



HAWASSA UNIVERSITY

**COLLEGE OF LAW AND GOVERNANCE
SCHOOL OF LAW GRADUATE PROGRAM**

**INFORMAL SETTLEMENT REGULATION AND ITS HUMAN
RIGHTS IMPLICATION IN ETHIOPIA: THE CASE OF DAYE
TOWN, SIDAMA REGION**

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**Informal Settlement Regulation And Its Human Rights Implication In
Ethiopia: The Case Of Daye Town, Sidama Region**

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Environmental and Land Law Stream**

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DECLARATION

I, hereby declare that this research under the title “**Informal Settlement Regulation and its Human Rights Implication in Ethiopia: The Case of Daye Town, Sidama Region**” is my original work and has not been presented or submitted before in any institution or for any award. Further, I have duly acknowledged all sources used and have cited these in the reference.

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ACRONYMS AND ABBREVIATIONS

CC	Civil code of the Empire of Ethiopia 1960, proclamation No. 165,
EPRDF	Ethiopian People’s Revolutionary Democratic Front
E.C	Ethiopian Calendar
EU	European Union
FAO	Food and Agricultural Organization
FDRE	Federal Democratic Republic of Ethiopia
MOA	Ministry of Agriculture
MUDHC	Ministry of Urban Development Housing and Construction
Pro No. 721/2011	Lease Proclamation number 721/2011
PUA	Peri-urban Areas
RLAUD	Rural Land Administration and Use Directorate
TIMAD	Quarter of a hectare
UN-HABITAT	United Nations Human Settlement Programmer
VGLT	Voluntary Guidelines on Governance of Tenure of Land
UNDP	United nation development program

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ABSTRACT

An Informal Settlement become sensitive issues today, Informal land deals are targeted for housing purposes. People settled informally mainly because, of imbalanced life situations mainly with the income of individuals and due to lack of getting the formal way of a residential house. These factors force people into the informality process most of the time as people who participated in an interview said. The study also addressed the challenges that can be overcome to lessen their negative effects by considering the practical situation on the part of both informal settlers and key informants. Problems connected with residential houses in the town force people into the informal way of land acquisition system and informal housing process. Controlling the expansion of informal settlements can be made effective through an available housing provision, avoiding restrictions on land transfer, and through strong land administration capacity. Homelessness is a serious human rights violation and can be the result of a lack of affordable housing, often on account of gentrification and speculation or other market forces coupled with racial or ethnic discrimination. To conduct this research the researcher employed a qualitative research approach of legal frameworks and policy of Informal Settlement Regulation and its Human Rights Implication in Ethiopia. In this regard, the study employed primary data that includes official and mandatory legal frameworks of Ethiopia and policy with international law analysis, interviews, and secondary data that the researcher employed from various secondary sources which include soft laws, principles, articles, and recommendations. The finding of the study indicated that legal gaps that exist in land laws and policy problems affect human rights. Accordingly, the study recommends that amendments in land laws and policy reform should be made. As far as people with low levels of income and urban poor are concerned, the government must provide possible ways to provide legal ways to get living houses in the city.

Key Words: Informal Settlement, Regulation, and Human Rights Implication.

CHAPTER ONE

1. INTRODUCTION

1.1. Background of the Study

A clear definition of informal settlement is hardly available. Various words have been used in literature to refer to squatter settlements. The terms have been used to refer to unregulated, illegal, and unauthorized construction, arising from the conditions and regulations in different countries, including spontaneous, unplanned, unauthorized, illegal, or squatter settlements.¹ In most cities or towns of Ethiopia informal settlement is highly seen in peripheral areas this is because people can easily hold land for housing from local farmers, brokers, and speculators without permission from concerned bodies.²

The informal settlement has never been defined in Ethiopian laws and has no permeation from any legal bodies. Proclamation number 574/2007 which concerns urban planning, under article 25(1), provides no development activity may be carried out in an urban center without a prior development authorization.³

The difficulty of informal settlement has been greatly exacerbated by perception gaps. These kinds of settlements are referred to as "Chereka Bet" in the Ethiopian setting. The name Chereka Bet literally translates to "house of the moon," suggesting that illicit house building takes place at night.⁴ The communities are constructed without the approval of local governments and without receiving building permission from local governments. Different cities in Ethiopia have reacted differently to these communities.⁵

On the other hand, Land rights are not typically perceived to be a human rights issue. These rights broadly refer to rights to use, control, and transfer a parcel of land. They include rights to occupy, enjoy and use land and resources; restrict or exclude others from the land; transfer, sell,

¹JemalAbagissa, 'informal settlements in Addis Ababa; extent, challenges and measures taken' (Issue 15/2019)11

²Daniel W. Ambaye, "Land Rights and Expropriation in Ethiopia," (2015), p. 27.

³Ethiopian Urban Planning Proclamation no 574/2008, article 25(1), Proclamation No.3, (1994), Region 14 Urban Land lease holding Regulations, Addis Nagarit, A.A, Ethiopia.

⁴AADIPO (2003), Informal Settlement in Addis Ababa: Addis Ababa Development and Improvement Project Office, Addis Ababa.

⁵Ibid

purchase, grant, or loan; inherit and bequeath; develop or improve; rent or sublet; and benefit from improved land values or rental income.⁶

Legally, land rights usually fall within the categories of land laws, land tenure agreements, or planning regulations; but they are rarely associated with human rights law. The necessity of providing access to land to facilitate the realization of human rights has been considered in several international principles and interpretive documents.⁷ Moreover, the obligation of states towards individuals and land access has not been given adequate attention.⁸

Yet, Governments should establish and uphold organizational, legal, and policy frameworks that support responsible land tenure and governance. These frameworks are reliant on and supported by more extensive changes to the legal system, government, and judicial institutions.⁹ Explicit rights to land have been developed in two key areas of international human rights law, the rights of indigenous people and the rights of women.¹⁰ As such, land rights have been more fully developed in the sphere of indigenous rights. A human rights approach might be an important tool to ensure that both the cultural and economic value of land is recognized and that thus the right of people over their lands is respected as a fundamental right.¹¹

However, Land rights constitute the basis for access to food, housing, and development, and without access to land, many people find themselves in a situation of great economic insecurity.¹² Here land rights are seen to be essential elements for the realization of other human rights. The connection between land rights and the right to food seems to be gaining some prominence, based on a view of land rights as an essential element for the realization of the right to food. A very similar approach to land rights has developed under the banner of housing rights.¹³ In both situations, land rights have been identified as a portal for the realization of other fundamental rights.

⁶Food and Agricultural Organization of the United Nations (FAO). 2002. Land Tenure and Rural Development. Rome. (FAO Land Tenure Studies, 3).

⁷The Vancouver Declaration on Human Settlements, UN Conference on Human Settlements, Adopted June 11, 1976,

⁸Ibid

⁹FAO. 2022. Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security. First revision. Rome. <https://doi.org/10.4060/i2801e>

¹⁰Alain De Janvry et al., Access to Land and Land Policy Reforms, in ACCESS TO LAND, RURAL POVERTY, AND PUBLIC ACTION, 4 (Oxford Univ. Press 2001).

¹¹See Roy L. Prosterman & Tim Hanstad, Land Reform in the Twenty-First Century: New Challenges, New Responses, 4 SEATTLE J. SOC. JUST. 763, 763 (2006).

¹²SECURE LAND RIGHTS FOR ALL, UN-HABITAT GLOBAL LAND TOOL NETWORK 4 (2008).

¹³Centre on Housing Rights and Evictions (COHRE), Housing and Property Restitution for Refugees and Displaced Persons, 3-5 (2007), available at

In Ethiopia, one must consider the difficulties associated with exercising one's right to housing through official land-provision processes and following credit systems that lead to homeownership. Furthermore, the challenges in condominium housing must also be figured out. Also, there is a challenge to be won in the unofficial land dealing with construction (with the goal of formalization). The state's recent strong effort to raze such settlements and enforce evictions has further exacerbated the situation with informal settlements.¹⁴

In all these challenges and complications, the plight of the poor with no steady income, scanty income, or no income at all for that matter would be quite formidable. The legal provision of land and acquiring other inputs towards home ownership is ever getting expensive and unapproachable. In addition, there are building standards that are complicated further with corruption and administrative inefficiency. These factors encourage informal land acquisition toward home ownership.¹⁵

Therefore, this study would investigate the Informal Settlement Regulation and its Human Rights Implication in Sidama Region Daye Town administration, which is the study area. It would also evaluate legal gaps.

1.2. Statement of the Problem

Informal land settlements are a problem in urban areas, especially around the City or Town, farmlands are subjected to sale informally.¹⁶ That is why lower and middle-income households purchase farmland informally for housing purposes. Governments do not have the budget or the expertise to build houses for everyone who comes to the City or town, but the choice is not between public housing and no plan at all.¹⁷ Instead, to make formal housing accessible to ordinary residents and to eliminate informal land settlements, coordinated reforms will need to target the regulatory barriers that derive from formal housing costs.¹⁸

The dynamic character of Ethiopia's informal settlements is influenced by a wide range of actors. Finding the many actors and their various parts is difficult. Some people portray informal

<http://www.humanitarianreform.org/humanitarianreform/Portals/1/cluster%20approach%20page/clusters%20pages/Protection/PinheiroPrinciplesHandbook2007.pdf>.

¹⁴Daniel Behailu, Rights To Housing Vis-À-Vis Demolishing Informal Settlements In Ethiopia: Is Forced Eviction By Government The Answer? Analysis- (Eurasia Review 2023).

¹⁵Ibid

¹⁶Araya AsegedomTareke, Salient Features of the New Ethiopian Urban Land Lease Holding Proclamation No. 721/2011 and its Implication on the Ethiopian Economy, [Unpublished], Addis Ababa University, Law Library, (2013)

¹⁷Paul Collier, Edward Glaeser, Tony Venables, Michael Blake and Priya Manwaring, (Informal settlements and housing markets)³

¹⁸Ibid 15

settlement as a location where the impoverished and needy congregate because they have no other choice than to settle. On the other hand, the entire town is portrayed as indigenous people's land that has been taken by erratic and unstable informal land dealings. There are many pushes and pull factors that influenced the deal. Lack of legal land availability, high lease rates, high building standards, high rent prices, and accessibility to informal land markets are some factors that encourage illegal land deals.¹⁹

Human rights watch organizations support informal settlers because their rights are gravely infringed while coercive eviction is taking place and because there aren't enough facilities and basic services in the settlements.²⁰ These communities frequently serve as brutal game-playing grounds for corrupt government agents, middlemen, and activists for farmers and settlers, among others. Each of these actors wants to further their discourse.²¹

From the subject matter at hand, it is also important to look into the policy problem that exists in our urban land law.²² The 1995 Constitution of Ethiopia regulates and places an umbrella policy framework. The Constitution confirms under Art. 40(3) affairs that the right to ownership of rural land and urban land is vested in the state and the peoples of Ethiopia.²³ The constitution as well as the urban land administration and use proclamation ensure the right to get access to land by lease. People who want a plot of land for residential and business purposes may bid to win. The bidder who offers the highest bid price will get the land. Proclamation No. 721/2011, provides for the administration of all urban lands through the lease system and imposes some restrictions. It restricted accessibility of urban lands by a majority of the people due to its leasehold in nature.²⁴

According to Proclamation number 574/2007 the government employed regularization (it is the process of making regular or lawful) or demolishing informal settlers as an alternative for resolving such problems. However, the practice shows that removing using demolishing methods those illegal settlements is not effective and could not bring the intended result but rather have a serious effect on their rights to housing which is the parties' human rights.

¹⁹Daniel Behailu, Rights To Housing Vis-À-Vis Demolishing Informal Settlements In Ethiopia: Is Forced Eviction By Government The Answer? Analysis- (Eurasia Review 2023).

²⁰ Guiding Principles on Large Scale Land Based Investments In Africa (2014)

²¹Tsegaye Tegenu, 'Urbanization in Ethiopia: Study on Growth, Patterns, Functions and Alternative Policy Strategy' Department of Human Geography, Stockholm University Stockholm, 2010. P.2

²²Zelalem Yirga, Critical Analysis of Ethiopian Urban Land Lease Policy Reform since early 1990's, FIG Congress Engaging the Challenges-Enhancing the Relevance, Malaysia, (2014) p16.

²³The Constitution of Ethiopia, 1995, Proc. No. 1, Fed.Neg. Gaz., Year 1, no.1, article 40(3)

²⁴Urban Lands Lease Holding Proclamation, 2011, No. 721, Fed. Neg. Gaz , Year 18, no. 4

The urban land-holding registration proclamation recognizes uniform protection of land-holding rights of private, government, and non-government institutions. However, the proclamation does not recognize the registration of informal settlements unless changed into lease-holding administration.²⁵ Again there are discrimination, maladministration, and corruption on the sides of governments, unlike principle 3B of FAO. Which provides Non-discrimination: no one should be subject to discrimination under law and policies as well as in practice.²⁶ This will have a serious effect on informal settlers' rights to housing which are the parties' human rights.

It is true that when the current land management and planning system falls short of meeting the demands of the entire community, informal settlements develop. People utilize their routes to settle on other people's land when the system fails to satisfy social housing requirements.²⁷ These communities are known for their quick, haphazard, and uncontrolled growth in Sidama Region Daye Town.

The urban poor are trapped in an informal and illegal world in slums that are not reflected on maps in Ethiopia, particularly the study area. As illegal or unrecognized residents, many of these slum dwellers have no property rights, nor the security of tenure, but instead, make whatever arrangements they can in an informal and unregulated. The right to adequate housing is particularly relevant and land is a critical element in fulfilling the right. Land right has developed as human rights under the banner of housing rights.²⁸ But in Ethiopia, particularly in study area the failure to laws various services like housing is a crucial factor for informality. To aid the poor and penalize elite land theft, the informal tenures should be recognized in law and policy level. In doing so, Ethiopia must also uphold its obligations to uphold human rights around the world and take into account other countries' experiences in this area.

1.3. Research Questions

Considering the above-mentioned problems, this research paper tries to address the following research questions:

1. How the laws and policies about informal settlement in Ethiopia particularly in Sidama Region Daye Town properly address issues of the Human right of informal settlers to access urban land in line with human rights?

²⁵Urban Landholding Proclamation No. 818/2014", Fed. Neg. Gaz. Art. 4/1, Year 20, no. 25

²⁶FAO. 2022. Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security. First revision. Rome. <https://doi.org/10.4060/i2801e>

²⁷Ibid

²⁸Commission on Human Rights, Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, Miloon Kothari, ¶ 41, U.N. Doc. E/CN.4/2005/48 (March 3, 2005).

2. What are the major causes of informal settlement in peri-urban areas in general and study areas in particular? Why is the informal land deals common in peri-urban areas?
3. What is the status of informal settlements and how do they affect human rights?

1.4. General Objective

The overall aim of this paper is to critically scrutinize the legal and policy frameworks with the existing reality about informality and its impact on human rights to suggest possible reforms by taking *Daye Town* as a case study.

1.4.1. Specific objectives

The specific objectives that this paper achieves are the following;

- ❖ To evaluate the laws and policies of Ethiopia and Sidama region concerning the control of informal settlement regulation in line with human rights;
- ❖ To examine major factors for the informal settlement in peri-urban areas in general and the study area in particular;
- ❖ To investigate how urban land is held by informal settlers for housing purposes and the existing status of in rights i line of Human rights implication.

1.5. Research Methodology and Methods

Owing to the research questions and the overall driving objectives the study conducted by employing **the qualitative research methodology** because it enables the researcher to get an in-depth inquiry and understanding of the empirical data and to evaluate both legal and practical problems. As noted by Jennifer Mason “qualitative research is concerned with how the social world is interpreted, understood, experienced, produced or constituted.”²⁹ Similarly, Richard Tewksbury describes qualitative methodology as a methodology that focuses on traits, meaning, and characteristics of people and events.³⁰

Therefore, researchers in the qualitative methodology collect data in the form of words, and images than quantitative data³¹ and make detailed investigations on the topic at hand. More importantly, the selection of a given research methodology depends on the objectives³² of the

²⁹ Jennifer Mason, *Qualitative Researching* (2nd edn, Sage Publication 2002) 3; John W. Creswell, *Research Design: Qualitative, Quantitative, and Mixed Methods Approaches* (3rd edn, Sage Publication 2009) 176 ; Dawn Snape and Liz Spencer, ‘The Foundations of Qualitative Research’, in Jane Ritchie and Jane Lewis(eds), *Qualitative Research Practice: A Guide for Social Science Students and Researchers* (Sage Publication 2003) 1- 23, 3

³⁰ Richard Tewksbury, ‘Qualitative versus Quantitative Methods: Understanding Why Qualitative Methods are Superior for Criminology and Criminal Justice’ (2009) 1/1 Journal of Theoretical and Philosophical Criminology 38

³¹ Kristina Simion, *Qualitative and Quantitative Approaches to Rue of Law Research: Practitioner’s Guide* (INPROL 2016) 14

³² Jane Ritchie, ‘Designinig and Selecting Samples’ in Jane Ritchie and Jane Lewis (eds), *Qualitative Research*

research, and also qualitative research questions often start with “what?” and “why?” to encourage a complex answer than a simple “yes” or “no”.³³ Therefore, seen from these vantage points or favorable advantages, qualitative methodology is the most appropriate to address the research questions framed and objectives identified in this research proposal.

Accordingly, the study would be conducted by employing both doctrinal and non-doctrinal legal research approaches. The doctrinal approach is selected because there would be a deep assessment of laws, literature of scholars, and writings of scholars regarding informal settlement regulation and its human rights implication, and some other relevant materials necessary for the study. Whereas, The non-doctrinal approach would be used to substantiate the existing legal and policy frameworks with the reality on the ground of informal settlement taking, and some parts of the research questions and objectives could not be addressed without collecting empirical data. To this end, the non-doctrinal part would be conducted based on data that would be gathered by interviewing the appropriate bodies from the study area.

1.5.1. Sampling Technique

This paper basically employed a purposive sampling technique to get the appropriate information and interviewees. The rationale behind using purposive sampling is that it allows the possibility to select key informants purposively by using small-scale sampling. This would assist the researcher to choose the informants that can answer the research questions in the best way. Purposive sampling is therefore most successful when data review and analysis are done in conjunction with data collection.³⁴ Hence the writers selected participants like rightful informal settlers of 03 Kebele, Daye town, court, and experts on land administration purposively.

1.5.2. Data Collection Method

To collect the desired information for the proper conduct of the research, the study would concentrate on both primary and secondary sources of data. As primary sources, interviews of the concerned body and laws. Secondary sources, publications of scholars, research reports, and other relevant secondary sources that show the policy framework of land would be used.

Interview

For the collection of qualitative data from the sampled respondents, the researcher employed a semi-structured interview. Because, in this interview type, the interviewer uses the

Practice: A Guide for Social Science Student and Researchers (Sage Publication 2003) 77-108, 86

³³ Snape (n 35) 5

³⁴ Natasha Mack, Cynthia Woodsong and Others, ' *Qualitative Research Methods: A Data Collector's Field Guide* ' (Family Health International, USA, 2005) p5.

preset interview guide but is allowed to depart from it, when necessary and appropriate, and may add follow-up questions to clarify answers the interviewee provided and not properly understood by the interviewer.³⁵ The departure includes for instance the order of questions asked.³⁶ Thus, the use of a semi-structured interview allows the researcher to go over topics that have already been mentioned, but not in a detailed manner, to initiate changes in the topics, and to introduce appropriate new questions. The advantages of the semi-standardized interview would help the researcher to collect data flexibly and conveniently, which is why such a method is selected to be utilized here as a data collection tool.

1.6. Scope of the study

The 1995 constitution of FDRE regulates and places an umbrella policy framework. It affirms that ‘the right to ownership of rural and urban land is vested in the state and the peoples of Ethiopia, under article 40(3). Urban areas in Ethiopia have been growing very quickly in recent decades, which have led to an ever-increasing demand for land in peri-urban areas for housing and other non-agricultural activities. The constitutional prohibition of formal land sale created a loophole for the informal land market in peri-urban areas of Ethiopia. Informal land dealings are land sales through informal agreements between the transacting parties with written records of the agreed purchase price and timing of payment. Informal settlements are the fastest-growing type of human settlements. Informal land markets and housings are critical factors for informal settlements, which can cause greater human rights violations. The scope of this study would be assessing the existing regulatory framework and practice concerning urban land administration in the case of Daye town and its human rights implications.

1.7. Significance of the Study

Generally, this study is believed to significantly contribute to its academic, policy, and other significance. Among other things, the study aims to have the following specific significance: A new way of land allocation policy must be created for middle and low-income groups in the Town. Middle and low-income groups or people are the main role players are main role players for informal land dealings around the town. To avoid such problems in housing, new land allocation and housing policy must be implemented. Town administration should be capable enough to solve problems of housing informal land sale and efficient land provision for the urban poor. The study would also serve as a source of information for bodies working in the area

³⁵ Simion (n 37) 46

³⁶ Margaret and others, *Data Collection Methods: Semi-Structured Interview and Focus Groups, Training Manual* (RAND National Defense Research Institute 2009) 27

domestically. Furthermore, since the area is contemporary, the study can invite future researchers to conduct further studies on the subject matter and serve as reference material.

1.8. Limitations of the Study

The limitation of the study is the lack of a clear and concise understanding of the term informal settlement itself. This is because different scholars put the parameters of the informal settlement concept differently. To reduce such gaps, the writer attempted to collect data from multiple sources.

1.9. Organization of the Paper

The research paper would be organized and presented in five chapters in the following manner. The first chapter would be an introductory chapter that addresses different components of the research proposal. The second chapter is devoted to dealing with an overview of the nature and purposes of the regulation of informal settlements. It specifically touches on the definition and nature of informal settlement and surrounding area its origin and development, types of land administration, its peculiarity features, and the purposes of regulation of informal settlement and its human rights implication. Chapter three discussed international, regional and domestic Legal frameworks such as the constitution and other legislations will be analyzed. The Fourth chapter, which is the heart of this paper, is dedicated to assessing the regulation of informal settlement and its human rights implication with a details analysis of Ethiopian laws. In this chapter, I would discuss the land law and policy in the Ethiopian legal system and the effects of informal settlements on human rights from the Daye Town aspects. Finally, chapter five provides conclusion and recommendations.

CHAPTER TWO

THE CONCEPTUAL AND THEORETICAL FRAMEWORK

2. Introduction

This chapter's objective is to describe, analyze, and evaluate the theoretical framework of informal settlers, as well as their practical difficulties and their implications of human rights. The concepts of displacement of informal settlers forced eviction of informal settlement, expropriation, major causes of forced eviction of informal settlement, effects of forced eviction of informal settlement, and key drivers of informal settlement expansion are introduced in this chapter. The chapter shows the reason why we need to regulate informal settlements. Finally, informal settlement and its implication on human rights. Under the Ethiopian context, major factors for the expansion of informal settlement in peri-urban areas of Ethiopia are explored.

A clear definition of informal settlement is hardly available. Various words have been used in literature to refer to squatter settlements. The terms have been used to refer to unregulated, illegal, and unauthorized construction, arising from the conditions and regulations in different countries, including spontaneous, unplanned, unauthorized, illegal, or squatter settlements.³⁷ The United Nations has used the term informal settlements to refer to residential areas where a group of housing units has been built on land to which the occupants have no legal claim, or which they occupy illegally, unplanned settlements where housing is not in compliance with current planning and building regulations.³⁸ In the Vienna Declaration, informal settlements are defined as human settlements, which for a variety of reasons do not meet requirements for legal recognition and have been constructed without respecting formal procedures of legal ownership, transfer of ownership, as well as construction and urban planning regulations, exist in their respective countries and hamper economic development.

2.1. Informal settlers

The main legal problem raised in this topic is the difficulty of defining who “informal settlers” are. The reason for this is due to the nature of informal settlers. Within such difficulty, different scholars and institutions try to define informal settlers differently. Informal settlements are residential areas where inhabitants have no security of tenure vis-a-vis the land or dwellings they

³⁷Jemal Abagissa, ‘informal settlements in Addis Ababa; extent, challenges and measures taken’ (Issue 15/2019)11

³⁸Ibid

inhabit, with modalities ranging from squatting to informal rental housing.³⁹ Informal housing can be described as housing that does not conform to the laws and regulatory frameworks set up in the city in which it occurs.⁴⁰

Human settlements, which for a variety of reasons do not meet requirements for legal recognition and have been constructed without respecting formal procedures of legal ownership, transfer of ownership, as well as construction and urban planning regulations, exist in their respective countries and hamper economic development. While there is significant regional diversity in terms of their manifestation, these settlements are mainly characterized by informal or insecure land tenure, inadequate access to basic services, both social and physical infrastructure, and housing finance.⁴¹

Informal settlements can be characterized by a dense expansion of small, more or less provisional shelters built from diverse materials. People who do not hold any formal title to the land develop these settlements on private or public land.⁴² Informal settlements refers to any residential areas which fall outside of the formal housing system, and which have been established and constructed without the consent of the relevant authorities, or without complying with established building, planning, or land usage laws.⁴³ Informal settlements are identified as residential areas where a group of housing units has been built on land on which the occupants have no legal claim, or which are illegally occupied, unplanned settlements, and areas where housing does not meet current planning and construction standards. Many other terms and definitions have also been devised, such as informal human settlements, slums, illegal settlements, unconventional housing, non-permanent settlements, etc.⁴⁴

“Informal settlers” is a broad concept that refers to individuals and groups who establish their principal residence in mostly urban areas and types of dwellings considered illegal or in discord with the dominant social norms.⁴⁵ The Vienna Declaration on regional policy and programs on

³⁹ MAKAU IRENE NDUKU, ‘SECURING TENURE RIGHTS IN INFORMAL SETTLEMENTS’ Submitted in partial fulfillment of the requirements of the Bachelor of Laws Degree, Strathmore University Law School (2017)3

⁴⁰ UN-HABITAT, (2003)104

⁴¹ Vienna Declaration (2004)1

⁴² Hendrik PLOEGER and Danielle GROETELAERS, *Informal Settlements and Fundamental Rights* (2006)4

⁴³ International Development Research Centre, *The Right to Housing for Residents of Informal Settlements* p.3

⁴⁴ UN-HABITAT (n17), SameyaYassinAbdulkadir, *CAUSE AND EFFECTS OF INFORMAL HOUSING DEVELOPMENT IN ADAMA TOWN, THE CASE OF BOKU SHANAN SUB-CITY* (M.A thesis, AdamaUniversity, 2020)6

⁴⁵ Miguel A. Martinez, Sonia Roitman, ‘Informal settlers’ (research gate 2019)2

informal settlements defined informal communities as human settlements constructed without respecting urban planning regulations or the formal requirements of legal property ownership, transfer, or construction. Further, such population centers do not meet the requirements for legal recognition and hamper economic development. The UN Habitat Program has defined informal settlements as residential areas where people construct their houses with no legal claim to the land and unplanned settlements where housing is not in compliance with building regulations and current planning policies.⁴⁶

2.2. Categories of informal settlements

Scholars have recognized basic forms of informal settlements. The first form involves squatting on state-owned land. In this case, people construct their housing in violation of state laws, and their action creates slums in cities. Public authorities routinely clash with occupiers whenever they try to control these settlements. This settlement type is common in all developing countries. The second sort of informal settlement often occurs when houses are constructed without permission on legally-owned land parcels or illegally sold land without a formal registration. The third form of informal settlement occurs when residents construct illegal building extensions. To avoid complex bureaucracy and high taxation systems, informal community residents often prefer to add stories to a one-story building to increase the space available to their families.⁴⁷

2.3. Major factors for the expansion of informal settlement

The critical factors causing the formation of informal settlements are notably related to several major interrelated changes poverty, rapid urbanization and influx of people into urban areas, war, natural disasters, and earthquakes leading to massive movement of people to places of opportunity and safety, ineffective housing Policies inefficient public administration, inappropriate planning and inadequate land administration tools. Manifestations of informality are attributed to the lack of effective planning, effective land management systems and zoning regulations for urban development.⁴⁸ According to the United Nations Economic Commission for Europe, poverty and social ostracism are the primary causes of informal settlements in most

⁴⁶WafaMohsenSaleh Al-Daily, An Exploration of State and Non-State Actor Engagement in Informal Settlement Governance in the MahwaAser Neighborhood and Sana'a City, Yemen (Dissertation submitted to the faculty of the Virginia Polytechnic Institute and State University in partial fulfillment of the requirements for the degree Of Doctor of Philosophy In Planning, Governance, and Globalization 2013)19

⁴⁷ Ibid

⁴⁸FunmilayoLanrewajuAmao, 'Housing Quality in Informal Settlements and Urban Upgrading in Ibadan, Nigeria A Case Study of Apete in Ibadan' (Vol 2, No.10, 2012)71, <<www.iiste.org>> accessed on April 22, 2022

nations. Governments around the world grapple with fiscal deficits and therefore promote and subsidize industrial sectors that can revitalize the economy.⁴⁹

In most of developing countries the cause for expansion of informal settlements and the consequences are more or less similar, it is characterized by weak land administration system, inequitable allocation of resources among citizen in within one country, inability of the government to minimize unemployment rate from time to time, expansion of corruption and soon. The above problems can results in citizen live in poverty, crime, low living conditions and this affects the sustainable developments one of the countries.⁵⁰ Informal settlements occur when the current land administration and planning fails to address the needs of the whole community. These areas are characterized by rapid, unstructured, and unplanned development.

On a global scale, informal settlements are a significant problem, especially in third-world countries housing the world's disadvantaged.⁵¹ When the system fails to address social housing needs, people use their own paths to settle on somebody else's land. Such settlements are characterized by rapid, unstructured, and unplanned development.⁵² At the global level, the main sources of vulnerability of informal settlement are population growth, rapid urbanization, and poverty, urban growth has an impact on housing quality and safety, especially when government institutions and the private sector are unable to cope with the need for adequate and affordable urban housing. Rapid urbanization, especially in low- and middle-income economies, is often associated with growing inequalities, marginalization, and exclusion of the urban poor from formal service delivery systems, all factors that contribute to climate change related vulnerabilities.⁵³ In most developing countries, poor economic performance caused by both internal and external factors has led to the growth of informal settlements parallel to the formal one.

Informal settlements provide cheap accommodation and economic opportunities for a large part of the Population which means these settlements respond both to housing needs and to the search of economic activities.⁵⁴ Informal settlement has been emerging due to a number of social,

⁴⁹ Ibid

⁵⁰ Dessalegn G/sillassie, 'The factors contributing for expansion of informal settlement: the case study of yeka sub-city Addis Ababa Ethiopia, a thesis submitted to department of urban land administration and management, Addis Ababa University, 2019)12

⁵¹ Daniel Weldegebriel Ambaye (n4)2

⁵² Ibid7

⁵³ Ebru Gencer, Mattia Leone, Oswaldo Lucon, Mussa Natty, Housing and Informal Settlements (2018)406

⁵⁴ Daniel Libro, 'Informal settlement in Addis Ababa' (UDP-705 housing in urban context)11

economic, and political factors.⁵⁵ The housing shortage, increasing urban poverty, high rate of rural-urban migration rural poverty, high rate of unemployment, high rising cost of living, economic recession as socio-economic factors, absence of accountability and transparency, corruption, absence of capacity human and technical, poor situational set-up and absence of coordination, poor enforcement, unclear regulation and long procedures, misuse of public lands as an institutional factor and lack of political commitment, less emphasis to urban issues, appropriate policy, impact of colonization segregation as a political factor are major factors for the expansion of informal settlement.⁵⁶

Informal settlements are not simply an outcome of massive urban population growth, rural-to-urban migration, or the perception among the poor in many countries that urban centers offer a better quality of life. In addition to these factors, they are also the result of a range of inadequate national and regional policies and practices. That is, multiple factors have caused the creation and growth of informal settlements in developing countries.⁵⁷ Informal settlements may be classified based on the legal status of the housing located within them. Informality results from land tenure, non-compliance with land use and non-compliance with building regulations.⁵⁸

2.4. Housing and related factors

Informality is attributed to many causes, including low income levels, unrealistic urban planning, a lack of serviced land and social housing, and a dysfunctional legal system.⁵⁹ Informal settlements also stem from the exclusionary nature of the regulatory framework governing land development, as well as the bureaucratic nature of land and urban management systems that are arbitrary and fail to involve effective popular participation.⁶⁰ Informal settlements have originated from difficult problems of housing, immigration rates, politics, physical planning, landlessness, and unemployment in urban areas. In particular, they originate from the existing gap between the number of regular dwellings supplied and the need. There is a strong correlation between informal settlements and informal economic sectors as well.⁶¹ When the land

⁵⁵Ibid 14

⁵⁶Ibid

⁵⁷Wafa Mohsen Saleh Al-Daily (n23)14

⁵⁸Ibid 17

⁵⁹ Lincoln Institute of Land Policy, Regularization of Informal Settlements in Latin America (Policy Focus Report 2013)2, <<www.lincolninst.edu>>accessed on March 4, 2022

⁶⁰Ibid 16

⁶¹ Teshome Affadadi, 'The influence of land management on the prevalence of informal settlement and its implication for environmental management in Abhor Dar city' (degree of doctor of literature and philosophy, south Africa, 2018)18

administration and planning authority fails to provide for the housing needs of the community as whole, squatter settlements are born. Most of the disadvantaged people live in third world countries and hence have become a serious issue in a really global scale.⁶²

2.5. Classification of informal settlement of urban land

The informal settlement of urban land falls into two broad categories: squatting and unregistered land sales. Squatting occurs when households or groups of families settle on vacant land by constructing rudimentary shelters. If they are not immediately evicted, they gradually consolidate their dwellings. Encouraged by the success of the original squatters, other households join them. The settlements usually exhibit a high degree of community cohesion borne out of solidarity during the illegal process of squatting. The other form of informal land settlement unregistered land sales differs significantly from squatting. It is based on an exchange of money at a price that is agreed on by both the landowner and the purchaser. What renders this land affordable to the lowest-income groups is that the land use is not legally recognized. This is either because it is unsafe or inappropriate for habitation or otherwise in contravention of official regulations, or because the vendor lacks a recognized title to the land that he is selling.⁶³

2.6. Major factors for the expansion of informal settlement in peri-urban areas of Ethiopia

The term '*peri-urban*' could be used to denote a place rural agricultural areas located between urban built-up areas in cities and predominantly rural agricultural areas. As a concept, peri-urban could be seen as an interface between rural and urban activities and institutions where rural and urban development processes meet, mix and interact on the edge of cities.⁶⁴ The proliferations of informal settlement areas in the transitional per-urban areas of Ethiopia are driven by the pull and push factors. As a pulling factor, the behavior and the illegal act of local peri-urban landholders has attracted large number of households from the inner-city and other parts who seek an alternative source of shelter.

An illegally subdivided plots located outside of the municipal boundary which can be supplied by local peri-urban landholder is relatively cheap and affordable to the urban poor for construction of a residential house. As a pushing factor, the deficiency of the formal land and

⁶²ZelalemTekalign, Dr. A. Kirubakaran, 'The Social Determinants and Impact of squatter settlement on the delivery of infrastructure among urban squatters. The cases of some select Woredas of Ilu ababor Zone, Oromia regional State' (Vol. 1 no. 1 2021)

⁶³Temesgen Rediet Legesse, 'The right to adequate housing in Gondar City and the so called "ye chereka bets" challenges and prospects of the right' (LL.M thesis, Gondar university)34, Social and Economic Rights Centers Action Vs. Nigeria, Communication No 155/96 (SERAC Case)

⁶⁴AchamyelehGashu Adam, (n8)

housing delivery system in the urban areas is one important factor for the emergence of new informal settlement areas in the peri-urban areas.⁶⁵ Large numbers of the urban residents largely the urban poor have been pushed to the unplanned peri-urban areas to live due to the affordability of the formal housing delivery system.

The formal land and housing provision seems to be skewed towards the segments of the society who can pay for lease or condominium housing for the government. Therefore, the case study analysis in this research illuminates the idea that informal settlements in the peri-urban areas are both responses and witnesses to extensive urban poverty and signal to failure of urban governance.⁶⁶ Different factors contributed to the expansion of informal settlement around peri-urban areas of Ethiopia. Such factors are un-affordable land and housing for low-income group, the absence of timely urban planning and land management, the absence of a policy for the social integration of low-income group, Population migration from rural to urban and from abroad.⁶⁷ It is also vital to note that most of the informal settlements are a result of migration from the rural to urban, feeling rural poverty, in search of urban opportunities.

In addition, lack of comprehensive legal response, good governance in land administration aims to protect the property rights of individuals and enterprise.⁶⁸ Informal settlements in Ethiopia have been developed under conditions of public ownership of land, where people have unlimited use right in rural areas and are awarded 99 years of residential land use in urban areas as per lease Proclamation. The present constitution came into the picture in 1995, however, it was confirmed that no major changes were to be made to the previous land tenure system. There are no fundamental differences between the legal framework of the Derg and the present government on rural land issues. In practical terms, there are more similarities in land administration between the two regimes than differences.

Therefore, one may wonder why people build their homes on unauthorized lands and suffer the consequences. The answer to such questions is essentially tied to land management policies and practices in informal settlements.⁶⁹ In Ethiopia on urban land and informal economy reveal that urbanization and deficiencies of the public land management especially the land allocation process have led to the evolution of informal housing markets. Major determinants of informal

⁶⁵Ibid 14

⁶⁶Ibid

⁶⁷Ayelu Dubale Abebe, 'Causes and consequences of informal settlements: the case of Woreta town, south Gondar administrative town, Amhara region' (2018)17

⁶⁸Ibid 18

⁶⁹Teshome Affadadi (n55)9

housing in this analysis include chronic poverty, shortcomings associated with the social housing programs, unrealistic urban land use regulations and standards, bureaucratic tendencies as well as the informal economy itself.⁷⁰

The bifurcation of the land administration institutions into urban and rural, typical to the Ethiopian context, has created a favorable ground for the emergence of informal settlements in the transitional peri-urban areas.⁷¹ The growth of informal settlements in the transitional peri-urban areas was driven by both pull and push factors. As a pull factor, the local peri-urban landholders' behavior and interest in selling their land on the informal market has attracted large numbers of low-income households from the inner city and other parts, seeking an alternative source of shelter.⁷² Informal plots which were subdivided illegally by local landholders are relatively cheap and affordable to low-income groups, which have drawn these groups of people to the peri-urban areas.⁷³ The deficiency of the formal land and housing delivery system in the urban areas is an important factor, which has been pushing low income groups to peri-urban areas to find shelter.⁷⁴

In Ethiopia, the major challenges for the emergence and expansion of informal settlements are emanated from the problems of legal administrative framework, but the government always takes demolition measures in Addis Ababa and region capitals to control squatter settlements.⁷⁵ In Ethiopia on urban land and informal economy reveal that urbanization and deficiencies of the public land management especially the land allocation process have led to the evolution of informal housing markets. Major determinants of informal housing in this analysis include chronic poverty, shortcomings associated with the social housing programs, unrealistic urban land use regulations and standards, bureaucratic tendencies as well as the informal economy itself.⁷⁶ Evacuation and relocation of informal settlement.

2.7. Core housing

Concerning housing rights it refers to the provision of basic infrastructure for the dwellings with a minimum level of services. According to this approach, if finance becomes available, the

⁷⁰Ibid 19

⁷¹Achamyeleh Gashu Adam, ' Peri- urban land tenure in Ethiopia' (Doctrinal thesis, Stockholm, Sweden 2015)46-47

⁷²Ibid

⁷³Ibid 47

⁷⁴Ibid

⁷⁵MemberMisganaw (n10)24

⁷⁶TeshomeA ffadadi (n55)19

housing should be extended. In addition, this approach includes the regulation of land tenure as well as the minimum provision of basic services, like the provision of water supply, sanitation, and some other services.⁷⁷

Refers to an approach in which the residents get the plots and the primary services such as the sanitation, water supply system, and paved roads, which also ensure the land property right. This approach includes the provision of site and services which are leaving for the house owners to construct.⁷⁸

2.7.1. Informal settlers and the right to housing

The human right to land can be defined as the right of all women, men, youth and, children to land that ensures an adequate standard of living and the right to a productive livelihood, which enables them to live in peace, security, justice, and dignity.⁷⁹ All people have the fundamental human right to dignified work and livelihood, including equal access to land and productive resources, and to basic labor protections. Underlying the human right to adequate housing and land is the human right to life with dignity. The failure to provide adequate living conditions, including adequate housing, land, and the provision of essential services results in a violation of human dignity.

The right to life with dignity is the most fundamental and non-negotiable human right and is the core for the realization of all other human rights.⁸⁰ The state must ensure equitable access to, and distribution of, land and, where necessary, implement land reform measures to ensure that marginalized and vulnerable groups are not left out. Similarly, every community must have access to natural resources necessary for its survival and livelihood, including *inter alia*, fuel, fodder, water, and access to agricultural inputs, building materials, and credit. Access to natural resources must be sufficient to meet community needs, including nutritional requirements.⁸¹

⁷⁷Maqsood Rezayee, Gabriel Hoh Teckling and SitiHajarMisnan, 'Approaches to Addressing Informal Settlement Problems: A Case Study of District 13 in the Kabul city, Afghanistan' (2019)3-4, <<www.preprints.org>> accessed May 12, 2022)

⁷⁸Ibid

⁷⁹Walter Kalin, Rhodric C.Williams, Khalid Koser, and Andrew Solomon (n24) 607

⁸⁰Ibid

⁸¹Ibid

2.7.2. The content of the right to housing

The right to adequate housing was recognized for the first time at the international level by the UDHR.⁸² Declaration provided that everyone has the right to a standard of living adequate for the health and wellbeing of himself and of his family including the right to adequate housing.⁸³ The right to adequate housing also known as the human right to adequate housing, the right to housing, housing rights, and the right to one's home, the right to shelter, land rights, livelihood right and the right to the city is clearly set out in international instruments. Universal declaration of human rights thus proclaims that everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social service, and the right to security in the events of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.⁸⁴

International covenant on economic social and cultural right is the other part which comprehensively provides for the right to adequate housing.⁸⁵ The covenant declares that States parties to the present covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate housing and to the continuous of living conditions.⁸⁶ General comment No 4 is also one of the important instruments that is aimed at elaborating the components, types of obligation and enforcement mechanisms of the right to adequate housing.

There are also other related international instruments which recognize this right. Among these is the international convention on elimination of all forms of racial discrimination. According to the convention to prohibit and eliminate racial discrimination in all its forms and to guarantee the right of every one, without distinction as to race, color or national or ethnic origin, to equality before the law, notability in the enjoyment of the right to housing.⁸⁷ The convention on the rights of the child is also among the international instruments that provide for the right to adequate housing. Convention states that state parties in accordance with national conditions

⁸²ArmayeAseffa (n21)13

⁸³ Universal declaration of human rights ((1948), article 25

⁸⁴MesayeTesfayeTadesse, 'the right to housing in Ethiopia: legal frame work (LL.B thesis, St.Mariyam's university college, 2008)10

⁸⁵ International convention on Economic, Social and Cultural Rights 1966, article 11

⁸⁶ Economic, Social and Cultural Rights" presented by APAP 2005, article (11)(1)

⁸⁷ Armaye Aseffa (n21)

and within their means shall take appropriate measures to assist parents and others responsible for the child to implement this right and shall in case of need provide material assistance and support programs, particularly with regard to nutrition, clothing and housing.⁸⁸ The last important international human right instrument is the convention on elimination of all forms of discrimination against Women.

This convention entails obligation on state parties to eliminate discrimination against women in rural areas in order to ensure adequate living conditions, particularly in relation to housing, sanitation, electricity and water supply.⁸⁹ The state must take measures to respect, promote, and fulfill the human rights to adequate housing and land of all residents within the country's borders, based on the principle of non-discrimination. Countries that, to differing extents, have enshrined the right to adequate housing in their national constitutions include Belgium, France, the Islamic Republic of Iran, Mexico, Russian Federation, South Africa comprehensive national housing law based on international human rights standards on housing should be promulgated for both rural and urban areas where it does not exist, and implemented effectively where it does.⁹⁰

This obligation requires that governments should protect people from infringement of their right by third parties other than the government. Under this obligation, governments are expected to prohibit third parties from committing acts that go against enjoyment of the right to adequate housing. For example, governments should enact laws that protect the population from forced and arbitrary eviction. This obligation requires governments to act in many positive ways including, creation of bodies to investigate violations of rights and establishing effective procedures for redressing victims of violation. These established procedures must enable victims to bring their claims before courts of law and get restitution or compensation for damages sustained. Furthermore, governments are also responsible to avoid discrimination by powerful individuals or business enterprises.

No person shall be refused housing because of his/her sex, nationality, color or for other ground of discrimination.⁹¹ The UN Committee on economic, social and cultural rights clarified the normative and legal content of the right to adequate housing and forced evictions.⁹² One of the key aspects of the requirements of adequacy is legal security of tenure. In unequivocal terms, the

⁸⁸ The International Convention on the Rights of the Child, article 27(3)

⁸⁹ Ibid

⁹⁰ Studies in transnational legal policy No. 41 p.630

⁹¹ Ibid, C. Golay and O.Melik, the Right to Housing p. 20.

⁹² Mohammed Abdo, 'The Human Rights Commission of Ethiopia and Issues of Forced Evictions- A Caseoriented Study of its Practice'

Committee made it clear that all persons should possess a degree of security of tenure which guarantees legal protection against forced eviction, harassment and other threats. It has argued that forced evictions are prima facie incompatible with the requirements of the ICESCR reinforcing this stance, the former UN commission on Human rights pronounced that the practice of forced evictions constitutes a gross violation of a broad range of human rights, in particular the right to adequate housing. Not all evictions are prohibited under international human rights law, however. They can be justified in the most exceptional circumstances, and in accordance with the relevant principles.⁹³

2.7.3. The Obligation to fulfill the right to housing

The obligation to implement is comprised of both the obligation to facilitate and the obligation to provide adequate housing.⁹⁴ When we say obligation to facilitate, governments are expected to act in positive way in helping its population enjoy their right to adequate housing. Governments for example, build low cost housing for those who cannot fully afford expensive housing by their own personal effort. On the other hand, the obligation to provide requires governments to guarantee temporary housing to all those in a situation of extreme instability. Generally speaking, the obligation to implement requires governments to adopt necessary legislative and strategic measures to ensure the availability and accessibility of adequate housing to everyone including the most disadvantaged groups of the society.⁹⁵ In relation to state parties' obligation, one should not forget the relationship of realization of ESC rights in general and availability of resources in a country. It is a general fact that many nations of the world are poor that they cannot afford to fully realize ESC rights or even meet the minimum core obligation. In such situations, nations should appeal to international cooperation as a remedy. This in turn reflects that the rich countries have the obligation to respond by the mere fact that they are parties to the ICESCR.⁹⁶

The obligation of the international community could basically be of three types. The first one is that the international community should refrain from any coercive measures designed to force a state to infringe its housing right obligations. The other is that the international community is duty bound to providing financial or other assistance to states affected by natural or

⁹³Ibid

⁹⁴ Mohammed Abdo (n145)18

⁹⁵Ibid

⁹⁶ C. Golay and O .Melik, the right to housing p. 21

manmade disaster, resulting in the destruction of homes and settlements. Moreover, they should respond to object violations of housing rights carried out in any state.⁹⁷

A State is in violation of international human rights law if any significant portion of the population is deprived of access to basic shelter or housing. States are obliged to adopt enabling strategies to implement the right to housing for residents of informal settlements within the shortest possible time, by all appropriate means, using the maximum of available resources. It is obvious that most States are in clear non-compliance with this obligation. Indeed, the scope and severity of the living conditions in informal settlements make them one of the most pervasive violations of the human rights of dignity, security, health, and life worldwide. They must be recognized as such.⁹⁸

2.8. Informal settlement regulation impacts on human rights

Forced evictions violate directly and indirectly the full spectrum of civil, cultural, economic, political and social rights enshrined in international instruments including the right to life, freedom from cruel, inhuman and degrading treatment, the right to security of the person, the right to an adequate standard of living, including the right to adequate housing, food, water and sanitation, the right to non-interference with privacy, home, and family, freedom of movement and to choose one's residence, the right to health, the right to an effective remedy, the right to property, the rights to vote and take part in the conduct of public affairs.⁹⁹

Forced evictions occur in both developed and developing countries and urban areas, with informal settlers being evicted for variety of reasons. As to many international documents, forced eviction can result in the violation of the number of rights like; the right to freedom of movement to choose one's residence, the right to non-interference with privacy, family and home, the right to be protected against the arbitrary deprivation of property, the right to the peaceful enjoyment of possessions of one's property.¹⁰⁰ Forced evictions often displace entire communities and are targeted at poor residents living in informal settlements and slums.¹⁰¹ Forced eviction increases poverty, homelessness, social conflict, and disproportionately

⁹⁷ S. Lekie, the Justifiability of Housing Rights p.19-22

⁹⁸ Temesgen Rediet Legesse (n57)42

⁹⁹ Afia Afenah, conceptualizing the effects of neo liberal urban policies on housing rights: an analysis of the attempted unlawful forced eviction of an informal settlement in Accra Ghana, (2009)5

¹⁰⁰ Ibid

¹⁰¹ Ibid

affects the poor and marginalized, such as children, women, and minority groups.¹⁰² Evicted people not only lose their homes and neighborhoods, in which they have often invested a considerable proportion of their income over the years, but are also often forced to relinquish their personal possessions, since usually no warning is given before bulldozers or demolition squads destroy their settlements.¹⁰³ They often lose one or more sources of livelihood as they are forced to move away from the area where they have jobs or sources of income.¹⁰⁴ Forced eviction causes several social consequences for people subjected to forceful eviction of their settlements.

Forced evictions that results in homelessness are a violation of international human rights law, as many authors agreed. The UN Commission on human rights resolutions 1993/77 and 2004/28 pronounce that, the practice of forced evictions constitutes a gross violation of human rights, in particular the right to adequate housing. Arbitrary displacement could violate the rights to freedom of movement, freedom to choose one's residence, freedom from arbitrary interference with one's home, and the right to adequate housing.¹⁰⁵ People who evicted their house forcefully fall into different social problems. Many of the evicted people left homeless without offering sufficient alternative accommodation or compensation.

The type of tenure ownership, public or private rental, cooperative housing, collective arrangements, lease, emergency or transitional housing or informal settlements everyone has a right to be protected against forced eviction.¹⁰⁶ States are required to adopt appropriate legislative, administrative, budgetary, judicial, promotional and other measures to fully realize the right to adequate housing and to prevent forced evictions.¹⁰⁷ Forced evictions invariably affect the most marginalized and disadvantaged groups, those with the most insecure tenure, those who are the poorest: slum dwellers and squatters, female-led households, persons with disabilities, indigenous peoples, the elderly and ethnic and racial minorities.¹⁰⁸

¹⁰²Ibid 6

¹⁰³Vienna declaration and program of action, Forced evictions and human rights (Part 1, para. 30), adopted by the World Conference on Human Rights, Vienna, 23 June 1993 (A/CONF.157/24 (Part 1), chap. III)

¹⁰⁴Ibid

¹⁰⁵Walter Kalin, Rhodric C. Williams, Khalid Koser, and Andrew Solomon (n24)603

¹⁰⁶UN- HABITAT (n19)5

¹⁰⁷Ibid

¹⁰⁸A review of the status of forced eviction globally through work of the advisory group on forced evictions, forced eviction global crises, global solutions p.17

Violence is common during forced evictions and it can include the use of batons, water cannons, tear gas and sometimes even rubber bullets against those who resist the eviction. This kind of violence has resulted in bodily harm and even death. Those who resist evictions also commonly face arrest and criminal charges of disturbing the public peace and order.¹⁰⁹ The effect of forced evictions and displacement on the lives of individuals, families and communities is nothing less than devastating. Forced eviction commonly results in overcrowding of households, loss of livelihood, unemployment, family breakup, increased consumption of alcohol and drugs, loss of educational opportunities, scarcity of food and potable water, and a loss of culture and community.¹¹⁰ Governments have a particular obligation to protect against the displacement of indigenous peoples, minorities, peasants, pastoralists, and other groups with a special dependency on, and attachment to, their lands.

The state must ensure that certain fundamental human rights are respected and guaranteed. These include the right to personal security and safety; right to protection from arbitrary displacement, violence, and injury; and protection of possessions, including personal belongings such as cooking utensils and clothing.¹¹¹ A human rights-based approach to informal settlement upgrading requires that residents should be ensured security of tenure over the land on which they live. Security of tenure means that States should adopt laws and policies which enable one to live in one's home in security, peace and dignity. The principle of security of tenure is a universal right under international human rights law, and applies to all people, whether they have formal title over the land on which they live, or not".¹¹²

In order to ensure security of tenure, people living in informal settlements must not be evicted from their homes and removed from their settlements. Evictions are almost always indicative of flawed processes and a lack of meaningful engagement with the people living in settlements. In ending evictions of informal settlement residents, states must immediately halt any existing legal procedures for eviction and courts should refuse to authorize any current or future eviction applications.¹¹³ Evictions are almost always indicative in order to ensure security of tenure, people living in informal settlements must not be evicted from their homes and removed from their settlements.

¹⁰⁹ Ibid

¹¹⁰ Ibid

¹¹¹ Ibid 630

¹¹² Ibid 58

¹¹³ International development research centre (n37)6

CHAPTER THREE

3. PRINCIPLES AND LEGAL INSTRUMENTS TO GUIDE THE INFORMAL SETTLERS AND PROTECTION OF HUMAN RIGHTS

3.1. International legal instruments

The International Covenant on Economic, social and Cultural Rights is the key legal source of housing rights under international human rights law. Covenant explicitly recognizes the right to adequate housing. General Comment No.4 and General Comment No.7 of the UN Committee on Economic, Social, and Cultural Rights also prescribe legal protection against forced eviction, at least for those 150 Countries that have signed and ratified the Covenant.¹¹⁴ Where it is not possible to provide legal recognition to informal tenure, States should prevent forced evictions that violate existing obligations under national and international law, and be consistent with relevant provisions under Section 16.¹¹⁵ Demolishing should not result in individuals being rendered homeless or vulnerable to the violation of human rights. Where those affected are unable to provide for themselves, States should, to the extent that resources permit, take appropriate measures to provide adequate alternative housing, resettlement or access to productive land, as the case may be.¹¹⁶ By ratifying human rights treaties, States commit themselves to act against and prevent forced informal settlers.¹¹⁷ General Comment No.7 indicates that “the State itself must refrain from forced demolishing and ensure that the law is enforced against its agents or third parties who carry out forced demolish”. International covenant on civil and political rights compliments the right not to be forcefully evicted without adequate protection when it protects against arbitrary or unlawful interference with one’s home. The covenant also requires state parties to provide an effective remedy for persons whose rights have been violated, which includes adequate compensation for any property.¹¹⁸ The United Nation Commission on

¹¹⁴COHRE (n5)

¹¹⁵Food and Agriculture Organization of The United Nations, Voluntary Guidelines on the Responsible governance of Tenure of Land, Fisheries And Forests in the Context of National Food Security(revised edition 2022)17

¹¹⁶ Ibid 28

¹¹⁷ UN-Habitat (n19)

¹¹⁸ International covenant on civil and political right (n107) article 2(3), article 17, Elisabeth Wickeri and Anil Kalihan, Land rights issues in international human rights Law (Institutes for human rights and business)

Human Rights resolutions pronounce that, the practice of demolishing informal houses constitutes a gross violation of human rights, in particular the right to adequate housing.¹¹⁹

The destruction of livelihoods and dissociation of communities or individuals from their sources of work and residence may amount to violation of human rights, even when resettlement is provided.¹²⁰ Among other international instruments, Agenda 21 adopted by the United Nations conference on environment and development directly addresses the issue of informal settlers. It states all countries should adopt and/or strengthen national shelter strategies with targets based as appropriate on the principles and recommendations contained in the global Strategy. People should be protected by law against unfair eviction from their homes or land.¹²¹

International covenant on economic, social and cultural rights states that the States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international co-operation based on free consent.¹²² Similarly, universal declaration on human rights further strengthens this right by recognizing everyone's right to a standard of living in adequate housing. The declaration recognizes the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions.¹²³ The human right to adequate housing, which is thus derived from the right to an adequate standard of living, is of central importance for the enjoyment of all economic, social and cultural rights.

The African charter on human and people's rights doesn't explicitly recognize the right to adequate housing. However, it later somehow tries to recognize this right through

¹¹⁹ UN commission Human Rights resolution No. 77/1993 and resolution No. 28/2004, Shivanichaudhry, Development-induced displacement and forced evictions (incorporating the guiding principles on international displacement into domestic law: issues and challenges, studies in transnational legal policy No. 41) 602

¹²⁰ Walter Kalin, Rhodri C. Williams, Khalid Koser, and Andrew Solomon (n24) 604

¹²¹ Vienna declaration and program of action (n135), Agenda 21 adopted by the United Nations Conference on Environment and Development in 1992

¹²² International covenant on economic, social and cultural rights (n87) article 11

¹²³ Universal Declaration of Human Rights (n146), article 25 article 11(1), Temesgen Rediet Legesse (n47) 3

Communication No. 155/96. In the social and economic rights action center and the center for economic and social rights (Communication No. 155/96), the African commission on human and people's rights found that, while the right to adequate housing was not explicitly recognized in the charter, it could be inferred from other rights.¹²⁴ According to the African commission on human and peoples' rights, this right is intricately intertwined with other rights including the rights to health and family. This is because provision of housing directly impacts on the quality of enjoyment of the other rights. The guarantees on security of tenure, peace and dignity in respect of housing can only be assured if the right enjoys legal protection.

Accordingly, the instruments that recognize the right impose a number of obligations on the duty bearers with respect to the right. These include the obligations to respect, promote, protect and fulfill the right.¹²⁵ Similarly the European social charter aptly contextualizes these obligations. Under the charter, state parties are required to take all reasonable steps to: promote access to housing of an adequate standard; to prevent and reduce homelessness with a view to its gradual elimination; and to make the price of housing accessible to those without adequate resources. By discharging these various obligations provided under the charter.¹²⁶

3.2. The Regional guide lines and instruments to guide informal settlers and protection of Human rights

Certain regional instruments also provide the legal basis for the protection of informal settlements. It also provides the legal basis for the progressive realization of the human right to adequate housing.¹²⁷ The African Charter addresses the right to property. The charter states: the right to property shall be guaranteed. It may only be encroached upon in the interest of public need or in the general interest of the community and in accordance with the provisions of appropriate laws.¹²⁸

The African charter on human and people's rights recognize the right to property and protection from arbitrary evictions.¹²⁹ Furthermore, the right to property is ill-defined in the African charter

¹²⁴ Ibid

¹²⁵ Benard Odongo Matanga (n46)17

¹²⁶ European Convention for the Protection of Human Rights and Fundamental Freedoms

¹²⁷ Sean Romero, 'Mass forced evictions and the human right to adequate housing in Zimbabwe' (2007) (Vol. 5 issue 2 North Western journal of international human rights) 288

¹²⁸ Ibid, African Charter on Human and Peoples' Rights, 1981, article 14

¹²⁹ Ibid article 14

and there are no provisions that specifically protect against human rights for informal settlers.¹³⁰ The context of Rights includes the right to access land, water and other natural resources, the right to food and to an adequate standard of living, as well as labor rights.¹³¹ International human rights treaties, constitutions and national laws require States to protect human rights¹³² In particular, guiding Principles encourage the recognition and protection of customary land rights whether registered or not. All actors have their roles in contributing to this outcome.¹³³

This means recognizing the legitimacy of these rights irrespective of whether those rights have been formally registered or not.¹³⁴ At the regional level, only a few legal documents recognize the right to adequate housing explicitly: the European convention on the legal status of migrant workers, the African charter on the rights and welfare of the Child, the revised European social charter the European convention for the promotion of human rights and fundamental freedoms the European social charter, the American convention on human rightsnor the African charter on human and peoples' rights refer to the right to adequate housing, but the mentioned regional systems are nevertheless characterized by an implicit existence of housing rights.¹³⁵

As to the general description of the law, we understand that under international human rights law the practice of informal settler's bad regulation is considered a gross violation of human rights. If an informal settler's bad regulation will result in the strong likelihood of homelessness, the Court will closely examine the justification for the action.¹³⁶

Informal settlers issues have been condemned by regional human rights mechanisms, such as the African commission on human and peoples' rights, through the consideration of African charter on human and peoples' rights and the principles and guidelines on the implementation of

¹³⁰ Sean Romero (n178)

¹³¹ African Union, African Development Bank and United Nations Economic Commission for Africa, Guiding Principles on Large Scale Land Based Investments in Africa (November 2014)7, <<www.uneca.org>> accessed June 22, 2022

¹³² Ibid

¹³³ Ibid 8

¹³⁴ Ibid

¹³⁵ Christina Bell, 'beyond bulldozing: Is slum upgrading a means to realize the right to adequate housing?' (E. MA thesis, Finland University, unpublished 2011/12)10

¹³⁶ European Convention for the Promotion of Human Rights and Fundamental Freedoms (1950), article 8, Malcolm Langford and Jean du Plisses, Dignity in the rubble forced evictions and human rights law p.18

economic, social and cultural rights in the African charter on human and peoples' rights, the inter-American commission on human rights, through the consideration of the American convention on human rights, the European court of Human rights, through the consideration of the European convention for the protection of human rights and fundamental freedoms.¹³⁷ Although informal settlements are informal or illegal, the occupants can claim under the European convention protection against arbitrary acts of the government interfering with their fundamental rights. European convention on Human rights guarantees every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law. On the aspect of illegal occupied land, the European Court of Human rights in Strasbourg holds a wide interpretation of possessions.¹³⁸ The Court accepts that occupants of land can claim proprietary interests, although they don't have any formal right in the occupied land. On the other hand, the Court recently found that the right to property of the landowner itself was infringed by the rule of adverse possession under English law.¹³⁹ **Informal settlements are homes; places where people live, work, build communities and start families. Whatever they are named, it is vital that they are primarily recognized as such and that residents are regarded as important, rights-holding citizens.**¹⁴⁰ **A state party honors its duty to respect, protect, promote, and fulfill the right to housing which is party of Human Rights.**¹⁴¹

3.3. Laws governing land administration and housing policy in Ethiopia

Historically the Ethiopian housing policy does not consider much more on urban squatting. . Production of housing was very expensive process for the poor in urban areas, which need high investment, and indirectly, which needs strong and open government housing policy which invites

¹³⁷ Amnesty international (n71) 43, African Charter on Human and Peoples' Rights (n125), art. 14, 16 and 18 (1), American Convention on Human Rights art.11, art.21, European Convention for the Protection of Human Rights and Fundamental Freedoms (n129), art. 8

¹³⁸ Hedrick PLOEGER and Danielle GROETELAERS (n19)2

¹³⁹ Ibid

¹⁴⁰ International development research centre, The Right to Housing for Residents of Informal Settlements (n20)

¹⁴¹ Ibid

internal and external investors for the housing production.¹⁴² Pre-1974 monarchic monopoly of urban land and dwellings and no one has a right to construct his house on privately owned land.¹⁴³ Majority was almost totally excluded from access to urban land and house building and ownership. Thus, unlike the practices in other cities of developing countries, the participation of low-income people in building activities was very limited.¹⁴⁴

During the Derg regime, the derg administration proclaimed to provide for government ownership of urban lands and extra houses proclamation No 47/1975. This proclamation was the major legislation defining the urban land and housing policy. This proclamation allowed ownership of only a single dwelling house, no person or family organization was allowed to obtain income from land or house rent.¹⁴⁵ Therefore, the use and benefit rights of the confiscated extra houses were transferred to the tenants and other homeless urban poor dwellers with a very low monthly rent paid for the government. This was administered via the Kebeles, responsible for infrastructure and service provision.¹⁴⁶

The constitution of FDRE retains state ownership of the land. The constitution states that land is exclusively vested in the state and in the peoples of Ethiopia. It further stipulates that land is a common property of the nations, nationalities and peoples of Ethiopia and shall not be subject to sale or other means of exchange. While every Ethiopian citizen has the right to own private property, the constitution does not provide for private ownership of land.¹⁴⁷ However, it is incumbent upon the government to allocate resources to give social services including education and health.¹⁴⁸ The social service referred to here could include housing as the provision is not meant to be exhaustive.

¹⁴² Journal of geography and natural disasters, ‘ Rapid urbanization, squatter settlements and Housing policy interface in Ethiopia, the case of Nekemte Town’ (volume 7- issue 3- 1000211)4

¹⁴³ Daniel Libero (n48)23

¹⁴⁴ Ibid 26

¹⁴⁵ Daniel Weldegebriel Ambaye (n4)26

¹⁴⁶ Bosena Ayele, ‘Urban informal dwellers access to urban land for housing and regularization of informal settlements: the case of Nifas Silk Lafto Sub- City’

¹⁴⁷ FDRE Constitution (n102), Tendayi Gondo, (urban land and informality: an evaluation of institutional response options to land in formalization in Ethiopian cities)4

¹⁴⁸ Mohammed Abdo, ‘the human rights commission of Ethiopia and issues of forced evictions- A case oriented study of its practice’

One of the national policy principles included in the constitution obliges the state to adopt policies and measures so long as resources permit, to provide social service to citizens.¹⁴⁹ Under the current land policy of the country, which is the result of changes and continuities in the past fifty years, all urban and rural land is constitutionally the property of the state and the people and, accordingly, sale and other exchange means of exchange is prohibited as per FDRE constitution. This grand policy direction has been reinforced by other federal and regional land laws that define and regulate land governance in the country.¹⁵⁰

Regarding urban law, the lease system is proclaimed as a sole means of urban landholding in the country since 1993. The first lease law i.e. urban lands lease holding proclamation No. 80/1993 has been amended three times as proclamation No. 272/2002 and Proclamation No. 721/2011.¹⁵¹ The Ethiopian land governance system is troubled with a high degree of informality. No single document sets out Ethiopia's land policy. Moreover, with guidelines or without, the enforcing institutions are weaker.¹⁵²

Urban land system and administration are now embodied in the lease proclamation of 2011 which came into being after repealing both preceding proclamations. (12) The lease system is quite agreeable to urban development albeit the mal-administration and ensuing massive corruption. In fact, it has kicked in robust urban land and housing market after the fall of the derg military regime. Yet again, its side effects are not well analyzed in terms of the concerns of the very poor urban dweller and the younger generation forming a family of their own and trying to find space in society.

The first lease proclamation was proclaimed in 1993 even before the advent of the FDRE constitution which came into being in 1995. Hence, there was doubt about the legitimacy of the law itself. However, the second lease proclamation which repealed its predecessor came in 2002 (13) and removed constitutional questions and cited the FDRE constitution itself for authority. Of course, the FDRE constitution under article 40 clearly declared that both rural and urban land belonged to the people and the state. Hence, urban land is under public ownership.¹⁵³

¹⁴⁹Ibid

¹⁵⁰MisganawGashawBeza, 'corruption in the post 1991- Urban land governance of Ethiopia: tracing major drivers in the law' (conference on land policy in Africa, 2019)4

¹⁵¹Ibid

¹⁵²Daniel Behailu and AdisuKasa, 'Land governance in Ethiopia: towards evaluating global trends' (The journal of social sciences research Vol. 4 2018)40

¹⁵³ See FDRE Constitution article 40(3)

The right to housing is one of the most important human rights and its fulfillment ensures the right to live in dignity. A decent living space is a *sin quo non* for a decent life and towards forming a family. A government that is productive and protective must be proactive toward ensuring human dignity and ensuring an adequate standard of life. In fact, it is the legal obligation of a given state to facilitate and create capacity for individuals to cater to their own basic needs. Among the major necessities of life is the right to housing and homeownership.

3.4. Institutional responsibility in regard to land administration

The overall mandate to enact laws for the utilization and management of land and other natural resources in Ethiopia is given to the federal government. Simultaneously, the responsibility to administer land and other natural resources is given to regional states within their jurisdictions. Institutions responsible for the administration of land is divided for rural and urban land even though there is an overlap; leading to conflict of interest and lack of clarity on the matters related to peri-urban land. Responsibilities are also shared between the federal and regional level, with large differences in structure and capacity between the regional states.¹⁵⁴

3.5. The right to an adequate standard of living under Ethiopian law

Socio-economic rights in general and the right to adequate standard of living in particular is enshrined in many international human right instruments. Ethiopia has ratified almost all major human right instruments. The FDRE Constitution provides that all international instruments ratified by Ethiopia are integral part of the law of the land. Moreover, the Constitution requires the interpretation of the bill of rights of the Constitution in light of the principles of the UDHR, international covenants on human rights and international instruments ratified by Ethiopia. Apart from the international human rights instruments, the right to adequate standard of living is reflected in domestic laws and policies of Ethiopia.¹⁵⁵

In Ethiopian constitutional history, the right to housing has never been explicitly recognized as human right.¹⁵⁶ From 1931 when Ethiopia promulgated its first written constitution upto 1974 housing was a private affair as any Ethiopian who could afford to build a house had a right to own a house, which meant that only the affluent owned houses. The

¹⁵⁴ Achamyeleh Gashu Adam (n8)11

¹⁵⁵ FDRE constitution (n102) article, 9(4), 13(2)

¹⁵⁶ DejeneGirmaJanka, 'The realization of the right to adequate housing in Ethiopia' (LL.M thesis, university of Pretoria, 2007)9

government provided housing to the poor on rent which was not up to town planning standards, leading to development of slums.

From 1974 upto 1991, the government was directly involved in the supply of housing by nationalizing all urban land and housing units not occupied by owners, extra houses and by effectively eliminating private sector rental or sale of real estate development. Moreover, the government introduced different incentives such as allocation of land without charge for the construction of owner-occupied dwelling units and subsidization of building materials to encourage people to build their own houses. Nevertheless, the total planned housing production ultimately satisfied only a small portion of housing demands.¹⁵⁷

From the 1991 onwards, the era of the current government, the situation of the right to housing in Ethiopia is different. Unlike the previous governments, the present government has ratified different international human rights treaties that recognize the right to housing. Domestically, however, neither its Constitution nor other legislation expressly provides for the right to housing; nor is the government directly getting involved in the provision of housing on equally footing with its predecessor.¹⁵⁸

The Ethiopian constitution, which is the supreme law of the land, has recognized a number of socio-economic rights under chapter three which deals with fundamental freedoms and rights.¹⁵⁹ Unlike the civil and political rights which are dealt in different articles, socio-economic rights are categorized under one heading economic, social and cultural rights. It provides that every Ethiopian has the right to engage freely in economic activity and to pursue a livelihood of his choice anywhere within the national territory, every Ethiopian has the right to choose his or her means of livelihood, occupation and profession, every Ethiopian national has the right to equal access to publicly funded social services, the state has the obligation to allocate ever increasing resources to provide to the public health, education and other social services, the state shall, within available means, allocate resources to provide rehabilitation and

¹⁵⁷Ibid

¹⁵⁸Ibid

¹⁵⁹Ibid 29

assistance to the physically and mentally disabled, the aged and to children who are left without parents or guardian.¹⁶⁰

Constitution also provides that the peoples of Ethiopia as a whole, and each Nation, Nationality and People in Ethiopia have the right to improved living standards and to sustainable development.¹⁶¹ Constitution give us an idea that rights to adequate food, clothing and housing that constitute the right to adequate standard of living are protected by the FDRE Constitution. However, since the Constitution does not indicate their non-justifiability, it can be logically concluded that the recognized rights are justiciable.¹⁶² In addition to incorporating socio-economic rights, the FDRE Constitution has incorporated many social, economic and cultural objectives and principles that the state has to observe for formulation of national policies under chapter ten. These policy principles and objectives are aimed at requiring the government to develop policies that ensure the enjoyment of rights of citizens.

Though these principles and objectives are not directly enforceable by courts, they may affect the interpretation of other rights. Generally, the socio-economic objectives require that policies should aim to ensure equal opportunity for all Ethiopians to improve their economic conditions and to provide all access to public health, education, clean water, housing, food and social security.¹⁶³ The Proclamation which establishes Ethiopian human rights commission sets the protection, respect and enforcement of human rights as its core objectives. Institute of Ombudsman, on the other hand, has the objective of ensuring good governance by respecting rule of law and protecting human rights.

Currently, it is also empowered to ensure the protection and implementation of proclamations, but also strongly deals with administrative matters.¹⁶⁴ There is little experience in Ethiopian institutions of the collaborative approach to land allocation when informal development occurs. It is, however, more likely to succeed in achieving at least some orderly settlement than either

¹⁶⁰ FDRE Constitution (n102), article (41) (1-5)

¹⁶¹K. Adem, 'Human Rights under the Ethiopian Constitution: A Descriptive Overview' p.14, available at <<www.pretoriauniversityhrtscentre>> accessed on may 2, 2022 , A. Sisay, The Constitutional Protection of Economic and Social rights in the FDRE, Journal of Ethiopian Law, Volume XXII No 2, December 2008, p. 141.

¹⁶²Ibid

¹⁶³ FDRE constitution (n102) article (89), (90)

¹⁶⁴ TemesgenRediet Legesse (n57)28-29

the disengagement of laissez-faire or the aggressive approach of bulldozing or court proceedings.¹⁶⁵

3.6. The Legal gaps for the protection of informal settlers under Ethiopian legal system

3.6.1. Absence of regulation and standards

Under the FDRE constitution international human rights instruments that concerned issues related to the right to adequate housing made part of Ethiopian law. The right to an adequate standard of living, including adequate housing, serves as an affirmative provision of the ICESCR prohibiting the violation of this right in the case of forced displacement is also part of Ethiopian law.¹⁶⁶ Further other specific regulations and standards must be enacted by the federal government regarding the right of informal settlers to protect from forced eviction and forced displacement. Existing obligations under international law make clear that, to overcome the prohibition on demolishing of informal houses, states must provide full justification and appropriate legal remedies when asserting an overriding public interest.

However, in practice, States have engaged in demolishing informal houses based on an asserted public interest without guaranteeing these protections.¹⁶⁷ Currently, at the federal level, we have urban as well as rural land proclamations, one federal urban lease proclamation, and another federal rural proclamation. In addition there is a detailed regulation that deals with the formulas and manners of regularization. However, there are some gaps that need further regulation because the enabling legislations assume the enactment of specific regulations or directives by the executive organs in various matters for instance; regarding the prohibition of eviction and forced displacement of informal settlement and compensation for expropriation. When States assert the public interest to justify development based informal settlers. The enactment of such clear standard will help to minimize forceful eviction on informal settlers and to implement sustainable development the ground; in other word the failure to enact such standard will directly affect people settled informally.

¹⁶⁵Ibid 28

¹⁶⁶FDRE Constitution (n102) article 9(4)

¹⁶⁷ Abby Robinson, 'preventing human rights violations done in the public interest: recommendations for development that respect the prohibition on forced evictions' (university of san Francisco law review vol. 48)675

3.6.2. Demolishing Informal settlers house constitute violations of human rights

Forced demolishing violate directly and indirectly the full spectrum of civil, cultural, economic, political and social rights enshrined in international instruments including the right to life, freedom from cruel, inhuman and degrading treatment, the right to security of the person, the right to an adequate standard of living, including the right to adequate housing, food, water and sanitation, the right to non-interference with privacy, home and family, freedom of movement and to choose one's residence, the right to health, the right to an effective remedy, the right to property, the rights to vote and take part in the conduct of public affairs.¹⁶⁸ As to many international documents, forced demolishing house can results in the violation of number of rights like; the right to freedom of movement to choose one's residence, the right to non-interference with privacy, family and home, the right to be protected against the arbitrary deprivation of property, the right to the peaceful enjoyment of possessions of one's property.¹⁶⁹ Forced evictions often displace entire communities and are targeted at poor residents living in informal settlements and slums.¹⁷⁰ Forced eviction increases poverty, homelessness, social conflict, disproportionately affects the poor and marginalized, such as children, women, and minority groups.

¹⁶⁸ Afia Afenah, conceptualizing the effects of neo liberal urban policies on housing rights: an analysis of the attempted unlawful forced eviction of an informal settlement in Accra Ghana, (2009)5

¹⁶⁹ Ibid

¹⁷⁰ Ibid

CHAPTER FOUR

4. INFORMAL SETTLERS AND PRACTICAL CHALLENGES IN LINE OF HUMAN RIGHTS IN THE STUDY AREA

4.1. Introduction

This chapter discusses informal settlers in Daye Town in general by focusing on selected kebeles under the scope of this study. Chapter deals with the presentation, analysis, and discussion of data gathered from the sample respondents which include informal settlers, municipality managers, court officers, Town administrators and more experienced residents and concerned officials in the region and the Town. The chapter presents an expansion of informal settlements in peri-urban areas of the Town; the Chapter under this part additionally explains the consequences of informal settlement for human right and mechanisms to control the expansion of informal settlement. Focus given to explore the pushing factor in which people are forced into an informal way of land acquisition system and the expansion of informal settlement is another point of view in this chapter. The collected data were presented, analyzed, and interpreted in relation to the basic research questions and objectives of the study.

4.2. Informal Settlement in peri-urban areas of Daye Town: Reality analysis

Man-to-land relationship in the study area is in a permanent state of change in which it encounters both rural and urban land settlers. Access to land is the basis of economic and social life in both rural and urban areas. Land settlement is a complex problem in the peri-urban areas of Daye Town due to its dynamic nature. Currently, informal settlers issue of the area is at the risk because of the horizontal expansion of the town into the surrounding peasants at an alarming rate.

In Ethiopia, the major challenges for the emergence and expansion of informal settlements are emanated from the problems of legal administrative framework, but the government always takes demolition measures in Daye town to control squatter settlements. Legal gaps and Implementing policies are not well-articulated on the ground i.e. upgrading and legalizing such settlements are not well-developed rather mainly concerned with slum clearance and demolition of informal settlements.¹⁷¹

¹⁷¹ Member Misganaw, (n10)24

In many urban centers of Ethiopia, squatter settlers are marginalized politically, economically socially and psychologically. They are forced to give up their life and property during bulldozing process. In this regard, solutions that focus on preventing mechanisms of squatter settlement expansion is better than employing demolition measures to expand formal benefiting of individuals in housing and to achieve urban development in general.¹⁷² The Town has been undergoing a major transformation as evidenced by the expansion of road networks, schools, healthcare institutions, hotels, banks, shopping centers, and many other businesses.¹⁷³ Squatters have been taken different actions in demolishing process and arbitrary displacing of informal settlers in urban centers of Daye Town. Mostly, their actions could create the socio-economic cost of individuals and lead to conflict between the security forces and these residents.¹⁷⁴

The major role of the government is demolishing the newly constructed informal settlements and controlling further informal construction rather than thinking housing rights of individual which is human right. The FDRE Constitution incorporates the international treaties into the domestic legal system by adoption and interpretation. All international agreements ratified by Ethiopia are an integral part of the law of the land. More importantly, the human rights provisions contained in the Constitution must be interpreted in a manner conforming to the principles of the universal declaration of human rights, international covenants on human rights and international instruments adopted by Ethiopia.¹⁷⁵ This implies that the Ethiopian government has a duty bound to respect and enforce the rights of citizens specified under those international human rights instruments.

4.3. The expansion of informal settlement in peri-urban areas of Daye Town

In Eastern Sidama zone Capital Daye Town the situation of informal settlement is alarming. As the population expands, Day's shelter needs are becoming ever more acute: existing housing stock and government housing programs and policies do not match demand. While informal settlements expand to absorb increasing demand from migrant workers and others, sustainable housing solutions are urgently needed for the Town's hundreds of thousands of residents. Existing schemes were meant to provide housing for people on low incomes but are largely beyond the reach of even middle-income groups.

¹⁷² Ibid

¹⁷³ Milkias Bulcha, 'reconciling human rights and eviction for public purposes in Ethiopia: appraisal of the laws and practices with focus on some selected sites in Addis Ababa city' (2015)2

¹⁷⁴ Member Misganaw

¹⁷⁵ Tura Husen Ahmed

In addition, current government policy promotes the building of high rise housing in response to land shortages, but this is not made affordable for low income groups. The expansion of informal settlement has resulted in informal land sell mainly due to the problem related to failure of housing provision and problem in relation with urban land management system. Because of rapid population growth in the city and weak housing provision people forced people into informal land dealings mainly for housing purpose.¹⁷⁶ During interview made with one respondent in Daye Town municipality, informal land sell played great role for the expansion of informal settlement in Daye Town. Informal settlement is expanded due to the factors related to weak land administration system and weak housing provision in the Town.

As to the idea of above respondent, weak controlling system of informal land sell in the city is also another factor for the expansion of informal settlements in the Town.¹⁷⁷ Respondent say, to address such kind of problems, Town municipality must take strong measure to control informal land dealings like through providing housing opportunity especially for low income groups in the city. Urban poor who is unable to participate in formal land delivery system directly participate in informal land acquisition system in order to get land in informal way for housing purpose. Through such a way, informal settlement is easily expanded.¹⁷⁸ Daye's expansion is characterized by horizontal expansion, and is occurring through the conversion of the peripheral farmland as a form of peri-urbanization.¹⁷⁹

4.4. Absence of formal way of land and housing delivery system Visa Vis Human Right

People settled informally in the city due to many reasons. As to the evidence gathered from sample respondents, many people choose the informal way of land acquisition mainly due to the non-existence of formal way of land acquisition method. Many people participate in an informal way of land acquisition mainly for housing purposes. The land law of Ethiopia including the constitution, closed the way for formal land acquisition system. FDRE Constitution states that, the right to ownership of rural land urban land, as well as all natural resources is exclusively vested in the state and the people of Ethiopia. Land is a common property of the Nation,

¹⁷⁶ Interview with Legese Lema, manager, Ajersa (03) kebele, Daye Town (Daye Town, 20 June 2023)

¹⁷⁷ Interview with Kambata Fetera, coordinator, construction department, Daye (Daye, Town municipality, 19 June 2023)

¹⁷⁸ Ibid

¹⁷⁹ Agenyo hanka, Duwe keta (n1)12

Nationalities and Peoples of Ethiopia and shall not be subject to sale or to other means of transfer.¹⁸⁰

Informal land deals are targeted for housing purpose. People especially under low level of income prefer to buy land through informal way of land acquisition system as to the data gathered from sample respondents. Land especially peri-urban area of the city has subjected to informal land sell through such a way. People interviewed reflected that formal way of housing delivery system is not easy and in full of administrative bureaucracy. People say, city administration or municipality has to take necessary and proportional measures to avoid such kind of problem of housing in the city.¹⁸¹ In addition, residents in the city raised the problem of rental housing prices. The price of rental house in the city is very expensive and not proportional with real life situation of residents. Individuals who rented houses increase monthly price for rental houses by each duration of month.

These and related problems force people into informal land dealing process through in which informal settlement is easily expanded. People who participate in informal land sell are mainly live in low level of income and urban poor.¹⁸² According to the data collected in field work, respondents reflected government and Town administration must give serious attention for the provision of residential house and different housing alternatives for the poor and people in low level of income. Another problem raised by residents during the process of data gathering was the weakness of Town municipality with regard to provision housing alternatives and in providing different opportunities of residential houses for the poor and people in low level of income.

This housing problem aggravated the expansion of informal settlement in peri-urban kebeles of the Town. But Town municipality has started taking different administrative measures so as to avert the problem of housing in the city. But residents say measures taken by Town administration in relation with housing is not as such proportional with problems of housing in the city. Town administration must take proportional measures to overcome problem of as much as possible. Another problem raised by respondents is with regard to expansion of informal settlement in connection with formal land delivery system in the Town.¹⁸³ The formal way of

¹⁸⁰ FDRE constitution n7), article 40(3)

¹⁸¹ Interview with Hamaro Roba, resident, Daye Town (Daye , Damo, 24 June 2023)

¹⁸² Ibid

¹⁸³ Ibid

land delivery system is the lease system that proclaimed as a sole means of urban landholding in the country since 1993. The first least lease law i.e. urban lands lease holding proclamation No. 80/1993 has been amended three times as Proclamation No. 272/2002 and Proclamation No. 721/201.¹⁸⁴ Urbanland is governed and administrated by the urban landleasehold law which has been amended three times since itsfirst application in 1993 (proclamation.No.80/1993, 272/2002, and 721/2011). On the other hand urban land-related laws like proclamation No.574/2008 and the proclamation No. 818/214 alsoincluded. All these legislations have primarily aimed to promote efficiency and effectiveness in urban landgovernance.

However, the objective to promote good governance in urban land management appears to be a frightening statutory forecast due to gaps under the law itself and in the course of enforcement. The empirical studies indicate that urban land institutional and legal framework does not promote good governance in urban land and discourage the widespread unethical practices from the government. Concerning practical situation of study area, people participated in interview raised practical problems like corruption and unfairness on land administration¹⁸⁵ On the other hand the lease system by itself is not as such easy way to get urban land for poor people live under low level of financial capacity.

The highest bidder will buy the allotted land, which allows the rich segment of the society to dominate the middle and low income earning societies. This in turn, in one or another way, excludes the low income earner from getting the land which would affect their right to adequate housing negatively. Due to above and related problems, many people want to participate in informal land sell system which is easy way to get land. Town administration must focus on this area and must give due attention so as to avoid such kinds of problems of housing.¹⁸⁶ According to the interview made with Daye Town manager, high population migration into the Town is another factor which opened the way for informal land market and the expansion of informal settlement around peri-urban kebeles in the Town.

According to the manager of the Town, the agricultural land in peri- urban area of the Town greatly affected due to peoples migration from rural areas to the Town. The way of land acquisition system is through informal way of land dealings with seller of that land specifying the specific area of the land and by preparing written document of land sell contract in form of “sell of house on starting stage” on that specified parcel of land. Therefore people choose

¹⁸⁴ See Proclamation No. 721/201. Article 12

¹⁸⁵ Interview with Mindaye Direso, resident, Daye Town (Daye, Damo, 27 June 2023)

¹⁸⁶ Ibid

accessing land through informal way of land sell since this way is simple and easy for people than formal one. Manager said this way creates best opportunity for the expansion of informal settlements in the Town.¹⁸⁷

Most of the people who migrate from rural areas to the Town are middle income groups and under low level of income for searching job opportunity. Since these people have no financial capacity to get land or residential houses formally, they make their only choice to acquire land informally. This way of land acquisition system created the best opportunity for the expansion of informal and irregular settlements in peri-urban areas of the Town. As to the manager, there is no law and regulation to control population migration from rural areas to the Town. Therefore, it doesn't become easy work to control informal land Sell in this difficult situation.¹⁸⁸

Some argue that migration to urban centers might function as an adaptation method against socio-economic and environmental deprivation in rural areas and challenges urbanization. Squatters in and around major cities in the nation are a formidable challenge for any Town planners. It is true that informal settlements occur when the current land administration and planning system fails to address the needs of the whole community. When the system fails to address social housing needs, then people use their own paths in settling on somebody else's land. Informal settlement is characterized by rapid, unstructured and unplanned development.¹⁸⁹

In study kebele during observation researcher observed most houses made of cement bricks and mud houses covered with cement materials. However, most of the houses found at the peripheral areas of the city are made up of mix of mud and wooden materials. Researcher interviewed one respondent who was resident of Damo kebele around Daye Town municipality and respondent said people prefer informal way of land acquisition system because, Ethiopian land law including constitution and land legislations restrict formal way of land acquisition system between individuals and to get land in such a way is illegal as per the Ethiopian land law.

During interview made with above respondent said urban poor especially people unable to participate in formal land delivery system and in lease system wants to participate in informal land dealing system to buy land through informal way for housing purpose. Informal settlement is expanded mainly in such a way in the Town.¹⁹⁰ According to one of the informants around

¹⁸⁷ Interview with Geremu Abebe, manager, Daye Town 01, Daye Town , 192 June 2023)

¹⁸⁸ Ibid

¹⁸⁹ Daniel Weldegebriel Ambaye (n4)7

¹⁹⁰ Interview with Kifile kachara, resident, Daye Town, (Daye Damo, 23 June 2023)

Damo kebele of Daye Town, presently the poor is not able to feed himself not able to afford more than feeding and paying for rent. For the poor, children the only option which seems available to the poor is that they may get a plot for house construction through informal agreement of land acquisition. Otherwise, the poor have no option to possess a house of their own with the present situation and remain without housing.

The mode of land acquisition system in peri-urban kebeles of Daye was to sell under the pretext of a property sale, meaning that the sale was constitutionally illegal; this was a common practice to transfer land to non-family third parties. The person who decided to sell the land passed the information to the local brokers those living in the village, who were connected to the brokers living in the city. Without using brokers, there was no available platform that allowed the land seller and buyer to meet. Even then, it was only after negotiating and agreeing the deal with brokers that the buyer could meet the seller.¹⁹¹ Many agreed that it was these brokers who set the ever-escalating land price and that the brokers' benefits were determined by the price of land. Once the buyer had seen the land, under the broker's guidance and without communicating with the seller a price was agreed in principle with little possibility of amendment.

The Constitution provides that the right of ownership of all rural and urban land is exclusively vested in the State and in the peoples of Ethiopia. Urban land delivery system in Ethiopia is transferred through lease system as per proclamation No. 721/2011. Within the current lease law, urban land is transferred by two principal modalities. The first is through allotment mechanism for project and programs that have welfare implications and national significance. The second modality reserved for market allocation through an auction system.¹⁹² During an interview interviewees respondents claimed inability to compete with the high and middle income earner individuals in time of land auction forces. In the city majority of the population is a low and middle income earner the lease system and the lease law are constraints. The law transfers parcel of land only to a higher bidder when auctions of parcels of land are made by the administration. The human right to adequate housing is one of the progressive realization rights which need time for its realization. However, informal settlers as they claim it, let alone without informally built,

¹⁹¹Eshetayehu Kinfu Tesfaye, 'Per-urban Land in Ethiopia: Genesis, Dynamics and Planning' (2019)99

¹⁹² Daniel Berihe, 'a critical assessment of urban land policy implementation and its benefit: The case of Bole sub city' (2019)13

life are hard even after they built such houses.¹⁹³ But residents claim in another way that Town administration has been not demolishing only such type of house but also houses built by poor and people who live in low level of income without differentiating and even without supporting with sufficient evidence.

4.5. The role of land lease law for the expansion of informal settlement in the study area

The Town's system for land leasing is lengthy and costly. As a result, auctioned plots of land are in high demand and extremely expensive, forcing people to turn to informal settlements and informal deals on peri-urban land where lease holding is ambiguous, which can spark land-related conflict.¹⁹⁴ Low and middle-income groups have minimal access to mortgage finance. The growing pressure on land has created incentives for farmers living on the city periphery to transfer their land lease, as many fear lawful but involuntary resettlement. This practice has been common across Ethiopia in recent years but leaves farmers with government compensation that, until very recently, was far below market rates and with little control over new land granted.¹⁹⁵ According to the data gathered from interview, many informal settlers erected residential house on study kebele through informal way of land acquisition system due to challenges related with leasing system which is lengthy and costly and not easy for people in low level of income and urban poor.

4.6. The Implementation of laws, the law and practice in Daye Town

According to law or interview made with city municipality land management unit informal settlers house subjected to demolish have no way to get compensation. This is because the law doesn't provide the way for these settlers to pay compensation. They have no title deed for their holdings from very beginning and the law provides the way for the compensation for the people who have the title deed only.¹⁹⁶ As to their idea, anyone who built houses informally without holding permission license must be subjected to demolish without giving compensation. Hence, practice shows the implementation of the compensation law for informal settlers is problematic, that why law by itself closed the opportunity for them. Proclamation No. 1161/2011 concerning

¹⁹³ Interview with Daniso Dangiso, resident, Daye Town (28 June, 2023)

¹⁹⁴ Social development direct, 'Access to shelter and services for low-income groups: lessons from Hawassa, Mogadishu and Nairobi on the politics of informal settlements and shelter access' (Synthesis report, 2019)12-13, <<<http://pubs.iied.org>>> accessed June 7, 2022

¹⁹⁵ Ibid

¹⁹⁶ Interview with Dukamo Dumo, Officer, Daye Town municipality (Daye , 17 June 2023)

Property compensation states that the one whose land is expropriated shall be paid compensation for the property on the land and the permanent improvement made on the land and the amount of compensation for the property on the land shall cover the cost of replacing the property a new.¹⁹⁷

Under this provision proclamation states that compensation for the property on the land and the permanent improvement made on the land shall be paid and the amount of compensation for the property on the land shall cover the cost of replacing the property. Regarding to the implementation of these provision municipal managers replied this legal provision doesn't cover informal settlers, because it is only for the people who possessed the land through legal way. But informal settlers are not. Informal settlers who the researcher interviewed purposively selected residents in Daye Town around Damo kebele say this is practical problem when informal settlers are displaced. Thus from interview and observation made on different residents, the finding of the thesis reveals that the people informal settlers remained without alternatives and this is another practical challenge on the side of key informants as well as informal settlers.

4.7. Practical challenges on the side of informal settlers in line of Human Rights

Controlling expansion of informal settlement is very decisive component for the municipality. There are two types of houses constructed informally observed in study area in field work. These are informal houses built by original holder of the land, by acquisition system of land through informal land sell, and houses constructed under the moon or during the night time. But the main problem raised by interviewed residents was, Town municipality usually takes demolishing measures on the people who built house on even their original land based on permit related ground. Municipalities also lack well documented land information system which is very crucial to make a better allocation of land for the urban poor as observed in field work. Existing government programs to strengthen capacity in the municipality's housing sector are insufficient.

Additional financial and technical capacity support is needed for the institutions involved in shelter provision. Strengthening the power of the ombudsman with regards to both its engagement and complaint handling mechanisms will be key to ensure that government is more accountable.¹⁹⁸. Informal houses built especially by two types of people; these are original

¹⁹⁷ Expropriation of Land holdings for Public Purposes, Payments of Compensation and Resettlement of Displaced People Proclamation No. 1161/2011, 25th Year No. 90, article 12(1) (2)

¹⁹⁸ Ibid

(main) holder of the land and people who acquired land through informal way of land acquisition system.¹⁹⁹ The municipality lacks transparency in that it did not disclose the reason why they bulldoze some houses and leave others.²⁰⁰ The funniest thing is how can they leave some houses and bulldoze others with in the same row.

According to informants, the municipality has the tendency to predominantly bulldoze closed and newly constructed houses. But, there were also evidences of bulldozing houses with in which people are living. It was also reported that the demolition process in informal settlement areas of Daye was not done without social costs.²⁰¹ Most interviewees indicate that the land tenure problems and physical problems of the informal settlement must be addressed through the legalization of informal settlement, a regulation on registration of urban informal properties but not by bulldozing of informal settlers.

Huge demand for shelter has also driven the growth of informal settlements in Daye, despite very clear signals from government that areas illegally settled after 2014 are at risk of demolition without compensation. Their appeal often rests on their location. Residents can easily access informal markets to sell goods or travel cheaply to other places of employment or income generation. They are also an alternative to informal settlement areas where land and rent prices are unaffordable for low income households.²⁰² Alternatively, they may be driven by a government decision to remove people from land that is illegally or irregularly occupied, or from areas that are unsafe or require environmental protection or that are needed for infrastructure. In addition, how informal settlers regulated are carried out can have serious implications for residents' shelter provision, social networks and livelihoods, as well as affecting their well-being and their attitude towards the state and law-enforcement agencies.²⁰³

Among the challenges, unavailable service in available time limit and corruption related problems are major ones. People interviewed said many people around Town municipalities waste their time in asking building permit. Another point raised by residents was even though Town administration arranged different administrative ways to control informal land sell and

¹⁹⁹ Interview Lema Tuke, resident, Daye Town (June 27. 2023)

²⁰⁰ Ibid 152

²⁰¹ Ibid

²⁰² Social development direct (n226)6

²⁰³ Ibid

expansion of informal settlement, Town municipality is unable to control as of targeted goal than taking demolishing measures on informally erected houses.

4.8. Challenges forwarded by informal settlers in light of Human right

People participated in interview responded that different factors forced people into informality process in the study area. Poverty and financial capacity are major ones. Residents mainly in low level of income and urban poor participate in formality process due lack of their financial capacity to participate in formal way of acquiring residential house. This type of people mainly forced to construct residential house informally due to their financial capacity.²⁰⁴ Daye town is one of the towns under fast growth, and many people come into the town in different times, and many people want to reside in the town. To that extent, each individual needs residential house. Excessive restrictions of the rental houses made on their use right in different ways such as restriction on the use of water, electricity, toilet services and even receiving and entertaining of relatives are major cause of informality process.²⁰⁵ Interviewed respondents said, Town administration must regularize rental prices as to balance life situation and rental housing prices in the town. Respondents raised the controlling capacity of city administration with regard of controlling system.

Controlling capacity of municipality with in such imbalanced situation of housing problems is so weak and measures taken by town administration in this regard are not sufficient. They say, town municipality is unable to control such kind of housing problems with current situation of residents' life. Unless serious measures are taken to overcome such kind of housing problems, land especially peri- urban areas of the city would be invaded for indefinitely. Problems related to residential housing and life situation in the city forces people into informality process. Another problem raised by respondents in relation to expansion of informal settlement is excessive restriction on land right transfer.²⁰⁶

Ethiopian land law including constitution restricts transfer of land through sell and other means. Holder of the land is allowed only usufruct right by law. Even though people of Ethiopia provided use right of land for indefinite period of time, no one is allowed to transfer his land under his possession by sell or other means like donation. This type of excessive restriction on land transfer opened the way for informality expansion as to the respondents' idea. People have

²⁰⁴ Ayele Bekele, resident, Daye Town (Daye, town, 19 June 2023)

²⁰⁵ Interview with Bekele Hatiya, resident, Daye town (Daye, 21 June 2023)

²⁰⁶ Ibid

no easy chance to get land formally as per the current land law of Ethiopia. This type of legal restriction on land transfer created the best opportunity for informal land sell mainly for housing purpose around peri-urban kebeles of the Town. People participate in informality process by neglecting the formal legal restriction on land transfer.²⁰⁷

4.9. Human rights are not protected by the court's practice of hearing matters involving informal settlers and the forcible demolition of informal settler's homes.

The researcher conducted interviews with two judges at various levels of Daye Town's first instant court in order to analyze how the legal community and the town administration regard the right to appropriate housing and forced eviction. The goal of the entire interview was to gauge their opinions regarding what they would think of a court case that demanded an injunction order or an order against an administrative body for the demolition of informal settlements and forcible eviction. For them as long as the informal settlers are concerned, informal houses built through acquisition of informal land sell is illegal as per Ethiopian law and there is law which forbids their construction.

Judges replied that the illegal nature of squatter settlements is undeniable. They argue that whatever the settlers claim from the point of legality and human rights there are laws and regulations which forbid holding of parcels of lands through informal land sell.²⁰⁸ According to the head of Daye town administration mayor office, the constructions of informal settlements in the town are illegal. Individual insists that demolishment as a last resort could be taken place as the houses are illegal but the right to adequate housing and the fate of the residents should be taken into consideration.²⁰⁹ People participated in interview forwarded that, individuals subjected to forced displacement and demolition don't want take their case directly to the court.

They claimed that instead of going to court, people whose homes have been forcibly demolished could take their case to an administrative agency. This is due to the fact that there is no legal provision for taking this kind of case directly to court. These people started out by building dwellings in an unofficial manner. People are afraid that a case of this nature would be justified. They worry that the courts will dismiss their claims on the grounds that informal settlements are prohibited. Even though informal settlers forcefully displaced or their houses demolished

²⁰⁷ Interview with Getenet Gata, resident, Daye Town (June 14, 2023)

²⁰⁸ Interview with Judges at Daye Town first instant court (June 22, 2023)

²⁰⁹ Kebede Kasa, Head of Daye town Administration Mayor Office (Daye, 28 June, 2023)

forcefully, individuals make their only choice to go administrative body with their cases as to the data collected from respondents. The main problem for this is people who settled informally are people who get land for through acquiring in informal way.

There are legal issues with the law's provisions because Ethiopian law prohibits the acquisition of land in an informal manner. If anybody with rights claims against informal settlers of an informal settlement seeks legal remedies from the court, he or she may assume that the court will not rule in favor of their claim or would reject their case due to the informality of the settlement. They also contended that the forced demolish violated their constitutional rights to housing (Article 43), respect for human dignity (Article 28) and their right to equality and non-discrimination (Article 27). Article 21 (implementation of rights and fundamental freedoms) and 43 (the right to adequate housing), but also in the national values and principles of governance set out in Article 10 which include (b) human dignity, equity, social justice, inclusiveness, equality, human rights, non-discrimination and protection of the marginalized.

In researcher's assessment of court cases in Daye Town first instance court there are no petitions which claim a violation of human right to adequate housing, when squatter houses are demolished. This might be due to the fear of the decision of court in regard with such claims could be in favor of administrative side since the law by itself closed the way for such type of claims though the fact on the ground happening in opposite way. Due to above related reasons, cases in relation to forced displacement forced eviction of informal forced eviction of settlers are not available.

Another interview made with one individual of Shantawene kebele resident in Daye Town municipality in seeking administrative claims for forcefully demolished house. Respondent say, Town municipality forcefully demolished his house on the ground of development project. Individual explained his fear, if this kind of case is taken to court; the court might rejects case on the ground of illegality of land acquisition process for informally constructed houses. Even though forced displacement was there, people subjected to demolishing their informally settled houses never want to take their case to the court. Court should be required to encourage and hear as broad a range of rights claims as possible in line of human right.

This might include those related to inadequate budgetary allocations, failure to comply with timelines or to meet agreed goals, inadequate engagement with the community, and the failure to consider marginalized groups. Courts should also be capable of holding the government to account regarding its overriding obligation to progressively realize the right to adequate

housing.²¹⁰ The international covenant on economic, social and cultural rights which has been ratified by Ethiopia prohibits any form of forced demolish.²¹¹ The United Nations Committee on Economic, Social and Cultural Rights, mandated with monitoring compliance with the ICESCR, has given further elaborations on the same, clearly defining what amounts to a forced demolish.²¹² On title to land and the security thereof, the committee has clarified that the security of tenure takes many forms, and not just ownership.

The Ethiopian State is therefore bound to respect the provisions of the Convention, given that it has gained a full legal effect in Ethiopia upon its ratification. No individual therefore ought to be denied the enjoyment of the right to adequate housing on such grounds as a lack of a title to land or its invalidity thereof.

4.10. The institutional frameworks for the protection of human rights of informal settlers

The Constitution recognizes private property whose contents include the right to acquire, to use and to dispose of such property by sale or bequest or other means of transfer subject to public interest and the rights of other persons.²¹³ As far as the institutional framework is concerned, FDRE Constitution provides that, all federal and state legislative, executive and judicial organs at all levels shall have the responsibility and duty to respect and enforce the provisions of this Chapter. Constitution provides that the primary institutions responsible for the protection, promotion, and enforcement of human rights in general, and socio-economic rights in particular, are the legislature, the executive, and the judiciary, both at the federal and state level.

For instance, the legislature can make protective laws and facilitate the enjoyment of rights; the executive, on its part, has the role of respecting human rights and preventing violations by others; and the judiciary enforces rights by determining entitlements, punishing violators, and by redressing the victims.²¹⁴ Any attempt at strengthening the institutional framework for the better protection of human rights including socio-economic rights must start with strengthening these mainstream institutions, because strengthening law making and law

²¹⁰ International Development Research Center (n37)16

²¹¹ FDRE Constitution (n102) article 9(4)

²¹² The Committee has defined forced eviction as “The permanent or temporary removal against their will of the individuals, families and/or communities from the home and/or land which they occupy, without the provision of, and access to, appropriate forms of legal or other protection.”

²¹³ FDRE Constitution (n102), article 40(1)

²¹⁴ Amare Tesfaye (n96)55, FDRE Constitution (n102), article 13(1)

enforcement institutions as well as courts will go a long distance in the effort to their better protection.²¹⁵

Issues of forced evictions underscores that they are indeed legally justifiable human rights and judicial and quasi-judicial bodies like national human rights institutions, ombudsman institute, the human rights commission that mandated to promote and protect human rights should thus deal with cases involving such matters.²¹⁶ Government has to take measures to legalize informal settlements and by setting different institutions so as to decrease different social risks. When we come to regional level to assess the case of Sidama regional state authority and other lower organizations researcher in interviews explored institutional capacity problems. Institutional capacity is in protection forced and arbitrary demolish of informal settlers may include the existence of well-staffed experts, adequate budget and necessary facilities.²¹⁷

Institutional capacity is helpful to evaluate the complaints of affected community and give response to those affected of informal settlers and issues in regard with alternative measures for demolished houses. So arbitrary displacement protection institution should have experts with in bundle of knowledge to understand and decide whether measures take is forced displacement or not. When we come to staff and expertise the Sidama regional authority is understaffed at directorate level, until the last visit to authority for data collection only limited arrangements transformed from zone arrangement and structurally not well staffed even if study area zone symbolically arranged as Eastern Sidama Zone Capital town of Daye.

Further from interviews current staff is just transformed from the former zonal arrangement and currently the authority is on the process of recruiting staff. This shows the regional authority lacks specialized staff that able to inspect forcefully displaced settlers and to solve complaints throughout the region. Similarly, in Daye Town municipality land and housing management unit department the same problem is observed. During the time of data collection, researcher observed that municipality lacks technologically arranged data of informal settlers and demolished houses.

According to interviewee currently only half of staffs are recruited from the allowed scale and there is no legal expert on their staff and despite different job offering they have made there is no legal expert who wants to work, due to the difference of salary. From interview and observation

²¹⁵ AmareTesfaye (n96)56

²¹⁶ FDRE Constitution (n102), article 55(14) (15)

²¹⁷ Interview with Daye Town municipality land administration unit workers (June, 2023)

in different offices, limited municipal resources and capacity, human capacity both in terms of number of staff and specialized knowledge is very limited in the case study area. So these are challenges with regard to the protection of informal settlers since without necessary staff and knowledge it is unthinkable to enforce laws. Though absence of organized and well compiled data about the total number of demolished informal houses has been common practice.

4.10.1. Lacks of institutional linkage and its Human Rights Implication

Institutional linkage may include the social and political connection among state agencies and between state officials and civil society actors that foster effective communication and feedback. Materialization of demolish and arbitrary displacement protection requires a successful work of different organs that function as a unit for a common ultimate goal in light of human rights. Thus formal and informal institutional linkage is the key to increase effectiveness of the institutions. Various proclamations ascertain power from federal to lowest unit of government; however none of them establish clear institutional linkage guide. In connection with study area institutional linkage among different sector is very weak and limited.

4.10.2. The effect of informal settlers in line of Human Rights

People settled informally mainly because, imbalanced life situation mainly with income of individuals and due to lack of getting formal way of residential house. These factors force people into informality process in most of the time as people participated in interview said. Unregulated rental housing price in the town also forces people into informal way of land acquisition process especially for housing purpose. But government believes that everyone who constructs house in such a way through informal land acquisition process doesn't get status of legality and should be subjected to demolition.

Rights guaranteed under international instruments which may be ancillary to the right to housing and which become relevant from time to time in the context of forced eviction and forced displacement. For example, the international covenant on civil and political rights, this extends protection to privacy and homes²¹⁸ And the International Convention on the elimination of all forms of discrimination against Women, which prohibits discrimination with regard to the protection of the right to housing.²¹⁹ ICCPR safeguarded the right to housing which prohibits unlawful interference with privacy, family, home or correspondence. Although the right to

²¹⁸ International covenant on civil and political right (n145), article 17

²¹⁹ International Convention on the Elimination of All Forms of discrimination against Women article 5(e) (iii)

adequate housing is not expressly provided for in the African Charter on human and peoples' rights, the combined effect of some articles would seem to affirm such right.²²⁰

People construct residential houses informally due to the lack of easy way of getting house in formal way. Lack of comprehensive housing policy forced people to construct living house specially peri-urban kebeles of the Town. Problems connected with living house in the study area forces people into informal way of house construction as residents say. People made interview forwarded their idea that Daye town expansion is mainly connected with the expansion of informal settlement. Informal settlers played main role for the expansion of the Town. This is to mean that, informally settled residents are people mainly in low level of income. If these people displaced arbitrary without providing alternative means, the situation connected with housing makes them homeless and causes different social risks. As far as people under low level of income and urban poor are concerned, government must provide possible ways to provide legal way to get living house in the city.

Unless housing problems in the town averted through formal way, the life situation of the residents in the city connected with housings mandatory lead people into informality process. The UN Commission on human rights resolutions 1993/77 and 2004/28 pronounce that, the practice of forced demolish constitutes a **gross violation of human rights**, in particular the right to adequate housing. Arbitrary displacement could violate the right to freedom of movement, freedom to choose one's residence, freedom from arbitrary interference with one's home. ICESCR emphasized on adequate housing.²²¹ Displacement must not render individuals homeless or vulnerable to the violation of other human rights.²²² **Homelessness is a serious human rights violation and can be the result of a lack of affordable housing**, often on account of gentrification and speculation or other market forces and coupled with racial or ethnic discrimination. Homeless persons often have to resort to living in informal settlements, such as in tent cities, which come under threat of forced, demolish house.

²²⁰ The African Charter on Human and Peoples' rights (n125), article 4, article 14, article 16, article 18(1) and article 24, Laurence Juma, 'urban evictions and the right of access to adequate housing in Kenya' (African human rights law journal 2012)480

²²¹ Walter Kalin, Rehdri C. Williams (n24)603

²²² Amnesty international, denial of the right to adequate housing in post- Quake Haite (Amnesty international publication 2015) <<www.amnesty.org>> accessed 8 July, 2022)

CHAPTER FIVE

5. CONCLUSION AND RECOMMENDATION

5.1. Conclusion

By using Daye Town as a case study, this study will examine the human rights of informal settlers and practical difficulties. The study's primary goal was to examine forceful demolition from informal settlements in the context of national and international norms and regulations. The study also addressed the challenges that can be overcome to lessen their negative effects by considering the practical situation on the part of both informal settlers and key informants. Data from respondents were gathered through questioning and through conducting interviews with relevant government agencies.

The findings from a carefully chosen sample of respondents showed that the research area's informal settlement is growing through the construction of homes, mostly for residential housing needs. This is because there aren't enough affordable housing options, especially for urban poor people who lack the competence to apply for homes in a formal manner. The main source confirmed that new settlers acquired land legitimately from long-term residents in the research region. The key informant reflected that new residents settled by buying land informally from permanent residents in the study area.

The majority of respondents indicated that forceful eviction of informal settlers occurred as a result of various development projects and roads when it came to the destruction of their homes. People who had recently moved informally in the study area said that the people who had been forcibly evicted were primarily those who had taken land unofficially and had erected homes informally. But they raise practical challenges connected with human right, because the law by itself doesn't provide opportunities for them because they are informal settlers.

However, removing an informal settler's home is not a simple solution from their perspective. By requiring building permits, the local municipality also made an effort to address the practical issues associated with the growth of informal settlements. According to the municipal, any form of house constructed without a license should be demolished. The respondent, on the other hand, argues that mandating a building permission or license created the ideal setting for various types of administrative corruption and political will. Corruption resulted from paying for expedited service after acquiring a license or permit.

Urban poor, expensive rent of house and high cost of land lease attracted people towards informal settlement in the study area. Development of projects, roads, industry projects, town beautification, and large scale land acquisition leases, and related factors are also factors for displacement of informal settlers in the study area. Another reason for the growth of the informal settlements in Daye town is the rural-to-urban migration. Regarding the effects of evicting informal settlers, eviction leads to homelessness and other social issues as a result of the violation of human rights. According to study participants, those who were forcibly relocated under the pretext of being informal settlers at various points in time experienced homelessness and social issues.

According to the information acquired for the study, those who lived informally were forcibly relocated even when they did not have enough notice. Due to this, many displaced individuals did not receive adequate alternative means of transportation or resettlement locations, and they continued to lack adequate alternatives and compensation. Respondents in the study area responded that current land law of Ethiopia didn't provide the opportunity to take cases related to forced displacement of informal settlements and for demolished informal settlers to the court of law and to seek compensation. This is practical challenge both on the side of informal settlers and key informants. Due to this, many cases related to demolishing of informally settled houses resolved through informal way of dispute settlement method or through administrative means.

In addition to this, people subjected to demolishing of their houses prefer to take his case to the administrative body than to take his case to the court by fearing of non-legality of the case related to such ground. Land law of Ethiopia doesn't provide the opportunity to take this kind of cases directly to the court. This is great legal challenge as to respondents' idea. Due to this challenge many cases related to forced displacement of informal settlement has not been taking to the courts no legal protection of human rights of informal settlers.

Problems connected with residential house in the town forces people into informal way of land acquisition system and informal housing process. Controlling the expansion of informal settlement can be made effective through an available housing provision, avoiding restriction on land transfer and through strong land administration capacity.

5.2 Recommendations

Based on the main findings of the study, the researcher forwarded the following recommendations as follows.

People who are forced into the informality process is mainly urban poor and those in those low level of income. Town municipalities must provide a formal way of housing provision system, especially for the urban poor and people with low levels of income by following different possible ways.

Displacement of informal settlements must not leave people homeless or exposed to other human rights violations. Displacement of informal settlements must only take place when the proper procedural safeguards are in place and not at random. Genuine consultation, proper warning, and another alternative method by adhering primarily to international as well as national rules and guidelines are a few of these.

Forced demolition of informal settlers causes different social risks and a violation of the right to adequate housing. Based on this, the government and town administration has a duty not to displace informal settlers forcefully.

Expansion of informality can be effectively controlled by using different possible mechanisms than taking demolition measures. This can be effective through strong land administration capacity with good governance on land, by creating awareness for the people on expansion of informal settlements, and by providing a formal way of land acquisition and housing delivery system.

The town administration must pay close attention to these regions and seek alternative legal actions to restrain the growth of informal settlements rather than using coercive methods and violating people's human rights.

International human rights instruments which made an integral part of the law of Ethiopia as per article 9(4) provide forced demolition of informal settlements as a violation of human rights. Even though these internationally binding human rights instruments are made part of Ethiopian law as per the constitution, there is a limitation on consecutive legislative frameworks to implement this constitutional provision. The government must take additional legislative measures to protect the rights of informal settlers from forced eviction.

The best possibility for the growth of informal settlement and the sale of land informally was created by general restrictions on land transfer. To stop the growth of shady property deals and squatter settlements, the land law will need to be revised once more. Article 40(3) of the FDRE constitution, which provides for public ownership of land, must be amended through policy actions.

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APPENDICES

Annex 1. Interview Guide Questions

This questioner is intended for to collect data for master thesis on a title “**Informal Settlement Regulation and its Human Rights Implication in Ethiopia: The Case of Daye Town, Sidama Region**” The objective of the study is to asses and collect legal and practical regulation of informal settlers and its human right implication by focusing on Daye Town. Thus the information you provide is relevant for fulfilling the requirement of LL.M degree inland and environmental laws. You are humbly requested to furnish all the relevant data for the successful completion of this work. The type of interview envisaged is semi-structured qualitative interview and more flexibility for both the researcher and the interviewee, where the researcher prepares initial questions which serve as interview guide and the interviewee has a great deal of the way in answering the questions.

➤ **Interview guide questions related to key informants from the government sectors: Sidama Regional State Eastern Zone Daye Town, Daye Town municipality, Daye Town Municipality land administration unit and Daye Town courts.**

1. Does the land belong to the surrounding of the **Daye Town** registered and certified? If not how does the government officials distinguish the landholders from the informal settlers?
2. Do you think that the expansion of informal settlement by using controlling measures?
3. Is a human rights-based approach to land rights essential to address conflict?
4. With so many distinct facets, why has informal settlement led to human rights violations in Ethiopia?
5. Where the government employs force to destroy the homes of squatters. Can it do that legally? Exists a situation where houses can be legally demolished?
6. What has to be done to alter the present situation?
7. Why do you think people participate in informal way of housing construction?
8. In light of other countries experiences, how should the government's recent forceful action about “demolishing houses” are handled? Is forced eviction legal in light of Human rights?
9. Do you think restriction on free transfer of land right caused expansion of informal settlement?

10. Why are shady land transactions and settlements so common in the studied area? Is there any other option for individuals who seek urban land for residence?
11. How and which organ is empowered to administer the peri-urban areas of the study area?
12. What do you think could be done in order to effectively control the expansion of informal settlement?
13. How do the disputes related to the land issues like suits claiming ownership entertained in the courtroom? Are there cases related to informal settlements in the courtroom?
14. What would be your advice to lessen the problem of Informal settlement?

Interview guides (questions)

Interview questions for peri-urban farmers and Informal Settlers?

1. Do you have your own residential house? If yes what type formal or informal?
2. How do you understand the concept of Informal Settlement?
3. What are the basic causes for Informal Settlement in the study area?
4. Do you have a landholding certificate? If not how do the government officials distinguish the landholders from the informal settlers?
5. Do you think demand and supply for land are equivalent? If not what will be the solution?
6. Do you think forced displacement of informal settlers causes violation of human right?
7. Is it really practical that Informal Settler land is used for the intended development?
8. Is there any provided remedy for your demolished house? If yes what amount?
9. What would be suggested to ensure Informal Settler Human Rights?

List of Interviewed people

1. Interview with Legese Lema, manager, Ajersa (03) kebele, Daye Town (Daye Town, 20 June 2023)
2. Interview with Kambata Fetera, coordinator, construction department, Daye (Daye, Town municipality, 19 June 2023)
3. Interview with Hamaro Roba, resident, Daye Town (Daye , Damo, 24 June 2023)
4. Interview with Mindaye Direso, resident, Daye Town (Daye, Damo, 27 June 2023)
5. Interview with Geremu Abebe, manager, Daye Town 01, Daye Town , 19 June 2023)
6. Interview with Kifile kachara, resident, Daye Town, (Daye Damo, 23 June 2023)
7. Interview with Daniso Dangiso, resident, Daye Town (28 June, 2023)
8. Interview with Dukamo Dumo, Officer, Daye Town municipality (Daye , 17 June 2023)
9. Interview with Dukamo Dumo, Officer, Daye Town municipality (Daye , 17 June 2023)
10. Interview Lema Tuke, resident, Daye Town (June 27. 2023)
11. Interview with Bekele Hatiya, resident, Daye town (Daye, 21 June 2023)
12. Interview with Getenet Gata, resident, Daye Town (June 14, 2023)
- 13.** Habitu Hailu Judges at Daye Town first instant court (June 22, 2023)