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THE CONVERSION OF OLD-POSSESSIONS INTO LEASE UNDER FEDERAL URBAN LAND LAW OF ETHIOPIA VIS-À-VIS THE AUTHONOMY OF REGIONAL STATES UNDER FEDERAL CONSTITUTION

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Abstract: *Proclamation № 721/2011 recognizes old possessions as a non-lease form of urban landholdings possessed legally by private persons for an indefinite duration, before the introduction of a lease system in Ethiopia. However, at the same time, the proclamation stipulates a conversion policy which would ultimately change old possessions into a definite duration of the leasehold system. The purpose of this article was to analyze the validity of the institutional framework provided for the conversion, in light of the FDRE Constitution. To this end, the researcher has employed a qualitative approach which was mainly doctrinal legal research, and revealed the following. The procedures of the conversion under the proclamation has ignored the autonomy of Regional Stats. Even if the FDRE constitution provides meaningful power to Regional States as to land policymaking and land administration, they are not take part on the conversion decision. Accordingly, institutions of Regional Stats have no say on the issue of the conversion, since the conversion procedure is totally monopolized by Federal Government Institutions Viz. the House of Peoples' Representatives, and the Council of Ministers. Hence, the Federal Government should abolish the policy of conversion, which need repealing the pertinent provision of the proclamation. And the Federal Government should open a wide room for Regional States involvement on merit of the conversion and determination its method.*

Keywords: Old Possessions, Conversion, Lease Holdings, Urban Land, Regional Autonomy Land Ownership, FDRE Constitution, and Lease Proclamation
Research Area: Constitutional Law
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1. INTRODUCTION

Old-possessions and Lease Possessions are the two major forms of urban land possessions hold by a private person in Ethiopia. According to Federal Urban Land Proclamation of Ethiopia; old possessions are a plot of urban land legally held by a private person, which were acquired before the introduction of the leasehold system via a permit system.[1] The proclamation also gives recognition to lease possessions are plots of urban land possessed on the basis of the lease contract for a limited period of time. In line with the title of the proclamation, which is named as urban land lease proclamation of Ethiopia, the proclamation has underlined the implementation lease dominated urban land policy in the country. To this end, the proclamation made lease as the only legally recognized method of transferring urban land from the government to persons.[2] For the same end, the proclamation encompassed the most controversial decision of Federal Government, which is the conversion of old possession into lease system.

The conversion policy under the proclamation is not determinable based on harmonious coordination between Federal Government and Regional Governments. Because after stating the inevitability of the conversion, the proclamation has vested power for Council of Ministers to determine the method of the conversion; on the basis of research conducted by Ministry of Urban Development and Construction.[3] The federal legislator has

passed the decision of conversion under the proclamation by making an assumption that the role of Regional States on the issue of conversion is insignificant. The conversion decision is also assumed that the Federal Government and the Regional States, respectively have land law-making and land administration power independently under the FDRE constitution.[4]

Thus, if we take this assumption for granted, the Regional States are under obligation to implement the federal legislation on conversion. However, the inherent land administration power of Regional States under the constitution forces us to question the extent of Federal Government legislative influence on such inherent power. In accordance with this view, it is important to look in light of the constitution the significance and extent of Regional Stats autonomy on land administration, and the significance and extent of federal legislative power concerning urban land. In other words, whether the Federal Government has the constitutional power to instruct via federal legislation, the Regional States to implement a lease system on old-possessions is an important issue.

Thus, the objective of this paper was to evaluate whether the conversion policy of the Federal Government under Proclamation №. 721/2011 has respected the autonomy of Regional States or not. To this end, the researcher has employed a qualitative approach, which is mainly doctrinal legal research that analyzes the Ethiopian legal framework on land rights. To expose the nature and scope of the rights on in Ethiopia, secondary data was collected and analyzed by consulting relevant laws of FDRE. These include the FDRE constitution, Federal Urban Land Proclamations, and land policy documents. Besides, for explicating the theories behind reliance was made on works of literature. Finally, the researcher has analyzed all relevant laws and other authoritative documents.

2. APPROACHES OF FEDERAL CONSTITUTIONS ON ALLOCATION OF POWER

Federal constitutions allocate power between central and constitute units based on two approaches. The first approach is called *dual federalism* which is followed by the older federations like the USA, Australia and Canada. [5] The dual approach underlines a principle that each level of government retains the executive responsibility in those matters in which it exercises the legislative power.[6] Accordingly, both the legislative and the executive powers concerning a given subject matter lie with the same level of government. This method works with the assumption that the two levels of authority retain autonomy with respect to their respective powers.

The second approach results in the division of labour where the legislative power is reserved for one of the tiers of government and its administration to the other. The approach involves a strong relationship between the Federal Government and the states. The best illustration for this method of allocating executive powers is the practice in Germany where the Federal Government is primarily concerned with policy initiation, formulation and legislation, while the states are mainly responsible for implementation and administration. As a result, German federalism is described as *functional federalism.*[7]

In Ethiopian federation, Art 50 (2) of the FDRE Constitution, provides that both Federal and Regional Governments have the legislative and executive powers on matters that fall under the respective jurisdictions. Each tier of government shall respect the powers of the other as per Art50 (8). To this effect, the powers and functions of the Federal Government and the states are listed under Article 51 and 52 of the Constitution respectively. In addition to Article 51, the scope of the legislative and the executive powers of the Federal Government are indicated under Articles 55, 74 and 77.

Similarly, Regional States are endowed by the constitution with legislative, executive and judicial powers. States have the power to establish their own administrative levels which they consider necessary. The State Council is the highest organ of state authority and elects the regional president which is the head of the state administration (the highest state executive organ). States hold residual power in addition to the brief account of powers stated under the constitution (Art 52). They are also empowered to draft, adopt and amend state constitutions. From the above, it is clear that the FDRE Constitution follows the USA model of a dual structure by reserving the executive responsibility to each level of government on matters in which they exercise the legislative power.

The Constitution, however, appears to introduce an exceptional division of power approach as to the land resource. Since the constitution has made the land resource as a subject-matter over which both levels of government can exercise power. It has provided a division of power by giving land law-making and land administration power to the federal and regional states, respectively; and independently under Article 52 (2).

Provisionally, it is possible to state that the division formula of the FDRE constitution concerning land resource is a functional one. But, there are different reasons not to consider the division formula of the FDRE constitution as to land resource is not functional. Because, first, it is important to recognize the presence of difficulty to put clear demarcation between land administration and land policy-making power, since both powers concern a single subject matter i.e. land resource. The powers of both tires of governments are also inherent. Thus, in practice overlap of power between land policy and land administration and vice versa is unavoidable.

Besides, in principle the division formula of Ethiopian federalism, as per FDRE constitution is dual. And the idea of implementing federal policies via regional state institutions is far from the principle of division of power the constitution. Dr. Assfa Fisha also underlined high emphasize given by the constitutional assembly for the values on self-rule to be the reason for the adoption of the dual approach under the FDRE constitution.[8] Finally, it is important to recognize the two models to be general and simply imply the constitutional approaches for the division of legislative and executive powers. The applicability of one approach can not exclude the other. This is affirmed by Dr. Solomon Nugusse who states that recent federations are tending to design their constitutions in between the two approaches.[9]

3. THE ESSENCE OF REGIONAL STATES LAND ADMINISTRATION IN ACCORDANCE WITH FEDERAL LAW

FDRE Constitution has not provided explicit land law-making power of Regional States, that is far more clear Federal Government. This is amplified under two provision of the constitution, Article 51(5), stipulates Federal Government has the power to enact laws for the utilization and conservation of land resources. Once again the same power is amplified under Article 52 (2) (d), by requiring Regional States to administer land resources, but *in accordance* with Federal Laws. On the other hand, the constitution also amplifies land administration to be inherent power of regional states. This makes questionable and limit the scope of federal legislative intervention land administration.

The core issue here is what does *in accordance with federal law* means? To what extent the constitution expects regions administer land in accordance with federal law? What type of laws the constitution have expected federal legislation? What type of laws is necessary for the utilization and conservation of land resource? Do the constitution not hinted

the entity for whom and how land to be conserved and preserved? Do the provisions of the constitution which relate land issue with NNP right not relevant? Are such provisions not relevant to understand what does land administration means? Also to determine what is the scope of Federal Government legislation?

3.1 Rational and Scope of Federal Government Land Law

FDRE constitution is serious on the issue of land resource, and it aims to ensure and preserve the land resource for the benefit of NNP. The authors of the constitution had taken the assumption that NNP economic and political interest will be endangered; unless the size of government legislative and policy-making intervention articulated and limited under the constitution. To this effect, the constitution has limited government from introducing land reform (formulate and implement land policy) which directly or indirectly, in short-run or in long run, provisionally or permanently prejudice or likely to prejudice NNP interests and relation on land resource.

The government should respect constitutional restriction or control on dealings concerning land resource by taking in to account NNP land right which is a form of the prohibition against disposition by the state or as a means of controlled land alienation. The scope of Government intervention lawmaking is not unlimited, and the government is limited from making a deal on the fundamental land reform policy of the constitution which considers land as "NNP reservation" to NNP. The provisions of the constitution which provide law-making intervention to Federal Government should be read along with the uniqueness of NNP protection/policy embodied in the Constitution, the supreme law of the land.

Consequently, Government cannot make a legislative intervention to any land matters which are already settled and covered under the constitution namely "land tenure, the relationship of between government and people on land transfer and charges in respect of land.

Now, it is important to figure out the justification on the relevance and the scope of the federal land law under the constitution. Besides, the relevancy of federal government legislative intervention is warranted under the constitution based on change into practice land rights of NNP. There is no other dimension which makes essential for the need of land law intervention by the federal government under constitution on. Because in the absence of an effective legal framework it would be impossible to enforce the rule of law on land resource and NNP sensitive land policy of the constitution.

The role of Federal land law is constitutionally limited in terms of its relevancy to enable land resource is utilized and conserved for the benefit of each of NNP found in the nine regional states. The intervention of Federal on land administration cannot extend beyond ensuring that landholders are secure in their occupation, they are not dispossessed without due process and compensation, and the land market can function with confidence and security.[10] The scope of federal law on land administration cannot extend beyond putting in place an efficient infrastructure that manages the relationship of NNP with land recognized under the constitution. The regional states are under obligation to administer land by formulating a regional land policy which effectively implements land tenure reforms of the FDRE constitution.

Besides, the scope of federal government policy intervention should take in to account the institutional framework of the constitution on the federal law-making process. This is the fact that although each of NNP is sovereign and their members has direct electoral

relationship with the federal government, they are not represented in the federal policymaking process. Unlike with Federal Government, NNP has direct electoral and political, and land relationship with the regional states, which has given monopoly power on land administration and meaningful economic and development policy making and implementation autonomy.

Hence, despite the constitution subject the Regional States to administer land in accordance with federal law, this wouldn't mean that land law-making power is a federal matter. The rationale behind the constitution for federal legislative intervention on the land resource is not the need of having a uniform land policy in Ethiopia. The constitution direct and oblige Federal government to enact a law which is helpful for the conservation and utilization of the land resource. The role of the federal government on conservation and utilization of land resource cannot be seen separately with the invaluable place of land resource for the protection and promotion of economic and political right and interest of each of the NNP. Finally, the constitution is the result of a bargain among NNP, who are sovereign and have the bearers of the right to land and self-determination.

The constitution is not interested in the enactment of legislation, which not accommodate the rights and interests each of NNP in land in any form, like the manner of acquisition of land, rating and valuation of the land; even if it promotes and ensure uniformity on the Regional States land administration. On the contrary, the constitution supports the enactment of federal legislation which respect and accommodate the exercise of NNP land right at the regional level. This, in turn, requires each of the regional states to make land law which promotes and protect the right of NNP. Thus, the Federal Government cannot have unlimited power to legislate on all land matter and land administration. Since uniformity of land (policy) law and thereby land administration is far from the sprite of FDRE Constitution.

3.2 The Meaning of Regional States Land Administration Power

FDRE Constitution under Art. 52 (2) (b) states Regional States administer land resources. The constitution uses the term administer in different provisions. In order to understand the significance and meaning of the term under the above proviso, it is reasonable to highlight the use of the term under the other provisions of the constitution and its implication in practice. For example, the constitution employs the term 'administer" while listing some of the power of the Federal Government under Art. 51.

Accordingly Art. 51 (6), (7), (10), (13), and (18), respectively vest power to the Federal Government to *administer* national defence and public security forces as well as a federal police force; *administer* the National Bank, print and borrow money, mint coins, regulate foreign exchange and money in circulation, *administer* the Federal Government's budget, *administer* and expand all federally funded institutions that provide services to two or more States, and *administer* all matters relating to immigration, the granting of passports, entry into and exit from the country, refugees and asylum.

The constitution has assigned all of these matters for the Federal Government, by using umbrella term- administer. The constitution made all decision making on any aspect of such matters outreach of Regional States, and it is only Federal Government which has jurisdiction to deal with them the independently Regional States. Administration of these matters require the formulation of policies and strategies, as well as the institutional and legal framework. In practice, the Federal Government has passed legislation and established institutions so as to properly and effectively determine and direct the necessary polices the federal institutions follow while administering the above matters. The constitution also

underscored under Art. 55 the need of legislation so as to administer all matters assigned to and under Federal jurisdiction.

Consequently, the meaning of the term *administers* under the constitution and the federal practice implies the presence of wide room to make deal with the subject matter for the entity empowered to administer so. And there is no reason to interpret less favourably and differently the meaning of the term *administer* under Art. 52 (2) (b) of constitution. The Regional States administer land resources "in accordance with Federal Law does not mean that land resource is a subject matter that falls under the jurisdiction of the federal government. This can be also supported based on an inference made from Art. 51 (11) of the constitution, which exceptionally assigns natural resource-related jurisdiction of Federal Government. Because this provision limits the jurisdiction of Federal Government only to determine and administer the utilization of the waters or rivers and lakes linking two or more States or crossing the boundaries of the national territorial jurisdiction.

The constitution has also a different hint in support of regional states jurisdiction on land resource. This can be inferred from the definition of NNP under art. 39 in which the group of people are defined together with their land. the constitution also confirms that while stating the special interest of the State of Oromia in Addis Ababa, regarding the utilization of natural resources. This indirectly confirms the intention of the constitution to vest monopoly power at the hand of each regional state to determine the use of land resource within their boundary. Hence, in terms of the FDRE constitution in Ethiopia land resource and matters incidental to it, are under the jurisdiction of Regional Government. FDER constitution made land under the jurisdiction of Regional States not for Federal Government.

All land situated within the respective state boundaries are vested in the state and they, therefore, have the power to dispose and deal with it. All functions pertaining to land matters are vested in the states and the supreme authority in each state on questions of land administration is the Regional States, including their different organs horizontally and vertically. Moreover, the Federal Government has no power under the constitution concerning the determination of Regional States revenue from the land; since the power to levy and impose a land tax is given for regional states.

Besides, Regional land administration requires a regional legal framework which enforces the rule of law. Such a regional legal framework is essential to ensure that landholders are secure in their occupation, they are not dispossessed without due process and compensation, and the land market can function with confidence and security. In support of that one has stated that 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.[11]

The constitution has required the federal intervention to introduce some means of uniformity is to rectify the complex nature of the land tenure system that the current federal structure inherited from the previous system of central structure masters. The ultimate end of this uniformity is to conserve and utilize land resource for the economic and political benefit of NNP. The purpose of legislative intervention by Federal Government on land matters, which is a subject matter assigned to states under the constitution, should not be confined to achieve uniformity of land law and policy in all Regional States. The past political and economic considerations, beyond the need of federal intervention under the constitution, should not be understood to tilted the balance of power further in favour of the Federal Government at the expense of Regional States.

4. THE ECONOMIC AND POLITICAL SIGNIFICANCE REGIONAL LAND POLICY UNDER THE CONSTITUTION

From the previous section, it can be concluded that the phrase *in accordance with Federal Law"* should not be interpreted widely, as if the constitution is interested all Regions to administer land based on federal law. The constitution does give the Federal Government to exert unlimited legislative intervention which influences significantly the manner of Regional land administration. However, there is no clear constitutional standard on the limit of federal legislation to influence Regional States land administration. But, in order to know the limit linking the above land resource power structure provision of the constitution with other land resource-related substantive and procedural provisions is essential. Importantly it is reasonable to consider land right as human right i.e. the invaluable role of land resource for the exercise of NNP economic and political right. This consideration, in turn, hints the political and economic significance of providing meaningful legislative room for the Regional States on land resource under the constitution.

The following sub-sections the author has attempted to provide constitutional factors which justify the presence of regional land legislation power. The core the justifications are based on different assumptions. The first is based on an assumption that the inherent power regional state on land administration obliges us to look at land policy-making power under the umbrella of economic policymaking power. The second is looking land lawmaking power as an important component of NNP right and the relevance of institutions of Regional States, then Federal Government institutions, in articulating the right up on land law and economic policymaking. Each of the justifications is provided on the following sub-sections.

4.1 Determination of Regional Economic Policy

Among others, the significance of land policy-making power of Regional States has wide support from the economic and development point of view. In this regard primarily it is important to admit that land policy to be the part and percale of economic policy. Because the land policy has a strong link with economic policy since the land resource is one important variable for shaping an economic policy of a country. Consequently, it is essential to admit the absence of strong reason to treat the land resource as an irrelevant subject matter for the formulation of economic policy. Similarly, there is no clue under the FDRE constitution limit us not to look at land policy-making power under the umbrella of economic policymaking power. Because of the fact that land resource is recognized to have significant implications for the type of development (both urban and rural) as well as for the distribution of income and wealth, for the rate of economic growth, and for the incidence of poverty.[12] The fact that land policy influences the development of Ethiopia is also recognized.[13]

FDRE constitution, under Article 52(2) (c) suggests that the Regional States are endowed not merely with administrative power. The constitution places primary responsibility on the Federal Government to determine major policy directions and standards.[14] It cannot exhaustively and exclusively legislate on all matters fall under the umbrella of economic and developmental policymaking. And it is not an exaggeration to consider the zenith role of land resource as a matter of economic and development policymaking.

Hence, it is sound to recognize the significance of land resource to influences and shape the nature of the regional economic policy of Ethiopia. The Regional States cannot properly exercise their economic policymaking power unless they take into account land issue upon formulation of their respective economic and developmental policy. Because the

land resource is one important input which likely to influence and shape the kind and the nature of Regional States economic policy. In effect, it is unreasonable to consider land policymaking as a remote subject matter of regional economic policymaking power. Thus, Art. 52 (2) (c) of FDRE is one important ground in support of Regional States power to formulate land policy.

Besides, there is no principle- exception relationship- between Art. 51(5) and Art. 52 (2) (b), and Art. 52 (2) (c) of FDRE Constitution which respectively hint land policy-making power of federal government, and economic policymaking the power of regional states. Because there is no reasonable ground to ignore the relevance of article 52 (2) (c) of the FDRE constitution which also encompass land policy making as an aspect of economic policymaking. Also, it is important to underscore the absence of a hierarchy of norm among different clauses provided under the FDRE constitution. In effect, there is no ground to consider land lawmaking power as the exclusive federal power; based on Art 51(5), of FDRE constitution and at the expense of Art. 52 (2) (c).

4.2 The Exercise of Self-Determination Right of People

The economic significance of land resource for Ethiopian NNP is invaluable and incalculable. On the basis of this assumption, the FDRE constitution has considered land to be one fundamental resource for the exercise of NNP self-determination rights. Because the constitution has provided both substantive and procedural limitations which indirectly guide and determine land resource-related powers and relationship of both governments. On one hand, the constitution provides substantive limitations namely, NNP land ownership right under Art. 40, NNP right of self-determination under Art. 39, and NNP right to development under Art. 44. On the other hand, there are procedural limitations under the constitution which amplify NNP say on land resource namely, the principle of accountability and transparency under Art. 9, and the procedure of public consultation under Art. 44 and 89.

Besides, the constitution has favoured the involvement of NNP, who are owners of land resource, who are sovereign and eligible to exercise self-determination rights, upon land policymaking. And, the absence of clear constitutional provision for the establishment NNP sensitive land policy coordination institution, doesn't mean that land policy making process should be monopolized by the federal government. Rather, the constitution supports the establishment of the intergovernmental institution; serve as a forum land policy formulation with the Federal Government and promote active and formal involvement of representatives of NNP.

Further, under the FDRE constitution, there is no institutional framework that might serve as a discussion and coordination role between the federal and regional government for the formulation of land policy. First, the second chamber is nothing to do with the role of coordination, because the composition and power of HoF under the constitution not designed to have meaningful participation in the name of the regional state. Second, the nature of our federation seems dual, since on one hand, the constitution dictates (under Article 50) that the Federal Government and the constituent states have legislative, executive, and judicial powers. Third, the constitution has not established an institution that might serve as a coordinating body at the national level of government for land policy discussion and coordination.

Among different institutions of the federation like the HOF, the COM, the constitution has given due recognition and impose utmost responsibility on each of Regional States by considering them as the most relevant organ represent NNP and participate on land

policy-making process at the federal level. Their relevancy, for example, can be inferred, ethnic criteria, which is formally recognized under the constitution as NNP to be the principal formula that the nine Regional States are established. Besides, the fact that the constitution is a bargain between NNP and concerning matters which are not negotiated and articulated by NNP while making the constitution are given to regional states, which is the residual power. Art. 50 (3) of the constitution also recognize the same. It stipulates that the State Council is the highest organ of State authority. It is responsible to the People of the State.

Finally, the FDRE constitution also amplified its high preference on the institution of Regional stats than the federal government, to represent NNP. this can be inferred from FDRE constitution which recognize NNP as the author of the constitution, the owners of land resource, and the holder of sovereign power, and the holders of self-determination rights; allow delegation of Federal Government power to Regional Government. Thus, the prohibitions of the reverse delegation from regional government to federal and other government amplify the relevancy of Regional States to represent NNP in any affair, which includes their interest on land resource.

Although the constitution stipulates land should be administered in accordance with Federal Law, this wouldn't mean that the Federal Government can strip the say of NNP concerning land resource. The constitution does not allow the enactment of a land law, which ignore the spatial and socio-cultural distinctions NNP. The dominant intervention of the Federal Government on land policy is undesirable under the constitution. The constitution is interested to have a land policy which accommodates the possible distinctions among each of Ethiopian NNP interest on land resource. That is why the constitution, instead of Federal Government, has preferred and vested to the Regional States the power to administer land and other natural resources. This preference has been also strengthened under the provision of the constitution which vest the power to the Regional States on economic policy formulation and implementation.

Consequently, the land policy should not be totally guided by the interest of the federal government; as equal as the constitution is not interested in the intervention federal government on regional economic and developmental policy. The constitution is in favour of federal legislative intervention on the land resource, which is legitimate and general, as well as not ignore possible distinctions of interest among NNP. Thus, Federal Government land law and policy intervention have to leave meaningful policymaking space for the Regional States, enabling them to plan and allocate land resource based on regional land policy; which protect and sustain the economic interest of NNP. The next point is what is the scope and rationale of the federal legislative intervention.

5. THE PARADOX OF FEDERAL CONVERSION POLICY ON REGIONAL AUTONOMY

Federal Urban Land Proclamation NO 721/2011 obliges the nine Regional States of Ethiopia to implement a lease system without exception. The Regional States of Ethiopia are expected to administer urban land exist within their respective boundary via lease oriented (dominated) policy of Federal Government. Besides, the conversion decision is provided by the Federal Government. Thus, the level of regional stats autonomy under the constitution to resist the federal policy of conversion is a vital concern. Speaking differently, the core issue to be addressed under this section is whether the Federal Government has constitutional power or not to instruct the Regional States to implement the lease system on old-possessions.

To start with the federal legislation practice, the previous federal urban land legislations, except the current one, have supported and respected the presence of Regional States say on land policymaking. Accordingly, the three federal urban land proclamations viz. proclamation No.80/1993, proclamation № 272/2005 and proclamation № 721/2011 differ in terms of scope and manner (conditions) concerning the application of lease system as well as the conversion of old possessions into lease tenure. Such legislative difference, in turn, affected the size and space of regional stats decision-making involvement on urban land policy making and implementation.

Proclamation No 272/2005) stated under its preamble that lease should be the cardinal and exclusive urban land-holding system in Ethiopia. Additionally, Article 3 provides that the scope of the proclamation to be on an urban land held by the permit system, or by the lease-hold system or by other means prior thereto, as well as to an urban land permitted hereafter. Under Article 3 (2) the proclamation has left meaningful space (legislative/ administrative) to the Regional States to determine the time, manner and conditions on the applicability of lease system in their respective regional boundaries.

Proclamation No 721/ 2011, however, has expressly provided that every urban centre in Ethiopia should be administered via lease system. Besides, the proclamation prohibited any person from acquiring urban land through modalities other than the lease system. As an exception under Art 5(4), the proclamation states that Regional Governments may identify urban centres to which lease may not be applicable for not longer than 5 years. Hence, according to the current lease proclamation as a matter of principle, lease shall be the cardinal tenure system for urban landholding, but in small towns where it is not yet possible to place leasehold system, other modalities of tenure system (perhaps permit system) may be used temporarily, for a maximum of 5 years. The applicability of such exception is not relevant since the 5-year period has already lapsed.

Besides, there is also clear indifference as to the conversion of old possessions into lease tenure. In this regard, the first lease proclamation has introduced the limited application of the conversion for plots of land possessed for the purpose of undertaking trade and industry activities.[15] The proclamation unequivocally stipulated non-application of lease system and administration on urban lands hold before (via permit system) for the purpose of private dwellings, private dwellings transferred through inheritance and private dwellings rented to others because of leaving the city due to various reasons such as work, education, medication etc. are not administered under the leasehold system.[16] However, Federal Urban Land Proclamation NO 721/2011 provides the applicability of the conversion policy on all plots of urban land.

The presence of such substantial difference as to the legislative space left for regional government imply the absence of Federal Government monopoly on land policymaking. Hence, unlike the current one, the previous proclamations relatively respect the autonomy of Regional States concerning land policymaking. Because it allows regions to select of the manner and type of urban landholding. Thus, the federal legislative practice of Ethiopia had been giving wide legislative space for the Regional States which in turn enable them to limit the application of the lease system.

Such federal practice also has support under FDRE constitution, since the presence of land law-making legislative space enables the Regional States to determine urban land policy by taking in to account their respective different economic, political or administrative

circumstances. Thus, against the constitution and federal practice, the current proclamation is has encroached the autonomy of Regional States by providing lease and conversion policy which totally marginalize the legitimate land law-making and land administration space of regional states, which is important to hear and accommodate land resource interest of NNP protected under the constitution.

Hence, it is not constitutional to come up with federal legislation that significantly limits (instruct) the Regional States on land administration. Because the constitution has given the Regional States broad mandates to design urban land policies that fit their local socio-economic and political context. Besides, as per the constitution, the Regional States power on land administration should not be guided totally based on federal land law. However, proclamation № 721/2011 has ignored the very policy of the FDRE constitution which is seriously interested in the formulation of land policy (land law) that accommodates the interest of each of NNP. The proclamation has encroached constitutionally granted autonomy of regional states; by making regional land administration under the tight control of Federal Government legislation or influence. As a result, the role of Regional States is limited to the implementation of urban land law designed centrally by the federal government.

6. CONCLUSION

The significance of Regional Sates Autonomy on land resource under the FDRE constitution can be justified in different ways. First, the autonomy is justified due to Regional States better position to represent and accommodate the distinct interest of NNP. FDRE constitution assumed that the interest of NNP who are landowners is institutionalized better at a regional level than the federal government. Because there is no way make possible NNP representation at the federal land policy/law-making process/ institution under the constitution. The Regional States which are institutions principally represent NNP have no direct and indirect involvement in the federal making process. The federal second chamber, the HoF which is the chamber composed of representatives of NNP has no legislative role concerning land. That is the reason why the constitution provided land administration power.to regional states.

Second, FDRE Constitution under Article 52 (2) (d) provides power to the Regional States to formulate and execute economic, social and development policies, strategies and plans of their respective state. The involvement of the Federal Government on land policy /lawmaking should not erode the autonomy of regions as to land resource. Because without having meaningful say and participation role concerning land resources, Regional States cannot properly formulate and implement regional economic and development policies. Since the more land policy determination role a region play, the larger is the potential for genuine regional autonomy. Besides, the land resource is one important input for influencing and shaping the kind and nature of economic and developmental policymaking.

Third, FDRE constitution is very much concerned on the preservation of the autonomy of Regional States on land administration. And without Regional States involvement on land policymaking the exercise right to self-government and right of NNP to self-determination is valueless and doubtful.[17] Because Regional States are institutions established under the constitution that shoulder utmost responsibility to protect and respect land resource-related interest and rights of NNP. Consequently, in Ethiopia land administration should not be totally guided by the interest of the federal government. Rather

the federal land law/land policy has to leave meaningful decision-making space for regional states.

In contrary to the autonomy of regional states, Federal Government enacted proclamation № 721/2011 which totally ignored the very policy of the FDRE constitution which is seriously interested for the formulation of land policy (land law) that accommodates the interest of each of NNP. The proclamation has encroached constitutionally granted autonomy of regional states; by making regional land administration under the tight control of Federal Government legislation or influence. As a result, the role of Regional States is limited to the implementation of urban land law designed centrally by the federal government. Similarly, the procedure on the formulation of the conversion policy has marginalized the Regional States. The policy of the conversion under the proclamation totally designed by institutions of Federal Government.

Hence, the proclamation has ignored the important policy of the constitution which is interested in the accommodation of different NNP land-related interest. This interest of the constitution cannot be achieved unless the Federal Government leaves meaningful legislative and policy-making space to regional states. The Federal Government also ignored the significance of the constitution which explicitly stipulate the possibility of a delegation of powers from the Federal Government to regional states, not vice versa. Ironically, the HPR has passed uniform and inflexible lease dominated urban land legislation by ignoring constitutionally recognized rights of NNP and procedure of delegation. In sum, the lease proclamation has encroached autonomy of Regional States on the land resource which is a pillar for the exercise of NNP right to self-determination.

7. RECOMMENDATIONS

To cure the aforementioned constitutional inconsistencies of the proclamation as to the conversion of old possessions into lease possessions, the following recommendations are provided.

First, the following legislative measures should be taken. The provision of the proclamation which provides power to institutions of Federal Government on the determination of the method of the conversion should be amended. And, the amendment should give meaningful decision-making space to each of Regional States to determine the method of the conversion. The provision of the proclamation that was intended to determine the method of the conversion on the basis of research conducted by federal executive organs should be rectified. The amendment should also oblige the government to consult the section of society who hold old possession on the merit and method of the conversion.

Second, it is essential to establish an Inter-Governmental Relation Institution which serves as a forum for negotiation between Federal and Regional Governments on urban land policymaking. To this end, primarily there should be a political consensus on the significance of establishing formal and democratic IGR institution, in safeguarding and promoting the land rights and interest of NNP under the constitution. Besides, the objective of the institution should be principled on the accommodation of the specific land policy interests and policy options of each of the nine Regional States. The procedure of the institution should also be enabled for each Regional States to make formal and independent land policy negotiation with the federal government.

Third, the government should enact procedural legislation which ensures the land policy formulation process of Ethiopia involves meaningful participation of NNP. The objective of the legislation should be principled on accommodating the different views of

each of NNP. Thus, the procedural rule should be enabled for each NNP of Ethiopia to reflect their voices concerning land policy options at regional, zonal, local levels. The procedural rule should enable active and informed participation of NNP who pursue their lives in urban centres/municipalities/ or towns.

Last, it is necessary to conduct a preliminary study that investigates the view of the public and identifies key variables so as to make consultation concerning the conversion. The study should be enabled to understand the economic as well as the political views of NNP on the conversion. The study should be conducted individually for towns/cites by an independent body. It essential to engage Higher Education Institution of Ethiopia which are proximate to a particular place.

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