little to change the overall situation.

It should also be noted that individuals seek land not only to build a resident but also to do other activities for their livelihood. If the poor are looking for secured and long term urban tenure for such purposes, they can get it only through tender procedure and this procedure would obviously drive them out of the game as the rich are able to bid higher land prices and make urban land unaffordable to the poor. In this regard, the new lease system failed to ensure social justice which requires equitable distribution of common resources including land. Art 89(2) of the FDRE constitution declared that "government has the duty to ensure that all Ethiopians get equal opportunity to improve their economic conditions and to promote equitable distribution of wealth among them."¹⁹ To advance social justice and improve land development, land development policies, laws, programs and plans should be accommodative and consider the land interests of the poor.

IV. THE INTEGRATED HOUSING DEVELOPMENT PROGRAM (IHDP): REMEDIAL MEASURES

The housing development experiences before 2005 revealed that unplanned, informal and private housing development have poorly responded to the housing demand in urban areas. This was partly due to the undesired bureaucracies in getting urban land, nationalization

¹⁸ See Art 41 and the following of the FDRE CONSTITUTION.

¹⁹ See the remaining sub articles of Art 89 too of the FDRE CONSTITUTION.

policy of previous Derg regime that banned construction of extra houses and ever increasing informal housing supply.²⁰

Table 1: Houses constructed in Addis Ababa, 1996-2003 (UN: HABITAT)²¹

Housing Supplier	No. of Houses	Percentage
Public	7, 409	8.4
Cooperatives	24, 830	28.2
Individuals (Formal)	22, 225	25.3
Real estate developers	3, 520	4.0
Informal sector	30, 000	34.1
Total	87, 976	100

Source: Addis Ababa City Government, 2004.

Such distorted housing scheme has of course resulted in shortage of houses and has made the same unaffordable. Such difficulties have dictated the government to introduce an Integrated Housing Development Program (IHDP) in 2005.

Since the year 2005, Ethiopia has been executing its ambitious IHDP aimed at constructing over 400,000 units (houses) in urban areas to meet the house demands of the low and middle income inhabitants.²² The projected time of completion was 2010. Out of the total houses, about 175,000 units were planned to be built in Addis Ababa.²³ But, only around 100, 000 were built until 2013.²⁴ Nationwide about 200,000 units were built, i.e. 50% of the plan until 2013 fiscal year.²⁵ As this project was meant to be completed in 2010, the delay in the construction process is evident. Considering the ever rising demand for housing, the government has renewed its housing development program in Addis following the adoption of the current lease system. The government has also attempted to expand the housing programs into other major regional cities but met with immense challenges of financing, maladministration and price rising.

After the government renewed its housing program in 2014, close to one million people got registered in Addis alone to get house through 10/90, 20/80 and 40/60 housing programs.²⁶ Most of the residents (780,000) are registered for the 20/80 program and the remaining for 40/60.²⁷ The number of people registered for the 10/90 program is insignificant and the government has long claimed that it has achieved this program. The government has provided

²⁰ UN HABITAT, CITIES WITHOUT SLUMS: SUB REGIONAL PROGRAMME FOR EASTERN AND SOUTHERN AFRICA, SITUATION ANALYSIS OF INFORMAL SETTLEMENTS IN ADDIS ABABA, (2007), at. 11.

²¹ ADDIS ABABA CITY GOVERNMENT, HOUSES CONSTRUCTED IN ADDIS ABABA, 1996-2003, (2004) (as cited by UN: HABITAT)

²² UN HABITAT, CONDOMINIUM HOUSING IN ETHIOPIA: THE INTEGRATED HOUSING DEVELOPMENT PROGRAMME, (2011), at. vii. This integrated housing development plan was introduced in 2005 and the projected time of completion was 2010.

²³ *Id.*, at.11.

²⁴ ZEMEN MAGAZINE. 2013, interview with Ato Mekuria Haile, Minister of Urban Development and Construction, Ethiopia.

²⁵ *Id.*

²⁶ <http://ethioconstruction.net/?q=news/bureau-set-speed-housing-construction>, Under 10/90, 20/80 and 40/60 programs, individuals are expected to save 10%, 20% and 40% in advance and the remaining balance (including interests) will be paid within defined times. The state-owned Commercial Bank of Ethiopia is stepping up for paying the remaining amount.

²⁷ *Id.*

about 40,000 units under the 20/80 program in 2014²⁸ and over 35,000 in 2015.²⁹ Yet, one can think the time it will take the government to provide housing to close to one million people. Circumstances dictate the government to invite the private sector in housing development. One should keep in mind that in addition to the registered people, we have the young generation joining the world of work every year and looking for similar housing schemes.

Despite the figures depict low performance; the IHDP has, being the first of its kind, made many homeless home owners. As the private sector housing scheme is encumbered with a multitude of problems which could naturally make the market price of houses so expensive, the IHDP has supplied house units at a relatively lower but continuously rising prices. As HABITAT explained it,

*“Private sector housing supply remains constrained by high costs and time required for title registration, land access and construction material supply, along with cumbersome and expensive procedures for land and property transactions and the shortage of experienced private developers.”*³⁰

Such a fundamental shift from old and poorly constructed government owned housing to privately owned units, as advocated by IHDP, seems appropriate.³¹ However, as the government has controlled the construction process, lack of competition in housing development has serious ramifications. The investigator has, for instance, personally observed incomplete and poor quality houses constructed by government and transferred to citizens in many cities in Ethiopia. Moreover, the fact that such houses are being constructed in the outskirts of the cities would also mean that the poor living far away from their work places, services they need and other activities they do will face very costly life than they can think of and this in turn makes living in condominium units unaffordable.

The new lease proclamation has facilitated the prospective IHDP. As clearly stated under Art 12(c) of the lease proclamation, urban land, up on decisions of the cabinet of the concerned region or city administration may be transferred through allotment for public residential housing programs and government approved self-help condominium housing constructions.³² If an individual opts to construct his own unit through “public residential housing construction programs and government approved self-help housing constructions” (Art 12), he is not expected to go through the tender procedures to get urban land as his association or a government agency (in case of public residential housing construction) can invoke Art 12(1(c) of the lease proclamation. This would mean that individuals who have chosen such housing schemes can easily escape sky rocketing lease prices of tender proceedings. However, the government has not yet approved and provided land for self-help housing constructions other than its own housing programs.

²⁸ Zerihun Getachew, Ethiopia: City to Transfer 20 Thousand Condos. ALLAFRICA.COM, 10 June 2014. <http://m.allafrica.com/stories/201406110264.html/>

²⁹ Over 35,000 condominium houses transferred to Addis dwellers; ETHIODEMOCRACY, March 23, 2015 <http://www.ethiodemocracy.com/index.php/news/item/372-over-35000-condominium-houses-transferred-to-addis-dwellers>.

³⁰ Supra note 13, at.9.

³¹ Zelalem Adamu, *Institutional analysis of condominium management system in Amhara region: the case of Bahir Dar city*, AFRICAN REVIEW OF ECONOMICS AND FINANCE, Vol. 3, No.2, (201) 1-19.

³² See Art 12(1(c) of the Urban Land Lease Holding Proclamation No. 721/2011.

It is good that the lower and middle income residents get urban land for construction of condominiums without any payment and that makes the lease system flexible to some extent. Yet, the gaps and ambiguities under the lease holding laws make it uncertain if such lease holders are free of lease prices at all throughout the lease period. The lease payment obligation is evident if one closely reads Arts 5, 16 (2 & 3) and 20(7) of the lease holding proclamation. Art 5 of the proclamation unequivocally prohibited urban land possession and permission other than lease holding.³³ Art 16 requires a lease contract to include payment schedule except for budgetary government entities and religious institutions who pay only compensation in the course of clearing the land (Art 20(7)). If individuals to whom urban land is transferred for construction of condominiums have to pay lease price, then, when, how much and under what conditions they may pay is also not clear.

Hence, the government should clarify the ambiguities in a way that guarantees accommodative and flexible urban land lease and housing development schemes which can serve the poor and ensure sustainable land development.

V. CONVERSION OF OLD POSSESSIONS TO LEASE HOLDING AND SOCIAL JUSTICE

The other issue related with access to urban land and tenure security is the conversion of old possessions into lease holding system. The year 1994 marked the introduction of a lease system (Proclamation No. 80/1993) in Ethiopia to administer urban land.³⁴ This proclamation declared that once the lease system under the proclamation entered into force, urban land should be administered through lease. But, its enforcement did not go far and we can even find urban areas not administered through the legally prescribed lease system hitherto. This proclamation was later repealed by Proclamation No. 272/2002.³⁵ This proclamation too remained dormant in most of the urban areas in Ethiopia and got repealed by urban land lease holding Proclamation No.721 in 2011.³⁶

Therefore, there are old possessions (non-leasehold land use rights) which predate the introduction of the lease hold system in 1994 and continue as such in urban centers. Accordingly, “old possession” is defined under Art 2(18) of the Lease Hold Proclamation No. 721/2011 as “a plot of land legally acquired before the urban center entered into the leasehold system or a land provided as compensation in kind to persons evicted from old possession.”³⁷ As the previous lease proclamations were not implemented nationwide effectively, most of urban land holdings in Ethiopian cities are acquired through legal arrangements other than the lease system. According to the definition provided under Art 2(18) of the proclamation, such holdings or substitutions given when such holdings are expropriated are considered as old possessions.

³³ Ibid. See Art 5(4). This particular provision empowered regional cabinets to identify urban centers which will be exempted from the rules set under the lease holding proclamation and its subsidiaries. But, this power is temporary and the proclamation will govern all cities after 5 years.

³⁴ Ethiopia, Urban Lands Lease Holding Proclamation No. 80/1993. NEGARIT GAZETA No. 40, 53rd Year, 23 December 1993, at. 92-98, Addis Ababa.

³⁵ Ethiopia, Re-enactment of Urban Lands Lease Holding Proclamation No.270/2002, FEDERAL NEGARIT GAZETA, 8th Year No. 19, 14th May 2002, ADDIS ABABA.

³⁶ Ethiopia, Urban Lands Lease Holding Proclamation No. 721 /2011. FEDERAL NEGARIT GAZETA, 18th Year No. 4, 28th November 2011, Addis Ababa.

³⁷ *Id.*, see Art 2(18).

If most of the possessions in Ethiopian cities are old possessions as per the definition discussed above and such old possessions are going to be converted to lease holdings, addressing such conversion is worth considering in appreciating the implications of the conversion to social justice. Article 6 of the new lease proclamation has declared that the old possessions will be converted to lease holding after studies are conducted by the appropriate body. Transfer of urban land holding rights other than through inheritance will also automatically convert the old possession to a lease holding.³⁸

Those who have old possessions are paying fixed and relatively low rents hitherto. Such fixed payments are set considering living standards of citizens and are affordable. These people are not paying market prices for the land. On the other hand those to whom urban land is transferred through the lease arrangement have to pay very soaring down payments and periodic lease payments to complete the remaining balance. The researcher found such differential treatment unjust. There is no any substantive ground to treat the old and new possessions differently except the point of time. Two individuals exercising urban land use rights on plots of the same size, place and purpose will have to pay significantly different amounts as the one who received such land through the lease system has to pay the market price while the other with an old possession on a land of the same value has to pay not market lease price but very low and fixed land tax. The people and state should be able to derive appropriate proceeds from old possessions as the owners of land in Ethiopia.³⁹ Thus, the government has to embark on converting old possessions and should set benchmark lease prices to be imposed on old possessors when it takes such a measure as the lease price to be paid by old possessors cannot be determined through tender procedures.

One may say that the new lease system should not change the real property rights of urban residents retroactively. One of the cardinal principles of law is that no law should affect already existing legal relationships retroactively. This is to ensure certainty and confidence in creating legal relationships. If laws can apply retrospectively and disturb already established legal rights and obligations, individuals will not feel confident while involving themselves in land related transactions. Such retrospective effect of law can also undermine citizens' reliance on legal instruments and institutions. Yet, compelling circumstances (for example, uniform administration of land) may dictate the state to introduce such laws. Under the Ethiopian legal system, it is not totally impossible to enact laws with retrospective effects. What is clearly prohibited is enactment of criminal laws with such effect (Art 22 of FDRE Constitution).

A contrary reading of this particular provision would give us the impression that the government can enact retroactive laws on civil matters when pressing circumstances require so though the general principle is that laws should not have retroactive effect. Thus, converting old possessions to the new lease system could bring about social justice, uniformity in administering urban land and sustainable and healthy development of urban centers. Such conversion process should, however, be flexible to allow the poor continue holding their possession with affordable lease prices. The problems which are caused by the

³⁸ Ibid, see Art 6 of the urban land lease holding proclamation along with other provisions which set the obligations of someone with urban land holding rights.

³⁹ Mekasha Abera, *Ethiopian Basic Lease Law Concepts and the problems associated with the lease system*, April 2013, at. 40.

existing lease holding system should, of course, not be allowed recur in the conversion process.

What is rather challenging is the discontent those old possessors will have when government starts implementing such conversion. The country introduced a lease hold system in 1994 and thus the majority of the residents in urban centers got their land use rights under the old possession system and many even have been getting urban land through such system after the adoption of the lease system as the urban lease hold proclamations were inactive in many urban centers until recently as I explained it earlier.

The lease hold proclamation No. 721 is silent on many issues about conversion of old possessions into the lease system. It does not go beyond stating that “the modality of converting old possessions into lease hold shall be determined by the Council of Ministers (CM) on the basis of a detailed study to be submitted by the (concerned) Ministry”.⁴⁰ The proclamation has not set time framework. It has not also given basic directions on how the CM should determine the modality of conversion. To the author’s knowledge, neither a detailed study nor a decision on the modality of conversion to be used is made so far. Institutional, economic and political factors could explain the government’s reluctance on this compelling issue. Whatever factor might have caused such a delay, the old possessors are benefiting a lot paying relatively low fixed land tax while the new possessors have to pay the market prices of land.

The other point worth considering here is the change in size of the parcel following conversion. When an old possession is converted into the lease system, the old possessor’s land size may increase, decrease or remain unchanged according to the national standard to be approved. The Amharic version refers to the ‘national standard to be approved’ and the English version employs the phrase ‘in accordance with the approved national standard’.⁴¹ As the Amharic versions of the Ethiopian laws practically prevail over the English version when there are inconsistencies between the two versions, we should think of a new standard to be approved to guide implementation of the lease proclamation. The country has not so far approved a new national standard since the enactment of the urban leasehold proclamation and different plot sizes of the same purpose are being transferred to individuals through tender procedure. As any ambiguity in the prospective plans and standards may open room for corruption and defeat the purposes of the proclamation, such delicate issues need to be treated watchfully.

The urban land lease hold proclamation has also a discriminatory effect against those whose old possession size has to be reduced in light of the national standard to be approved. While those individuals who get extra land will only pay the market price of this additional land like other citizens, individuals whose old possession size has to be reduced will get compensation only for the ‘property to be removed from the land so reduced’; they will get nothing for losing part of their land use right.⁴²

Transfer of any property attached to an old possession through whatever modality except inheritance results in conversion of the old possession into the lease system. This shows how the government is enthusiastic to gradually convert old possessions into the lease system

⁴⁰ Art 6(1), Urban Lease Hold Proclamation No. 721/2011.

⁴¹ *Id.*, Art 6(2).

⁴² *Id.*, Art 6(2)(a).

making use of the natural course of transaction in real property in urban centers rather than taking a measure which transforms all old possessions at a time. Equally, merging of an old possession with a new lease hold converts the whole holding to lease hold reads.⁴³

On the other hand, transfer of a property attached to an old possession through inheritance does not result in conversion of the old possession. The rationale behind this might be to leave the rights transferred through such modality undisturbed as inheritance is not for consideration and doesn't form part of commercial transaction. One thing that we should take note here is that the exemption that the heirs may exercise over transferred old possession will come to end whenever the CM adopts a modality to convert all old possessions into the lease hold system.⁴⁴ Thus, this exception under art 6 sub art 3 of the urban land lease hold proclamation is temporary and will become inapplicable after some time. Yet, given the reluctance the government has shown to convert old possessions into the lease system, this exception may last long.

Here, the researcher is not suggesting that the government should swiftly convert old possessions to the lease system. Swift and ignorant measures could result in quite onerous and unaffordable obligations. But the standard at which old possession are converted into the new lease system are haphazard and less convincing, and deserve scientific approach.

VI. DISCRIMINATION AMONG ILLEGAL LAND HOLDERS AND BETWEEN LEGAL AND ILLEGAL LAND HOLDERS

Circumstances have forced some urban dwellers to resort to informal (illegal) land acquisition and that has persisted for years due to government's reluctance to take appropriate administrative measures until very recently. While the proclamation guarantees legalization of illegal holdings which are acceptable in accordance with urban plans and plotting standards under the lease system, it does not provide any compensation for those whose holdings are unacceptable. This is clear discrimination among illegal land holders. Though discriminated illegal urban land holders do not have legal claim against the government, they should be treated alike and compensated in kind or cash once the government has started tolerating previous illegal holdings. It is also very costly to destroy what has been built simply because an old possession is incompatible with the plans and parceling standards and such a measure can have a serious impact on the country's economy. Thus, compelling exceptions and appropriate reparation should have been included under the relevant provision of the proclamation.

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 regulations to be issued by regions and city administrations shall be administered by lease holding. (Art 6(4)).

The provision is poorly crafted as it does not provide a complementary provision which considers the interests of the remaining possessors. This could also open a room for corruption unless utmost care is taken by the government in preparing urban plans and parceling standards. Any ambiguity in crafting such instruments will have undesired ramifications. The

⁴³ *Id.*, Art 6(6).

⁴⁴ *Id.*, Art 6(3).

illegal land holders could use all the means including bribery to secure their holding and vague standards and plans can exacerbate this as public officials can justify their arbitrary decisions by manipulating vague terminologies. Hence, such delicate issues need utmost good-faith and care.

Besides, the urban lease hold proclamation, by regularizing illegal old possessions which are acceptable in accordance with the plans and parceling standards to be adopted, has taken a position which could disappoint the law observing citizens. While the illegal old possessors are rewarded, those who obeyed the law and left themselves landless have to pass through tough tender procedures to get urban land under the existing lease hold system. This is noticeably uncalled-for handling of the matter. Regularization of illegal holdings might be necessary given its intensity and the country's poor land administration system; yet this could have been done after imposing some form of penalty on those who held land illegally. By failing to do so, the proclamation has encouraged urban residents to keep on holding urban plots illegally. Unauthorized land hold has become prevalent even after the coming to force of the existing urban lease hold proclamation.⁴⁵

Such social injustice under the proclamation does have severe impacts on those who are not lucky old possessors nor financially able to get land through the current lease arrangement. The present lease law has pushed out this class of the society. Addressing this particular problem requires amendment of the lease proclamation to draw exceptions to ensure that land is accessible for the desperate people through a lawful means. Otherwise approach would infringe the grand principle which declares that land belongs to the people and state of Ethiopia.

VII. CONCLUSION AND RECOMMENDATIONS

This work has examined the problems related to urban land acquisition and social justice in Ethiopia. It has depicted that the Ethiopian urban land acquisition system is not flexible enough to respond to the ever increasing demand for urban land. It also uncovered that though the government introduced the Integrated Housing Development Program (IHDP) to help poor urban residents without requiring them to go through tender procedures, the houses offered through such programs are not still affordable to a significant portion of the society, are low quality, and not accessible to all. What is more, individuals look for land not only to build residents but also to do other activities for their livelihood. If the poor are seeking for secured and long term urban tenure for such purposes, they can get it only through tender procedure and this procedure would obviously drive them out.

This work has also revealed how the reluctance on conversion of old possessions to the lease hold system, the regularization of illegal land holdings and the discrimination among the illegal land holders can result in social injustice. Individuals who have urban land use rights on plots of the same size, place and purpose will have to pay significantly different amounts if we tolerate the mutual existence of the old possession and lease holding system. The one who acquired such land through the lease system has to pay the market price while the other with an old possession on a land of the same value will pay not the market lease price but very low and fixed land tax. The people and state, as the owners of land, should be able to derive appropriate proceeds from old possessions. Doing so would not stand against the principle of

⁴⁵ THE REPORTER, Widespread unauthorized land holding, Addis Ababa, 03 August 2014.

non-retroactivity of laws as exceptions to this principle are not prohibited in enacting civil laws when compelling circumstances dictate so. The regularization of illegal land holdings and discrimination between the illegal land holdings also resulted in social injustice. Regularization of illegal land holdings has rewarded the law breakers and ignored those who are left landless because they adhered to the law. The lease holding proclamation, by treating the equals (illegal land possessors) substantially unequally (differently), has again resulted in social injustice.

The author, therefore, recommends that the current urban lease holding proclamation and the subsidiary lease holding laws should be amended to adopt accommodative urban land acquisition and transfer system which even, at times, allows the poor acquire urban land for free as land in Ethiopia belongs to the public at large and everyone should be enabled to access it. Secondly, the government should also revise the discriminatory rules on regularization of illegal land holdings and conversion of old possessions.

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