

# **The Ethiopian Urban Land Lease Holding Law: Tenure Security and Property Rights**

**Legesse Tigabu\***

## **Abstract**

As urban centers in Ethiopia are expanding fast, adopting and executing a flexible urban land use system which can respond to the ever mounting demand for urban land and ensure tenure security would be mandatory. In the absence of tenure security, no one is happy to bring about a costly permanent improvement to land. Under this article, the author argues that the Ethiopian urban land holders encountered land tenure insecurity due to poor real property registration system, restrictive rules on land holding, and their inability to pay lease and related debts to the government and all these have their own uncalled for consequences on property rights. This article also unveils how urban land has become unaffordable to the public at large.

## **1. Introduction**

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

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owned by the state and peoples of Ethiopia and thus cannot be owned privately.<sup>1</sup>

While farmers may get rural land for free as proclaimed under the constitution,<sup>2</sup> urban residents have to go through tender and allotment procedures of the urban land lease system to secure urban land use rights on a plot of land. The Ethiopian urban land lease system has tried to ensure the right balance between the interest of the public at large as owner of land on one hand and individual interests related to urban land on the other. Among the most important urban land related interests of the individual citizen is tenure security. As urbanization is growing fast<sup>3</sup> in Ethiopia, introducing and implementing a land administration system which ensures tenure security is mandatory. In the absence of tenure security, no one is content to bring about any form of permanent improvement to land. This has serious ramifications as it discourages real estate development and ultimately results in shortage of housing and other immovable properties needed for different uses.

This piece of writing will explain how individuals may face urban land tenure insecurity due to poor real estate registration system, expiry of lease periods, their incapacity to pay lease debts to the government and

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<sup>1</sup> Art.40 (3) of the FDRE constitution declared that “*The right to ownership of rural and urban land, as well as of all natural resources, is exclusively vested in the State and the peoples of Ethiopia. Land is a common property of the Nations, Nationalities and Peoples of Ethiopia and shall not be subject to sale or to other means of exchange.*”

<sup>2</sup> See Art 40(4) of the FDRE Constitution.

<sup>3</sup> Sisay Habtamu Tekle 2012, *Urban Land Policy vis-à-vis Tenure Security and the Environment: A Case Study of Addis Ababa, Ethiopia*. Also see Shlomo Angel, David de Groot, Richard Martin, Yohannes Fisseha, Tsigereda Taffese and Patrick Lamson-Hall 2013, *Urban Expansion (Ethiopia): Interim Report August 18 2013*. Though Ethiopia is the least urbanized country in the region and below 20% of its population lives in urban centers, the urbanization process is one of the fast growing due to high rate jobless youth emigration from rural to urban areas. Thus, advancing the urban land administration system of the country is so indispensable to respond to growing demand for urban land.

### **The Ethiopian Urban Land Lease Holding Law...Legesse Tigabu**

failure to start and complete construction within the specified period. It will also explore on the implications of the relevant provisions under the Ethiopian urban land lease laws on property rights of individuals. So, both the urban land lease system which creates and terminates urban land use rights and the urban land registration system which aims at ensuring tenure security are the subjects to be dealt with hereunder. For easy understanding, this work is designed to have six sections. Section one will explore the expiry of lease period and its impact on tenure security and property rights of individual rights. Section two will focus on commencement and completion of construction and tenure security. Registration and urban land related property rights of individuals will be addressed under section three. Section four reflects on constitutionality of proclamation No. 818/2014. Section five explores land lease related debts and property rights and section six concludes the work.

## **2. Expiry of lease period, tenure security and property rights of individuals**

There is no problem with setting time limits while transferring land to individuals through a lease arrangement as lease, by its nature, is temporary and for a defined period of time. Urban land transferred, particularly, to investors (persons who are considered domestic or foreign investors as per the investment proclamation No. 769/2012, Reg. No. 270/2012 and other relevant laws) should be for a defined time and even should not be for unjustifiably long time, say 99 years, as this would deny a given generation's right to use such tract of land. The reason is obvious. Investors need large tracts of land and such investors at times may be foreigners. Thus, giving urban land for undefined period of time or unduly long time may tailor the principle of public ownership of urban/rural land. This may change the nature of urban land market to land grabbing by investors who can afford it and that may put land use rights of Ethiopian citizens at stake. Given the fact that urban land related

corruption is common<sup>4</sup> in Ethiopia and the government is striving to curtail it, sympathetic approach in this regard may not be opted for.

On the other hand, transferring urban land only through a lease arrangement and thus setting lease periods for all types of urban land holdings might be undesirable. Art 18 of the lease proclamation has set the ceiling lease periods<sup>5</sup> as this proclamation declared lease to be the only means of acquisition of urban land. Such ceiling ranges from 5 years for short-term land uses for economic and social activities to 99 years. There is no problem with limiting land use rights through lease periods. The problem with the proclamation is that it doesn't provide any exception to the principle of acquisition of land through a lease system. To be precise, lease shouldn't have been the only urban land acquisition modality and the constitution doesn't dictate so. The nature of the real state to be built, the function it has to give and some other factors should be considered before putting time limits for all types of holding rights. Above all, individuals have a constitutional right to private property and thus may own improvements over land permanently unless the government exercises its inherent right to take land back for public purposes (expropriation) by virtue of art 40 (8) of the FDRE constitution or their land use right was temporary from the beginning because they acquired it through a lease arrangement. Yet, it doesn't mean that the constitution has declared lease arrangement as the only means of acquisition of urban land use right. The legislator, as stated under the preamble of the lease proclamation, intends to ensure the prevalence of good governance by introducing lease as the only means of urban land

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<sup>4</sup> Samira Lindner 2014, *Ethiopia: Overview of corruption in land administration*, Anticorruption resource center, June 2014

<sup>5</sup> See the sub articles under art 18 of the lease proclamation. Under the urban land lease law of Ethiopia, there is no any exception to the principle that land use right in urban areas expires after some defined time. Though the constitution has kept silent over this particular issue and thus the government may regulate it, such very inflexible stand could have uncalled for ramifications on property rights of real estate owners.

**The Ethiopian Urban Land Lease Holding Law...Legesse Tigabu**

acquisition.<sup>6</sup> Yet, the government could have included other modalities and made the procedures transparent to ensure equitable access to land.

As long as the government can avail itself of expropriation proceedings when it needs land for public purposes, setting time limits for all cases (using lease as the only means of acquisition of urban land) and removing any type of real estate after expiry of and refusal to renew a lease period would have detrimental effects on the country's economy and is even inconsistent with the constitutional right of real estate ownership which in principle has to be limited by the government through expropriation proceedings.<sup>7</sup> Though the government may come up with different restrictions on land use rights, it cannot deny the real estate ownership right of individuals unless the land use right of individuals ends. Individuals may lose their urban land use right either because of expropriation or after expiry of lease periods. Individuals cannot avoid expropriation; but as the constitution has not set lease as the only means to acquire urban land, the urban land use right of individuals should not have been limited by time in all cases and there could have been possibilities where urban residents exercise permanent land use and real estate ownership right subject to expropriation like the farmers in rural areas.

Only urban land holdings whose nature requires lease periods should be transferred through lease arrangement and subjected to such time bound. Otherwise argument leaves urban land under the control of the government while the constitution says land belongs to the state (not government) and peoples of Ethiopia.<sup>8</sup> Government is not land owner. It is there to regulate land use right on behalf of the state and peoples of Ethiopia. While doing so, it has to make land accessible to all and ensure tenure security. But, the modality of urban land acquisition adopted by the government couldn't achieve these constitutional objectives as

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<sup>6</sup> See section 3 of the preamble of the lease proclamation.

<sup>7</sup> See art 40 (8) of the constitution

<sup>8</sup> See Art 40(3) of the constitution.

unaffordable land tender proceedings could push out the lower class. At times, such undesired lease arrangements may also discourage real estate development and result in lower quality buildings as the owners of buildings have no guarantee that they/their children will continue to be owners of the building they erect after expiry of the lease period. Though renewal might be requested, it could be refused and the grounds of refusal are not mentioned under the proclamation. One may, for example, transfer his land use right along with poorly constructed house 5 or 10 years ahead of expiry of his lease hold right. Then, who is imprudent to construct a better building on such plot of land while he/she is not certain that the lease period will be renewed? He/She knows that no compensation will be paid in case the renewal request is rejected as proclaimed under art 19 of the urban land lease proclamation. We can think of many more scenarios.

It could be said that a lease period can be renewed after its expiry and we can ensure tenure security using the procedures set by art 19. But, under art 19 of the lease proclamation, getting the lease hold right renewed cannot be claimed as of right if one closely reads the last phrases. Rather, it is the discretionary power of the authority concerned to reject or approve a renewal request. To ensure that such discretionary power is used properly, the proclamation should have mentioned the grounds of refusal as such grounds have serious implications on one of the fundamental rights of individuals-the right to property. While art 25 (1) (a) and (b) set sufficient grounds which could terminate urban land use right any time before expiry of the lease period, sub 1 (c) declared that the fact that the lease period has not been renewed in accordance with art 19(1) results in termination of the lease hold right without explaining when the lease period could not be renewed. Art 19 has made it clear that at times renewal couldn't be possible though the request is made. This could have been clarified. It is obvious that the lease holder could also lose his right because of his failure to request renewal up on expiry of the lease period as such period cannot be renewed unless the lessee lodges an application to this effect as proclaimed under art 19 (2).

### **The Ethiopian Urban Land Lease Holding Law...Legesse Tigabu**

The lease regulations of the regions under the study have tried to close rooms for abuse by setting some grounds to reject renewal requests. Yet, such grounds of rejection are not clear enough and could be abused. The directives of the respective regions have copied and pasted the grounds stated under the regulations instead of elaborating them. Art 45(2) of Addis Ababa City Administration urban land lease regulation, art 50(2) of Amhara Regional State urban land lease regulation, art 48(2) of SNNP Regional State urban land lease regulation and relevant provisions of the urban land lease directives of the respective regions have set identical grounds of rejection of a renewal request.<sup>9</sup> These grounds are:

1. *When the structural plan of the urban center is changed*
2. *When the land is required for public interest*
3. *When it is impossible to change the previous development to the development level the place demands.*

The lease proclamation should have incorporated these grounds as they determine fundamental rights of individuals. The first ground is quite clear. If a fundamental urban land plan changes the purpose of some tract of land from industrial zone to residential area after impact assessment, then the one who have leased urban land for specified time may not be able to get his holding right renewed. This may simply fall under the broad notion of “public purpose” which allows the government to expropriate land even before expiry of a lease period.

The last two requirements are vague. The government may say the land is needed for public interest or it may claim that it is impossible to change the previous development to the development level the place demands.

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<sup>9</sup> See Art 45(2) of Addis Ababa City Administration urban land lease regulation, Art 50(2) of Amhara Regional State urban land lease regulation, Art 48(2) of SNNP Regional State urban land lease regulation and relevant provisions of the urban land lease directives of the respective regions. As grounds for the rejection of urban land lease renewal request will have serious impacts on the constitutionally recognized property rights of individuals in general and tenure security in particular, they should have been set by the legislator itself in unequivocal terms. Also see Zelalem Yirga 2914, *Critical Analysis of Ethiopian Urban Land Lease Policy Reform since Early 1990s*: USA, 2014

The latter couldn't be a big challenge if experts in the field set clear guidelines and decide accordingly. The former is worth considering. Broadly speaking, any land can be required for public interest. It is, therefore, really difficult for the individual to establish absence of public interest. The narrow phrase "public purpose" which is employed by the constitution and the civil code is substituted by public interest. Public purpose limits the power of government by allowing expropriation when the land is needed for goods and services which are going to be open for the public at large like schools and hospitals. In such cases, the public at large acquires direct benefit from the use of land. If one takes a look at the broad definition given to the phrase 'public interest' under art 2(7) of the lease proclamation, he can easily understand that there exists a room for abuse. This provision reads:

*““Public interest” means the use of land defined as such by the decision of the appropriate body in conformity with urban plan in order to ensure the interest of the people to acquire **direct or indirect benefits** from the use of the land and to consolidate sustainable socio-economic development.”*

Such disputes may not be brought before ordinary courts (art 29(1) of the lease proclamation). When land is expropriated for public use, for example, the 'public use', claimed by the government cannot be questioned by ordinary courts and it should not be as it is an administrative matter.<sup>10</sup> If so, the rules the concerned authorities base their decisions on should be clear enough to avoid possible arbitrariness. Only disputes over the amount of compensation may be brought before courts.<sup>11</sup> In case, the land is needed for public use after expiry of the lease period, there is no compensation to be paid<sup>12</sup> which would mean that there is no issue at all to be brought before ordinary courts. Thus, there is a room for tenure insecurity.

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<sup>10</sup> Art 29(3) of the lease proclamation

<sup>11</sup> Ibid

<sup>12</sup> Art 19(1) of the lease proclamation

### **The Ethiopian Urban Land Lease Holding Law...Legesse Tigabu**

What is more, urban land lease contract is a distinct form of administrative contract in which the government represents the land owners, the state and peoples of Ethiopia. This would mean that the government will have control over the lease contract as administrative contracts always involve public interest and such public interest is represented by the government. Such control and discretionary power over the lease arrangement, if abused, will result in tenure insecurity and leaves ownership and other urban land related rights at stake.

Regarding the renewal procedure, art 19(2) declared that the period of lease will be renewed only if the lessee applies in writing to the appropriate body within 10 to 2 years before the expiry of the period of lease. The appropriate body is required to respond within a year from the date of submission of the application and failure to do this would mean that the lease period is renewed pursuant to art 19(3) of the proclamation. Art 19(4) warns officials who fail to respond within a specified time by making them liable for all adverse consequences of the renewal. Thus, it is less probable that lease right holders will make use of this opportunity to get their right renewed.

All these would mean that the ownership right of the lessee over his/her improvements made over the land could be at stake.<sup>13</sup> Lease by its nature is temporary and hence subject to renewal. But, the grounds of refusal, as they are serious limitations on a fundamental right of an individual, should be imposed and clearly mentioned by the law maker. If his/her leasehold right is not renewed, then he/she has to remove his/her property or the government will take the land along with the property without any payment. This might have damaging ramifications unless the decision makers consider the prevailing facts. Removal/non-removal of very expensive buildings should be worth considering and needs wise decisions to avoid undesirable destruction.

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<sup>13</sup> See Mekasha Abera 2013, *Ethiopian Basic Lease Law Concepts and the problems associated with the lease system*, Far East Press, 2013 p.120-121.

### **3. Commencement and completion of construction and tenure security**

The Ethiopian urban land lease arrangement has set construction commencement and completion time ceilings as it transfers land use rights for a defined time. The lease proclamation has regulated these issues under art 22 and 23. Given the fact that the demand for urban land is increasing at an alarming rate in Ethiopia and because urban land could be used for different purposes, our land lease system should avoid circumstances which may make urban land idle. If there is no time ceiling for commencement and completion of construction, the natural consequence is that there won't be guarantee that the land will be improved within a reasonable time.

Art 22 of the lease proclamation declared that the time of commencement of construction should be specified under the lease contract. Such time might be extended based on the complexity of the construction and cannot be extended beyond the ceilings provided by regional regulations.<sup>14</sup> The time of commencement is from the date of conclusion of construction permit as proclaimed under the regional regulations. The regional regulations have copied and pasted the time limits set under art 34 of the model regulation adopted by the Ministry of Urban Development and Construction which are 6, 9 and 18 months for small, medium and large constructions respectively with possible extension for 6, 9 and 12 months correspondingly. Accordingly, art 34, 36 and 33 of the urban land lease regulations of SNNPs regional state, Amhara regional state and the Addis Ababa City Administration respectively have set identical ceilings as they have copied art 34 of the model regulation as it is. Other regions have also followed the suit with no or insignificant differences. The constructions are classified as small, medium and large constructions based on their complexity and all these categories are eligible for commencement time extension as may be allowed by the regulations of regional states. The

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<sup>14</sup> See Art 22(2) of the lease proclamation

### **The Ethiopian Urban Land Lease Holding Law...Legesse Tigabu**

proclamation has not set the time of commencement of construction nor the ceiling periods. It has left these matters to the regional states.

Art 23(2) on the other hand has provided time limits for completion of construction. The time limits under art 23(2) may be extended when circumstances so require. The applicable ceilings are those set by the regulations of the regional states; yet these ceilings cannot go beyond the ceilings set by the proclamation which are 28, 48 and 60 months for the three levels of construction, respectively.<sup>15</sup> So, the regions can set ceilings within the ceilings stated under the proclamation. However, the regional regulations have again copied and pasted the time limits on completion of construction under art 35 of the model regulation and this model regulation is identical to the lease proclamation in this regard.

As discussed earlier, the author advocates the time stipulations for commencement and completion of constructions. However, the severe penalties for failure to commence or complete construction in time stated under the lease proclamation will have undesired consequences and may discourage real estate development. Given the down payment the lessees should pay in advance,<sup>16</sup> project study and design costs and regular lease payments before they commence or complete their construction, they will obviously be in financial difficulties to commence or complete construction. What is more, those who have failed to comply with the time bounds might be at different stages of construction. If they fail to discharge such obligations within the time ceilings, they all will automatically lose their lease hold in addition to the penalty.<sup>17</sup> The author

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<sup>15</sup> See 23(4) of the lease proclamation

<sup>16</sup> In urban land tender proceedings, the amount of the down payment (the amount to be paid in advance) and the lease price offered by a bidder determine his/her chance of winning. It is, therefore, natural that the bidders will present higher down payments to win the bid. Then, they fall into financial crisis when they start construction. The urban lease hold proclamation and most of the regional urban land lease laws have proclaimed that the winner bidders are identified based on the lease price they offered (80%points) and the down payment they undertook to pay (20%).

<sup>17</sup> See art 22 and 23 of the lease proclamation

would say penalty is indispensable to ensure timely improvement over land; but it should not be this much severe and discouraging. The construction progress the lessees are making and the stage they are in should also be considered in determining penalties. Ordering the lessee to remove a building of any type and at whatever stage following his failure to comply with the time of completion of construction<sup>18</sup> could not also be economically sound. When the lessee fails to remove, the appropriate body may, through auction, transfer the incomplete building to other individuals or remove it, as the case may be, and recover costs from the lessee.<sup>19</sup> As the appropriate body may remove it and recover costs from the lessee instead of selling it through auction<sup>20</sup>, the lessee may remove an incomplete construction as he has this right under art 23(6) and that is simply an economic loss for the country. Though the government authorities will have to opt for the right solution at the end in each case, the uncertainty right after the order may result in demolition of the incomplete construction by the lessee.

If the lessees face such tenure insecurity, then they will choose to transfer their lease hold rights before the time of commencement or completion is over, as the case may be, to escape penalties. Hence, a lessee who is not capable of commencing construction ahead of the deadline or a lessee who already has commenced construction but is not able to complete it within the time ceiling may transfer their lease hold right without paying any penalty as they do have this legal right under art 24(2 and 3). Such transfer is attractive and rewarding compared to the penalty discussed above. The lessee will get the effected lease payments back including interests calculated based on bank deposit rate, value of the already executed construction if he is transferring his lease hold right after commencement and before the time of completion and lastly 5% of the

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<sup>18</sup> See sub art 6 of art 23 of the lease proclamation

<sup>19</sup> See Art 23(7) of the lease proclamation

<sup>20</sup> See Art 23(7(b) of the lease proclamation

### **The Ethiopian Urban Land Lease Holding Law...Legesse Tigabu**

transfer lease value.<sup>21</sup> This encourages individuals to transfer their lease hold rights before commencement or completion of construction and that is detrimental to real estate development. Individuals who have transferred their holdings before completion of construction repeatedly could be barred from participation in future land lease bids if they have done so “in anticipation of speculative market benefits.”<sup>22</sup> This could discourage rent seekers from manipulating the land market.

#### **4. Lease debts, tenure security and property rights of individuals**

In addition to the obligations like down payment,<sup>23</sup> commencement and completion of construction which at times may result in termination of the lease hold right unless discharged, there is also annual lease payment<sup>24</sup> which may lead to punishment and seizure and sale of the property of the lessee by the concerned authority when such lease payment is not effected timely.<sup>25</sup> All these would mean that the early stages of urban lease arrangements are quite onerous and can easily drive the majority of Ethiopians away from urban land markets. The researcher would say such a lease arrangement serves only the rich who are capable of discharging such onerous obligations and government as it derives a significant amount of revenue from the transaction. The process should have enabled the lower class construct and own real estate as one of the most important rationales behind adoption of public ownership over land is to avoid accumulation of land and real estate in the hands of the rich and overcome exploitation of the lower class by the rich.

On top of the penalty fee equivalent to the rate of penalty fee imposed by the Commercial Bank of Ethiopia on defaulting debtors, their property may be seized and sold by the appropriate body to collect the arrears. This gives the government free hand to seize and sale the properties of

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<sup>21</sup> See sub art 2 and 3 of art 24 of the FDRE urban land lease holding proclamation No.721/2011.

<sup>22</sup> See art 24(7) of the lease proclamation

<sup>23</sup> See supra note 15.

<sup>24</sup> See Art 20(6) of proclamation No. 721/2011.

<sup>25</sup> Ibid

defaulting debtors without going to and waiting for court orders. Thus, accumulation of arrears for three years may result in seizure and sale of properties of the debtor by the concerned body and this leaves the lease hold rights of the lessee uncertain as the property right the concerned authority knows closely and may most likely sale is the real property he has built on his lease holding.

In principle, one cannot oppose the penalties and the powers given to the appropriate body as such penalties and powers are meant to help effective enforcement of the proclamation. But, given the onerous obligations that I mentioned earlier and the power granted to the government under art 20(6) of the lease proclamation, the lease hold rights of the lessees are uncertain and that would make an urban land lease arrangement scaring for many Ethiopians.

#### **5. Registration and urban land related property rights of individuals**

Registration of land and land related properties would be crucial in improving land management and development. Scientific recording of information regarding real estate is indispensable to administer urban land and urban land related properties. In the absence of systematic recording of physical and legal information on a plot of urban land, we won't have advanced urban land management and this in turn could have serious implications on tenure security. Tenure insecurity has many undesired consequences. The UN Centre for Human Settlement (Habitat) has identified the following as unwanted ramifications of tenure insecurity.<sup>26</sup>

1. *Inhibits investment in housing*
2. *Hinders good governance*
3. *Undermines long term planning*
4. *Distorts prices of land and services*
5. *Reinforces poverty and social exclusion*
6. *Impacts most negatively on women and children.*

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<sup>26</sup>Peter Dale, *The importance of land administration in the development of land markets - a global perspective*, University College London, England, 2000, p.4.

## The Ethiopian Urban Land Lease Holding Law...Legesse Tigabu

Cadastre which records physical information about a plot of land<sup>27</sup> and land register which records legal information related to a unit of land<sup>28</sup> are so important in improving land market and use as such systems provide reliable information about a plot of land. Cadastre registers boundaries, fertility, purpose of a unit of land and size of such land.<sup>29</sup> Such physical information has, basically, to be recorded, managed and studied by engineers and geographers.

Countries may adopt cadastre and land registration separately or a multipurpose integrated land information system which includes both cadastre and land register and is advisable to respond to market demands.<sup>30</sup> Ethiopia has chosen the latter when it approved the Urban Landholding Registration Proclamation No. 818/2014. Though the country incorporated land registration provisions under Title 10 of the Civil Code of the Empire of Ethiopia Proclamation No. 165 of 1960 decades ago, these provisions are denied a legally binding force as article 3363 of the Civil Code suspended their application until an executive order is issued by the government.<sup>31</sup> No government in Ethiopia so far issued such an order.

As the application of the provisions under Title 10 of the Civil Code is suspended, the courts have been using these provisions as customary rules as this part of the Civil Code incorporated important principles on registration of immovable properties and because the country didn't provide alternative comprehensive legislation governing the subject matter. The Civil Code regulated the country's land information system in a unified approach integrating cadastral and land register rules.<sup>32</sup> The

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<sup>27</sup> Ibid, p.3, also see Daniel W/Gebriel and Melkamu Belachew, *Land Law Teaching Material*, Justice and Legal Research Institute, 2008, p.1001-104

<sup>28</sup> Ibid

<sup>29</sup> Ibid

<sup>30</sup> Supra note 25, p.5

<sup>31</sup> See art 3363 of the civil code

<sup>32</sup> See art 1567 and 1606 of the Civil Code.

Civil Code didn't also make a distinction between urban and rural real properties.<sup>33</sup> Real property registration laws of the country adopted by the existing government are scattered over legislations as the rural and urban land laws at regional and federal levels provide their own landholding registration rules. Thus, one has to take a look at the federal and regional rural and urban land proclamations, regulations and directives to fully understand the Ethiopian law governing registration of immovable properties. The country's urban land registration law has, therefore, not been comprehensive and the country has experienced poor urban land registration system due to lack of capacity and well established system to record urban land use rights, transactions over these right and possible restrictions.<sup>34</sup>

In 2014, the government has adopted Urban Landholding Proclamation No. 818/2014 to realize real property rights of individuals, provide reliable land information to the public at large, minimize land related disputes and modernize the country's real property registration system.<sup>35</sup> Though limited in scope (as it doesn't regulate registration of rural real property), this proclamation is applicable throughout the country and can bring about tenure security and certainty in real property transaction as registration provides reliable and public information both for the land holder and interested third parties. The Proclamation has adopted integrated urban land information system by dictating registering organs to record both physical (cadastral) and legal information about land; it unified cadastre and land register.<sup>36</sup> The Proclamation has employed the phrase 'legal cadastre' to refer to both legal and cadastral information about a unit of land.<sup>37</sup> This urban landholding registration proclamation is comprehensive as long as urban real property registration is concerned

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<sup>33</sup> See art 1575 of the Civil Code.

<sup>34</sup> Ethiopia: *Overview of corruption in land administration*, [file:///C:/Users/ju/Downloads/2014-11%20\(1\).pdf](file:///C:/Users/ju/Downloads/2014-11%20(1).pdf). Accessed on Nov 7, 2014 (845PM).

<sup>35</sup> See the preamble of proclamation No. 818/2014.

<sup>36</sup> See Art 6 of proclamation No. 818/2014.

<sup>37</sup> Ibid

### **The Ethiopian Urban Land Lease Holding Law...Legesse Tigabu**

and has repealed all pre-existing laws and customary practices governing urban real property registration as long as they are inconsistent with it.<sup>38</sup>

What we can infer from this is that already existing rules on real property registration in urban areas are yet valid as long as they don't contradict the urban landholding registration proclamation. The courts may, therefore, make use of urban real property registration laws preceding this proclamation to fill possible gaps.

One point worth considering when we talk about the urban landholding registration proclamation is that this proclamation doesn't create, modify, transfer or terminate real property rights of individuals. The registering organ, according to this proclamation, simply registers/records physical and legal information about land. In other words, registering organs record/register cadastral information about a unit of land and rights and restrictions which already have been created on such unit of land through other laws or decisions. Among others, the Urban Land Lease Holding Proclamation No. 721/2011, law of succession, judicial decisions, administrative decisions, contract law and property law may create such rights and restrictions over immovable properties in urban areas.

### **6. Proclamation No. 818/2014 and constitutional land related powers assigned to the federal government and regional states**

Though the urban land registration proclamation No. 818/2014 has set basic rules which can ensure tenure security and full realization of the land use rights enshrined under the urban land lease legislations, there is a contention over its constitutionality. The contention is as to whether the federal legislator can enact such land administration related laws having nationwide application.<sup>39</sup> This section reflects on such contention.

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<sup>38</sup> See Art 56 of proclamation No. 818/2014.

<sup>39</sup> <http://www.ethiopianreporter.com/index.php/news/item/4384>. Accessed on Oct 13, 2014 (6:38PM)

In Ethiopia, land is a subject-matter over which both levels of government can exercise power. The federal government is empowered to enact laws on utilization of land and natural resources<sup>40</sup> while the power to administer the same in accordance with federal laws is assigned to the regions.<sup>41</sup> Power of administration involves enactment of subsidiary legislation. Some federal land laws recognized this and allow regional states to enact laws on utilization of land. The federal government cannot address all details and it is a regional state which can adopt feasible subsidiary land legislation to implement federal laws considering the prevailing facts in the region.

When we come to the power of land administration, however, it is an exclusive power of the regions<sup>42</sup> and we cannot come across legal nor practical reasons to assert otherwise. While the laws on utilization of land enacted by the federal government have to define land use rights, manners of use of land and restrictions on land use rights, land administration laws set rules on enforcement and realization of the laws on land utilization. Nonetheless, the Ethiopian urban landholding registration proclamation which has been enacted by the federal government dictates the regional states to administer urban landholding in a certain way as the regions are expected to adhere to the rules on registration under Proclamation No. 818/2014. The proclamation is applicable in all urban centers in Ethiopia.<sup>43</sup> The question here is whether the federal government can go beyond regulating land use rights in the regions and involve itself in the administration of the same by ordering regions to administer land in a particular way. The federal government has enacted substantive land laws including urban land leasehold proclamation No. 721/2011 to regulate creation, transfer, modification, restriction and termination of rights over immovable properties. Is it not then up to the states to administer such rights once they are regulated through substantive laws? If the federal

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<sup>40</sup> Art 51(5), FDRE Constitution.

<sup>41</sup> Art 52(2) (d), FDRE Constitution.

<sup>42</sup> Art 52(1) and 52(2) (d), FDRE Constitution.

<sup>43</sup> Art 3, urban landholding registration proclamation No. 818/2014.

### **The Ethiopian Urban Land Lease Holding Law...Legesse Tigabu**

government can order the regions to administer land in a particular way, where is the significance of the constitutional power of the regions to administer land? One may raise these and related questions over the urban landholding proclamation No. 818/2014.

The HPRs (the Ethiopian legislator) was not sure if the draft urban landholding proclamation was consistent with the constitution while deliberating on it. It has, therefore, sent it to the HOF (Ethiopian second chamber which has a final say on constitutional disputes).<sup>44</sup> Some MPs have objected such decision claiming that the HOF is not given any legislative role under the constitution and, therefore, we should not request a comment from the second chamber as a precondition to pass draft laws.<sup>45</sup> The HOF decided that the draft legislation is consistent with the constitution and the country is in need of such legislation to build one economic community.<sup>46</sup> It should be noted that the HPRs has the power to enact laws on civil matters (though they are left to the regions under the constitution) whenever the HOF deems indispensable to bring about one economic community.<sup>47</sup> Art 55(6) of the FDRE constitution declared the following.

*It (the federal legislator) shall enact civil laws which the House of the Federation deems necessary to establish and sustain one economic community.*

Thus, one could uphold constitutionality of the Ethiopian urban landholding registration proclamation No. 818/2014 considering this particular provision under the constitution. Among the major objectives of the proclamation, one is building one economic community and this goes in line with art 55(6) of the constitution. The second and most important objective of the proclamation is ensuring tenure security for urban land

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<sup>44</sup> Supra note 39.

<sup>45</sup> Ibid

<sup>46</sup> <http://www.ethiopianreporter.com/index.php/news/item/4640>. Accessed on Oct 13, 2014 (7:29PM)

<sup>47</sup> Art 55(6), FDRE Constitution.

holders.<sup>48</sup> Given the fact that the country didn't have uniform and well functioning real property registration law previously, the adoption of the urban landholding registration proclamation should be appreciated and even the same trend could be suggested when it comes to the rural real property registration system.

## **7. Conclusion and recommendations**

This work has uncovered that urban land tenure insecurity, due to poor real estate registration system, inflexible rules on lease periods, the land users' incapacity to pay lease debts to the government and failure to start and complete construction within the specified period, would discourage real estate development in Ethiopia. The recently adopted urban land registration proclamation no. 818/2014, if implemented very well, can improve the urban land registration system and ensure tenure security.

Yet, making lease the only means of acquisition of urban land and hence setting time bounds for all types of improvement on urban land cannot hold water and could at times result in tenure insecurity. As individuals know that they may lose their building or have to remove it after expiry of the lease period whenever the government rejects their request for renewal, they don't want to spend a lot on the land leased to them. Though no lease period related to permanent improvement over urban land has naturally expired so far or is going to expire soon and we couldn't witness refusal of a renewal request and its consequences at this point of time, one can figure out how such procedures are discouraging when the relevant provisions get executed. This work revealed that there is no problem with limiting land use rights through lease periods. The setback with the Ethiopian urban landholding system is that it doesn't provide any exception to the lease system. Lease shouldn't have been the only urban land acquisition modality and the constitution doesn't say so. The government could have come up with flexible and accommodative legislation using the constitutional silence.

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<sup>48</sup> See Art 4 of proclamation No. 818/2014.

## **The Ethiopian Urban Land Lease Holding Law...Legesse Tigabu**

The obligations related to rent payment, commencement of construction and completion of construction are also onerous and all these would mean that land users are discouraged from or incapable of bringing quality permanent improvements over land and hence they may prefer to transfer their land use right without any improvement on the land.

Based on the findings discussed under this work, the author recommends the following:

- Given the country's poor record in registration of urban real estate, the government should strive to fully implement the recently enacted urban land registration proclamation no. 818/2014 to modernize the urban real state registration system. This could ensure tenure security and minimize land related disputes in urban centers.
- Tenure security could also be further improved by revising some objectionable lease periods set under the country's urban land lease holding laws by drawing exceptions to the lease system to address compelling scenarios as the constitution has not prohibited the government from doing so.
- What is more, the rules which have made obligations related to rent payment, commencement of construction and completion of construction onerous should be revised as such rules discouraged the land users from bringing quality permanent improvements over land. Among others things, the required amount of down payment in the tender procedures should be reduced and we should have rules which can accommodate the progress the lessees are making while constructing even though they may have failed to start or complete construction within the time limits set by the law due to imperative reasons. We can impose fees than employing severe penalties stated under the lease proclamation which could result in taking away the land from the lessee. Reconsidering the Ethiopian urban land lease system taking into account the compelling reasons discussed above would mean making urban land accessible to the public at large and ensuring equitable distribution of wealth.