

# OVERVIEW OF THE CORE CHANGES IN THE NEW ETHIOPIAN URBAN LAND LEASEHOLD LEGISLATION

---

Belachew Mekuria Fikre\*

*He who owns the means by which I live owns my life*<sup>1</sup>

## Introduction

Rural land administration has shown a significant improvement, *inter alia*, due to the implementation of the possession certification process. Whether or not this process of certification would bring the desired goal of ‘sustainably conserving and developing natural resources and pass over to the coming generation through the development and implementation of a sustainable rural land use planning’<sup>2</sup> is yet to be seen. This progress in the rural land administration is not matched by the urban land holding system. It is rather perplexing that the total houses in Addis Ababa without title deeds are more than the ones with title deeds. Current efforts towards the issuance of title deeds is expected to address this gap. Moreover, the urban land holding system is far from being uniform.

Amidst such murky situation exists a steadily rising ‘political economy’ of rent seeking behaviour that has given rise to a number of millionaires with a capacity to easily navigate through the system to their profiteering advantage. That, among other things, is what the new legislation avows to tackle. This comment is meant to highlight the main changes introduced by the amendment proclamation.

## 1. Uniformisation of urban land holdings

Urban land is to be held based on a lease agreement to be concluded between individuals, private and public institutions, diplomatic establishments or others on the one hand and the appropriate government organ on the other.

---

\* (LL.B, M.Sc., LL.M, M.A, PhD Candidate), Addis Ababa University – Center for Human Rights

<sup>1</sup> See the Preparatory work on Article 1 of the first protocol to the European Convention of Human Rights, CDH (76) 36 (Strasbourg, Le 13 Acut 1976), a speech by Mr. Nally, Representative of the United Kingdom, p 16.

<sup>2</sup> See the Preamble of FDRE Rural Land Administration and Land Use Proclamation 456/2005, *Federal Negarit Gazeta*, 11<sup>th</sup> Year, No 44, Addis Ababa, Hamle 15, 2005, Para 2.

---

Uniformalising the urban land holdings under the unified leasehold system remained a long over-due project of the current government. It was anticipated under the 2002 urban land lease proclamation that aspires to make all urban land fall under the lease hold system<sup>3</sup> based on the time and conditions to be set by the concerned region or city government. The significant change that this newly adopted proclamation has introduced relates to the express prohibition of any other form of land holding by declaring that ‘no person may acquire urban land other than in accordance with the leasehold system stipulated under this Proclamation.’<sup>4</sup>

However, the legislature has still provided for exceptions taking into account the difficulty that some of the regions might encounter in enforcing this strict prohibition. The exception shall only be accepted upon the particular regional cabinet’s decision specifying urban centres that may be granted a transitional period of not exceeding five years for applying this proclamation.<sup>5</sup> After the lapse of those five years, no region in Ethiopia may be allowed to grant urban land except through the leasehold system.

The second measure that the law has introduced towards the uniformalisation process relates to *conversion* of the old possessions into the leasehold system. This is, by far, the most controversial and complex process that will undoubtedly create public discontent, to say the least. Urban land holdings in the country at their current status are primarily held through the permit system and thus, the conversion of all those holdings into the unified leasehold system requires time, caution to be exercised by the cohort of experts of the appropriate government organ. Accordingly, the Council of Ministers, based on the detailed study by the Ministry of urban Development and Construction, is expected to lay down, as it were, by regulations, the modality of converting old possessions into leasehold.<sup>6</sup>

At this level, the Proclamation anticipates the entry point for conversion to be the incidents of transfer of property on old possession of land to a third party through any modality other than inheritance.<sup>7</sup> In these transfer cases, the old possession shall be subjected to conversion to the leasehold system. Apart from transfers, the case of consolidating a leasehold land with a previously permit-

---

<sup>3</sup> See Article 3(2) of the Urban Lands Lease Holding Proclamation 272/2002, *Federal Negarit Gazeta*, 8<sup>th</sup> Year no 19, Ginbot 14, 2002, Addis Ababa (Hereinafter referred to as ‘the old urban land lease proclamation’)

<sup>4</sup> See Article 4(1) of Proclamation 721/2011, a Proclamation to Provide for Leaseholding of Urban Lands (hereinafter referred to as ‘the new urban land lease proclamation’).

<sup>5</sup> *Ibid*, Article 4(4).

<sup>6</sup> *Ibid*, Article 5(1).

<sup>7</sup> *Ibid*, Article 5(3).

---

based holding would also result in uniformalising the entire possession into leasehold.<sup>8</sup>

## **2. Mode of acquiring urban land leasehold and lease price**

Under the previous legislation, three modalities were recognized by which lease right on urban land could be acquired. These were *auction, negotiation and allotment*.<sup>9</sup> Setting aside the vagueness of all these modalities, particularly negotiation has given rise to high level of abuse and corruption. This is now omitted under the new proclamation and accordingly, *auction and allotment* are the only methods by which a lease right on any urban land may be acquired.<sup>10</sup> The particulars on the tender process are fairly detailed in the new legislation that provides for the preconditions that an urban land must fulfill to be ready for tender, the requirements of publicity and the detailed guides on handling the bid process.<sup>11</sup> Considering the huge corruption and mishandlings that the law enforcement organs have uncovered in the last couple of years, this form of rule-based clarity will partly address those urban land lease-related glitches.

Allotment is the second method of acquisition of leasehold which is meant to apply only for specific urban land users. The latter are exhaustively listed by the legislature and such allotment requires the ‘decisions of the cabinet of the concerned region or the city administration.’ Thus, leasehold right on urban land may be allotted to the following:<sup>12</sup>

- Office premises for budgetary government entities,
- Social service institutions run by government or charitable organizations,
- Public residential housing construction programs and government approved self-help housing constructions,
- Places of worship,
- Manufacturing industries,
- Use of diplomatic missions and international organizations as per agreements entered into with the Government,
- Projects having special national significance and considered by the president of the region or the mayor of the city administration and referred to the cabinet,
- A person displaced due to urban renewal program,

---

<sup>8</sup> *Ibid*, Article 5(6).

<sup>9</sup> *Ibid*, Article 4(1).

<sup>10</sup> *Ibid*, Article 6(2).

<sup>11</sup> See *Ibid*, Articles 7-10.

<sup>12</sup> *Ibid*, Article 11(1), (2) & (3).

---

- A lawful tenant of government or kebele owned residential house in a region or Dire Dawa who has been displaced due to urban renewal program and who could not be provided with access to substitute housing.<sup>13</sup>

According to the previous lease proclamation, the regional authorities and city governments had the right to permit urban land for a lease price down to nil for a development activity, social service rendering institutions, low cost housing, private dwelling houses and similar undertakings that they purport to encourage.<sup>14</sup> This in a way was meant to ensure access to urban land for those, among others, who do not have the adequate means of paying for the land lease price and thus it was envisaged to be an equity provision. It also was meant to encourage and provide support through land access to those institutions and development actors that would in turn bring socio-economic benefits to the urban community.

However, this discretion is no more embodied under the revised law which declares that ‘objective conditions of each urban centre’ shall alone determine the method of valuation to establish the urban land benchmark price. And every plot of urban land, irrespective of the purpose for which it is put into use, and by whatever establishment it is being held, shall have a lease benchmark price<sup>15</sup> which needs to be updated at least every two years to reflect the fluctuating market conditions.<sup>16</sup> The new law provides for two important exceptions from the requirement of all urban land holding to be with a lease price. These relate to urban land holdings granted by allotment to a budgetary government entity and in the cases of religious institution.<sup>17</sup> In these two cases of allotment of urban land the only payment that is required is an amount that offsets the compensation paid in clearing the land.<sup>18</sup>

One other detour the new legislation has taken pertains to the rise to 10% of the minimum down payment from its previous 5% that a lessee will have to

---

<sup>13</sup> If an Addis Ababa resident of a government or kebele owned residential house is displaced for similar reasons, s/he shall instead be entitled to ‘facilitated purchase of condominium housing unit’ and not allotment of substitute land. This presumes that Addis Ababa will have enough condominium housing units reserved for such events of displacements. See Article 11(4) of the new urban land lease proclamation.

<sup>14</sup> Article 8(2) of Proclamation 272/2002, i.e. the old urban land lease proclamation.

<sup>15</sup> A lease benchmark price is ‘the threshold price determined by taking into account the cost of infrastructural development, demolition cost as well as compensation to be paid to displaced persons in case of built up areas, and other relevant factors.’ See the definition Article 2(11) of the new urban land lease proclamation.

<sup>16</sup> Article 13 of the new urban land lease proclamation.

<sup>17</sup> *Ibid*, Article 19(7).

<sup>18</sup> *Ibid*.

---

effect upon concluding the lease agreement.<sup>19</sup> More significant is also the consequence of defaulting in payment of the lease instalments that this new law has introduced. It is provided, 'where a lessee has failed to make payments within the specified time limit and accumulated arrears for three years, the appropriate body shall have the power to seize and sale the property of the lessee to collect the arrears.'<sup>20</sup> By appropriate body the provision is referring to 'a body of a region or a city administration vested with the power to administer and develop urban land.'<sup>21</sup> Accordingly, this executive branch of the government will have the entitlement to dispose of the property without the need to obtain the blessings of the judiciary, just as the banks foreclose a defaulting debtor's mortgaged assets. This again is another area where a strict policy has been introduced into the urban land management architecture.

### **3. Transfer of urban land holding**

Like it was before, leasehold right may be transferred to a third person during the life of the lease agreement. It may also be used as a collateral or capital contribution to the extent of the lease amount already paid.<sup>22</sup> The novelty of the new legislation lies on *the process of transfer* and the distribution of the *proceeds that accrue from the sale of the leasehold right* of the urban land. Where a lessee, with the exception of inheritance, decides to transfer his leasehold right which may happen either prior to commencement or half completion of construction, 'he shall be required to follow transparent procedures of sale to be supervised by the appropriate body.'<sup>23</sup> Therefore, gone are the days where an urban land leaseholder and an interested buyer hammer out their deal and then go for registering their contract for title transfer purposes. Though practice is yet to clarify as to what is meant by 'transparent procedure', it is apparent that every transfer, except inheritance, may only be done under the supervision of the appropriate body. Whether or not transparency implies an auction arrangement that need to be conducted under the supervision of the appropriate body is a matter open to doubt.

Apart from the process of transfer that must be transparent and supervised, the new legislation has also provided for a scheme on the share of the proceeds where a leasehold right of a land is transferred on which construction has not started or half completed. In this circumstance, with the objective of discouraging speculative profit making or rent seeking behaviour in general, the

---

<sup>19</sup> *Ibid*, Article 19(2).

<sup>20</sup> *Ibid*, Article 19(6).

<sup>21</sup> See *Ibid*, Article 2(6).

<sup>22</sup> Article 23(1) of the new urban land lease proclamation and Article 13(1) of Proclamation No. 272/2002, i.e. the old urban land lease proclamation.

<sup>23</sup> Article 23(1) of the new urban land lease proclamation.

---

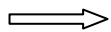
lessee is not allowed to devour on the whole amount of the proceeds from the transfer. Article 23(3) provides that in the event of transfer of leasehold right, the lessee shall retain (a) the effected lease payment including interest thereon, calculated at bank deposit rate, (b) the value of the already executed construction, if any, and (c) 5% of the transfer value, and pay the remaining balance to the appropriate body.

We can illustrate this stipulation by assuming that urban land obtained for a total lease price of ETB 1 million is sold after 5 years for a value of 1.5 million with no construction being carried out on it. Further assuming that the lessee who has now transferred the land had paid only the initial down payment of the 10% of the lease price, the proceeds of the sale shall then be distributed as follows:

10% of 1,000,000+6% interest rate (a) (=106,000)

+0 construction cost (b)

+5% of 1,500,000) (c) (=75,000)



= 181,000 will be deducted from 1,500,000 of the proceeds of the sale and is retained by the lessee; and the remaining, 1,319,000 (one million three hundred nineteen) shall be paid to the appropriate authority.

In effect, the seller who transfers the leasehold without any construction on the land shall only be entitled to 5% of the profit that comes as a result of the increase in the market value of the urban land held by lease, forfeiting the remaining 95% to the original 'owner' of the urban land.

#### **4. Criminal liability**

Finally, the new law has introduced the penalty of imprisonment that ranges from 1 to 15 years, and monetary fine of 10,000 to 200,000 Birr. These penalties may be imposed on an officer or employee (in charge of implementing this proclamation and regulations and directives to be issued hereunder), or private individuals involved in unlawful acts of fencing an urban land, or carrying out construction on such land, or who are involved in a bid by using falsified documentary evidence.<sup>24</sup> ■

---

<sup>24</sup> See *Ibid*, Article 34.

---