

**JIMMA UNIVERSITY**  
**COLLEGE OF LAW AND GOVERNANCE**  
**SCHOOL OF LAW**

**THE RIGHT TO ADEQUATE HOUSING IN ETHIOPIA:  
THE NEED TO REGULATE PRIVATE RENTAL  
HOUSING SECTOR**

**BY**

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## **Declaration**

I, Awel Abu Hadji, declare that this thesis is my original work and has not been presented for a degree in any other university and that all sources of materials used for the thesis have been duly acknowledged.

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**THE RIGHT TO ADEQUATE HOUSING IN ETHIOPIA: THE  
NEED TO REGULATE PRIVATE RENTAL HOUSING SECTOR**

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## **Acronyms**

AAGH- Agency for Administration of Rental Houses

ACHPR- African Charter on Human and Peoples' Rights

AGH- Agency for Government House

BR- Bed Room

CBD- Central Business District

CEDAW-Convention on the Elimination of All forms of Discrimination against Women

CPI- Consumer Price Index

CRC- Convention on the Right of the Child

CSA- Central Statistical Authority

DERG- Former Military Government of Ethiopia

E.G- Example

EPRDF-Ethiopian People's Revolutionary Democratic Front

ETB- Ethiopian Birr

FDRE- Federal Democratic Republic of Ethiopia

ICESCR- International Covenant on Economic Social and Cultural Rights

IHDP- Integrated Housing Development Program

MUDHCo- Ministry of Urban Development, Housing and Construction

SERAC-Social and Economic Right Action Centre

SECR- State of Ethiopian Cities Report

SNNP-Southern Nation Nationalities and Peoples

UDHR- Universal Declaration of Human Rights

UN-HABITAT- United Nations Human Settlements Programme

USD (\$) -United State Dollar

## **Abstract**

*Post 1991 the private rental-housing sector in Ethiopia was providing housing to the majority of tenants. However, the private rental housing market was unregulated. The left unregulated of the private rental market have resulted in socially undesirable consequences such as unreasonable rental price levels and eviction. In this paper, the writer argues that the private rental market should have to be regulated in order to provide decent and affordable rental accommodation for the poor and low-income households for the following reasons. First, due to their low and irregular income, these groups are not beneficiaries from the government subsidised homeownership schemes; second, public rental sector that can serve as “safety net” for these groups is not functioning efficiently and of slum standard because of deterioration, and lack of basic services. Consequently, the stock was found in state of unfit for living. Thirdly, a shortage of affordable rental accommodation, combined with an effect of inflation, justify the enactment of rent control law in the private rental-housing sector since it would be in the public interest.*

# CHAPTER ONE

## Introduction

### 1.1. Background of the Study

The realization of the right to adequate housing is of central importance to the enjoyment of all human rights. It has been accepted in international human rights law in 1948 with the adoption of the Universal Declaration of Human Rights.<sup>1</sup> Then onwards different international and regional human rights instruments have recognized it.<sup>2</sup> State parties to these international and regional human rights are required to take different measures to make sure that they are complying with their obligations under these instruments. Ethiopia is a member to these international and regional instruments.

In Ethiopia, condominium housing under the Integrated Housing Development Program (IHDP) has been implemented in the major urban centres with objective of making low and middle-income households home owners since 2006.<sup>3</sup> The programme has built 142,802 condominium-housing units between 2006 and 2010.<sup>4</sup> It has also benefited the housing market by increasing the supply of owner occupied housing and rental units.<sup>5</sup> Despite its laudable aim of making low-income families homeowners the actual beneficiaries of the program were middle and high-income households who afford down payment and mortgage requirement for bank loans.<sup>6</sup> Hence, poor and low-income households were excluded from the program.

On the other hand, the public rental housing sector which were supposed to accommodate poor and low-income households are not in a status of accommodating these groups because of highly decreasing number of the stock due to urban redevelopment program throughout the

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<sup>1</sup> Universal Declaration on Human Rights (1948) GA Res.217A (III) UN.Doc A/3/810(1949) art 25 (UDHR).

<sup>2</sup> Most of international human rights treaties incorporated it, such as art 25 of UDHR; art 11 of ICESCR; art 14 of CEDAW; art 27 of CRC, and art 43 of CMW

<sup>3</sup> Ministry of Urban Development, Housing &Construction, *The National Urban Housing Development Policy and Strategy Framework* (Addis Ababa 2013).

<sup>4</sup> Ministry of Urban Development, Housing &Construction, *National Report on Housing & Sustainable Urban Development* (2014) 57

<sup>5</sup> Ibid

<sup>6</sup> Ministry of Urban Development, Housing and Construction and Ethiopia Civil Service University, *The State of Ethiopian Cities Report* (2015).

country besides absence of supply of the stock since 1991.<sup>7</sup> More than 70 percent of the stock specifically the Kebele units are slum housing standard owing to overcrowding, continuous deterioration, absence of repair since 1991 and lack crucial facilities like toilet, electricity, kitchen and these resulted in that the stock is unfit for living.<sup>8</sup> Middle and high-income households like parliamentarians, university teachers, and diplomats occupy the small proportion of the stock with good condition (public rental houses under AGH).<sup>9</sup> Under such circumstance, the available option for low-income households is the private rental-housing sector.<sup>10</sup>

Private rental-housing sector was developed after the Derg regime (post 1991) which totally prohibited the sector from engaging in the rental housing activity.<sup>11</sup> The private rental sector refer to individual or small-scale house owners that rent out their houses for residential purpose within their residential premise or in other premises destined for rental purpose. The sector become the major supplier of rental accommodation for many tenants in urban centres of the country; for instance, according to the CSA report of 2008 in Shire Endasellasiye, Hawassa, Addis Ababa, Adigrat, Bahir Dar and Adama, 60.9, 60, 58.1, 55.7, 48.8 and 46 percent of population are tenants respectively.<sup>12</sup> According to estimation made recently by the Ministry of Urban Development, Housing and Construction, in 2013 more than 600,000 families lived in rented homes in major cities and above half of these families were accommodated by private rental housing.<sup>13</sup>

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<sup>7</sup> Ibid; see also Ministry of Urban Development, Housing & Construction, *National Report on Housing & Sustainable Urban Development* (n 4) 57.

<sup>8</sup> The World Bank, *Ethiopia Urbanization Review: Urban Institutions for a Middle-Income Ethiopia* (WB 2015) 27, Yehanew Hailu Habtewold, 'Public Rental Housing as Housing Delivery Strategy in Addis Ababa: The Case of Apartments Constructed by Agency for Government Houses' (AGH)(Addis Ababa University and Ethiopia Institute of Architecture Building Construction and City Development (EiABC), (School of Graduate Studies MSc Thesis, Unpublished 2016) 64-67; UN-Habitat, *The Ethiopia Case of Condominium Housing: The Integrated Housing Development Programme* (United Nations Human Settlements Programme, UNONP,2010)

<sup>9</sup> The World Bank, *Ethiopia Urbanization Review* (n 8) 27

<sup>10</sup> Peter A. Kemp, 'Low-income Tenants in the Private Rental Housing Market' (2011) 26 HS 1019, 1026-1029

<sup>11</sup> Government Ownership of Urban Lands and Extra Houses Proclamation No.47/1975, preamble, arts 3, 13, 20; see also Tegegne G/E. and Daniel S.(eds), *Urban and Regional Development Planning and implementation in Ethiopia* (National Urban Planning Institute, 1997), UN-Habitat, *Situation Analysis of Informal Settlements in Addis Ababa: Cities without Slums Program: Addis Ababa Slum Upgrading Program* (United Nations Human Settlements Programme, UNONP 2007) 169

<sup>12</sup> Ethiopia Central Statistical Agency, *The 2007 Population and Housing Census* (National Report 2008) and CSA Welfare Monitoring Survey of 2011, see Annex 4.4 and 4.5 taken from it.

<sup>13</sup> Ashenaf Endale, 'Rental Standards Scrutinised' *Addis Fortune* (Addis Ababa, 21 April 2013)

However, the sector failed to provide affordable rental housing to the majorities in general and for low-income households in particular.<sup>14</sup> The reason is absence of regulatory framework under which the sector is currently operating resulted in high rental price levels.<sup>15</sup> Moreover, this problem was further aggravated by shortage of affordable rental housing due to limited supply of housing and high demand for housing.<sup>16</sup> Thus, the sector failed to deliver affordable rental housing accommodation. This is not in line with the country human rights obligation under international human rights laws; for instance, the Committee on Economic Social and Cultural Rights under General Comment No. 4 stated that member States to the Covenant have obligation to take necessary measures to ensure affordability of housing by any appropriate means.<sup>17</sup> Rent control laws are the main means of ensuring affordable housing for low-income households in private rental accommodations.<sup>18</sup> The phrase “rent regulation” or “rent control” refers to legislative intervention, namely where the state regulates the private rental market in order to restrict rent increases and provide security of tenure.<sup>19</sup>

## 1.2. Literature Review

Rental accommodations provide a range of options to low-income households in terms of location, improved mobility and flexibility in terms of dwelling type.<sup>20</sup> It enables low-income households to avoid house price risks, indebtedness, and exposure of falling capital values and

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<sup>14</sup> Ministry of Urban Development, Housing & Construction, *National Report on Housing & Sustainable Urban Development* (n 4); Ministry of Urban Development, Housing and Construction and Ethiopia Civil Service University, *The State of Ethiopian Cities Report* (n 6)

<sup>15</sup> Ibid; see also Ministry of Urban Development, Housing and Construction and Ethiopia Civil Service University, *The State of Ethiopian Cities Report* (n 6); Fasika Tadesse, ‘Through the Roof: Spike in Housing Rental Prices Leaves Residents in a Bid’ *Addis Fortune* (Addis Ababa 30 March, 2014); Endale (n 13)

<sup>16</sup> Ministry of Urban Development, Housing & Construction, *National Report on Housing & Sustainable Urban Development* (n 4) 57; see also Endale (n 13)

<sup>17</sup> Committee on Economic, Social and Cultural Rights, General Comment 4, The Right to Adequate Housing, (1991), U.N. Doc. E/1992/23, para 8

<sup>18</sup> Satvik Dev, Rent Control Laws in India: A Critical Analysis (CCS Working Paper No. 158, 2006) 17; see also Eoin O’Sullivan and Pascal De Decker, ‘Regulating the Private Rental Housing Market in Europe’ (2007) 1 EJM 92,103; Hans Lind, ‘Rent Regulation and New Construction: With a Focus on Sweden 1995-2001’ (2003) 10 SEPR 135, 138

<sup>19</sup> Sue-Mari Maass, ‘Rent Control: A Comparative Analysis’ (2012) 15 PELJ 41,45

<sup>20</sup> Kath Scanlon and Ben Kochan (ed), *Towards a Sustainable Private Rented Sector: The Lessons From other Countries* (LSE 2011) 12

carries a lower transaction cost than homeownership.<sup>21</sup> It also provides a regular additional source of income for landlords.<sup>22</sup>

The access of low-income households to private rental housing was challenged by costs, specifically because of rising rent prices and shortage of affordable rental housing.<sup>23</sup> Many tenants are facing rent unaffordability problem throughout the world, and it is worse in developing countries where rental housing is less available.<sup>24</sup> For instance, 3.8 percent of Europeans, and 8.6 percent of those with income below 60 percent of the median national income are facing difficulty in paying rent<sup>25</sup>; in Africa, the rent-to-income ratio in urban centres is more than twice that of cities in high-income countries at 39.5 percent of income.<sup>26</sup> Thus, by increasing the supply and regulating such rental accommodation it is necessary to solve affordability problem faced by low-income households.<sup>27</sup>

Even though most governments have focused on homeownership policies, there are notable examples of supply and demand based policies aimed at encouraging the private rental sector and enabling rental price affordability for low-income families.<sup>28</sup> Such intervention includes taxation, subsidies and regulation.<sup>29</sup> The tax treatment play a vital role in either discouraging or encouraging private rental housing investment; for instance, it play encouraging role in Germany and France while in United State and Canada its discouraging.<sup>30</sup> Germany was also successful in having large and stable private rental housing sector by employing supply side subsidies for private investor.<sup>31</sup> Some countries employ demand side subsidies, like rent allowance, to address affordability problems but it is highly unlikely that such schemes, in

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<sup>21</sup> Ibid 139

<sup>22</sup> UN-Habitat, *The Ethiopia Case of Condominium Housing: the Integrated Housing Development Programme* (n 8) 10; see also Endale (n 13); Scanlon and Kochan (n 20) 51

<sup>23</sup> Organization for Economic Cooperation and Development (OECD), *Housing Markets and Structural Policies in OECD Countries* (OECD Economic Department Working Paper No. 863, Jan. 2011)

<sup>24</sup> Kemp (n 10) 1026-1029; see also UN-Habitat, *Affordable Land and Housing in Africa* (United Nations Human Settlements Programme, UNONP, 2011) 24

<sup>25</sup> Ibid; see also UN-Habitat, *Affordable Land and Housing in Africa* (n 24)

<sup>26</sup> UN-Habitat, *Affordable Land and Housing in Africa* (n 24)

<sup>27</sup> Scanlon and Kochan (n 20) 143-147

<sup>28</sup> J. Hegedus and Others, *Social Housing in Transition Countries* (Routledge 2012); see also J. Rugg and D. Rhodes, *The Private Rented Sector: its Contributions and Potential* (Centre for Housing Policy 2008)

<sup>29</sup> Steve Pomeroy and Marc Godbout, Development of the Rental housing Market in Latin America and the Caribbean (Inter-American Development Bank Discussion Paper 2011) 10-11

<sup>30</sup> Ibid 19; see also Scanlon and Kochan (n 20)

<sup>31</sup> Alan Gilbert, 'Rental Housing: The International Experience' (2015) 30 HIJ 1, 6-8; see also Scanlon and Kochan (n 20); Peppercorn and others, *Rental Housing: Lessons from International Experience and Policies for Emerging Markets* (WB 2013) 95

absence of other supportive policies regulating markets, are not sufficient enough to ensure the supply of affordable rental housing for low-income families.<sup>32</sup> For instance, in countries in which supply of rental housing is limited, demand side subsidies are proved counter-effective because it actually lead to increment in rental prices and shortage of rental stock for low-income households.<sup>33</sup>

Rent control laws are main means of ensuring affordable housing for low-income households in private rental accommodations.<sup>34</sup> Even though it varies across the countries, it mainly contains two protections: security of tenure and control on levels of rental price.<sup>35</sup> It tends to set the amount and frequency of rental price increases in the private rental-housing sector.<sup>36</sup> Some modern forms of rent controls are referred as rent regulation (also known as second and/or third generation rent control), which refers to schemes that limit rent increases with a view to preventing unreasonable rent increases as opposed to traditional rent control that totally froze rents(first generation rent control).<sup>37</sup>

The justification for rent control laws were based on two conditions: first, the failure of rental housing market to function properly; and second, the societal definition of criteria relating to housing is broader than “economic efficiency” as it is defined by housing market.<sup>38</sup> The underlying assumptions of free market, such as presence of great numbers of tenants and landlords in a market, existence of equal bargaining power of both parties, existence of relatively homogenous stock, are not empirically grounded; and this result in rental housing

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<sup>32</sup> Winnick, ‘The Triumph of Housing Allowance Programs: How a Fundamental Policy Conflict was Resolved’ (1995) 1 CS 95, 121; see also Peppercorn and others (n 31)

<sup>33</sup> Kemp (n 10) 1025; see also Dugald Monro, Public Rental Housing Policy: Learning the Lessons From Overseas (Research Paper No.6 1997),

<sup>34</sup> Dev (n 18) 17; see also Sullivan and Decker (n 18)103, Hans Lind, ‘Rent Regulation and New Construction: With a Focus on Sweden 1995-2001’(2003) 10 SEPR 135, 138

<sup>35</sup> Marietta Haffner and others, ‘Rent Regulation: The Balance Between Private Landlords and Tenants in Six European Countries’ (2008) 8 IJHP 217, 218-223; see also UN-Habitat, *Rental Housing: An Essential Option for the Urban Poor in Developing Countries* (United Nations Human Settlements Programme, UNONP, 2003) 159

<sup>36</sup> Hans Lind, ‘Rent Regulation: Conceptual and Comparative Analysis’ (2001)1 IJHP 41, 44-46; see also Elia Werczberger, ‘Home Ownership and Rent Control in Switzerland’ (1997) 12 HS 337, 339, Philipp Deschermeier and others, ‘A First Analysis of the New German Rent Regulation’ (2016)1 IJHP 1, 3-5

<sup>37</sup> Ibid; see also Hans Lind, ‘Rent Regulation: Conceptual and Comparative Analysis’ (n 36); see also Werczberger (n 36) 339, Deschermeier and others (n 36) 3-5; Maass (n 19) 45

<sup>38</sup> Craig P. Dunn & A. Quang Do, *The Normative Aspects of Rent Control* (T & E 1991) 291-294; see also Yves Zenou, Housing Policies in China: Issues and Option (IFN Working Paper No. 824, 2010) 5-7

market failure.<sup>39</sup> Thus, under such market failure, rent control is justified; and it can prevent some aspects of rental housing condition from growing worse and enforce certain basic principles of justice and equity in the landlord-tenant relationship.<sup>40</sup> The experience of some countries also shows that rent control is also justified in the case of absence of social or public rental housing that can serve as “safety net” for the poor and low-income households.<sup>41</sup>

On the other hand, there are also arguments against rent control laws. The critics claim that such measures produce inefficiencies, distort market values, reduce the housing supply and low housing maintenance.<sup>42</sup> It has also been criticized for not targeting low-income household since controlled rents and protected tenancies usually favour those who have lived in rental housing for years over potential new tenants,<sup>43</sup> and there is no mechanism to ensure that those benefiting from rent control are the low-income households.<sup>44</sup>

However, there are notable instances in which rent control laws have had favourable effects on stabilizing the rental sector i.e. it prevents arbitrary eviction and the exploitation of temporary shortages, and maintaining access by low-income households to urban housing that is well located.<sup>45</sup> For instance, Austria, Germany, Switzerland, Canada and USA (New York and San Francisco) are notable examples where rent control laws have had positive effect.<sup>46</sup>

When we consider rent control law under international human rights laws, it is one means of ensuring the right to adequate housing. As stated under ICESCR, the obligation to protect requires State to prevent violation of the right to adequate housing by third parties.<sup>47</sup> The Committee on Economic Social Cultural Rights states that steps should be taken by States to

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<sup>39</sup> J. David Hulchanki, Market Imperfection and the Role of Rent Regulations in the Residential Rental Market (Research Study No.6, School of Community and Regional Planning, University of British Columbia, 1984) 72; see also Zenou (n 38)

<sup>40</sup> Dunn and Quand (n 38); see also Zenou (n 38)

<sup>41</sup> Lok Sang Ho, ‘Its Rationale and Effects’ (1992) 29 USJ 1183, 1184-1185; see also Kemp (n 10) 1020

<sup>42</sup> Scanlon and Kochan (n 20)10; see also S. Kumar, *Landlordism in Third World Urban Low-income Settlements: A Case for Further Research* (US 1996) 768; R. Ault and R. Saba, ‘The Economic Effects of Long-term Rent Control: The Case of New York City’ (1990) 3 JREFE 25, 41; L. E. Glaeser, ‘Does Rent Control Reduce Segregation?’ (2003) 10 SEPR 179, 202

<sup>43</sup> Kumar (n 42) 768-769; see also S. H. Anderson, ‘Motives for Investments in Housing Rehabilitation among Private Landlords under Rent Control’ (1998) 13 HS 177, 200; UN-Habitat, *Rental Housing UN-Habitat, Rental Housing: An Essential Option for the Urban Poor in Developing Countries* (n 35) 159

<sup>44</sup> Ibid; see also Ault and Saba (n 42), Glaeser (n 42), UN-Habitat, *Rental Housing UN-Habitat, Rental Housing: An Essential Option for the Urban Poor in Developing Countries* (n 35)

<sup>45</sup> Scanlon and Kochan (n 20) 145; see also Peppercorn and others (n 31)

<sup>46</sup> Werczberger (n 36) 339-353; see also Pomeroy and Godbout (n 29)16-18

<sup>47</sup> Committee on Economic, Social and Cultural Rights, General Comment No.4 (n 17) para 8

ensure that the percentage of house related costs is generally commensurate with income levels; as for rental arrangement, tenants should be protected from unreasonable rent levels or rent increase by appropriate means, including legislative measure.<sup>48</sup> Such legislative means includes subsidy schemes, rent controls and direct supply of housing provision by State.<sup>49</sup> In support of this, the case laws of European Court of Human Rights show that rent control laws issued by various countries to address housing problem in their respective sphere are justified.<sup>50</sup> Since housing is a prime social need, it require some of form of regulation by State rather than being left to free market forces which failed to provide housing as expected.<sup>51</sup> The jurisprudence also shows that the right to property is not absolute and it can be legitimately restricted for the purpose of public interest; the public interest it serves is the protection of tenants from unreasonable rent increase and eviction.<sup>52</sup>

In Ethiopia studies on the regulation of private rental housing sector is limited. Nevertheless, this does not mean that no research was conducted with regard to right to adequate housing. One of the study conducted on right to adequate housing in the country shows that, Ethiopia has not adopted adequate measure to realize this right.<sup>53</sup> An author argued that, measures that are in place and those addresses issues pertaining to the right to housing remain inadequate.<sup>54</sup> Firstly, Ethiopia is supposed to take measures that are deliberate, concrete and targeted as clearly as possible towards the realization of the right to housing; these measures include specific housing legislation that has the realization of the right to housing as at least one of its primary purposes, which are missing in Ethiopia.<sup>55</sup> Secondly, those measures are inadequate

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<sup>48</sup> UN-Habitat, *Enhancing Security of Tenure: Policy Directions, Enhancing Urban Safety and Security* (Global Report on Human Settlement, 2007) 27

<sup>49</sup> Ibid

<sup>50</sup> *Mellacher and others v Austria* App No 10522/83; 11011/84; 11070/84 (ECHR, 19 December 1989) para 45; see also *Fleri Soler and Camilleri v Malta Judgment* Application No. 35349/05 (ECHR, 26 September 2006); *Hutten-Czapska v Poland* App No. 35014/97 (ECHR, 22 February 2006); *James and Others v United Kingdom* App No 8793/79 (ECHR, 21 February 1986) para. 47; *Anthony Aquilina v Malta*, App No 3851/12 (ECHR, 11 December 2014); *Amato Gauci v Malta* App No 47045/06 (ECHR, 15 September 2009)

<sup>51</sup> Ibid; see also *Fleri Soler and Camilleri v Malta Judgment* (n 50); *Hutten-Czapska v Poland* (n 50); *James and Others v United Kingdom* (n 50) para 47; *Anthony Aquilina v Malta* (n 50); *Amato Gauci v Malta* (n 50)

<sup>52</sup> Ibid; *Fleri Soler and Camilleri v Malta Judgment* (n 50); *Hutten-Czapska v Poland* (n 50); *James and Others v United Kingdom* (n 50) para 47; *Anthony Aquilina v Malta* (n 50); *Amato Gauci v Malta* (n 50)

<sup>53</sup> Dejene Girma Janka, *The Realization of the Right to Housing in Ethiopia* (LLM thesis, School of Law, Pretoria University, Unpublished, 2007) 44-46

<sup>54</sup> Ibid

<sup>55</sup> Ibid

because they were not adopted to implement housing rights but to serves different societal goals.<sup>56</sup>

In the other study, the writer also argued that there are violations of the right to adequate standard of living in general and the right to adequate housing in particular, but victims were left without remedy.<sup>57</sup> First, courts of the country usually raise issues of legitimacy of courts to adjudicate violation of the right to adequate housing because the realization of such right requires mobilization of resources.<sup>58</sup> Second, non-justiciability and progressive realization were also raised by courts not to adjudicate cases of violation of the right to adequate housing; third, failure to directly apply the FDRE Constitution in litigation since it is the mandate of the House of Federation to interpret the constitution.<sup>59</sup> Generally, this study is different from previously conducted studies because it is interested only on affordability and security of tenure aspects of the right while the previously conducted studies were focused on the general aspects of the right to adequate housing.

### **1.3. Statement of Problem**

The Ethiopian government with the aim of fulfilling its international human right obligations, as part of its housing policies and strategies need to come up with specifically designed legislations with the purpose of enforcing individual's adequate housing rights. In fact, in view of the spirit of ICSECR the government promised under Article 90 of FDRE Constitution to the extent resources permit to fulfil the need of residential houses of the citizens. Hence, the right to housing was regarded as a progressively realizable right depending up on the economic capability of the State. However, despite the existence of economic constraints, all State parties have also assumed the duty to take immediate actions.

One of the obligations is that States are required to tackle any kinds of violation of the right to housing either by their own organs or by third parties. In addition, the impossibility of attaining universal homeownership in developing countries, including Ethiopia, due to different factors make the consideration of private rental housing sector as the available and feasible option to accommodate housing issues. Moreover, the General Comment No. 4 to the ICESCR on right

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<sup>56</sup> Ibid

<sup>57</sup> ArmayeAssefa, *The Right to Adequate Standard of Living with Specific Focus on the Right to Adequate Housing: the Institutional and Legal Framework in Ethiopia* (LLM thesis, School law, Addis Ababa University, Unpublished, 2011) 56-59

<sup>58</sup> Ibid

<sup>59</sup> Ibid

to adequate housing states that in accordance with the principle of affordability, tenants should be protected by appropriate means against unreasonable rent levels or increases. It added that tenants should possess a degree of security of tenure that guarantees legal protection against forced eviction by private landlords. Hence, such duties of States demand the existence of well-stipulated legislations that will properly regulate the relationships between tenants and landlords. On other hand, as raised under the background part, the private rental-housing sector is characterized by various problems, including unreasonable rent increases and eviction, due to neglect of the sector by the government. Thus, the issue is that should Ethiopian government intervene into the private rental housing market in order to regulate rental-housing price or leave it to the free play of rental housing market.

#### **1.4. Research Questions**

Inspired by the above background this paper has the following research questions:

1. Does regulating private rental housing sector form a part of the State's 'duty to protect' in realizing the right to adequate housing?
2. What are the needs and effects of regulating private rental housing sector for the realization of the right to adequate housing in Ethiopia?
3. Is there any relevant law that intends to regulate rent in the private rental-housing sector in Ethiopia?

#### **1.5. Objectives of the Research**

This research aims at explaining of the right to adequate housing in general while its specific objectives are to:

- Show the need to regulate private rental housing sector,
- Assess the existence of laws or regulations that intend to regulate rent or leave room for rental control,
- Assess whether such laws are sufficient or adequate, if any, and
- Recommend feasible solutions in order to alleviate existing problems associated with private rental house pricing and its control.

## **1.6. Methodology**

In order to achieve its objectives this study employs qualitative research design. The research is doctrinal or documentary research. In addition, some empirical data was used for supporting arguments forwarded and showing the extent of problems identified. Generally, the research was used two methods: Documentary research and interview.

Documentary research and literature: the research examines international human rights instruments, general comments, books, research studies, academic articles, and domestic laws that have some relevance to the study. The jurisprudence of other countries and international treaty monitoring bodies in the adjudication of socio-economic rights were also reviewed for better analysis of issues. In addition, various internet sites were visited for relevant data.

Interview: This is relevant to assess the initiation of self-regulation for standardized rent by condominium owners associations found in Addis Ababa city; and to know what the Ethiopian government is doing with regard to ensuring affordability of private rental housing sector and other obligations related to the realization of the right to adequate housing. The interviews were made with public officials at ministerial level and manager of Gotera condominium owners association.

## **1.7. Significance of the Research**

This study will be helpful to the Ethiopian government and Ethiopian's in knowing about their respective rights and duties with regard to affordability and tenure protection aspects of the right to adequate housing. It will also provoke more research on the subject matter and will be used as research material for future researchers, and as secondary source for students. It will create awareness on the part of landlords and tenants on how to determine rental price, reasons for rental price increases and other related issues in connection with their relationship. Generally, the study will help to suggest feasible solutions in order to alleviate existing problems in private rental sector with regard to providing affordable rental accommodation in general and to low-income households specifically.

## **1.8. Scope and Limitation of the Research**

The scope of the study is limited only to the case of private residential rental housing sectors found in Ethiopia. Content wise, it is limited to the study of rent regulation in the private rental-housing sector. Any discussion raised with regard to public rental housing sector was used for

supporting arguments and showing how the two sectors interact with each other. The first constraint encountered during this study was lack of relevant materials on the subject matter under the Ethiopian legal system beside time constraints. However, the research attempted to remedy this problem to a lesser extent by resorting to materials written in other legal systems and trying to juxtapose them with the provisions of FDRE Constitution and ratified international agreements to meet the objectives of this study.

## **1.9. Organization of the Study**

Chapter 1 is a general introduction to the research. Chapter 2 discuss the legal and policy framework of the right to housing, the obligations flowing therefrom and the measures taken by the Ethiopian government to realize the right to adequate housing. Chapter 3 considers development, types, justifications, arguments for and against rent control laws, and international experiences supporting with case laws. Chapter 4 focus the housing demand and supply, the need to regulate rent in the private rental housing market and the effect of rent regulation while Chapter 5 presents conclusion and recommendations.

## CHAPTER TWO

### Legal and Policy Framework of the Right to Adequate Housing

#### 2.1. Introduction

The right to adequate standard of living is often referred to as the right to subsistence.<sup>60</sup> This right requires at a minimum, that everyone shall enjoy the necessary subsistence rights: adequate food, clothing, housing and water.<sup>61</sup> The right to adequate housing is integrally linked to other human rights; it plays a crucial role for the enjoyment of all other human rights.<sup>62</sup> It is recognized in several international and regional human right instruments. Member States to these instruments assumed different obligations. Ethiopia, as member to these instruments, also assumed obligations to enforce the right to adequate housing recognized under these instruments. Under this chapter the writer, discusses the right to adequate housing under international and regional human rights laws, state obligations, legal content of the right to adequate housing and measures taken by government of Ethiopia to enforce the right.

#### 2.2. International Laws

The economic, social, and cultural rights are the freedoms, privileges and entitlements that individuals and communities require to live a life of dignity.<sup>63</sup> These kinds of rights are manifested by their role of providing unequivocal recognition for individual to get food, shelter, water and health care services.<sup>64</sup> Adequate housing is universally viewed as one of the most basic human needs.<sup>65</sup> Thus, as a basic right, to have a place to live with a decent and dignified way of life, it shall not be regarded as a luxury nor shall be left only for those who are economically capable of building their own houses.<sup>66</sup> Rather the indispensable importance of housing for personal security, privacy, health, integrity, protection from different challenges and the need of maintaining different positive attributes of shared humanity irrespective of

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<sup>60</sup> Magdalena Sepulveda and others, *Human Rights Reference Book* (3<sup>rd</sup>edn, UP 2004) 267-273

<sup>61</sup> Alan Gilbert and Ann Varley, *Landlord and Tenant: Housing the Poor in Urban Mexico* (Routledge 2002) 42-47

<sup>62</sup> B. Yung and F.P Lee, 'Right to Housing in Hong Kong: Perspectives from the Hong Kong Community' (2012) 29 HTS 401, 402-404

<sup>63</sup> Nihal Jayawickrama, *The Judicial Application of Human Rights Law: National, Regional and International Jurisprudence* (CUP 2002) 874; see also Sepulveda (n 60); Young and Lee (n 62)

<sup>64</sup> Ibid 876-880; see also Sepulveda (n 60)

<sup>65</sup> Ibid; see also Sepulveda (n 60); Young and Lee (n 62)

<sup>66</sup> UN-Habitat, *Rental Housing: An Essential Option for the Urban Poor in Developing Countries* (n 35) 17

one's economic status has necessitated the international community to recognize adequate housing as basic and fundamental human rights.<sup>67</sup>

As an expression of the international community's commitment for its enforcement, the right to adequate housing is enshrined in a number of international and regional human rights instruments. The right to adequate housing in the field of human rights is not a recent development; it was regarded a long time ago as an essential attributes for ensuring the wellbeing and dignity of human beings.<sup>68</sup> The right to get access to housing is normally regarded as an integral part of the whole of human right in general, and it has been either explicitly or impliedly included in most authoritative international and regional multi-lateral treaties regarding human rights.<sup>69</sup>

At international level, since the adoption of the Universal Declaration of Human Rights in 1948 the right to adequate housing has been reaffirmed and explicitly recognized in a wide range of international human right instruments and create a legally binding obligation upon States parties to which became part of these instruments through the ratification process.<sup>70</sup> Among all international human right instruments, the International Covenant on Economic, Social and Cultural Right is regarded as the most important international multi-lateral treaty, with regard to the right to adequate housing, on which States are bound by its provisions.

Article 11(1) of the ICESCR stated the right of everyone's to an adequate standard of living for himself and his family, including housing, and to the continuous improvement of living conditions. Interestingly, the ICESCR goes one-step ahead of the UDHR by, on top of recognizing the right to adequate housing, demanding its continuous improvement.<sup>71</sup> Other international human rights treaties have addressed the right to adequate housing in different ways; some are of general application while others cover the human rights of specific groups, such as women, children, indigenous peoples, or persons with disabilities.

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<sup>67</sup> Ibid

<sup>68</sup> Ibid 2

<sup>69</sup> Jayawickrama (n 63); see also UN-Habitat, *Rental Housing: An Essential Option for the Urban Poor in Developing Countries* (n 35) 2

<sup>70</sup> UN-Habitat, *Rental Housing: An Essential Option for the Urban Poor in Developing Countries* (n 35) 18

<sup>71</sup> International Covenant on Economic, Social and Cultural Rights, April .10, 1979, 993 U.N.T.S (ICESCR) art 2

At regional level, the African Charter on People's and Human Rights does not expressly provide for the right to housing. In *SERAC v Nigeria* case the African Commission on Human and Peoples' Rights stated that although the right to housing is not explicitly recognized under the ACHPR, the combined effect of the right to property, the right to health and the protection accorded to the family reads into the ACHPR a right to housing.<sup>72</sup> Birhanu Mosisa also argued that the right to housing was a missed right had it not been for the jurisprudence of the African Commission which broadly interpreted the housing right into the African human rights system.<sup>73</sup> However, author criticised that, first, the commission approach of reading the right to adequate housing into the general property right while it would have invoked Article 22 of the Charter that specifically deals with socio-economic rights or it would have invoked Articles 60 and 61 that provides the sources of laws for the realization of human rights in Africa.<sup>74</sup> Second, such approach has put the universality concept of the right in dilemma because the African human rights system failed to inculcate the right into its grand human rights documents.<sup>75</sup>

Ethiopia ratified all these instruments. By virtue of article 9(4) of the Ethiopian Constitution; therefore, they are integral part of the law of the land thereby creating the obligation to realize the right to housing.

### **2.2.1. Content of the Right to Adequate Housing**

Under the ICESCR, what is recognized is not simply right to housing rather right to adequate housing. The Global Shelter Strategy defined adequate housing as adequate privacy, adequate space, adequate security, adequate lighting and ventilation, adequate basic infrastructure and adequate location with regard to work and basic facilities- all at reasonable cost.<sup>76</sup> According to General Comment No. 4 of the Committee on ICESCR, the Committee made it clear that, adequacy can be determined in part by social, economic, cultural, climatic, ecological and other factors.<sup>77</sup> In addition, aspects such as legal security of tenure, availability of services, affordability, habitability, accessibility, location, and cultural adequacy must be taken into

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<sup>72</sup> *SERAC v Nigeria* App No.155/96, (African Human Rights Commission, October 2001) para 45

<sup>73</sup> Berhanu Mosisa Wakjira, 'Formulating the Key Aspects of the Human Rights to Adequate Housing: The Scenario under African Human Rights System' (2014) 6 *JUJL* 31, 71-74

<sup>74</sup> *Ibid*

<sup>75</sup> *Ibid*

<sup>76</sup> Maria Foscarinis and others, 'The Human Right to Housing: Making a Case in U.S. Advocacy'(2004) *CRJPLP* 97, 99

<sup>77</sup> Committee on Economic, Social, and Cultural Rights, General Comment 4 (n 17) para 1 and 7

account in any particular context to determine the adequacy of housing.<sup>78</sup> Tenure protection and affordability aspects of the right will be discussed below since other aspects are not relevant as such for the purpose of this research.

### **2.2.1.1. Security of Tenure**

Many tenants have limited tenure rights and some are evicted by the landlords on false grounds throughout the world and worse in developing countries.<sup>79</sup> Various governments have set legislation to protect the tenants from eviction; tenure protection can be substantive or procedural protection.<sup>80</sup> The essence of substantive tenure security is generally to allow the tenant to continue occupying the leased premises as a lawful occupier and protect tenants from the possibility of eviction for consecutive periods.<sup>81</sup> Procedural protection is aimed at providing tenants with due process during eviction proceedings so that evictions take place in a just and equitable manner.<sup>82</sup> Security of tenure takes numerous forms, including rental accommodation for both public and private, cooperative housing, lease, owner-occupation, emergency housing and informal settlements, including occupation of land or property.<sup>83</sup> Regardless of the type of tenure, all persons should possess a degree of security of tenure that guarantees legal protection against forced eviction, harassment and other threats.<sup>84</sup> Rent controls are meant to protect tenants so that they have security as much as owners do; for instance, establishing a minimum duration of occupancy during which eviction is totally/partially prohibited, putting restriction on the eviction of tenants.<sup>85</sup> Therefore, States should consequently take immediate measures aimed at conferring legal security of tenure upon those persons and households currently lacking such protection.

### **2.2.1.2. Affordability**

Affordability refers to the ability of households to pay the costs of housing without imposing constraints on living cost. There are various types of housing affordability approaches;

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<sup>78</sup> Ibid

<sup>79</sup> Supelveda (n 60) 270-273; see also UN-Habitat, *Rental Housing: An Essential Option for the Urban Poor in Developing Countries* (n 35) 91

<sup>80</sup> Maass (n 19) 45

<sup>81</sup> Ibid; see also UN-Habitat, *Rental Housing: An Essential Option for the Urban Poor in Developing Countries* (n 35); Supelveda (n 60)

<sup>82</sup> Ibid; see also Supelveda (n 60); UN-Habitat, *Rental Housing: An Essential Option for the Urban Poor in Developing Countries* (n 35)

<sup>83</sup> Committee on Economic, Social and Cultural Rights, General Comment No.4 (n 17) para 8

<sup>84</sup> Ibid

<sup>85</sup> Maass (n 19)

however, the following two are the commonly used one.<sup>86</sup> The income ratio approach, affordability is concerned with securing some given standard of housing at a price or a rent that does not impose an unreasonable burden on household income.<sup>87</sup> This approach measure affordability using housing prices for buying or renting to income ratios and give a general indication of whether housing prices are affordable in relation to incomes.<sup>88</sup> The other approach is residual income approach that defines housing affordability by adequacy of the residual income remaining for other household needs after deducting housing expenditures.<sup>89</sup> In the residual income approach, housing is considered affordable when people can adequately consume both housing and non-housing goods.<sup>90</sup>

Different countries have defined affordable housing to present the economic potential of an individual for buying or renting a house.<sup>91</sup> For instance, in the United States and Canada, a commonly accepted guideline for affordable housing is that the cost of housing should not be more than 30 percent of a household's income.<sup>92</sup> Most experts also believed that the percentage of family's income dedicated to housing should be no greater than 30-35 percent, or less for the lowest-income groups.<sup>93</sup> According to the United Nations Habitat Agenda, housing is unaffordable when a family spends more than one quarter of its monthly income on rent.<sup>94</sup> In theory, to make a private rental unit affordable for low-income households, the gap between the rent a tenant can afford and the market rent would need to be bridged by either rent control or subsidy.<sup>95</sup>

According to General Comment No. 4, affordability refers to the amount a person pay for their housing must not be so high that it compromise the attainment and satisfaction of other basic

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<sup>86</sup> Michael E. Stone, 'What is Housing Affordability? The Case for the Residual Income Approach' (2006) 17 HPD 151, 157; see also Kristof Heylen and Marietta Haf, 'A Ratio or Budget Benchmark for Comparing Affordability across Countries?'(2013) 28 JHBE 547, 549-551; John M. Quigley and Steven Raphael, 'Is Housing Affordable? Why is not It More Affordable?' (2004) 18 JEP 191, 197-199

<sup>87</sup> Ibid 162; see also Heylan and Haf (n 86); Quigley and Raphael (n 86)

<sup>88</sup> Ibid; see also Heylan and Haf (n 86); Quigley and Raphael (n 86)

<sup>89</sup> ibid 163; see also Heylan and Haf (n 86); Quigley and Raphael (n 86)

<sup>90</sup> Vivienne Rae Milligan, *How Different? Comparing Housing Policies and Housing Affordability Consequences for Low Income Households in Australia and the Netherlands* (Utrecht 2003) 68-70

<sup>91</sup> Ibid; see also Heylan and Haf (n 86)

<sup>92</sup> Ibid; see also Heylan and Haf (n 86)

<sup>93</sup> Peppercorn and others (n 31) 49

<sup>94</sup> UN-Habitat, *Sustainable Housing for Sustainable Cities: A Policy Framework for Developing Countries* (United Nations Human Rights Settlements Programme, UNONP 2012) 23

<sup>95</sup> Peppercorn and others (n 31) 50; see also Sullivan and Decker (n 36) 103

needs.<sup>96</sup> It can be taken as a ratio of the sum of the monthly housing expenses (e.g. rent, mortgage repayments) to the monthly income per household. It impose obligation on State parties to ensure that the percentage of housing-related costs is commensurate with income levels.<sup>97</sup> In accordance with this principle, tenants should be protected by appropriate means against unreasonable rent increase.<sup>98</sup> Therefore, as housing expense has become more expensive, several governments have intervened in the market to make housing more affordable for such diverse community and this is the main reason behind different types of rent controls.

The protections for security of tenure and affordability aspects of the right to adequate housing are related to each other since protection for security of tenure is unavoidably intertwined with the question of rent, due to the possibility of economic eviction.<sup>99</sup> The prime purpose of rent control is to make it possible for tenants to find and keep decent houses at reasonable rents. Security of tenure requires two kinds of regulatory protection: regulations that govern the conditions of tenancy, especially the reasons for and the manner in which tenants may be evicted; and the protection form economic eviction.<sup>100</sup> Regulation of the rental contract that was limited to eviction protection and did not include controls over rent increases would fail to provide basic security tenure.<sup>101</sup> Hence, security of tenure regulations must be accompanied by rent regulation in order to prevent landlords from circumventing the regulations by evicting tenants who refuse to pay large rent increases.

### **2.3. State Obligation**

The legal obligation of governments concerning the right to housing consists of main two obligations that emanates from the ICESCR. These are general obligations and specific obligations.<sup>102</sup> The general obligations are the obligations that stem from Article 2 of the Covenant while the specific obligations are the obligation to respect, protect, promote and fulfil

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<sup>96</sup> Committee on Economic, Social and Cultural Rights, General Comment No.4 (n 17) para 8; see also UN-Habitat Fact Sheet No.21/Rev. on the Right to Adequate Housing (2009 ) 4

<sup>97</sup> Ibid; see also UN-Habitat Fact Sheet No.21/Rev (n 96)

<sup>98</sup> Ibid; see also UN-Habitat Fact Sheet No.21/Rev (n 96)

<sup>99</sup> Hulchanki (n 39) 73-78

<sup>100</sup> Ibid

<sup>101</sup> Ibid

<sup>102</sup> Olivier De Schutter, *International Human Rights Law: Cases, Materials, Commentary* (CUP 2010) 240

this and other rights.<sup>103</sup> The general obligations are obligations for discharging the specific obligations.<sup>104</sup>

### 2.3.1. General Obligation

Article 2(1) of the Covenant is of central importance for determining what governments must do and what they should refrain from doing in the process leading to the society-wide enjoyment of the rights found in the covenant. The Article reads as follows:

Each State Party to the present Covenant undertakes to take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures.

Three phrases in this article are important for understanding the obligations of governments to realize fully the right to adequate housing: a) “undertakes to take steps . . . by all appropriate means”; b) “to the maximum of its available resources”; and c) to achieve progressively.

The obligation to “Undertakes to take step . . . by all appropriate means”: this obligation is immediate. States must undertake steps directly upon ratification of the covenant. The Committee has emphasised that in many instances, legislation is highly desirable, and in some cases, indispensable, for the fulfilment of each of the rights found in the covenant.<sup>105</sup> Thus, in most cases, those States in which there are no specific housing laws are probably not in the right track to implement their obligation to realize the right to adequate housing.<sup>106</sup> Government is required to diagnose the existing situation of the rights and must take steps that are deliberate, concrete and targeted as clearly as possible towards meeting the obligations recognized in the covenant.<sup>107</sup>

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<sup>103</sup> Ibid; see also Supelveda (n 60)

<sup>104</sup> Ibid; see also Supelveda (n 60)

<sup>105</sup> Committee on Economic, Social and Cultural Rights, General Comment 3, *The Nature of States Parties Obligations*, 5<sup>th</sup> Sess. UN. Doc. E/1991/23 (1990) Para 3

<sup>106</sup> Ibid

<sup>107</sup> Ibid para 2

However, it should be noted here that whatever means is adopted, there are minimum core obligations that any State is required to meet for the realization of the right to adequate housing.<sup>108</sup> The “minimum core” obligation is considered the baseline of the obligation to progressively realize rights. This minimum core obligation is the obligation to provide basic housing to significant number of citizens.<sup>109</sup> If this is not so, then the state concerned is, *prima facie*, failed to perform its obligations under the ICESCR.<sup>110</sup> Because, in many cases, compliance with such obligations may be undertaken by most states with relative ease and without significant resource implications.<sup>111</sup> Government policy should aim to providing at least basic housing to significant number of its citizens. Failure to do so will render the policy to be unacceptable and inconsistent with the right to housing.<sup>112</sup>

The obligation “to the maximum of its available resources”: this obligation requires State party to make an equitable and effective use and access to the available resources.<sup>113</sup> Though the alleged lack of resources is often used to justify non-fulfilment of certain rights, the Committee has emphasised that even, in times of economic problem vulnerable members of society must be protected by the adoption of relatively low-cost targeted programmes.<sup>114</sup> If a State claims that it is unable to meet even its minimum obligations because of a lack of resources, it must at least be able to demonstrate that every effort has been made to use all resources that are at its disposal in an effort to satisfy, as a matter of priority, those minimum obligations.<sup>115</sup> However, lack of resources can never be used to justify failure of a State to fulfil its obligation to monitor non-enjoyment of the rights found in the Covenant.<sup>116</sup>

The obligation “to achieve progressively”: it impose obligation on State to move quickly and effectively as possible towards the goals of realizing fully the right to adequate housing so that States cannot postpone its efforts to ensure the full realization.<sup>117</sup> No state can use the obligation to progressively realize rights as a pretext for non-compliance with its obligations.<sup>118</sup> If a state,

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<sup>108</sup> Ibid para 10

<sup>109</sup> Ibid

<sup>110</sup> Ibid

<sup>111</sup> Ibid

<sup>112</sup> UN-Habitat Fact Sheet No.21/Rev (n 96) 30

<sup>113</sup> Schutter (n 102) 461; see also UN-Habitat Fact Sheet No.21/Rev (n 96)

<sup>114</sup> Committee on Economic Social and Cultural Rights General Comment No 3 (n 105) para 12

<sup>115</sup> Ibid para 10

<sup>116</sup> Ibid

<sup>117</sup> Ibid para 8 and para 9

<sup>118</sup> Maastricht Guidelines on Violations of Economic, Social and Cultural Rights, (Maastricht, Jan. 22-26, 1997) para 8

therefore, fails to realize the right to adequate housing when it is possible to do so, it will violate its obligation to progressively fully realize the right.<sup>119</sup> The obligation of progressive realization exists independent of any resources.<sup>120</sup>

### **2.3.2. The Obligation to Respect, Protect, Promote and Fulfil**

The Committee, on Economic, Social and Cultural Rights has identified four different State obligations by stating that every socio-economic rights includes duties to respect, protect, promote and fulfil.<sup>121</sup> The Maastricht Guidelines on Violations of Economic, Social and Cultural Rights under its guideline 6 has also stated the same obligations except for duties to promote as an obligation of the State while it has been incorporated under the duties to fulfil according to the Committee.<sup>122</sup> The African Commission in entertaining the SERAC case has also identified these four obligations.<sup>123</sup>

The obligation to respect requires refraining from interfering with the enjoyment of the rights. It requires all State parties and its organs, including all levels of public authority to refrain from carrying out or aiding in any ways or tolerating any practice or policy that may have a determinant effect on individuals housing rights or diminish their legal status and render them incapable to enforce their right.<sup>124</sup> However, to prevent the interference, the State may still have to take positive measures, for instance, to prevent State agents from evicting households. The obligation to protect housing right has imposed very serious responsibilities on States to take all necessary positive action in order to tackle any possible violation of housing rights by third parties.<sup>125</sup> This is thus encompassing responsibility on States to regulate the behaviour of third parties, so that the possibility that private persons can violate these rights is precluded.<sup>126</sup>

The Habitat Agenda state that State should adopt legislation or other measure that non-State actors comply with human rights standards related to the right to adequate housing.<sup>127</sup> For instance, State should regulate the housing and rental markets in a way that promotes and

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<sup>119</sup> UN-Habitat Fact Sheet No.21/Rev (n 96) 30-32

<sup>120</sup> Ibid

<sup>121</sup> Committee on Economic Social and Cultural Rights General Comment No 3 (n 105) para 9

<sup>122</sup> The Maastricht Guidelines (n 118) 6

<sup>123</sup> *SERAC v Nigeria* (n 72) para 45

<sup>124</sup> UN-Habitat, *Rental Housing: An Essential Option for the Urban Poor in Developing Countries* (n 35) 27

<sup>125</sup> Ibid; see also *SERAC v Nigeria* (n 72)

<sup>126</sup> Ibid

<sup>127</sup> UN-Habitat, *Rental Housing: An Essential Option for the Urban Poor in Developing Countries* (n 35) 27

protects the right to adequate housing. The African Commission in the SERAC case has reaffirmed this that the Nigerian government was found in violation of the obligation to protect with regard to the right to adequate housing of Ogoni Community as a result of State's failure to regulate and prevent the conduct of a private oil company.<sup>128</sup> The obligation to promote includes the obligation to raise peoples' awareness about their right to housing and create conducive environment whereby they will be able to exercise the right, for instance, by encouraging private housing providers.<sup>129</sup> while the obligation to fulfil encompasses the duty to facilitate the enforcement of housing rights through promulgating different legislation which gives due recognizance for the full and progressive realization of the right and the obligation to provide an adequate shelter for those who cannot afford to build their own home.<sup>130</sup> For instance, State must adopt a national housing policy that defines the objectives for the development of the housing sector, with a focus on disadvantaged and marginalized groups; identifies the resources available to meet these goals and specifies the most cost-effective way of using them.<sup>131</sup>

From the above-discussed obligations, it is possible to deduct that: First, the State parties need to have effective and feasible housing policies to achieve full realization of the right to adequate housing by considering their economic capacity. For instance, too many governments pretend that they can achieve universal homeownership for everyone. However, homeownership for all is neither financially possible, nor desirable for all household groups and life-cycle stages.<sup>132</sup> Hence, rental housing and homeownership should not be competing tenure options.<sup>133</sup> Government should enable the housing market to provide people with an effective choice of tenure that is affordable and appropriate to their need.<sup>134</sup> Rental housing is a key component of well functioning and healthy housing market.<sup>135</sup> While renting is not the panacea to solving the housing challenge, it does constitute a significant and vital housing tenure option that should be promoted alongside homeownership.<sup>136</sup>

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<sup>128</sup> *SERAC v Nigeria* (n 72) paras 55, 57, 58 & 66

<sup>129</sup> *Ibid*; see also UN-Habitat Fact Sheet No.21/Rev (n 96)

<sup>130</sup> UN-Habitat Fact Sheet No.21/Rev (n 96) 33

<sup>131</sup> *Ibid*

<sup>132</sup> UN-Habitat, *A Policy Guide to Rental Housing in Developing Countries* (United Nations Human Settlements Programme UNONP 2011) 23

<sup>133</sup> The African Rental Housing Conference, *Formal Rental Housing in Sub-Saharan Africa: Opportunities to Provide Affordable Housing for All* (Nairobi Kenya, 15 Oct. 2014) 8

<sup>134</sup> Gilbert (n 31) 9

<sup>135</sup> UN-Habitat, *A Policy Guide to Rental Housing in Developing Countries* (n 132) 3

<sup>136</sup> *Ibid*; see also Gilbert (n 31) 8

Secondly, according to the UN-Habitat Agenda minimum core obligation requires State to provide basic housing to significant number of citizens. In fact, this does not mean that States do have obligation to provide housing for all.<sup>137</sup> In most, both in developed and developing, countries the private rental sector provide housing to the significant number of citizens.<sup>138</sup> Moreover, when housing provision is transferred to third parties, the private rental market, the State should regulate the market in order to protect against human rights abuses such as forced evictions or economic evictions and rental price bubbles.<sup>139</sup> Hence, State has the obligation to protect against abuses of human rights by third parties and to adopt the necessary measures to enable and assist individuals in enjoying their human rights.

Thirdly, to protect the right to housing effectively, it is necessary to pay attention to the specific situation of individual and groups, in particular those living in vulnerable situations. Measures and steps taken for the realization of the right to adequate housing should be with special focus on the poorest and most marginalized groups. For instance, government should tailor their housing laws and policies to those most in need. Obviously, rental sector is the most available option since it is relatively more affordable than homeownership to them. It should be noted that in countries where there is neither public nor social rental-housing sector that is largely meant to accommodate poor and marginalized groups, the government should give more focus to the poorest and marginalized groups since private rental sector might be unaffordable due to high rent level or increases.<sup>140</sup> Since rent in private sector is always higher than rent in social/public rental sector.<sup>141</sup>

Generally, governments could and should develop a rental policy and legal framework that includes defining the type of rented homes; the duration and termination of a rental contract; initial rent setting and rent increase regulations and clear guidelines of processes for solving conflicts between owners and tenants.<sup>142</sup> In addition, according to the report of Special Rapporteur on the right to adequate housing, failure to reform legislation in conformity with

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<sup>137</sup> UN-Habitat Fact Sheet No.21/Rev (n 96) 30

<sup>138</sup> Raquel Rolnik, Report of the UN Special Rapporteur on Adequate Housing as a Component of the Right to Adequate Standard of Living, and the Right to Non-discrimination A/68/289/2013, para 27

<sup>139</sup> Ibid

<sup>140</sup> Kemp (n 10) 1020; see also Maass (n 19) 47

<sup>141</sup> Ibid 1029

<sup>142</sup> The African Rental Housing Conference (n 133) 12

the ICESCR and to intervene in the rental housing market concerning rent levels, rent increase and rent subsidies amount to, prima facie, violation of the right to adequate housing.<sup>143</sup>

#### **2.4. Potential Violation of the Right to Adequate Housing**

The non-observance of the above-discussed obligations of State parties to the ICESCR will amount to violations of the right to adequate housing in that Member State. The Committee noted that the right to housing could be subject to violation. The Special Rapporteur outlined a series of acts and omissions that could provoke concern regarding possible infringements of the right. The report provides a list of acts and omissions that amount to violations of adequate housing rights. Most of the acts that could be considered to constitute violation include:

- Adoption of legislation or policies clearly inconsistent with housing rights obligation, particularly when these result in homelessness, greater level of inadequate housing and inability of persons to pay for housing and so forth;
- Acts of discrimination in the housing sphere;
- Actively denying basic services such as water, electricity or other services despite a proven ability to provide these;
- Carrying out, sponsoring, tolerating or supporting the practice of forced evictions;
- Prioritizing the housing interest of high-income groups when significant numbers of citizens live without their housing rights having been achieved; and other.<sup>144</sup>

Among the omissions that could result in violations of housing right obligations according to Special Rapporteur are:

- Failure to take “appropriate steps” as required under the ICESCR
- Failure to reform legislation consistent with the ICESCR;
- Failure to intervene in the housing market, especially concerning rent levels, rent control, rent subsidies, issues of security of tenure and prevention of undue speculation;
- Failure to provide infrastructure, basic services such as water, electricity and others
- Failure to enforce legislation that are inherent in the fulfilment and recognition of housing rights; and other.<sup>145</sup>

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<sup>143</sup> Ioam Maxim, Working Paper and First Progress Report of the UN Special Rapporteur on Promoting the Realization of the Right to Adequate Housing E/CN.4/Sub.2/1992/15 and E/CN.4/Sub.2/1993/15 para 143

<sup>144</sup> Ibid para 144

<sup>145</sup> Ibid

## 2.5. Measures taken by Ethiopian Government

### 2.5.1. Introduction

In Ethiopia, the housing problem exists throughout the country. According to the UN-Habitat Agenda, about 70-90 percent of the urban population are living in sub-standard housing and growing by 4 percent per year.<sup>146</sup> The housing stock is of a very low quality, poorly maintained, and needs either replacement or significant upgrading.<sup>147</sup> Informal unplanned housing has proliferated because of high urbanization, limited housing supply, and the limited affordability of housing.<sup>148</sup>

According to the 2007 Population and Housing Census, in Ethiopia there are about 15,103,134 housing units most of which, 12,206,116 units, are found in the rural areas and the 2,897,01813 units are found in the towns of the country.<sup>149</sup> This report shows that private rental was the major means of obtaining urban residential accommodation accounting a range of 11.2 to 60.9 percent of the housing units.<sup>150</sup> Owner occupancy was the second major tenure arrangement. Furthermore, according to the Welfare Monitoring Survey on 2011 by the Central Statics Agency on 14 major cities, private rental was the major modality of housing provision, covering a range of 37.8 to 66.5 percent of households.<sup>151</sup> Thus, private rental accommodation is prevalent in most cities and its share is on increase from time to time. The public rental housing is superseded by the era of the private rental housing; it is decreasing which is associated with demolition of Kebele units in old parts of cities such as Addis Ababa, as well as many of the regional capitals and other major urban centres targeted for redevelopment.<sup>152</sup>

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<sup>146</sup> UN-Habitat, *Ethiopian Urban Profile* (United Nations Human Settlements Programme UNONP 2008) 18; see also The World Bank, *Ethiopia Urbanization Review* (n 8); UN-Habitat, *The Ethiopia Case of Condominium Housing The Integrated Housing Development Programme* (n 8) 26-32

<sup>147</sup> UN-Habitat, *The Ethiopia Case of Condominium Housing The Integrated Housing Development Programme* (n 8) 3; see also The World Bank, *Ethiopia Urbanization Review* (n 8) 27-32

<sup>148</sup> Ibid; see also Ministry of Urban Development, Housing & Construction, *National Report on Housing & Sustainable Urban Development* (n 4); Ministry of Urban Development, Housing and Construction and Ethiopia Civil Service University, *The State of Ethiopian Cities Report* (n 6) 94-96

<sup>149</sup> Ministry of Urban Development, Housing & Construction, *National Report on Housing & Sustainable Urban Development* (n 4); see also Ministry of Urban Development, Housing and Construction and Ethiopia Civil Service University, *The State of Ethiopian Cities Report* (n 6) 94

<sup>150</sup> Ministry of Urban Development, Housing and Construction and Ethiopia Civil Service University, *The State of Ethiopian Cities Report* (n 6) 96

<sup>151</sup> Ibid; see also Ministry of Urban Development, Housing & Construction, *National Report on Housing & Sustainable Urban Development* (n 4)

<sup>152</sup> Ibid

The data indicates that the private rental sector is currently playing the dominant role in housing supply.

On the other hand, Ethiopia has ratified international human rights instruments that recognized the right to adequate housing. With ratification, it assumed the obligation to respect, protect, promote and fulfil the right to adequate housing. These obligations require the Ethiopian government, regardless of scarcity of resources, to adopt legislations or policies specifically devoted for the full realization of the right to adequate housing.<sup>153</sup> Furthermore, the measures to be taken must be reasonable and the State should move expeditiously and effectively as possible towards the full realization of the right.<sup>154</sup> The housing policy or legislation can be said reasonable when it is inclusive in a sense that it includes the disadvantaged parts of the society.<sup>155</sup> Besides, measures to be taken must match with the available resource in the country.<sup>156</sup> Thus, a measure would be not reasonable if the available resource is fair and less attention is given to realize the right to adequate housing.<sup>157</sup>

Accordingly, Ethiopia has undertaken various measures in order to realize the right to adequate housing. The taken measure can be legal and/or policy measure.

## **2.5.2. Legal Measures**

### **2.5.2.1. The Constitution of Ethiopia**

The FDRE Constitution has provides the fundamental legal framework for the protection of human rights in Ethiopia.<sup>158</sup> Chapter III of the Constitution deals with the protection of fundamental rights and freedoms; however, most of the rights contained in this chapter are mainly civil and political rights.<sup>159</sup> Hence, the Constitution does not devote much space for Economic, Social and Cultural rights.<sup>160</sup> Surprisingly, it does not mention the right to adequate housing as a human right. However, close reading of certain provisions of the Constitution

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<sup>153</sup> Amare Tesfaye, *Justiciability of Socio-Economic Rights in the Federal Democratic Republic of Ethiopia* (Addis Ababa University, School of Law, LLM Thesis, Unpublished, 2010) 40

<sup>154</sup> *Ibid*

<sup>155</sup> *Ibid*

<sup>156</sup> Assefa (n 57) 38

<sup>157</sup> *Ibid*

<sup>158</sup> Constitution of the Federal Democratic Republic of Ethiopia Proclamation No 1/1995, chap 3; see also Adem Kassie Abebe, 'Human Rights under the Ethiopian Constitution: A Descriptive Overview' (2011) 5 MLR 41, 42

<sup>159</sup> *Ibid* arts 14-28; see also Abebe (n 158) 50

<sup>160</sup> *Ibid* arts 41, 43; see also Abebe (n 158) 53

reveals implied recognition of the right to adequate housing in the Constitution.<sup>161</sup> For instance, Article 41(3) states that every Ethiopian citizen has the right to equal access to publicly funded social services; here the term “publicly funded social service” to which all citizens have the right to equal access can be interpreted to include housing services. Besides, sub-article 4 of the same article imposes obligation on the State to allocate resources to provide the public social services. Furthermore, Article 90(1) clearly mentioned housing as one of the guiding policy principles. In fact, under this article the government promised to extent resources permitted to fulfil the need of residential houses of the citizens. Hence, the right to housing is regarded as a progressively realizable rights depending upon the economic capabilities of the State.

Moreover, the reading of Articles 9(4) and 13(2) of the Constitution confirms that argument of implied recognition of the right to adequate housing in the Constitution.<sup>162</sup> The first article clearly states that international agreement upon ratification become part of the law of the land while the second article states that chapter III of the Constitution shall be interpreted in a manner conforming to international human rights covenants adopted by Ethiopia.<sup>163</sup> These provisions support the efforts to read impliedly the housing right into the expressly recognized constitutional rights since the article stipulates that when there are ambiguities, interpretation in conformity with international human rights instruments is required of the body interpreting the chapter III of Constitution.<sup>164</sup>

#### **2.5.2.2. Other Legislation**

In Ethiopia, strictly speaking, there are no laws that specifically deal with the right to adequate housing.<sup>165</sup> However, there are some laws, which are scattered here and there that addresses the right to adequate housing. These laws include Condominium Proclamation No 370/2003, Expropriation of Land for Public Purposes and Payment of Compensation Proclamation No 455/2005, Re-enactment of Urban Land Lease Holding Proclamation No 721/2011 and others. They address different aspect of the right to adequate housing. For instance, although the rationale behind issuing the Condominium proclamation was for purpose of efficient urban

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<sup>161</sup> Ibid arts 41, 90; see also Assefa (n 57)

<sup>162</sup> Ibid arts 9(4) and 13(2)

<sup>163</sup> Ibid

<sup>164</sup> Ibid; see also Janka (n 53) 20-23

<sup>165</sup> Janka (n 53) 24

land usage, it incidentally addresses the issue of access to adequate housing.<sup>166</sup> It also creates a favourable condition for building of low-cost houses for middle and low-income households.<sup>167</sup> In addition, it facilitates the environment for private developers to take part in housing construction.<sup>168</sup> Since the proclamation gives right for unit owners to transact with their titles, it increases the supply of private rental houses in the market.<sup>169</sup> The Expropriation proclamation address the issue of forced eviction and payment of compensation while the lease proclamation deals with issue of accessing urban land to be used for residential house building and regularization of informal settlement.<sup>170</sup>

With regard to the rental sector, in Ethiopia, there are two systems of rental: private and public. The Derg government owns many urban houses after it nationalized extra house by Proclamation No. 47/75. Nowadays the roles of administering these houses were given for the Agency for Government Houses.<sup>171</sup> It puts a regulated and mostly fixed rate of rent for its tenants.<sup>172</sup> However, with regard to the private rental sector, it is at liberty to put the market price for rent. Tenancy provisions of the Civil Code regulate these sectors.

In the Lease of house contract receiving rent is an important benefit to the lessor. The time and amount of rent shall be determined by the free agreement of the both parties.<sup>173</sup> The civil code adopts the principle of freedom of contract that allows the parties to decide on the amount of rent. The duration of the lease agreement may be made for determinate or indeterminate period.<sup>174</sup> The reasons for termination of the lease agreement can be; loss or destruction of the property, failure to comply with contractual agreement by party, expiry of lease term and termination upon notice, for indeterminate lease agreements.<sup>175</sup>

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<sup>166</sup> Condominium Proclamation, Proclamation No. 370/2003, preamble

<sup>167</sup> Ibid; see also Janka (n 53) 25; Assefa (n 57) 30-33

<sup>168</sup> Ibid; see also Janka (n 53) 24; Assefa (n 57)

<sup>169</sup> Ibid preamble and arts 21 and 22

<sup>170</sup> Expropriation of Land Holding for Public Purposes and Payment of Compensation, Proclamation No 455/2005, preamble and Re-enactment of Urban Land Lease Holding Proclamation No 721/2011, preamble; see also Assefa (n 57) 31-32

<sup>171</sup> Agency for Government Houses Proclamation No. 555/2007

<sup>172</sup> Habtewold (n 8); see also Ministry of Urban Development, Housing and Construction and Ethiopia Civil Service University, *The State of Ethiopian Cities Report* (n 6) 96

<sup>173</sup> Civil Code of Ethiopia Proclamation No. 165/1960 arts 2923 & 2950

<sup>174</sup> Ibid arts 2965, 2966

<sup>175</sup> Ibid arts 2929, 2965, 2930, 2931, 2966

### 2.5.3. Policy Measure

The National Policy on Urban Housing Development makes housing as component of urban development and one of the priorities of which is improving urban low cost housing.<sup>176</sup> Under this policy urban housing development program, which is called Integrated Housing Development Program was adopted in 2006. The program was aimed to integrate and coordinate efforts to enable access to housing by encouraging saving and arranging financial scheme for poor and mid-income households.<sup>177</sup>

The programme has greatly increases the number of homeowners that would never otherwise have owned a home within their lifetime, and, has benefited the housing market by increasing the supply of owners-occupied housing and rental units.<sup>178</sup> This program has had two main challenges: First, the common practice by condominium owners of renting out their units to wealthier households has frustrated the original aim of improving the living conditions of the low-income sector of the population by directly providing them with an affordable housing.<sup>179</sup> Second, many low-income households are excluded from the program owing to the fact that they cannot afford down payment.<sup>180</sup>

### 2.6. Problem with the Measures taken by Government

When we assess the measures taken by the government of Ethiopia for the realization of the right to adequate housing, the following problems can be easily identified. With regard to the legal measures, there are few laws, as discussed above, which have relation with the right to adequate housing. In addition, most of the laws issued have minor relationship with the right

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<sup>176</sup> Ministry of Urban Development, Housing & Construction, *The National Urban Housing Development Policy and Strategy Framework* (n 3) 1-3; see also UN-Habitat, *The Ethiopia Case of Condominium Housing The Integrated Housing Development Programme* (n 8) 45

<sup>177</sup> Ministry of Urban Development, Housing & Construction, *National Report on Housing & Sustainable Urban Development* (n 4) 57-58; see also Ministry of Urban Development, Housing and Construction and Ethiopia Civil Service University, *The State of Ethiopian Cities Report* (n 6); UN-Habitat, *The Ethiopia Case of Condominium Housing The Integrated Housing Development Programme* (n 8) 45

<sup>178</sup> UN-Habitat, *The Ethiopia Case of Condominium Housing The Integrated Housing Development Programme* (n 8); see also Ministry of Urban Development, Housing & Construction, *National Report on Housing & Sustainable Urban Development* (n 4)

<sup>179</sup> Ministry of Urban Development, Housing & Construction, *National Report on Housing & Sustainable Urban Development* (n 4); see also Janka (n 52) 32-32; Ministry of Urban Development, Housing and Construction and Ethiopia Civil Service University, *The State of Ethiopian Cities Report* (n 6); UN-Habitat, *The Ethiopia Case of Condominium Housing The Integrated Housing Development Programme* (n 8) 45

<sup>180</sup> Ibid; see also Janka (n 53); Ministry of Urban Development, Housing and Construction and Ethiopia Civil Service University, *The State of Ethiopian Cities Report* (n 6); UN-Habitat, *The Ethiopia Case of Condominium Housing The Integrated Housing Development Programme* (n 8)

to adequate housing because they are meant for other societal goals, for instance, for the purpose of efficient urban land usage and others.<sup>181</sup> As can be seen from the preambles and provisions of these proclamations, these laws are not deliberate, concrete and targeted towards the discharging of the obligation to enforce the right to adequate housing as per Articles 2(1) and 11(1) of the ICESCR. Since it requires taking of legislative measure, which is deliberate, concrete and targeted as clearly as possible towards meeting the obligation to enforce the right to adequate housing.<sup>182</sup> Such obligation requires the enactment of laws that has the realization of the right to housing as at least one of its primary objectives. Thus, these laws do not recognize the right to housing together with the obligation to enforce it; nor do they provide the protection against violations of the right to adequate housing by third parties, for instance, via unreasonable rent increase or evictions.<sup>183</sup>

With regard to policy measures, although the country has an array of policies, strategies, programmes and interventions that serve a variety of social protection purposes, it does not have a comprehensive and integrated social protection framework.<sup>184</sup> One expression of this is the absence of national housing policy so far. Furthermore, the current functioning housing program focuses only on homeownership and does not consider the issue of rental sector.

According to the African conference on rental housing in sub-Saharan Africa, with about 90 percent of Africa's population were unable to buy a house or even not qualify for a mortgage, thus, there is a justified need for a shift towards rental housing as a critical option to solve the housing crisis.<sup>185</sup> The conference also emphasized that the lack of rental housing policies has been contributed to increasing of more people living in poor, informal and undignified conditions.<sup>186</sup> In addition, as discussed above despite the fact that the private rental accommodation is the prevalent and leading tenure in the country, the government of Ethiopia neglected the sector, by not taking any measure.

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<sup>181</sup> Ministry of Urban Development, Housing & Construction, *The National Urban Housing Development Policy and Strategy Framework* (n 3) 39-40; see also Janka (n 51) 31-32; Assefa (n 53) 37-40

<sup>182</sup> Committee on Economic Social and Cultural Rights General Comment No 3 (n 105) para 2; see also Assefa (n 57)

<sup>183</sup> Committee on Economic, Social and Cultural Rights, General Comment No.4 (n 17) para 8; see also UN-Habitat Fact Sheet No.21/Rev (n 96); Committee on Economic Social and Cultural Rights General Comment No 3 (n 96); Assefa (n 57)

<sup>184</sup> Ministry of Urban Development, Housing & Construction, *The National Urban Housing Development Policy and Strategy Framework* (n 3)

<sup>185</sup> The African Rental Housing Conference (n 133) 8

<sup>186</sup> Ibid

Generally, from the above discussion it is clear that, in Ethiopia there are lack of specific housing policy and legal frameworks that are deliberate, concrete and targeted towards realization of the right to adequate housing. And, absence of such measures demonstrate that the Ethiopian government has failed to take adequate and reasonable measures to implement the right to adequate housing in the country because adoption of such frameworks is the minimum and immediate obligation that the government of Ethiopia should comply with.

## **2.7. Rent Control and the Right to Adequate Housing**

The Committee has underlined that the right to adequate housing should not be interpreted narrowly; rather, it should be seen as the right to live somewhere in security, peace and dignity.<sup>187</sup> It must provide more than four walls and a roof.<sup>188</sup> As already discussed above, affordability and tenure security are some aspects of the right to adequate housing.<sup>189</sup> The affordability aspect of the right obliges State to implement housing subsidies and financing options for those unable to obtain affordable housing.<sup>190</sup> Not only housing related costs should be commensurate with income levels, in addition, tenants should also be protected against unreasonable rent levels or rent increases.<sup>191</sup> The security tenure aspect of the right to adequate housing requires State to guarantee legal protection against forced eviction.<sup>192</sup>

Affordability is an acute problem throughout the world and a major reason why so many people do not have formal housing, and are forced to live in informal settlements.<sup>193</sup> In developing countries, individuals and families living in poverty and with low-income encountered difficult to find affordable adequate housing.<sup>194</sup> For instance, the rent-to-income ratio for African cities is at 39.5 percent of income.<sup>195</sup> In many of these countries, when rental housing is unaffordable, tenants' security was threatened as they can often be legally evicted for non-payment of rent.<sup>196</sup>

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<sup>187</sup> UN-Habitat Fact Sheet No.21/Rev (n 96) 3; see also Committee on Economic Social and Cultural Rights General Comment No. 4 (n 17) para 8

<sup>188</sup> Ibid; see also Committee on Economic Social and Cultural Rights General Comment No. 4 (n 17)

<sup>189</sup> Committee on Economic Social and Cultural Rights General Comment No. 4 (n 17)

<sup>190</sup> Ibid

<sup>191</sup> Ibid

<sup>192</sup> Ibid; see also Committee on Economic Social and Cultural Rights General Comment No.7

<sup>193</sup> UN-Habitat, *Rental Housing: An Essential Option for the Urban Poor in Developing Countries* (n 35) 91

<sup>194</sup> Ibid; see also The African Rental Housing Conference (n 133) 9

<sup>195</sup> Ronlik, Report of the UN Special Rapporteur (n 138) para 27

<sup>196</sup> Ibid

In free market, excess demand for rental housing in relation to insufficient supply will result in an increase in rent.<sup>197</sup>

However, State has obligation to regulate such problems in order to realize the right to adequate housing in general, affordability and security of tenure aspects in particular.<sup>198</sup> State interference usually takes place when it becomes apparent that the public interest demands intervention in the process of supply and demand.<sup>199</sup> Thus, by means of legislation, the State can intervene in the market, place restriction on rent increases and the right of landlords to evict tenants on termination of their leases, which is generally referred to as rent control.<sup>200</sup> The main objective and benefit of rent control is to ensure that landlords cannot evict the tenant by simply increasing the rent disproportionately.<sup>201</sup> It also functions as a mechanism that aims to balance the unequal bargaining power of landowners and tenants.<sup>202</sup> The required supply of decent affordable housing in the private sector usually indicates whether this type of intervention is necessary to accommodate tenants in general.<sup>203</sup>

From this, one can grasp that rent control is a means of realizing the affordability and security of tenure aspects of the right to adequate housing. It also shows that rent control laws issued by different states to address housing problem are justified since housing is a prime social need so it requires some form of regulation by State rather than being left to free market forces that failed to provide housing as expected.<sup>204</sup> Hence, rent control were mostly used in order to ensure the protection of the right to adequate housing for all of the society, and for low-income household, vulnerable groups of the society specifically.

## 2.8. Conclusion

Affordability and tenure protection are the basic aspects of the right to adequate housing. States interfere into the housing market to ensure that these aspects of the right are respected. Rent

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<sup>197</sup> Maass (n 19) 45

<sup>198</sup> UN-Habitat, *Rental Housing: An Essential Option for the Urban Poor in Developing Countries* (n 35); see also Ronlik, Report of the UN Special Rapporteur (n 138) para 28

<sup>199</sup> Ibid; see also Maass (n 19)

<sup>200</sup> Mass (n 17) 48-50; see also Ronlik, Report of the UN Special Rapporteur (n 138) para 34

<sup>201</sup> Ibid

<sup>202</sup> Ibid 44-45

<sup>203</sup> Ibid

<sup>204</sup> *Mellacher and Others v Austria* (n 50); see also *Fleri Soler and Camilleri v Malta Judgment* (n 50); *Hutten-Czapska v Poland* (n 50); *James and Others v United Kingdom* (n 50); *Anthony Aquilina v Malta* (n 50); *Amato Gauci v Malta* (n 50)

control is one of the means through which these two aspects of the right are protected. It protects tenants from rent increase and eviction by private landlords.

Ethiopia as a member State to the ICESCR takes different measures for the realization of the right to adequate housing. However, the failure to adopted specific housing legislation or national housing policy which must be deliberate, concrete and targeted as clearly as possible towards the realization of housing rights, Ethiopia has failed to take adequate measures to properly implement its immediate obligation to realize the right to adequate housing.

## CHAPTER THREE

### Rental Control Laws: History, Rationale and International Experience

#### 3.1. Introduction

Many groups in society, the young, students, migrants, recently independent households and divorced, all need the kind of accommodation that renting can provide.<sup>205</sup> Rental housing offers numerous benefits, such as providing shelter for transitional workers and to those who are poor or disabled, affordability, flexibility, mobility and others.<sup>206</sup> The global trend toward increasing urbanization also pushes markets towards rental housing.<sup>207</sup>

Across the world, approximately 1.2 billion people (around one third of the urban population and one sixth of all people in the world) live in rented accommodation, the great majority of towns and cities.<sup>208</sup> According to Housing Statistics in the European Union 2010, 40 percent population in Austria, 54 percent population of Germany and 56.1 percent in Switzerland are tenants.<sup>209</sup> In developing countries, the largest population of urban Africa are tenants, for instance, Kimusi (Kenya), Cairo (Egypt) and Lagos (Nigeria) 82, 63 and 49 percent of population are tenants respectively<sup>210</sup>; in Asia comprise approximately one third of the urban population.<sup>211</sup>

There are three types of potential suppliers of rental housing: individuals or small-scale owners, institutional investors and non-profit or limited-profit providers of social rental housing, including government.<sup>212</sup> The first category is the most numerous in almost all countries; they own one or small number of units and they may rent out a room in their house or an apartment in the same building in which they live in.<sup>213</sup>

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<sup>205</sup> Peppercorn and others (n 31) 3; see also The African Rental Housing Conference (n 133); UN-Habitat, *Rental Housing: An Essential Option for the Urban Poor in Developing Countries* (n 35)

<sup>206</sup> Ibid 4; see also Ronlik, Report of the UN Special Rapporteur (n 138) para 26

<sup>207</sup> Ibid 5

<sup>208</sup> Gilbert (n 31) 1

<sup>209</sup> Rolnik, Report of the UN Special Rapporteur (n 138) 21

<sup>210</sup> UN-Habitat, *Rental Housing: An Essential Option for the Urban Poor in Developing Countries* (n 35) 11-13

<sup>211</sup> Ibid

<sup>212</sup> Peppercorn and others (n 31) 5; see also UN-Habitat, *Rental Housing: An Essential Option for the Urban Poor in Developing Countries* (n 35)

<sup>213</sup> Ibid 8; see also UN-Habitat, *Rental Housing: An Essential Option for the Urban Poor in Developing Countries* (n 35)

The first two categories are referred to as private rental house providers while the third category is referred to as social or public rental house providers. The social or public rental housing generally serves targeted populations, such as low-income families, the elderly, the disabled and others in needy situation.<sup>214</sup> The rental housing market due to different factors failed to attain the intended aim in general and particularly failed to provide affordable housing to poor and low-income households.<sup>215</sup> Hence, rental market regulations were being issued since early 1900s as the paper going to discuss it in the following sections.

### **3.2. Historical Development of Rent Control Laws**

The historical development of rent control laws can be seen in two periods: the traditional and modern one. The modern developments of rent control laws begin with the world wars specifically in war prone areas, such as Europe and North America; but war, while it is the greatest single cause of the displacements that lead to the need of for rent control, is of course not the sole cause.<sup>216</sup> Some of the primitive rent control was inspired by the plight of the Jews of the 16<sup>th</sup> century Rome, who, confined to the Ghetto by Papal decree, found themselves at the mercy of their Christian landlords.<sup>217</sup> A century later the Lisbon earthquake called forth a royal order from the Portuguese monarch, imposing drastic penalties on anyone guilty of increasing rents.<sup>218</sup> The Government of France repeatedly during the 16<sup>th</sup> and 17<sup>th</sup> centuries found it necessary to grant reductions and delays to tenants who, because of the stagnation of commerce caused by civil strife, were unable to pay their quarterly rents.<sup>219</sup>

The modern period development began with the catastrophic events of the First World War. It was reintroduced in European countries; North American countries also followed late at the Second World War.<sup>220</sup> It was justified to impose rent control laws during wartime to ensure affordability of housing; the form of control was a freeze on nominal rent that has come to be termed as “first-generation” rent control.<sup>221</sup> The rent freeze continued after the end of the war

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<sup>214</sup> Ibid 9

<sup>215</sup> Ibid

<sup>216</sup> John W. Wills, ‘Short History of Rent Control Laws’ (1950) 36 CLR 54, 55-57

<sup>217</sup> Ibid

<sup>218</sup> Ibid

<sup>219</sup> Ibid

<sup>220</sup> Tore Ellingsen and Peter Englund, ‘Rent Regulation: An Introduction’ (2003) 10 SEPR 3, 3; see also Dev (n 18); Sullivan and Decker (n 18) 103; Lind, ‘Rent Regulation and New Construction (n 32) 138;

<sup>221</sup> Ibid; see also Richard Arnott, ‘Time for Revisionism on Rent Control?’(1995) 9 JEP 99, 100; Lind, ‘Rent Regulation: Conceptual and Comparative Analysis (n 34)

on the reason that the return of soldieries would otherwise cause a rapid and disruptive rise in rents, at least in certain markets.<sup>222</sup>

### 3.2.1. First Generation Rent Control

Rent control refers to control by the government of the rent a landlords may charge for a housing unit.<sup>223</sup> Rent control laws contain two main elements: security of tenure, establishing a minimum duration of occupancy and limitations on the eviction of tenants; and control on levels of price increase, intended both to preserve affordability and to preclude de facto economic eviction.<sup>224</sup> This generation of rent control laws are also termed as “hard rent control”.<sup>225</sup> The first-generation rent controls set rent ceiling beyond which landlords are unable to increase rents.<sup>226</sup>

Broadly speaking, the rent control continued through the 1970s as result of both the radicalism of the period and unsettling inflation in the wake of the oil crisis.<sup>227</sup> The history of rent control teaches lesson that once such controls have been imposed, they are difficult to remove. Rent control in almost every instance had been adopted as temporary measure, but in few cases did the legislators find it possible to remove controls as early as had been hoped.<sup>228</sup> The difficulty of removing rent controls was not only due to political considerations, even though the political power of the tenant and working class did have much to do with it.<sup>229</sup> Tenant protection became the main reason for not removing rent control even after the conclusion of peace.<sup>230</sup> This development was the outcome of its far-reaching effects on the standard of living of the wage earning classes.<sup>231</sup> Although total removal of rent control was not attained, some relaxation

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<sup>222</sup> Arnott (n 221); see also Werczberger (n 36); Maass (n 19)

<sup>223</sup> Ibid 90; see also Maass (n 19)

<sup>224</sup> Haffner and others (n 35) 217; see also Maass (n 19)

<sup>225</sup> Arnott (n 221); see also Maass (n 19); Lind, ‘Rent Regulation: Conceptual and Comparative Analysis’ (n 36) 43

<sup>226</sup> Ryan Bourne, *The Flaws in Rent Ceiling* (IEA Discussion Paper No. 55, 2014) 10; see also Hans Lind, ‘Rent Regulation: Conceptual and Comparative Analysis’ (n 36) 43

<sup>227</sup> UN-Habitat, *Rental Housing: An Essential Option for the Urban Poor in Developing Countries* (n 35) 158; see also Leon Betten Dorf and Erik Buys, ‘Rent Control and Virtual Prices: A Case Study for Interwar Belgium’ (1997) 57 JEH 654, 656

<sup>228</sup> UN-Habitat, *A Policy Guide to Rental Housing in Developing Countries* (n 132) 20; see also UN-Habitat, *Rental Housing: An Essential Option for the Urban Poor in Developing Countries* (n 35)

<sup>229</sup> Ibid; see also UN-Habitat, *Rental Housing: An Essential Option for the Urban Poor in Developing Countries* (n 35)

<sup>230</sup> UN-Habitat, *Rental Housing: An Essential Option for the Urban Poor in Developing Countries* (n 35) 158-159

<sup>231</sup> Ibid

were made to the first generation controls. The relaxation brought the second-generation rent control laws into picture.

### **3.2.2. Second Generation of Rent Control**

The rent control laws imposed during the 1970s differed significantly from the first generation rent control programs. They have been termed variously soft rent control, rent review and rent regulation.<sup>232</sup> They entail a complex set of regulations governing not only allowable rent increase, but also conversion, maintenance, and landlord-tenant relations.<sup>233</sup> The second-generation rent control aims to stabilise the rental market and improve the tenants' security of tenure.<sup>234</sup> This generation of controls commonly permit automatic percentage rent increases related to the rate of inflation.<sup>235</sup> There is no nominal rent freeze; there might be no significant difference between actual rents and market rents in long run.<sup>236</sup> They also contain provisions for rent increase in case of hardship provisions, which allow discretionary increases to assure that landlords do not face cash-flow problems; and rate-of-return provisions, which permit discretionary rent increases to ensure landlords a "fair" rate of return.<sup>237</sup>

Generally, second generation controls are different from first generation controls in that there is considerable flexibility with second-generation rent control package than with first-generation rent control; and, hence, it is so inappropriate to generalize about the effects of first-generation control to the second-generation control package.<sup>238</sup> Most of the European countries and North America control programs currently in effect also fit the above description of second-generation rent controls.<sup>239</sup>

### **3.2.3. Third Generation of Rent Control**

In the early 1990s tenancy rent control, that is, rents regulation within a tenancy, but not between tenancies replaced the second-generation controls.<sup>240</sup> It refers to regulation of rent during tenancy so that rent increases are controlled within a tenancy but are unrestricted

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<sup>232</sup> Werczberger (n 36) 339; see also Arnott (n 221)

<sup>233</sup> Deschermeier and others (n 36)3-5; see also Werczberger (n 36); Arnott (n 221)

<sup>234</sup> Ibid; see also Werczberger (n 36)

<sup>235</sup> Lind, 'Rent Regulation: Conceptual and Comparative Analysis' (n 36) 43

<sup>236</sup> Ibid; see also Lind, 'Rent Regulation and New Construction' (n 18)

<sup>237</sup> Lind, 'Rent Regulation and New Construction' (n 18) 138

<sup>238</sup> Ibid; see also Lind 'Rent Regulation: Conceptual and Comparative Analysis' (n 34)

<sup>239</sup> Ibid ; see also Sullivan and Decker (n 18) 103

<sup>240</sup> Sullivan and Decker (n 18) 102-103; see also Arnott (n 221) 100

between tenancies.<sup>241</sup> In other words, it is only sitting tenants that are benefited from such rent regulation while new tenants are not beneficiaries of rent regulation since it is subject to free negotiation.<sup>242</sup> In fact, such free negotiation is allowed only to the extent that the negotiated amount is not unreasonable rent; for instance, in Germany during new lease agreement rent is freely negotiated between the parties as long as it does not amount usury.<sup>243</sup>

The main reason for the introduction this generation was similar to the second-generation rent control, that is, the introduction of rent allowances in many countries from the 1970s onwards.<sup>244</sup> The introduction of housing allowance also enabled to state to relax the rather stringent post-war rent controls in the private rented sector without jeopardizing housing provision and affordability for low-income households facing rent increase.<sup>245</sup> They were seen as a cost-efficient tool that permitted rents to rise, thus helping to keep the market efficient.<sup>246</sup>

This generation was more popular because it strikes a balance between those who advocate full deregulation of private rental market and those who demand full rent control.<sup>247</sup> It satisfies both landlords and tenants by allowing initial rents to be market clearing and hence avoids the well-known difficulties of rent controls such as the mismatch of housing tenants and the issue of key money.<sup>248</sup> Furthermore, it provides tenants with a degree of security of tenure by preventing excessively sharp rent increases, which can generate economic evictions, nor it does allow eviction for the purposes of rehabilitation or redevelopment.<sup>249</sup>

### **3.3. Types of Rent Controls**

According to Hans Lind, discussion under conceptual and comparative analysis of rent regulation, the rent regulations can be divided into two main groups.<sup>250</sup> These are rent control that protects only sitting tenants and covers all tenants (protects both new and sitting tenants).<sup>251</sup>

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<sup>241</sup> Kaushik Basu and Patrick M. Emerson, 'The Economics of Tenancy Rent Control' (2000) 110 EJ 938, 940; see also Arnott (n 221) 92

<sup>242</sup> Ibid; see also Arnott (n 221)

<sup>243</sup> Scanlon and Kochan (n 20)53; see also The African Rental Housing Conference (n 133); Peppercorn and others (n 29) 95

<sup>244</sup> Ellingsen and Englund (n 211) 3-5

<sup>245</sup> Ibid; see also Sullivan and Decker (n 18)

<sup>246</sup> Ibid

<sup>247</sup> Sullivan and Decker (n 18)

<sup>248</sup> Ibid; see also Arnott (n 221)

<sup>249</sup> Ibid.

<sup>250</sup> Lind 'Rent Regulation: Conceptual and Comparative Analysis' (n 34) 44-48.

<sup>251</sup> Ibid

The first type of rent control accord protection only for sitting tenants against rent increase higher than the market level.<sup>252</sup> It protect sitting tenants against demand related rent increase.<sup>253</sup> Richard Arnott referred this type of rent control as tenancy rent control that rent increase are controlled within tenancy but are unrestricted between tenancies.<sup>254</sup> Hence, new tenants are not protected under this type of rent control since initial rent is subject to free negotiation of both parties as long as it is reasonable.<sup>255</sup> It also accords security tenure protection to the sitting tenants since it would be meaningless if landlord could demand rent increment to renew a lease.<sup>256</sup>

The second type of rent control accords protection to all tenants irrespective of their status either sitting or new tenants.<sup>257</sup> It protect all tenants against rent higher than the market level.<sup>258</sup> It aims at protecting all tenants against exploitation by landlords using their monopoly status, lack of information by tenants, weak bargaining power of tenants, high or urgent demand for dwelling by tenants.<sup>259</sup> According to Arnott this type of rent control is either first or second-generation rent control that protects all tenants irrespective their status.<sup>260</sup>

### **3.3.1. How Rent and Rent Increase are Determined**

There are bundles of factors that determine rent, which can be classified into economic and non-economic factors.<sup>261</sup> The economic factors include construction cost, running cost, income level and others while non-economic factors include housing characteristics such as number of bedrooms, number of other rooms, types of house, type of building, size, amenities, services, location and others.<sup>262</sup> Based on these factors rent will be determined using different techniques and most commonly used are the following two techniques.<sup>263</sup> First, housing services

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<sup>252</sup> Lind, 'Rent Regulation: Conceptual and Comparative Analysis' (n 36) 45-47; see also Lind, 'Rent Regulation and New Construction' (n 32) 138-140

<sup>253</sup> Ibid; see also Lind, 'Rent Regulation and New Construction' (n 32)

<sup>254</sup> Arnott (n 221) 92; see also Basu and Emerson (n 241) 940.

<sup>255</sup> Scanlon and Kochan (n 20) 53; see also The African Rental Housing Conference (n 133); Peppercorn and others (n 31) 95.

<sup>256</sup> Lind, 'Rent Regulation: Conceptual and Comparative Analysis' (n 36) 45; see also Lind, 'Rent Regulation and New Construction' (n 18)140.

<sup>257</sup> Lind, 'Rent Regulation: Conceptual and Comparative Analysis' (n 36) 46-48; see also Lind, 'Rent Regulation and New Construction' (n 18) 139-140; Ellingsen and Englund (n 221) 8

<sup>258</sup> Ibid; see also Lind, 'Rent Regulation and New Construction' (n 18); Ellingsen and Englund (n 221) 8

<sup>259</sup> Ibid; see also Lind, 'Rent Regulation and New Construction' (n 18); Ellingsen and Englund (n 221)

<sup>260</sup> Arnott (n 221) 92; see Basu and Emerson (n 241) 940; Bourne (n 246) 10-15

<sup>261</sup> G. Stacy Sirmans and John D. Benjamin, 'Determinants of Market Rent' (1991) 6 JRER 357, 357

<sup>262</sup> Ibid 358

<sup>263</sup> Ibid

technique: the government creates a classification system, usually based on the location, construction material, size of the unit and the amenities available, and set a rent accordingly, for instance, Tunisia fix rent as a price per square unit with differing prices or weights depending on the amenities provided.<sup>264</sup> Sometimes the value of the housing services is determined indirectly; for instance, in Sweden rents for public units are determined by negotiation between tenant organizations and the government, and rents of comparable private units are set accordingly.<sup>265</sup> The second technique seeks to directly address this issue; market rents are set to allow landlords a “fair rate of return.”<sup>266</sup> Usually these rates are set in order to allow amortization of the construction and land costs over a ten-to-fifteen-years period.<sup>267</sup> In highly inflationary times, this return may be insufficient to promote investment in rental housing.<sup>268</sup>

With regard to allowable rent increase, the most commonly used approach is to put limits on the extent to which rents can be increased.<sup>269</sup> Unlike the fair rent approach, this format does not attempt to set the rent but only to limit how high it can go.<sup>270</sup> The maximum allowable increase is either a fixed percentage (e.g. Dubai, Philippines, Tunisia) or a fraction of the construction cost index (e.g. France), or consumer price index (e.g. Italy, Netherland, Spain, certain cities of the in the USA), or a combination of the two (e.g. Canada).<sup>271</sup> In case of inflation, rising costs and improvement works done on the building increasing rent is allowed, for instance, in Philippines<sup>272</sup> and France the annual rent increasing is allowed up to 10and 20 percent respectively.<sup>273</sup> In some countries, there is a prescribed amount of rent increase, but the parties are free to accept it or apply for revision.<sup>274</sup> If one of the parties feels that, the increase

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<sup>264</sup> Stephen Malpezzi and Gwendolyn Ball, *Rent Control in Developing Countries* (WB Discussion paper No. 129, 1991) 17

<sup>265</sup> *Ibid*

<sup>266</sup> *Ibid* 18

<sup>267</sup> *Ibid*

<sup>268</sup> *Ibid*

<sup>269</sup> Pend Deng, *A Comparative Study of the Rental Housing Market in Five EU Countries and Lessons for the Chinese* (Real Estate and Construction Management, Stockholm 2009) 51; see also Malpezzi (n 264) 19

<sup>270</sup> Malpezzi (n 264)

<sup>271</sup> Prince Christian, *Investment Analysis: The Pros and Cons of Rent Control* (2009)

<<https://www.globalpropertyguide.com/investment-analysis/The-pros-and-cons-of-rent-control>>accessed on 1 May 2017, 2

<sup>272</sup> *Ibid* 3

<sup>273</sup> Hans Lind, ‘Effect of Rent Regulations and Contract Structure on Renovation: A Theoretical Analysis of the Swedish System’(2015) 394; see also *The African Rental Housing Conference* (n 133) 8

<sup>274</sup> Deschermeier and others (n 34)

is too much or too little, they can ask for rental authority to adjust the rent (e.g. Canada).<sup>275</sup> In others, the landlord can apply for a rent increase higher than the prescribed amount, if he/she would otherwise experience hardship, or for capital recovery or renovation.<sup>276</sup>

### **3.4. Rationales and Arguments for Rent Control Laws**

Rent control is an attempt to resolve, or mitigate, the high cost of rental housing. It is the most controversial government program to provide affordable housing to low-income families. Different justifications and arguments were forwarded in favour of rent control laws.

Dunn and Quang argue that adequate housing is necessary for the life and well-being of any human being. As with all vital societal resources, government hold a legitimate interest in ensuring reasonable access to housing for all citizens.<sup>277</sup> The options to achieve the goal of reasonable access to housing ranges from government ownership of public housing stock to laissez faire free-market capitalism.<sup>278</sup> Free-market bears the potential to provide such grounding in that competitive markets can achieve a fair price, but in many instances of rental housing market conditions depart in important aspects from the assumptions of free market economies, calling into question whether the action of a free market necessarily results in a just price.<sup>279</sup> The relevant assumptions underlying free market are the presumption that there are a great number of renters and landlords in a particular market, both renters and landlords possess the same degree of bargaining power, and the rental stock is of a relatively homogenous character; but the truth is that rental-housing markets do not reflect these assumptions.<sup>280</sup> Under such conditions of market failure, rent regulation is justified. However, such regulation needs to reflect the extent to which the local rental housing market violates free market conditions; and regulation is empirically justified to the extent that there is evidence of market failure.<sup>281</sup> In order to be normatively justified, the specific form of such regulation takes ought to demonstrate respect for the rights of all affected parties, achievement of the greatest good for the greatest number, and preference for the interest of the least advantaged members of the society.<sup>282</sup>

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<sup>275</sup> Christain (n 271)

<sup>276</sup> Ibid 4

<sup>277</sup> Dunn & Quang (n 38) 306

<sup>278</sup> Ibid

<sup>279</sup> Ibid 291-294; see also Zenou (n 38) 5-7

<sup>280</sup> Ibid 295; see also Zenou (n 38)

<sup>281</sup> Ibid 305

<sup>282</sup> Ibid 295-304

Radin also arguing in favour of rent control states that in some circumstances the tenant's personal use of her/his apartment as her/his home carries more weight, on a moral basis, than the landlord's commercial interest in reclaiming the apartment.<sup>283</sup> Personal property is bound up with a person's personhood to the extent that self-investment in the specific object take place, while fungible property is held by persons for commercial reasons and is exchangeable.<sup>284</sup> The connection between the personal property and individual contributes to self-development and enables the person to participate in society as fulfilled person.<sup>285</sup> Radin argues that the tenant's rented property is her home, which is justifiable form of personal property, because self-investment has taken place.<sup>286</sup> The preservation of the tenant's interest in the home therefore becomes 'a priority claim over curtailment of the merely fungible interest of others'; it follows from Radin's personhood perspective that property for personhood necessitate more stringent legal protection than the fungible property, because personal property is deemed more important by social consensus.<sup>287</sup>

Despite housing shortage, Radin underlines the fact that measures promoting security of tenure will enable tenants in general to foster and develop a sense of connectedness in the given property; this type of home interest is absent in an unregulated private landlord-tenant regime, because the home interest depends on strengthened levels of tenure security.<sup>288</sup> In addition, Radin places emphasis on the parties' unequal bargaining power, which is evident if one considers the impact of loss; if landlord unilaterally decides to terminate the lease and decide on eviction, the tenant will lose her home, her sense of connectedness and place in society in a matter of months, if not weeks.<sup>289</sup> On other hand, if the tenant decides for instance to terminate a periodic tenancy the landlord might lose some commercial gain, if anything at all.<sup>290</sup> The landlords' interest is purely commercial and in fact "fungible" as she can merely replace the current tenant, while the tenant's loss could be substantial from a personhood perspective.<sup>291</sup>

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<sup>283</sup> Margaret Jane Radin, 'Residential Rent Control' (1986) 15 PPA 350, 360

<sup>284</sup> Margaret Jane Radin, 'Property and Personhood' (1982) 34 SLR 957, 959; see also D. Benjamin Barros, 'Home as a Legal Concept' (2006) 46 SCLR 225,

<sup>285</sup> Maass (n 19) 54; see also Barros (n 283)

<sup>286</sup> Radin, 'Residential Rent Control' (n 283) 360

<sup>287</sup> Ibid 365

<sup>288</sup> Ibid 362

<sup>289</sup> Ibid

<sup>290</sup> Ibid

<sup>291</sup> Radin, 'Property and Personhood' (n 284) 978-979

Sang also states, in his discussion of the Hong Kong and Ontario experiences, that the justification for rent control appears to be consistent with the experiences of many countries.<sup>292</sup> For instance, the justification for deregulation of private rental sector in both England and South Africa was that the social rental housing will be provided (as alternative) to accommodate low-income and poor tenants.<sup>293</sup> It sees rent control as a substitute for public/social housing and thus serves to reduce the government's fiscal burden.<sup>294</sup> This view suggests that rent control is especially in demand where the government's fiscal position does not allow the introduction or expansion of its public housing programme.<sup>295</sup> Rent control is becoming less and less important as public housing expands.<sup>296</sup> The implication of this view is that the expansion of public housing is unlikely because of fiscal restraint; rent control is also unlikely to be abandoned.<sup>297</sup> If a government choose to end an existing rent control scheme, it must be prepared to have systems in place to protect tenants from sharp increases.<sup>298</sup> It might also have to prepare for increased budgetary costs as this social protection moves from the private to the government.<sup>299</sup>

David Hulchanski also argues that if the rental market were functioning efficiently and if we as a society agreed with the way in which the market determines what is efficient and equitable, there would be no rationale for rent controls.<sup>300</sup> The rationale for rent regulations rests on two conditions: the failure of private rental market to function and the societal definition of criteria relating to rental housing broader than simply "economic efficiency" as it is defined and operationalized by the housing market.<sup>301</sup> Under these conditions, there is a general rationale for rent regulations aimed at achieving a number of ends that would otherwise not be achieved. Regulation can only achieve certain limited ends; that is, they can prevent some aspects of the rental situation from growing worse and enforce certain basic precepts of justice and equity in the landlord-tenant relationship.<sup>302</sup> More specifically, a carefully designed and equitably administered system of rent regulations can do the following: improve security tenure, maintain

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<sup>292</sup> Sang Ho (n 41) 1184-1185

<sup>293</sup> Kemp (n 10) 1020; see also Maass (n 19) 47

<sup>294</sup> Sang Ho (n 41)

<sup>295</sup> Ibid; see also Kemp (n 10)

<sup>296</sup> Ibid; see also Kemp (n 10)

<sup>297</sup> Peppercorn and others (n 31) 37

<sup>298</sup> Ibid; see also Kemp (n 10)

<sup>299</sup> Ibid; see also Maass (n 19)

<sup>300</sup> Hulchanski (n 39) 72

<sup>301</sup> Ibid; see also Zenou (n 38)

<sup>302</sup> Ibid 72; see also Zenou (n 38)

the affordability of the existing rental stock, prevent a regressive redistribution of income in tight rental market, and mediate conflicts over rental tenure.<sup>303</sup> Given the feasible range alternatives, rent regulations do appear to be a most reasonable and practical means of achieving the above four ends.<sup>304</sup>

### **3.5. Arguments against Rent Control**

In many countries rent controls were introduced at the outbreak of the war as a means of preventing inflation.<sup>305</sup> Critics of rent control claim that such measures produce inefficiencies, distort market values, reduce the housing supply and encourage corruption and low housing maintenance.<sup>306</sup> It has also been criticized for not targeting low-income household since controlled rents and protected tenancies usually favour those who have lived in rental housing for years over potential new tenants,<sup>307</sup> and there is no mechanism to ensure that those benefiting from rent control are the low-income households.<sup>308</sup> Generally, economists claim that rent controls should be avoided because they are:

Inequitable: favouring some of tenants at the expense of others, particularly sitting tenants against those who wish to become tenants; protecting some tenants who do not need protection because they are not poor while not protecting other households who are poor; favouring tenants at the expense of landlords, even when the tenants are better off than landlords; and operating in formal housing markets but not in the informal areas where most poor tenants congregate.<sup>309</sup>

Inefficient: sometimes distorting the most appropriate use of housing, for example, by encouraging small tenant households to occupy more space than they need when larger households lack shelter; when making renting unprofitable, they discourage proper maintenance, particularly when capital values are falling; they sometimes encourage official corruption. As any other price control, rent control also distort incentives and price signals, leading to inefficient allocation of resources, that is, land and building since in the presence of

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<sup>303</sup> Ibid 73-85

<sup>304</sup> Ibid 73

<sup>305</sup> UN-Habitat, *Rental Housing: An Essential Option for the Urban Poor in Developing Countries* (n 35) 158; see also UN-Habitat, *A Policy Guide to Rental Housing in Developing Countries* (n 132) 20

<sup>306</sup> Scanlon and Kochan (n 20) 10

<sup>307</sup> Kumar (n 42)

<sup>308</sup> Ibid

<sup>309</sup> Ault and Saba (n 42); see also Glaeser (n 42); UN-Habitat, *Rental Housing: An Essential Option for the Urban Poor in Developing Countries* (n 35) 159

rent controls, house do not always get allocated to those who are willing to pay the highest rent.<sup>310</sup>

Counter-productive: discouraging landlords from providing more accommodation and thereby increasing the overall cost of renting. It leads to the formation of black, uncontrolled rental housing markets. The rents in these market are much higher than they would have been in absence of rent controls; this is because of two reasons: first, the excess demand from the controlled markets spills over to the uncontrolled markets bidding up prices there; second, the supply in the uncontrolled market is also affected, as there is always a fear of coming under regulation, which deters landlords from letting out in the uncontrolled markets.<sup>311</sup>

### **3.6. Rental Control in International Human Rights Laws**

The obligation to protect, under the ICESCR, requires state to prevent violations of the right to adequate of individual by third parties, such as landlords or private developers. Under General Comment No. 4 affordability is one of the essential elements of adequate housing; the Committee on ESCRs states that steps should be taken by States to ensure that the percentage of house related costs is generally commensurate with income levels.<sup>312</sup> As for rental or lease arrangement, tenants should be protected from unreasonable rent levels or rent increase by appropriate means, including legislative measure.<sup>313</sup> The legislative means by which States attempt to ensure that housing is affordable include inter alia: subsidy programmes, the direct provision of housing by State, rent price controls, the availability of affordable construction materials, incorporating affordable housing into general economic policies, and employer provided housing.<sup>314</sup>

General Comment 4 also state that right to adequate housing is justiciable so that State parties required to provide domestic legal remedies for complaints against illegal actions carried out or supported by landlords (whether public or private) in relation to rent levels, dwelling maintenance, and others complaints.<sup>315</sup> Furthermore, the Special Rapporteur of the Sub-

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<sup>310</sup> Ibid; see also S. H. Anderson, 'Motives for Investments in Housing Rehabilitation among Private Landlords under Rent Control' (1998) 13 HS 177, 200; UN-Habitat, *Rental Housing: An Essential Option for the Urban Poor in Developing Countries* (n 35) 159

<sup>311</sup> UN-Habitat, *A Policy Guide to Rental Housing in Developing Countries* (n 132) 20

<sup>312</sup> Committee on Economic, Social and Cultural Rights, General Comment 4 (n 17) para 8

<sup>313</sup> UN-Habitat, *Enhancing Security of Tenure: Policy Directions, Enhancing Urban Safety and Security* (n 48) 27

<sup>314</sup> Ibid

<sup>315</sup> Committee on Economic, Social and Cultural Rights, General Comment 4 (n 17) para 17

Commission on the right to adequate housing outlined a series of acts and omissions by States that could constitute possible infringement of the right to adequate housing.<sup>316</sup> Among the omission constituting housing rights violation, Member State failure to intervene in the housing market, especially concerning rent levels, rent control, rent subsidies, issues of security of tenure and prevention of undue speculation is one.<sup>317</sup>

Generally, as one can understand from the above discussion, housing should be affordable and governments should have to take steps that are necessary to make housing affordable especially to the poor for the purpose of the full realization of the right to adequate housing, including, but not limited to, rent control. In fact, some countries by abolishing rent control or deregulating the rental market they introduced different subsidies, in the form of rent allowance/benefits and standards that are sometimes referred as de facto rent controls.<sup>318</sup> For instance, Sullivan and Decker assert that although it is a common assertion that the private rented sector is deregulated and decontrolled, the types of control and regulation that exist in the sector have been dispersed through, for example, controls on housing benefit, property quality, and less so, security of tenure.<sup>319</sup> Though States are at discretion to opt for either rent control or rent allowances they need to consider their economic capacity since the latter option is more resource intensive than the former one.

There are case laws in the European human rights system that support the above discussion. The case of *Mellacher and others v Austria* shows the need and how to balance between property right of landlord and right to housing of tenant.<sup>320</sup> The case deal with the application of Article 1 of Protocol 1 to the European Convention on the “peaceful enjoyment of possessions” in the context of rent control measures.<sup>321</sup> The applicant landlord argued that these rights under Protocol 1 were infringe due to the imposition of rent control measures on the property an applicant owned.<sup>322</sup> However, the Court viewed the matter differently and made the following five main finding in their judgement, which is significant in housing rights particularly regarding to the rights of tenants. The First is that the disputed reductions [in rent] were neither a formal nor a de facto expropriation but amounted to a control of the use of the

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<sup>316</sup> Maxim, Special Rapporteur (n 143) para 144

<sup>317</sup> Ibid para 145

<sup>318</sup> Sullivan and Decker (n 18) 96

<sup>319</sup> Ibid

<sup>320</sup> *Mellacher and others v Austria* (n 50)

<sup>321</sup> Ibid

<sup>322</sup> Ibid

property. Second, the legislature has wide discretion with regard to the implementation of social and economic policies, in particular in the field of housing. Third, the justifications given by the State for the legislation in question cannot be regarded as manifestly unreasonable; they represent the pursuit of a legitimate aim in the general interest. Fourth, in remedial social legislation and in particular in the rent control, it must be open to the legislature to take measures affecting the further execution of previously concluded contract. Fifthly, the rent control measures adopted did not fall outside the state's margin of appreciation, and although the rent reductions were striking in the amount, they did not constitute a disproportionate burden.<sup>323</sup>

In the case of *James and Others v United Kingdom* rent control matters were also raised by the Court in the context of the right to peaceful enjoyment of one's possessions.<sup>324</sup> The Court held that:

[M]odern societies consider housing of the population to be a prime social need, the regulation of which cannot entirely be left to the play of market forces. The margin of appreciation is wide enough to cover legislation aimed at securing greater social justice in the sphere of peoples home, even where such legislation interferes with the existing contractual relations between private parties and confers no direct benefit on the State or the community at large; in particular, therefore, the aim pursued by the leasehold reform legislation is legitimate one.<sup>325</sup>

Furthermore, the Court, in other cases, stated that Article 1 of Protocol 1 does not guarantee a right to full compensation in all circumstances.<sup>326</sup> Legitimate objectives of "public interest", as pursued by measures of economic reform or measure designed to achieve greater social justice, that is, rent control, may call for less than full market value reimbursement.<sup>327</sup> The definition of "possession" under this article also includes the right of landlord to derive profit from rented property as part of tenants' rent payment.<sup>328</sup> The Court distinguished the *Spadea and Scalabrino v Italy* case from other where limiting the right of landlords had been proportionate on the grounds that the landlord here had never entered a freely negotiated lease, had lost the

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<sup>323</sup> Ibid

<sup>324</sup> *James and Others v United Kingdom* (n 50) para 47; see also *Anthony Aquilina v Malta* (n 50); *Amato Gauci v Malta* (n 50)

<sup>325</sup> Ibid

<sup>326</sup> Ibid

<sup>327</sup> *Hutten-Czapska v Poland* (n 50); see also *Anthony Aquilina v Malta* (n 50); *Amato Gauci v Malta* (n 50)

<sup>328</sup> Ibid

right to terminate the lease and the rent levels set were below that required to cover necessary maintenance expenses.<sup>329</sup> Therefore, legislation, in this case rent control law, aimed at securing greater social justice with regard to right to housing was justified, even when it interferes with freedom of contractual relations between private parties.

### **3.7. International Experience**

Rent controls were introduced in North America, Latin America and Europe mainly to solve housing problems during the two World Wars while later governments in African and Asian countries introduced rent controls as part of an ideological commitment to socialism.<sup>330</sup> This shows that rent controls were introduced into different countries regardless economic system they follow, that is, capitalist/free market economy or command/welfare economic systems.<sup>331</sup> Normally, rent controls were introduced as a temporary expedient to cope with special difficulties although few governments managed to remove them when situations changed.<sup>332</sup>

Almost over 60 countries all over the world have rent control law in place; many of these are developing countries in Africa, Asia and Latin America.<sup>333</sup> Due to high population growth rates and low per capita incomes, the relative demand of ownership housing in these countries is low.<sup>334</sup> While there are instances of rent controls being detrimental to the interests of both landlords and tenants, there are also cases where cities under rent controls have not faced any such problems.<sup>335</sup> The reason for this such effects is that many countries are still stuck on first generation controls while others are trying to repackage the first generation controls as second or third generation ones without changing their basic nature.<sup>336</sup> Some examples from all over the world supporting both sides of the story were presented as follows.

There are cases all over the world where imposition of rent controls has led to various problems. A study done in New York City in 1997 asserted that if there had been free housing market, 20% of tenants has either more or less number of rooms than they would have stayed in. The study also showed that the benefits to the tenants in the controlled sector (in the form of lower

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<sup>329</sup> *Spadea and Scalabrino v Italy*, Series A 315B (ECHR 1995)

<sup>330</sup> *Ibid*

<sup>331</sup> Gilbert (n 31) 2

<sup>332</sup> *Ibid*

<sup>333</sup> Dev (n 18) 17

<sup>334</sup> *Ibid* 18

<sup>335</sup> *Ibid*

<sup>336</sup> *Ibid* 18; see also Kumar (n 42); Ault and Saba (n 42)

rents) are far outweighed by the increased prices for the tenants in the uncontrolled sector.<sup>337</sup> Further, another study done by Malpezzi in 1998 on the housing market in Cairo revealed that rent payments in the controlled sector were accompanied by huge side payments, which substantially reduce any subsidies that the tenants would have received from a ceiling on rents.<sup>338</sup> Munch and Svarver in 2002 also asserted that rent control severely affected tenancy duration by as much as six years.<sup>339</sup>

On the other hand, in some countries, notably, Austria, Germany and Switzerland, and over the course of many decades, in some cities of the United States<sup>340</sup>, rent control has favourable effects on stabilizing the rental sector and maintaining access by low-income households to urban housing that is well located.<sup>341</sup> Rental investment has been maintained though rent controls operate in both German and Switzerland.<sup>342</sup> In Switzerland, rental investments have been sustained even though rent controls reduce the housing costs of long-standing tenancy, and legislation prevents arbitrary eviction and the exploitation of temporary shortages.<sup>343</sup> In Quebec, Canada, a consistent and well-established regulatory system, with a reasonable balance between protecting tenants and encouraging investment, has been retained.<sup>344</sup> In Uruguay, the Government has introduced a different tool to balance the interests of landlords and tenants, through a fund that provides guarantees to cover costs arising from non-payment of rent and service payments.<sup>345</sup> In Philippines, a study done on the effects of rent controls in Manila showed that net benefits of rent control are positive.<sup>346</sup> There are numerous other examples in Egypt, Canada and Mexico where rental-housing market flourished under moderate to strict rent control regimes.<sup>347</sup>

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<sup>337</sup> Ibid; see also Glaeser (n 42); UN-Habitat, *Rental Housing: An Essential Option for the Urban Poor in Developing Countries* (n 35) 159

<sup>338</sup> Ibid 19

<sup>339</sup> Ibid

<sup>340</sup> Rolnik, Report of the UN Special Rapporteur (n 138) para 44

<sup>341</sup> Gilbert (n 31) 6

<sup>342</sup> Ibid 8

<sup>343</sup> Werczberger (n 32) 337-353

<sup>344</sup> Rolnik, Report of the UN Special Rapporteur (n 138) para 36

<sup>345</sup> Ibid

<sup>346</sup> Dev (n 18) 20

<sup>347</sup> Ibid; see also Gilbert and Varley (n 61)

Many arguments against rent controls, though theoretically seems tenable, lack empirical support.<sup>348</sup> As an illustration, there is no empirical evidence that rent controls slow down the construction rate of housing; and the claim that rent controls lead to abandonment too has been contentious, for instance, study in Manhattan's (USA) shows that rent controlled areas have seen no abandonment at all despite being under strict rent controls.<sup>349</sup> A survey conducted in New Jersey revealed that rent controls had no impact on the supply of new housing and only marginally reduced housing quality.<sup>350</sup> Early and Olsen (1998) using data from 44 urban areas in the United States, they found that rent controls actually lead to a reduction in homelessness.<sup>351</sup>

As housing markets are characterized by asymmetric, there is an adverse selection problem when there is inflation; landlords might thus not rent out their apartments at all or might let out to short term tenants only, in order to adjust their rents for inflation in the future.<sup>352</sup> Hence, even in absence of rent controls, landlords may not always raise housing supply in response to shortages or increase in demand.<sup>353</sup> This was exactly what happened in Spain in 1980s<sup>354</sup> (the deregulation resulted in "chaotic short-termism and high rents" so that soft control had to be reintroduced, Urban Tenancy Act 1994)<sup>355</sup>, and Canada, Toronto in 1998.<sup>356</sup> Relaxation of rent control laws did not lead to an increase in housing supply even as its population increased significantly in the next few years.<sup>357</sup>

Such examples demonstrate that it is possible to design rent regulation and tenancy protection mechanisms that do not distort or discourage the private rental market but actually encourage it.<sup>358</sup> Almost all of the criticism against rent control were mainly from economists and it was targeted against first generation controls; but it is not obvious that the arguments are relevant against second or third generation controls since these generations controls are so different and

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<sup>348</sup> Ibid; see also Konstantin A. Kholodilina and others, *Market Break or Simply Fake? Empirics on the Casual Effects of Rent Controls in Germany* (DIW German Institute for Economic Research, Discussion Papers No 1584, 2016) 1

<sup>349</sup> Ibid; see also Scanlon and Kochan (n 20) 86-91

<sup>350</sup> Ibid; see also Scanlon and Kochan (n 20)

<sup>351</sup> Ibid; see also Scanlon and Kochan (n 20)

<sup>352</sup> UN-Habitat, *Rental Housing: An Essential Option for the Urban Poor in Developing Countries* (n 35) 159-161

<sup>353</sup> Ibid

<sup>354</sup> Ibid

<sup>355</sup> Peppercorn and others (n 29) 38

<sup>356</sup> UN-Habitat, *Rental Housing: An Essential Option for the Urban Poor in Developing Countries* (n 35)

<sup>357</sup> Peppercorn and others (n 29)

<sup>358</sup> Rolnik, Report of the UN Special Rapporteur (n 138) para 37

they are not just price ceiling; they should be evaluated largely independently of the experience with first generation controls.<sup>359</sup> They are complicated devices intended to prevent rents from rising to prohibitive levels and to balance the interest of the landlord and the tenant.<sup>360</sup> Furthermore, if any cases has rent control been adopted because of an abstract idea that state regulation would bring better results than the operation of the laws of economics.<sup>361</sup>

According to Special Rapporteur on the right to adequate housing report, well-regulated rental market can promote the goals of protecting tenants, particularly low income, and encouraging rental housing simultaneously.<sup>362</sup> On the other hand, according to the report, the elimination of rent controls and the easing of eviction procedures, has rarely led to more investment in the rental market but has actually skewed the market in the direction of homeownership.<sup>363</sup> Moreover, as already discussed in the chapter two, universal homeownership was neither attainable nor desirable.<sup>364</sup> Moreover, since tenants greatly outnumbered landlords and it was meant to help poor tenants, it was not always that easy to remove rent controls<sup>365</sup>, thus, rent control was equitable policy.

Although States do not have the obligation to provide adequate housing to all, they have the obligation to protect against abuse of human rights by third parties and to adopt necessary measures to enable and assist individuals in enjoying their human rights.<sup>366</sup> The necessary measure to do so, in this case, is regulating the private rental housing market and creating an enabling environment for the realization of the right to adequate housing, with special focus on the poorest and most marginalized.<sup>367</sup> Finally, General Comment 4 states that Member States have duty to protect tenants against unfair rent levels or increase by any means deemed as appropriate and rent control is one means of achieving this goal.

Below, the paper discusses the German experiences of rent control because it has unique character that worth discussion as compared to other countries experience. It can be taken as the best experience because: first, despite a lot of criticism is forwarded by economist that rent

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<sup>359</sup> Lind 'Rent Regulation: Conceptual and Comparative Analysis' (n 34) 42; see also Arnott (n 221) 99

<sup>360</sup> Arnott (n 221); see also Lind, 'Rent Regulation: Conceptual and Comparative Analysis' (n 36); Lind, 'Rent Regulation and New Construction (n 32) 138-140

<sup>361</sup> Wills (n 216)

<sup>362</sup> Rolnik, Report of the UN Special Rapporteur (n 138) para 37; see also Gilbert (n 31) 6

<sup>363</sup> Ibid

<sup>364</sup> The African Rental Housing Conference (n 133)

<sup>365</sup> UN-Habitat, *Rental Housing: An Essential Option for the Urban Poor in Developing Countries* (n 35) 161

<sup>366</sup> Rolnik, Report of the UN Special Rapporteur (n 138) para 38

<sup>367</sup> Ibid

control have negative effect on housing the market, the Germany experience show where rent control have positive effect on the housing market.<sup>368</sup> The rental sector can be explained by rent control that gives tenants a high degree of security and protection against rent increases or levels. Second, it also maintained rental investment and access by low-income households to urban housing: known by long tradition of renting as “the standard option” amongst all groups in the population.<sup>369</sup> The UN-Special Rapporteur on the right to also regards it as best experience adequate.

### **3.8. Germany Rent Control**

The economic model of Germany is based on the concept of the social market economy (also called Rhine capitalism).<sup>370</sup> It is a socioeconomic model combining a free market capitalist economic system alongside social policies.<sup>371</sup> The social market economy is opposed to laissez-faire policies and to socialist economic system and combines private enterprise with regulation and state intervention to establish fair competition, maintaining a balance between a high rate of economic growth, low inflation, good working conditions, social welfare and public services.<sup>372</sup>

The majority of German households are tenants; the total rented units comprised about 24 million flats and small private landlords own more than 60 percent of the rented housing stock.<sup>373</sup> Fewer than 1.7 million units have their rent capped and reserved for low-income households.<sup>374</sup> The group of small private landlords in German is dominated by pensioners, self-employed individuals and white-collar workers.<sup>375</sup> Together they account for more than 80 percent of all landlords.<sup>376</sup> Since the termination of privileged tax status for low-income housing companies in 1989, the social housing stock may belong to any of landlord, whether a public or private company or an individual.<sup>377</sup> A comparison of average ages and household

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<sup>368</sup> Rolnik, Report of the UN Special Rapporteur (n 138) para 36

<sup>369</sup> Ibid

<sup>370</sup> James C. Van Hook, *Rebuilding Germany: The Creation of the Social Market Economy* (CUP 2004) 185

<sup>371</sup> Ibid

<sup>372</sup> Ibid

<sup>373</sup> Scanlon and Kochan (n 20) 45

<sup>374</sup> Peppercorn and others (n 31) 93

<sup>375</sup> Scanlon and Kochan (n 20) 51

<sup>376</sup> Ibid; see also Deschermeier and others (n 34)

<sup>377</sup> Peppercorn and others (n 31) 93

sizes shows that tenants are younger and households are smaller than that of owner-occupiers.<sup>378</sup>

German tenants benefit from a strongly regulated rental market giving them a high level of security. This includes security against eviction and strong protection against unexpected rent increases by landlord.<sup>379</sup> The basis for all lease agreements regardless of the landlord, that is, whether private or public, individual or company, is Civil Code.<sup>380</sup> Leases on rented housing is necessarily indefinite.<sup>381</sup> Apart from non-compliance of the tenant (non-payment of rent by at least 2 months, damage to property, ant-social behaviour, or subletting the dwelling without landlord's prior permission), the only legitimate reason a landlord can invoke to terminate the lease is personal occupancy.<sup>382</sup> However, even here it may be difficult to make the tenant to leave. Usually a warning is required before the landlord can take action. If the tenant refuses to comply and appeals to the courts, the landlord will not necessarily win, because the judge takes into account the situation of both parties: if the tenant is more fragile than the landlords, the recovery may be long and difficult.<sup>383</sup> Moreover, if the property is sold, the existing lease is not terminated and it remains binding on the new landlords; the tenant thus has a virtual right to security of tenure.<sup>384</sup> This safety, coupled with relatively low rents, is the main explanation for the lower appetite for home ownership than in most other countries.<sup>385</sup>

To terminate an unlimited lease, the landlord has to give notice which depends on how long the contract has been in place: it is a minimum of 3 months for leases that have run for less than 5 years, a minimum of 6 months for contracts between 5 and 8 years old, and a minimum of 9 months for contracts with a longer duration.<sup>386</sup> The tenant on the other hand has to give only 3 months' notice, which is not related to how long they have lived in the property.<sup>387</sup>

The initial rent is not free; rents increases are strictly limited on existing leases.<sup>388</sup> The rent cannot be increased by more than 20 percent in three years and not above the average local

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<sup>378</sup> Scanlon and Kochan (n 20) 49

<sup>379</sup> Ibid 53

<sup>380</sup> Peppercorn and others (n 31) 95

<sup>381</sup> Ibid; see also Deschermeier and others (n 36)3-5

<sup>382</sup> Ibid

<sup>383</sup> Scanlon and Kochan (n 20) 53

<sup>384</sup> Ibid; see also Deschermeier and others (n 34)

<sup>385</sup> Peppercorn and others (n 31) 95

<sup>386</sup> Scanlon and Kochan (n 20); see also Peppercorn and others (n 31) 95

<sup>387</sup> Ibid; see also Peppercorn and others (n 29)

<sup>388</sup> Ibid; see also The African Rental Housing Conference (n 133); Peppercorn and others (n 31)

rent, according to the local rent index.<sup>389</sup> This local rent index is calculated based on the average rent from new leases or leases with rents agreed in the last four years, and is usually broken down by the age of the building as well as quality and location.<sup>390</sup> Rent tables are available in the bigger cities.<sup>391</sup> Rents on new leases are in principle freely negotiable as long as they do not exceed the limit that would be classed as usury, defined as 50 percent above the average local rents. Rents on new leases are regulated, usually for a periods of 12 years, only if the construction or purchase of the dwelling was subsidised and was dedicated to particular target groups such as low-income or disabled tenant.<sup>392</sup>

In German, income tax law favours rental dwellings from owner occupied dwellings. Property that is rented out is taxed as an investment while owner occupied dwellings are taxed as an item of consumption.<sup>393</sup> This means that all landlords can deduct the mortgage interest, allowances for depreciation and expenses incurred on the administration and the refurbishment of a dwelling can be deducted from their taxable income.<sup>394</sup> All investors, regardless of their status, either individual or company, or, subsidised or not, may deduct from their rental income 2 percent of the value of the investment during a period of 50 years from its acquisition.<sup>395</sup> These characteristics make taxation of rental income much more favourable than in most other countries.

Subsidies are also available for special purpose investments, for instance, to supply housing for low-income households and those facing particular difficulties to access suitable housing such as released prisoners, homeless people, etc.<sup>396</sup> Rents on subsidised dwellings are usually capped at a level below market rent for a period of 12-20 years.<sup>397</sup> During this period, landlords are obliged to let these dwellings only to those targeted groups. Other subsidies, such as for the refurbishment of the existing housing stock, energy saving measures or disabled access improvements are also available, but these are not exclusively available for rented housing.<sup>398</sup> In addition to the above supply side subsidies, the housing cost of low-income households are

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<sup>389</sup> Ibid; see also The African Rental Housing Conference (n 133); Peppercorn and others (n 31)

<sup>390</sup> Ibid; see also The African Rental Housing Conference (n 133); Peppercorn and others (n 31)

<sup>391</sup> Peppercorn and others (n 31) 95; see also Scanlon and Kochan (n 20); The African Rental Housing Conference (n 133)

<sup>392</sup> Ibid; see also The African Rental Housing Conference (n 133)

<sup>393</sup> Ibid; see also Scanlon and Kochan (n 20)

<sup>394</sup> Scanlon and Kochan (n 20) 55

<sup>395</sup> Ibid; see also Peppercorn and others (n 31) 96

<sup>396</sup> Peppercorn and others (n 31) 96

<sup>397</sup> Ibid

<sup>398</sup> Scanlon and Kochan (n 20) 56

also subsidized.<sup>399</sup> Not only tenants but also owner occupied are eligible for these subsidies. Low-income households receive housing benefit with the amount depending on their income and their household size.<sup>400</sup> The affordability gap for low-income households is therefore narrower.

As a conclusion, as far as housing is concerned, German is an exception in Europe and worldwide, sharing some features only Switzerland.<sup>401</sup> Despite existence of rent control Germany is featured by abundant housing stock, the rental housing is the dominant tenure, with stable tenants and long-term investors, institutional or individual landlords.<sup>402</sup> These issues allow Germany to escape the booms and busts that affect many other markets.<sup>403</sup> This may not be proof, but it is at least an indicator that the above-mentioned factors are indeed good stabilizers.

### **3.9. Conclusion**

Rent control laws were issued as a means to address emergency time housing shortage. The justification for imposition of rent control laws were mainly to provide security of tenure and protection against unreasonable rent increase for the tenants. International human rights laws state that Member States to the international human right instruments, specifically to the ICESCR, are under obligation to protect individual's right to adequate housing against violation by third parties. One means of enforcing such obligation is regulating the rental housing market that can be referred to as rent control. There are two types of rent controls: one that protect only sitting tenants and that protect all tenants together (sitting and new tenant as well). Rent controls were criticised for being inefficient, counter-productive and others. However, some countries experience shows that modern rent controls have positive effect if crafted carefully. It can enable the rental market to provide affordable rental housing while also maintaining investment on the sector.

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<sup>399</sup> Ibid

<sup>400</sup> Ibid

<sup>401</sup> Deng (n 269) 46; see also Gilbert (n 31); Peppercorn and others (n 31) 96

<sup>402</sup> Ibid

<sup>403</sup> Peppercorn and others (n 31)

## CHAPTER FOUR

### Private Rental Housing Sector in Ethiopia

#### 4.1. Introduction

In Ethiopia, the current state of housing reflects various approaches to housing provision, for instance, the government still retains public rental housing that was nationalized by the previous government, and on the other housing construction by private developers after 1991 signified a paradigm shift in land and housing policy.<sup>404</sup> The renting has become an especially important form of tenure in Ethiopia and nearly two-thirds of households were rented.<sup>405</sup> Most of units are rented from private owners.<sup>406</sup>

Owing to different factors, such as absence of serviced land supply, high proportion of slum dwellers, shortage of public housing finance, the country is experiencing housing shortage.<sup>407</sup> Thus, poor housing quality and often-overcrowded living conditions are the major deficits experienced by Ethiopia's urban households. Rent control laws are justified whenever one state is experiencing such housing shortages.<sup>408</sup>

#### 4.2. Current Housing Demand and Supply in Ethiopia

It is necessary to note from the outset that the state of data on urban housing in Ethiopia is perhaps one of the key missing links in the housing policy landscape. According to the MUDHCo, in 2013 there is dearth of housing related data. For instance, most cities do not have up-to-date information on the public housing stock they currently administering, they do not have an organized data on the number of residential plots, do not have comprehensive information on the privately rented housing stock and the others.<sup>409</sup> Although housing is the major focus of the CSA, the recent one being conducted in 2007, housing data seems to get outdated soon given the dynamics of the housing sector.<sup>410</sup> Therefore, it is difficult to come up

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<sup>404</sup> The World Bank, *Ethiopia Urbanization Review* (n 8) 27- 30

<sup>405</sup> Ibid

<sup>406</sup> Ibid

<sup>407</sup> Ministry of Urban Development, Housing & Construction, *National Report on Housing & Sustainable Urban Development* (n 4) 60

<sup>408</sup> Maass (n 19) 45-46

<sup>409</sup> Ministry of Urban Development, Housing & Construction, *The National Urban Housing Development Policy and Strategy Framework* (n 3); see also UN-Habitat, *Ethiopian Urban Profile* (n 146)

<sup>410</sup> Ethiopia Central Statistical Agency (n 12)

with comprehensive data on housing demand and supply at national or city level, which has its roots in the near policy neglect of the housing sector.

#### **4.2.1. Housing Demand**

The housing demand can be expressed in terms of various factors. Under this section, the paper briefly discusses two factors as indicators of housing demand in Ethiopia based on the result of the census conducted in 2007 and using reports of different sources. The first factor is overcrowding as an indicator of housing shortage.<sup>411</sup> The imbalance between the demand for, and, supply of housing has had negative effects on housing occupancy, especially in terms of overcrowding.<sup>412</sup> Number of persons sharing one room and number of single roomed units can measure overcrowding.<sup>413</sup> According to the report by the CSA in 2007, 44.9 percent of the units in the Ethiopian urban centres included in the study are single roomed; compared to the average number of persons per housing unit, over 44 percent of the housing units are in bad housing conditions since more than three persons occupy them.<sup>414</sup> The percentage of single roomed houses ranges from the lowest in Dilla (32 percent) to the highest in Gambela (64 percent).<sup>415</sup> The UN-Habitat Agenda states that such reduced space per person is the major factor for serious health problems for a considerable portion of the residents in such urban areas.<sup>416</sup>

The second factor is registration for public rental as proxy indicators of housing demand. In absence of reliable data on the income levels and expenditure patterns of households, information collected by the CSA from cities on the number of persons registered for Kebele rental housing, condominium housing and residential plots can be used as alternative indicators for the demand for the housing.<sup>417</sup> According to the SECR field survey in 2014, Addis Ababa has the highest housing demand ratio of 361 per 1,000 population; being capital of the country, Addis Ababa attracts many migrants, which results in relatively higher demands for housing.<sup>418</sup> Similarly, in 2013 in the city about 700,000 people are registered under the 20/80 and 10/90

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<sup>411</sup> Ministry of Urban Development, Housing & Construction, *The National Urban Housing Development Policy and Strategy Framework* (n 3) 26-28; see also The World Bank, *Ethiopia Urbanization Review* (n 8) 27-28

<sup>412</sup> Ibid

<sup>413</sup> Ibid

<sup>414</sup> Ethiopia Central Statistical Agency (n 12) See Annex No. 4.1 taken from it

<sup>415</sup> Ibid

<sup>416</sup> UN-Habitat, *Rental Housing: An Essential Option for the Urban Poor in Developing Countries* (n 35)

<sup>417</sup> Ministry of Urban Development, Housing and Construction and Ethiopia Civil Service University, *The State of Ethiopian Cities Report* (n 6)

<sup>418</sup> Ibid, see Annex No. 4.2 taken from 2014 field survey of SECR

condominium housing schemes while about 164,779 people have been registered in the 40/60 housing scheme.<sup>419</sup> The second highest ratio is found in Semera (277 per 1,000); Bahir Dar city has account for the third highest ratio of 272.4 per 1,000 population.<sup>420</sup> Higher figures were also reported for other cities like Bishoftu, Adama, Dire Dawa, Shire Endesellassie, Jimma and Hosanna.<sup>421</sup> The reasons that trigger higher housing demand in these cities include their favourable locations along major transport and trade routes as well as their status of regional or zonal administrative centres.<sup>422</sup>

#### **4.2.2. Housing Supply**

According to survey conducted in 27 cities by MUDHCo in collaboration with the UN-Habitat Agenda in 2015, between 2007/08-2013/14, various suppliers increased the total urban housing stock by 455,473 units.<sup>423</sup> Accordingly, government is the leading provider followed by individual construction, accounting 51.1 and 22.2 percent of the total supply respectively, while real estate developers contributed the lowest percentage of 0.4 percent.<sup>424</sup> However, the survey does not provide information on the number of units rented by private owners.

##### **4.2.2.1. Condominium Housing**

Condominium housing under the IHDP has been implemented in the major urban centres with multiple objectives such as increasing the urban housing stock, achieving economic use of land, building the asset base of individual families by making them homeowners, and the others.<sup>425</sup> Addis Ababa was the first to implement a large-scale housing development program in 2003 while latter the program was implemented in all regions in 2006.<sup>426</sup>

According to information from MUDHCo, the Addis Ababa City Administration managed to transfer 143,487 condominium units until March 2015, without including those under

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<sup>419</sup> Tadesse (n 14)

<sup>420</sup> Ethiopia Central Statistical Agency (n 12) see Annex No. 4.2 taken from it

<sup>421</sup> Ibid

<sup>422</sup> Ministry of Urban Development, Housing and Construction and Ethiopia Civil Service University, *The State of Ethiopian Cities Report* (n 6) 99

<sup>423</sup> Ibid

<sup>424</sup> Ibid 99

<sup>425</sup> UN-Habitat, *The Ethiopia Case of Condominium Housing: The Integrated Housing Development Programme* (n 8)10; see also Ministry of Urban Development, Housing & Construction, *National Report on Housing & Sustainable Urban Development* (n 4) 57-58

<sup>426</sup> Ministry of Urban Development, Housing & Construction, *National Report on Housing & Sustainable Urban Development* (n 4); see also Ministry of Urban Development, *Housing & Construction, The National Urban Housing Development Policy and Strategy Framework* (n 3) 3-5, 74-85

construction.<sup>427</sup> The Amhara and Harari national regional states as well as Dire Dawa City Administration have also transferred all of the condominium units under different modalities including selling to universities, government offices and business entities.<sup>428</sup> Oromia, Tigray and SNNPR national regional states still have significant number of condominium units to be transferred.<sup>429</sup> When seen in terms of the proportion of units yet to be transferred in Nekemte (63 percent), Shashemane (30 percent), Adwa (29.4 percent) and Adama (15 percent).<sup>430</sup>

For many households their condominium units become new source of income by renting out their units; they use the income to pay their monthly mortgage and rent of another house they live in.<sup>431</sup> The majority of condominium units are rented to middle and high income households enabling their owners to earn incomes that supplement their livelihoods.<sup>432</sup> This is why the rental price for condominium rental houses is dramatically increasing from time to time and become unaffordable for others with low-income households as compared to other private residential rental houses.<sup>433</sup> The condominium proclamation allows the unit owners to rent out their unit if they wish<sup>434</sup>; the model by-laws and rules of condominium owners association also permit the owner lease to his/her unit.<sup>435</sup>

There are initiations for self-regulation of standard rent by condominium owners associations in 2011.<sup>436</sup> For instance, there was such initiations in the Gotera Condominium Site and according to the Committee of unit owners association they set rental price based on the types of the units (Studio, 1BR, 2BR and 3BR).<sup>437</sup> The self-regulation was initiated to stabilize rental price in the site, besides with frequent rent increase, it followed by now and then conclusion and cancellation of lease of house which become obstacle for the Committee's proper

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<sup>427</sup> See Annex No. 4.3 showing Condominiums Built (2006/7-2007/8) and distributed (July 2014) taken from MUDHCo 2014

<sup>428</sup> Ibid; see also Ministry of Urban Development, Housing and Construction and Ethiopia Civil Service University, *The State of Ethiopian Cities Report* (n 6) 101

<sup>429</sup> Ibid

<sup>430</sup> Ibid

<sup>431</sup> UN-Habitat, *The Ethiopia Case of Condominium Housing: The Integrated Housing Development Programme* (n 8) 38 ;see also Endale (n 13)

<sup>432</sup> Ibid; see also Ministry of Urban Development, Housing and Construction and Ethiopia Civil Service University, *The State of Ethiopian Cities Report* (n 6) 107

<sup>433</sup> Tadesse (n 14); see also Endale (n 13)

<sup>434</sup> Condominium Proclamation (n 166) art 22

<sup>435</sup> For instance, see Gotera Site Condominium Unity Owners CEOP Society (May, 2010) art. 6(1)

<sup>436</sup> An Interview with General Manager of Gotera Condominium Site Unit Owners Association Mr. Legese Mukeria on Date 17/05/2017

<sup>437</sup> Ibid

management of condominium units.<sup>438</sup> Self-regulation initiation has also the aim of mitigating the roles played by the brokers in the negotiation of fixing rental price because most of condominium owners live some other place and they use this chance to increase rent since their commission's payment depend on the amount of rent, so that, as rent increase their commission also increases.<sup>439</sup> However, the self-regulation did not last long owing complain from some owners to the district Office and self –regulation was cancelled.<sup>440</sup>

Now, the only limitation in this regard is that the unit owner is obliged to inform and provide the document evidence upon conclusion, renewal or termination of the contract of lease to the unit owners association.<sup>441</sup> From this, two things can be drawn: first, by renting out their unit the owners are using the house as one means of income generating source; second, condominium owners are boosting the private rental housing market by supplying rental accommodation although this was not what was originally intended for.<sup>442</sup>

Related to this, recently the Addis Ababa City Administration Housing Management Agency announced that it is about to provide rent controlled condominium houses, for government schoolteachers in the city.<sup>443</sup> About 5,000 condominium houses are prepared for this purpose to be delivered for teachers at fair rental price based on qualification such as documents showing that they do not have their own house, their work experience, family size and the others; the rental price is to be determined in near future.<sup>444</sup>

Moreover, the MUDHCo has come up with new modalities commonly known as 10/90, 20/80 and 40/60 schemes as stipulated in a strategic framework manual for urban housing provision.<sup>445</sup> These modalities refer to the initial amount of saving that households are expected to make to be eligible to get condominium units via a lottery arrangement and seem to target

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<sup>438</sup> Ibid

<sup>439</sup> Ibid

<sup>440</sup> Ibid; see also Endale (n 13); Tadesse (n 14)

<sup>441</sup> Condominium Proclamation (n 166) art 22(1), (2) and (3); Gotera Site Condominium Unity Owners CEOP Society (May, 2010) art. 6(1) and 6(2) see annex No. 4.6; see also Annex No. 4.7 showing how contract of lease of house is concluded between tenants and landlords

<sup>442</sup> UN-Habitat, *The Ethiopia Case of Condominium Housing: The Integrated Housing Development Programme* (n 8) 38-40

<sup>443</sup> Tesfaye Getnet, 'Rent Controlled Homes Offered for Government Teachers' *Capital* (Addis Ababa, 9 January 2017)

<sup>444</sup> Ibid

<sup>445</sup> Ministry of Urban Development, *Housing & Construction, The National Urban Housing Development Policy and Strategy Framework* (n 3) 3-5, 74-85, see also The World Bank, *Ethiopia Urbanization Review* (n 8) 27-30; Ministry of Urban Development, Housing & Construction, *National Report on Housing & Sustainable Urban Development* (n 4) 45-46

the low, medium and high-income groups, respectively.<sup>446</sup> The strategic framework manual also provides for the revitalization of the cooperative schemes for those individuals who want to construct their housing units using their own finance.<sup>447</sup>

Despite all these efforts to increase the supply of housing through the IHDP there are still challenges that may necessitate reconsideration of the program. According to assessment made by MUDHCo in 2015, some of the families that won the condominium lotteries could not readily take the units for they found their cost to be unaffordable, some unable to finance the finishing work, while other households with large families could not readily to take the studio units because of its small size.<sup>448</sup> The other challenge includes inappropriate location of the condominium buildings with respect to administrative and social services such as schools and health facilities, market places, absence of access to roads and other services like water.<sup>449</sup>

However, the main challenge of the program is that many poor and low-income families are not beneficiaries of this program because they cannot afford down payment or the mortgage requirement despite the laudable aim of the program was to make low-income families homeowners.<sup>450</sup> According to the UN-Habitat Agenda, the major obstacle for securing affordable housing for low-income Ethiopians residing in urban areas has been difficulties in accessing housing finance.<sup>451</sup> Following the market-led policies implemented in the post, 1991 period, subsidized interest rates on mortgage were removed and this significantly increased lending rate; moreover, banks introduced stringent collateral requirements that require proof of regular income as well as equity financing that is equivalent to 30 percent of the total construction cost.<sup>452</sup> On the other hand, an important factor in this regard is the predominance of informal employment in the urban areas-characterized by generally low and irregular

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<sup>446</sup> Ministry of Urban Development, Housing & Construction, *National Report on Housing & Sustainable Urban Development* (n 4)

<sup>447</sup> Ibid

<sup>448</sup> Ministry of Urban Development, Housing and Construction and Ethiopia Civil Service University, *The State of Ethiopian Cities Report* (n 6) 102; see also Ministry of Urban Development, Housing & Construction, *The National Urban Housing Development Policy and Strategy Framework* (n 3) 26

<sup>449</sup> Ibid

<sup>450</sup> UN-Habitat, *The Ethiopia Case of Condominium Housing: The Integrated Housing Development Programme* (n 8) 39-40

<sup>451</sup> Ibid; see also Ministry of Urban Development, Housing and Construction and Ethiopia Civil Service University, *The State of Ethiopian Cities Report* (n 6) 102

<sup>452</sup> Ministry of Urban Development, Housing & Construction, *The National Urban Housing Development Policy and Strategy Framework* (n 3) 31-36; see also Ministry of Urban Development, Housing and Construction and Ethiopia Civil Service University, *The State of Ethiopian Cities Report* (n 6)

income- that excludes many households from being eligible for bank loans.<sup>453</sup> The result was that in most urban centres, house financing has been pushed beyond the reach of the majority of house seekers. Hence, it is safe to conclude that most of the actual beneficiaries of the IHDP's have been better-off families who could readily pay down payments or the full selling price of the condominium units.

Besides the programme faces specific gender related affordability challenges. While gender inclusion is tailored via the special provision for female-headed households, which is addressed through the 30 percent lottery allocation policy, the reality is that this affirmative action policy is being undermined by higher poverty levels among female-headed households.<sup>454</sup>

#### **4.2.2.2. Real Estate Housing**

As seen above next to government, the majority of housing supply is by individual construction and real estate housing. The National Urban Development Policy and Strategy framework emphasizes that, private real estate developers sectors can play role in providing housing for the high-income group under the framework of free market principles.<sup>455</sup> The private real estate housing sector is concentrated in Addis Ababa and other major cities such as Dire Dawa, Adama, Bahir Dar, Hawassa and Mekelle.<sup>456</sup> Even though the private real estate sector has been managed to construct a considerable amount of houses, there are some complains by and against the sector.

Real estate companies complain about the unavailability of road infrastructure and utilities such as water and electricity as well as shortage of housing finance and construction materials while complaint against the sector is related to protection of the rights of the consumers of real estate companies.<sup>457</sup> This is related to customers advance payment, arbitrary changes in housing price and even closure of some private real estate companies without clearing their liability to their

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<sup>453</sup> Ministry of Urban Development, Housing & Construction, *The National Urban Housing Development Policy and Strategy Framework* (n 3) 33-36

<sup>454</sup> Ibid; see also Ministry of Urban Development, Housing and Construction and Ethiopia Civil Service University, *The State of Ethiopian Cities Report* (n 6) 103

<sup>455</sup> Ministry of Urban Development, Housing & Construction, *The National Urban Housing Development Policy and Strategy Framework* (n 3) 10-12

<sup>456</sup> Ministry of Urban Development, Housing and Construction and Ethiopia Civil Service University, *The State of Ethiopian Cities Report* ( n 6) 107

<sup>457</sup> Ministry of Urban Development, Housing & Construction, *The National Urban Housing Development Policy and Strategy Framework* (n 3) 39-40; see also Dawit Endashaw, 'Ethiopia: Bill for Residential Housing Development, Transactions' *Addis Fortune* (Addis Ababa 19 October 2015)

customers.<sup>458</sup> Generally, this complain by and against the sector shows the need to issue comprehensive regulatory frameworks to make enabling working environment for the private real estate sector to facilitate its role in addressing demand for housing in the high-end of the market and beyond. It seems that these complains have got government attention because recently draft law regulating private real estate is under discussion by Ministry of Justice.<sup>459</sup>

#### **4.2.2.3. Informal Housing**

Informal housing is increasingly becoming an important component of housing provision in major urban centres.<sup>460</sup> Their unique features are that though they are illegal settlements, a large percentage of these houses are well designed and serviced than legal settlements.<sup>461</sup> According to the area covered by the States of Ethiopian Cities report, informal housing supply constitutes about 30 percent of the total supply.<sup>462</sup> The increasing number of informal housing sector shows the failure of urban centres to supply the need for the residential land according to the demand.

According to the UN-Habitat Agenda, access to serviced land is the major problem faced by developing countries; informal access to land, increasing via rental arrangement, is becoming a major form of accessing affordable housing for the poor.<sup>463</sup> Hence, a large number of urban private landlords in developing countries operate informally in unplanned settlements; and this also holds true for Ethiopian as it can be easily understood from 2014 final report by MUDHCo.<sup>464</sup> This shows the necessity of regularization of the informal settlements; according to the national urban development policy and strategy regularization of informal settlement should be carry out as per revised urban land lease holding proclamation<sup>465</sup> and urban land holding registration proclamation.<sup>466</sup>

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<sup>458</sup> Ibid

<sup>459</sup> Ibid; see also Endale (n 13)

<sup>460</sup> Ministry of Urban Development, Housing & Construction, *National Report on Housing & Sustainable Urban Development* (n 4) 45-46

<sup>461</sup> Ibid 97

<sup>462</sup> Ministry of Urban Development, Housing and Construction and Ethiopia Civil Service University, *The State of Ethiopian Cities Report* (n 6) 97

<sup>463</sup> UN-Habitat, *Affordable Land and Housing in Africa* (n 24) 27-28, 37

<sup>464</sup> Ministry of Urban Development, Housing & Construction, *National Report on Housing & Sustainable Urban Development* (n 4) 60; see also Ministry of Urban Development, Housing & Construction, *The National Urban Housing Development Policy and Strategy Framework* (n 3) 26-29

<sup>465</sup> Revised Urban land Lease holding Proclamation No 721/2011

<sup>466</sup> Urban Land Holding Registration Proclamation No 818/2014

### 4.3. Public Rental Housing

In Ethiopia, the history of public rental housing sector was dated back to 1942 when the government established agency referred to as Custodian Enemy Properties to administer confiscated movable and immovable properties owned by foreigners during the Italo-Ethiopian war.<sup>467</sup> The Custodian was granted a general power of attorney and authorized to exercise all right of ownership<sup>468</sup>; it was also entitled to grant temporary lease of any enemy property, including houses.<sup>469</sup>

Following the military government of Derg, proclamation affecting urban land and housing was proclaimed.<sup>470</sup> The proclamation nationalized all extra houses that were owned and rented by an individual.<sup>471</sup> The proclamation authorized the Ministry of Public Works and Housing and the Cooperative Societies of Urban Dwellers to rent and administer the nationalized houses.<sup>472</sup> Later, role of the Ministry was transferred to the AARH<sup>473</sup> to administer rental houses that could be rented 100 ETB and above.<sup>474</sup> On the other hand, the Cooperative Societies of Urban Dwellers took the responsibility of renting and administering the government owned houses (Kebele houses) which could be rented below 100 ETB.<sup>475</sup>

The change in government has brought minor change regarding these houses; they still managed and administered by the same institutions.<sup>476</sup> Under the FDRE government, the rights and obligations of the AARH established under proclamation No 59/75 were transferred to the AGH.<sup>477</sup> Under this proclamation government house is defined as any urban house nationalized under Proclamation No. 47/75 and could be rented at a monthly rate of over 100 ETB or constructed or acquired in any manner by the Federal Government and may be rented for residential, business or other purposes.<sup>478</sup> Kebele, which is the smallest administration body of the government, was given the administration of housing with rent price of less than 100 ETB.

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<sup>467</sup> Provide for the Custody of Enemy Property Proclamation No 14/1942 art 43

<sup>468</sup> Ibid art 5(a)

<sup>469</sup> Ibid art 5(b)

<sup>470</sup> Government Ownership of Lands and Extra Houses Proclamation (n 11)

<sup>471</sup> Ibid art 20(1)

<sup>472</sup> Ibid art.5(b)

<sup>473</sup> Proclamation No.59/1975

<sup>474</sup> Government Ownership of Lands and Extra Houses Proclamation (n 11) art 5(b)

<sup>475</sup> Ibid art 5(a)

<sup>476</sup> Proclamation of Agency for the Government Houses Establishment No 555/2007, art 5(5) and 6(8)

<sup>477</sup> Ibid art 14

<sup>478</sup> Ibid art 2(1)

The AGH is a centralized agency that administrates public rental housing in Addis Ababa and Dire Dawa.<sup>479</sup> Before 1985, the agency used to administrate 30,500 houses in 91 cities all over Ethiopia, in the same year when it is decided that regional states should administrate houses within their boundaries the agency remains with 20,000 houses in Addis Ababa and Dire Dawa.<sup>480</sup> Moreover, because of urban redevelopment program and other reasons the agency has lost around 5 percent of its holdings; the conditions of these houses, relative to Kebeles houses, are in good quality.<sup>481</sup> The rent price (100-500 ETB) is higher than Kebeles units are; but still it is below market price.<sup>482</sup>

The other duties of the AGH is to study and set rental price. Based on this, the agency have been preparing and introducing different methods for calculating rate of rent at different times.<sup>483</sup> Rent is fixed based on manual prepared for this purpose by MUDHCo in 2014; based on this manual, the minimum rent price for one square meter of the agency houses is 20 ETB and 10\$ for houses rented for diplomats; taking this as a base price, rent is calculated based on three factors.<sup>484</sup>

The first factor is location of the house; based on the suitability of residence; the manual have three levels of locations within Addis Ababa city that are in different level of suitability.<sup>485</sup> Houses closed to CBD of the city are considered as level one, and their rent price is also the highest; thus, rent price increases when the location is closer to the CBD and decreases as it goes out of it.<sup>486</sup> The second factor is area of the house; the minimum rent price for one square meter of the agency house is 20 ETB and this price is used to calculate rent price for houses with area up to 30m<sup>2</sup>.<sup>487</sup> When the area is more than 30m<sup>2</sup> the price for the first 30m<sup>2</sup> is calculated based on the base price (20ETB/m<sup>2</sup>) and for the remaining area, there is a deductible percentage from the base price.<sup>488</sup> The third factor is quality of the house; various factors are

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<sup>479</sup> Ibid art 4

<sup>480</sup> Ministry of Urban Development, Housing and Construction and Ethiopia Civil Service University, *The State of Ethiopian Cities Report* (n 6) 97

<sup>481</sup> Yohannes Balcha Haileyesus, 'Kebele' Houses: Past, Present and the Future, the Case of Kebele 17, in Woreda 9, Kirkos Sub-city, Addis Ababa (Addis Ababa University and Ethiopia Institute of Architecture Building Construction and City Development (EiABC), School of Graduate Studies, MSc Thesis, Unpublished 2014) 41-44

<sup>482</sup> Ibid

<sup>483</sup> Agency for Government Houses Proclamation (n 171)

<sup>484</sup> Habtewold (n 8) 64-67

<sup>485</sup> Ibid

<sup>486</sup> Ibid

<sup>487</sup> Ibid

<sup>488</sup> Ibid

considered as how to decide the quality of the house; these includes number of bedrooms, finishing material, electric installation, sanitary quality and parking services.<sup>489</sup>

The definition and purpose of public rental housing sector was focused on the low-income households, mainly those families who cannot get housing through the market price.<sup>490</sup> Moreover, many countries have used public rental housing to solve housing problem of these poor families.<sup>491</sup> In Ethiopia, tenants in the public rental houses under the AGH are high and middle-income households, as opposed to low-income households, which are considered as the right target group of such public rentals housing program. For instance, the apartments in Bole road, the London Cafe apartments and CMC apartments are rented out for parliament members, Addis Ababa University teachers and diplomats who can pay in USD.<sup>492</sup> However, in case of Kebele houses most of the tenants were low-income households.

According to the CSA report of 2007, Kebele units were constituted on average 20% of housing in all urban centres.<sup>493</sup> Nowadays, it is difficult to tell the exact number and percentage of the Kebele houses out of the total housing stock in general, for the reason of demolition of most of the stock under urban redevelopment program undertaken by the government in Addis Ababa as well as in major cities of regional states.<sup>494</sup> More than 70 percent of the existing Kebele houses were considered as slum housing because of overcrowding, continuous state of deterioration and exhibit lack of crucial facilities like toilets, kitchens, electricity and drainage immensely affecting the health and living conditions of inhabitants.<sup>495</sup> Most of the Kebele owned houses were rented between 10-30 ETB per month; this indicates the low level of affordability of the dwellers and the poor conditions of the houses.<sup>496</sup> Rent level remained unrevised since 1991 and the recent revision of rent on government owned rental properties was only applicable to houses being used for businesses, such as, shops, hotels, warehouses

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<sup>489</sup> Ibid

<sup>490</sup> Peppercorn and others (n 31) 9

<sup>491</sup> Ibid

<sup>492</sup> Habtewold (n 8) 69

<sup>493</sup> The World Bank, *Ethiopia Urbanization Review* (n 8) 27-36; see also Graham Tipple and Elias Yitbarek Alemayehu, *Stocktaking in the Housing Sector in Sub-Saharan Africa: Ethiopia* (Affordable Housing Institute, 2014)

<sup>494</sup> UN-Habitat, *The Ethiopia Case of Condominium Housing: The Integrated Housing Development Programme* (n 8) 1-3

<sup>495</sup> Ministry of Urban Development, Housing & Construction, *The National Urban Housing Development Policy and Strategy Framework* (n 3) 28-30; see also UN-Habitat, *The Ethiopia Case of Condominium Housing: The Integrated Housing Development Programme* (n 8)

<sup>496</sup> The World Bank, *Ethiopia Urbanization Review* (n 1) 28; see also Meheret Ayenew and Richard Martin, *Access to Housing Finance in Africa: Exploring the Issues No.9: Ethiopia* (Fin Mark 2009)

and cafes.<sup>497</sup> Finally, the current government housing strategy become the main challenge for the development of the sector since it only contain homeownership schemes while neglecting the rental sector in general.<sup>498</sup>

#### 4.4. Private Rental Housing

During the pre-1975 period landlords constructed houses in the form of rental housing; this period can be marked as the starting point of private rental housing.<sup>499</sup> In fact, during this period land and housing development in the country were owned and controlled by few individuals and groups.<sup>500</sup> In addition, the government showed little commitment to land and housing development for low-income sector and there was no coherent approach toward land and housing provision.<sup>501</sup>

Post 1975 period was characterized by the prohibition of private rental sector from supplying rental houses.<sup>502</sup> Proclamation No.47/75 has affected the private rental sector; first, extra houses that were owned and rented by individual owners were nationalized; second, private individuals and other organization except government organizations were prohibited from renting house; hence, the private rental sector was totally excluded from renting house.<sup>503</sup> Later, due to serious housing shortage, it was allowed with aim of alleviating housing shortage by permitting Co-dwelling; by the proclamation individuals are entitled to allow Co-dwellers houses they owned or rented.<sup>504</sup>

In 1991 with the coming to power of EPRDF, the private rental sector was revived; it became the major provider of rental accommodation throughout the country.<sup>505</sup> For instance, the report of the CSA 2007 showed that, rental accommodation in Addis Ababa accounts 58.1, in Adigrat 55.7, in Hawassa 60, in Bahir Dar 48.8, in Adama 46 and in Shire Endasellasie 60.9 percent.<sup>506</sup> Recently, according to the estimation by MUDHCo of 2013, 600,000 families were lived in

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<sup>497</sup> Amanuel T, 'Rent Fee Revision on Government Houses' *Capital* (Addis Ababa 15 January 2016)

<sup>498</sup> Habtewold (n 8) 69

<sup>499</sup> UN-Habitat, *The Ethiopia Case of Condominium Housing: The Integrated Housing Development Programme* (n 8)

<sup>500</sup> Ibid

<sup>501</sup> Ibid

<sup>502</sup> Government Ownership of Lands and Extra Houses Proclamation (n 11) art 20

<sup>503</sup> Ibid

<sup>504</sup> Proclamation of Construction and Uses of Urban Houses No. 292/1986

<sup>505</sup> Ministry of Urban Development, Housing and Construction and Ethiopia Civil Service University, *The State of Ethiopian Cities Report* (n 6) 95

<sup>506</sup> Ethiopia Central Statistical Agency report (n 12) See Annex No. 4.4 and 4.5

rented homes and from this about 227,000 families are accommodated by private rental housing sector in urban Ethiopia.<sup>507</sup> The sector is not only major provider but also increasing dramatically from time to time; for instance, in Addis Ababa alone it showed a dramatic increase from 62,528 units in 1994 to 222,284 units in 2007.<sup>508</sup>

The response of the private rental sector is purely market driven; because of serious shortage of housing and the increasing cost of life, individual house owners had respond to the opportunity by renting part of their house, their service quarters or building new rooms within their premise.<sup>509</sup> This sector is mainly provided by small-scale landlords; many condominium units in urban areas are the major private rental accommodation with high rental price.<sup>510</sup> The tenants of the sector are from different income, ethnicity, age, family size and religion; the housing delivered were also different in structure, quality, service provision and quantity.<sup>511</sup> The relationship between tenants and landlords in this sector is governed by the Civil Code, lease of house, provisions.<sup>512</sup>

#### **4.5. Lease of House**

Contract of lease of house regulate tenant-landlord relationship. Lease is the transfer of exclusive possession to the lessee for a limited period in return for rent.<sup>513</sup> It grants the lessee all rights of an owner except creating real rights on the house.<sup>514</sup> A house lease contract may related to furnished or unfurnished house in some other building or part of the building.<sup>515</sup> Contract of lease of house can be made for determined or undetermined period.<sup>516</sup> The tenant has many obligations under contract of lease of house which includes payment of rent, use of the house with due care and in accordance with purpose of lease, carryout repairs encumber upon him/her and to restore the house at the end of the lease.<sup>517</sup>

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<sup>507</sup> Endale(n 14)

<sup>508</sup> Ethiopia Central Statistical Agency report (n 12) 1994 and 2007

<sup>509</sup> Habtewold (n 8) 62

<sup>510</sup> UN-Habitat, *The Ethiopia Case of Condominium Housing: The Integrated Housing Development Programme* (n 8)

<sup>511</sup> Habtewold (n 8) 62

<sup>512</sup> Civil Code (n 173) arts 2896-2974

<sup>513</sup> Ibid art 2896

<sup>514</sup> Ibid Cum. Art 2896 and 2897

<sup>515</sup> Ibid art 2945(1)

<sup>516</sup> Ibid art 2928

<sup>517</sup> Ibid art 2948, 2952, 2953

According to Article 2890 of the Civil Code rent can be paid in kind or in cash. The amount of rent shall be fixed freely by the agreement of the parties.<sup>518</sup> This is derived from the principle of freedom of contract that assumed equal bargaining power of both parties. In the situation where there are shortage of houses and other similar problems, absolute freedom of contract may entail undesirable consequences.<sup>519</sup> At present, no limitation is imposed on the private sector as to the maximum amount of rent recoverable from lessee; so it is left to the discretion of the parties. The possibility of limitation is, when rent is to be fixed in conformity with the tariffs to be set by the municipal authority.<sup>520</sup> In fact, this is not always the case because it comes to picture only in case of doubt or disagreement on the amount of rent to be fixed.<sup>521</sup> Thus, this article shows the possibility of rent control by the municipal authority although it cannot be taken as last long solution.

Under the Civil Code, contract of lease of house may be made for determined or undetermined period.<sup>522</sup> The lessor is not required to give any reason why he/she terminated the lease where it is made for undetermined period; the lessee, too, is not entitled to bring action to question the legality of the lessor's action.<sup>523</sup> Hence, the lessor can terminate the lease anytime without any justified cause. This is not advisable in light of the existing shortage of housing supply and other problems like high prevalence of families those earn low and irregular income because, the lessor may use such power as means of exhorting excessive amount of rent from the lessee, and if the latter refused the demand of the lessor, he/she may face eviction.

These two main gaps of the law that regulated the private rental sector, make the sector unaffordable and in securable for the poor and low-income households.<sup>524</sup> The increasing number of population in general and, specifically, increasing number of inland migration to urban centres together with the steady increases in the cost of living contributed to the housing shortages and play a significant role in the increment of rental prices.<sup>525</sup> However, this is not in line with the country's human rights obligation with regard to enforcing the right to adequate

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<sup>518</sup> Ibid art 2950(1)

<sup>519</sup> *Mellacher and Others v Austria* (n 50) para 45

<sup>520</sup> Civil Code (n 173)art 2950(2)

<sup>521</sup> Ibid

<sup>522</sup> Ibid arts 2965, 2966

<sup>523</sup> Ibid

<sup>524</sup> Endale (n 13); see also Tadesse (n 14)

<sup>525</sup> Ibid

housing because the government has obligation to protect tenants from unreasonable rent increase and forced eviction.<sup>526</sup>

In this regard, the lessons that can be taken from German's experience are that tenants need to be protected from eviction and unexpected rent increase by rent control law.<sup>527</sup> First, although there is similarity with regard to termination of lease made for undetermined period in our country lease of house law and German lease of house law, termination of lease agreement by landlord in Germany, requires to the existence of legitimate interest while it was not the case in Ethiopia.<sup>528</sup>

In addition, in the case of German, apart from non-compliance by tenant with the lease agreement, the only reason of eviction is personal occupancy<sup>529</sup> while in our case any reason is acceptable, including eviction for failure to pay unreasonable rent increase since there is no regulation to the effect.<sup>530</sup> With regard to protection from unreasonable rent increase, rent on new leases is freely negotiated between parties as long as it is reasonable in reference to local area rent index.<sup>531</sup> Such protection is also not available in the case Ethiopia.

#### **4.6. The Need to Regulate Rental Price**

Rental arrangements provide a range of options to low-income households in terms of location, improved mobility and flexibility in terms of dwelling type; rental tenure enables low-income households to avoid house price risks, indebtedness and carries a lower transaction cost than homeownership.<sup>532</sup> It also provides a regular additional source of income to small-scale landlords, which can serve as a safety net against precarious employment or as a form of pension after retirement; this is particularly important in the case of low-income settlements.<sup>533</sup> However, these advantages of rental sector come to picture only when the rental market is regulated by legislation that strikes a balance between the interest of both landlord and tenant.

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<sup>526</sup> International Covenant on Economic, Social and Cultural Rights (n 71) art. 11 and Committee on Economic Social Cultural Rights General Comment No 4 (n 17)

<sup>527</sup> Scanlon and Kochan (n 20) 53

<sup>528</sup> Ibid; see also Peppercorn and others (n 31)

<sup>529</sup> Ibid; see also Peppercorn and others (n 31)

<sup>530</sup> Civil Code (n 173) art 2965 and 2966

<sup>531</sup> Scanlon and Kochan (n 20) 54

<sup>532</sup> Kemp (n 10) 1020-1021; see also Scanlon and Kochan (n 20)139

<sup>533</sup> Rolnik, Report of the UN Special Rapporteur (n 138) para 26

#### 4.6.1. Problem of Rent Increases

The private rental sector in Ethiopia is driven by market, rent price is increasing on fast rate, and the sector fails to deliver houses with affordable price let alone adequate.<sup>534</sup> Despite the fact that the sector is abusing human right of the right to adequate housing of the poor and low-income households, government forgets the sector. The absence of rent regulation makes the tenants to stay in their rental accommodation at mercy of the landlords because the landlords are at liberty either to evict tenants without any justified cause or demand excessive amount of rent that the tenant cannot afford.<sup>535</sup>

The complaints surrounding rent increase are something that can be heard throughout tenants that are living in urban centres.<sup>536</sup> In Ethiopia, many landlords increase their rent prices for different reasons. The major reason mostly given is market inflation, they increase rent in an effort to supplement the increasing costs of living.<sup>537</sup> The other reason is increasing demand for rental accommodation in urban centres.<sup>538</sup> Such an increase in demand for rental accommodation make landlords to demand whatever amount of rent they wish since there are plenty of people who would rent the house at the new price. For instance, according to the Gotera Condominium Site Manager, due to increasing number of foreigners, who can pay whatever amount of rent they were asked, is playing crucial role for rental price increment because the amount they pay for that landlord will become a reference rent amount in that areas in two ways.<sup>539</sup> First, other landlords also request the same amount of rent; second, brokers, who play a major role in determining the amount of rent, take that amount as reference for determining subsequent rents.<sup>540</sup> The Manager added that under these circumstances tenants who cannot afford same payment have only one option, which is looking for another rental house far. The other reason given is salary increment for government employees.<sup>541</sup>

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<sup>534</sup> Ministry of Urban Development, Housing & Construction, *National Report on Housing & Sustainable Urban Development* (n 4) 57-60

<sup>535</sup> Ministry of Urban Development, Housing and Construction and Ethiopia Civil Service University, *The State of Ethiopian Cities Report* (n 6) 95-96; see also Endale (n 13); Tadesse (n 14); Civil Code (n 173) art 2950

<sup>536</sup> Endale (n 13); see also Tadesse (n 14)

<sup>537</sup> Ibid

<sup>538</sup> Ibid

<sup>539</sup> An Interview with the General Manager (n 436)

<sup>540</sup> Ibid

<sup>541</sup> Ibid

However, the major reason is shortage of housing.<sup>542</sup> As discussed above there is big gap between housing demand and supply in urban centres that cause rental price increase.<sup>543</sup> The gap between demand and supply, that is, there are high demand for houses while the supply of houses are limited, resulted in housing shortage; for instance, according to the MUDHCo in 2014 estimate that the housing gap in urban centres is about one million units.<sup>544</sup> Such housing shortage in turn creates favourable ground for landlords to increase rent.<sup>545</sup>

Since the sector provide different housing types, the rental price also differs accordingly. The amount of rent in condominium rental accommodations is much higher than other private residential rental accommodations. For purpose of giving emphasize to the problem, let us consider rental price and affordability of the sector based on secondary and primary data gathered from different organs by taking Addis Ababa case as an example.

As discussed above self-regulation for standardized rent was initiated by the Gotera Condominium Site owners association and they tried to set rental price for the site, in 2011, although the measure did not last long.<sup>546</sup> Accordingly, at that time, the owners association fixed rent for studio at 700-900 ETB; one-room condominium at 1,500-1,800 ETB; two-room condominium at 2000-2500 ETB while three-room condominium at 3000-4000 ETB.<sup>547</sup> The Committee in fixing this rental price they took into account various factors including location of the unit within the site, location of the unit on the building (Ground, G+1, G+2), finishing work of the unit and others.<sup>548</sup> Two years later, in 2013, the rental price for the same site was increased highly and become for studio 2000-2800 ETB; one-room condos 3000-3500 ETB; two-room condos 4500-5000 ETB while three-room 5500-6000 ETB.<sup>549</sup> Currently, in 2017, the average market rent of the same site according to the Manager is for studio 3000-3500 ETB;

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<sup>542</sup> Ministry of Urban Development, Housing & Construction, *National Report on Housing & Sustainable Urban Development* (n 4)

<sup>543</sup> Ministry of Urban Development, Housing & Construction, *The National Urban Housing Development Policy and Strategy Framework* (n 3) 29-43; see also Ministry of Urban Development, Housing & Construction, *National Report on Housing & Sustainable Urban Development* (n 4) 60

<sup>544</sup> UN-Habitat, *The Ethiopia Case of Condominium Housing: The Integrated Housing Development Programme* (n 8) 6

<sup>545</sup> Endale (n 13); see also Tadesse (n 14); Maass (n 19)

<sup>546</sup> An Interview with the General Manager (n 436)

<sup>547</sup> Ibid

<sup>548</sup> Ibid

<sup>549</sup> Endale (n 13)

one-room condos 4500-5000 ETB; two-room condos 5500-6000 ETB while three-room condos above 7000 ETB/month.<sup>550</sup>

On the other hand, as discussed under the chapter two, affordability refers to the amount a family pay for their housing must not be so high that it compromise the attainment and satisfaction of other basic needs; and accordingly it protect tenants against unreasonable rent increase.<sup>551</sup> It can be expressed as a ratio of the sum of the monthly housing rent payment to the monthly income of household; hence, most literature reveals that the percentage of family's income ratio to housing should be not greater than 30-35%, or less for the lowest-income groups.<sup>552</sup> For the purpose of this paper the writer, employ 30% because it is the most conventionally used as a benchmark to evaluate affordability of housing in across countries.<sup>553</sup> Accordingly, if one has to pay 30% of its income for rent he/she should have a monthly salary of 10,000 ETB per month for the studio type and 24,000 ETB per month for the three bedroom units.<sup>554</sup> However, such monthly incomes are impossible seeing from various standards; for instance, according to the World Bank report in 2016 in Ethiopia the share of the population living below the poverty line (on less than \$1.9 per day) was estimated at 33.5 percent while 71.3 percent were living in poverty earning below \$ 3.1 per day.<sup>555</sup> Furthermore, the report also shows that the GDP per capita income of the country was \$ 617.<sup>556</sup>

With regard to private residential rental accommodations, other than condominium rental houses, the average market rental price in Bole Kifle Ketema (CMC and former Japanese Embassy areas) and Nefas Silk Lafto Kifle Ketema (Gabriel area) for single room is about 1450 ETB while for double room it is about 3,600 ETB.<sup>557</sup> Accordingly, if one has to pay 30% of its

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<sup>550</sup> An Interview With the General Manager (n 436)

<sup>551</sup> Committee on Economic Social Cultural Rights General Comment No 4 (n 15) para 8; see also UN-Habitat Fact Sheet No.21/Rev (n 96)

<sup>552</sup> Peppercorn and others (n 31) 49

<sup>553</sup> Heylan and Haf (n 86) 549-551; see also Quigley and Raphael (n 86) 197-199

<sup>554</sup> Affordable house rent is up to 30% of Monthly income (rent= monthly income \* 30/100). Here we know the current rent amount, for instance for studio 3000-3500 Birr; if one household is to pay let say 3000 Birr per month, then we can calculate what amount of monthly income should household have to earn if this given amount of rent is to be affordable? Rent=monthly income\*30/100 → monthly income= rent\*100/30; hence, for instance, for studio, 3000\*100/30=10,000 Birr per month

<sup>555</sup> International Monterey Fund, The Federal Democratic Republic of Ethiopia (IMF Country Report No 16/322, October 2016) 21-22

<sup>556</sup> Ibid

<sup>557</sup> Tadesse (n 14)

income for rent he/she should have a monthly salary of 4,800 ETB per month for single room and 12,000 ETB per month for 2 rooms.

On the other hand, the salary scale for government employees ranges from 1,013 to 14,589 ETB per month.<sup>558</sup> Hence, for a civil servant (living in that areas) getting the minimum salary of 1013 ETB/month the option<sup>559</sup> remains to share a single studio condos among nine families earning the same amount of monthly wage, or, to share a single room among four families earning the same amount of monthly wage in private residential rental housing.<sup>560</sup> This indicate how absurd the condominium rental prices' rises are as compared to private residential rental housing.

Generally, shows that how much rental housing is unaffordable for civil servants depending on their monthly wage. The same works true for workers in private organizations since there is no significant difference in their salary as compared to salary of civil servant in government offices.<sup>561</sup>

#### **4.6.2. Option for Low-income Households**

As discussed above, the main challenge of the IHDP in Ethiopia is that many poor and low-income families are not beneficiaries of this program because they cannot afford down payment or the mortgage requirement despite the program's laudable aim of making low-income families homeowners.<sup>562</sup> This is mainly due to predominance of informal employment in the urban areas that can be expressed by low and irregular streams of income that resulted in not

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<sup>558</sup> New Salary Scale in Ethiopia <<http://www.ETIOVOICE.NET/2017/23/NEW-SALARY-SCALE-IN-ETHIOPIA/>>accessed on 30 May 2017

<sup>559</sup> In fact civil servant with that monthly salary may have option like changing his living area to some other place with low market rental price but if we suppose that such civil servant decided to live in the same area then the option in that circumstance is to choose between the two option presented above.

<sup>560</sup> Since if someone is to get rental house of studio type (which it rent is 3000 Birr/month) in condominium rental accommodation and to pay about 30% of his/her monthly income, then he/she should have a monthly salary of 10,000 birr, but here the minimum salary of civil servant is 1013 Birr/month, so he/she need to join with nine persons/ households having the same amount of monthly salary ( $1013 + (9 \times 1013) = 10,013$  Birr so that jointly they can afford together; but here it should be noted that the number people to be joined could be minimized by joining person with different amount of monthly income/salary. The same formula works for private residential rental accommodation.

<sup>561</sup> Habtewold (n 8)

<sup>562</sup> UN-Habitat, *The Ethiopia Case of Condominium Housing: The Integrated Housing Development Programme* (n 8) 39-40

being qualified even for registration let alone for bank loans.<sup>563</sup> Hence, poor and low-income families, access to home ownership, are currently impeded from being beneficiary of the IHDP.

Then if they are excluded from house ownership, the next option for them is looking for rental accommodation. As discussed above in Ethiopia there are two types of rental accommodations: public and private rental housing. Public rental housing in Ethiopia is characterized by: first, accidental emergency associated with the coming to power of a socialist regime, that is, when the socialist government nationalized extra houses owned by the private sector and changes them to state ownership.<sup>564</sup> Second, the current government policy and strategy are challenges for the further development of the sector because the government current housing strategy focus only on ownership while not giving due attention to the rental sector in general and this can be expressed, for instance, by absence of any further supply of public rental house since 1991.<sup>565</sup>

Thirdly, decrease in public rental housing stock because of demolition of houses under urban redevelopment program throughout the country (in Addis Ababa for example in areas of Tekle Haimanot, Filwuha, Lideta and Casanchis areas renewal projects, regional capitals and major urban areas).<sup>566</sup> For instance, AGH loses 5% from the total units under its administration in Addis Ababa alone while significant number of Kebele units are also demolished.<sup>567</sup> Besides most of the existing Kebele houses are found at worse condition due to absence of maintenance and repair for long period of time, sub-standard houses with leaking roof and without basic services.<sup>568</sup> Fourthly, the current tenants of public rental housing (houses under the AGH), especially in Addis Ababa, are mainly high and middle income households, as opposed to low-income households which are considered to be the right target group of such public housing program.<sup>569</sup> These factors shows that the public rental housing sector is not functioning efficiently, thus, the sector is not accommodating low-income households' as supposed to be.

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<sup>563</sup> Ibid

<sup>564</sup> Ibid

<sup>565</sup> Ministry of Urban Development, Housing & Construction, *National Report on Housing & Sustainable Urban Development* (n 4)

<sup>566</sup> Ministry of Urban Development, Housing and Construction and Ethiopia Civil Service University, *The State of Ethiopian Cities Report* (n 6) 98

<sup>567</sup> Ibid 99

<sup>568</sup> Ibid

<sup>569</sup> Habtewold (n 8) 64

Private rental sector in Ethiopia, as already discussed above, due to being unregulated of the housing market, rental price is dramatically increasing in fast rate, and consequently, the sector fails to deliver housing with affordable rental price to the low-income households. Law of contract of lease of house does not address the problems related to rent since it was issued on the idea of freedom of contract.<sup>570</sup> As seen above, the main problems of the law, first, it does not regulate how to determine rent, what factors are to be considered, on what grounds to increase rent and rent level. Second, it allows landlord to terminate lease contract anytime without good cause and does not provide a chance of questioning the legality of such termination to tenants. This allows landlord to evict tenants for even failure to pay unreasonable rent increases.

The problem of rent increase is further aggravated by shortage of housing in the urban centres of the country.<sup>571</sup> The reasons are, first, high demand for housing due to high population growth rate and high migration of people to urban centres.<sup>572</sup> Second, limited supply of housing due to high construction cost, shortage of public housing finance, high rate mortgage interest rates, limited land supply and low income levels of urban households; high proportion of slum dwellers and informal settlements.<sup>573</sup> Hence, the access of low-income households to private rental housing sector is currently hindered by costs; mainly because of rising rental prices and a shortage of affordable rental housing.

Generally, although housing is one of basic human needs, in Ethiopia low-income households access to housing is impeded by several factors. Under such circumstances, when the housing market failed to provide housing to the society and low-income households specifically, most government intervene into the housing market in the form of rent control.<sup>574</sup> Rent controls are measures that aimed at enhancing housing affordability by restricting rental price increases and granting minimum security of tenure to tenants, so that, landlords cannot circumvent rent restriction through terminating their contract.<sup>575</sup> However, government has to make sure that proper balance is maintained between the interest of both landlords and tenants. Landlord's

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<sup>570</sup> Civil Code (n 173) art 2950

<sup>571</sup> Ministry of Urban Development, Housing & Construction, *The National Urban Housing Development Policy and Strategy Framework* (n 3) 29-43; see also Ministry of Urban Development, Housing & Construction, *National Report on Housing & Sustainable Urban Development* (n 4) 60

<sup>572</sup> Ibid 58-60

<sup>573</sup> Ibid

<sup>574</sup> Sullivan and Decker (n 18) 95-117

<sup>575</sup> Maass (n 19) 45-46; see also Hulchanki (n 39) 73-78

interest under such circumstance is protection of their right to property. In the coming discussion, the paper discusses how government can permissibly interfere with property right of individual landlords in the way of regulating rental price in the private rental housing sector.

#### **4.6.3. Permissible Interference with Property Right**

The most important aspects of the right to property are the owner's rights to use and to dispose the property.<sup>576</sup> The right of use refers to the ability to enjoy an object in accordance with its purpose; this aspect of the right gives the owner an exclusive right to his property.<sup>577</sup> Right to dispose of is another fundamental aspect of the right to property.<sup>578</sup> It entitles the owner to enter into a legal relationship with another person, which may take various forms: sale, rental or usufruct.<sup>579</sup>

These two aspects of rights can be restricted. Interference made with regard to right to use is said to be control of use while interference made with regard to right to dispose is said to be deprivation.<sup>580</sup> Control of use involves no transfer, the owner retain his property, but it is restricted in use of it while deprivation involves taking the possession away from its owner.<sup>581</sup> In some exceptional circumstances, such dispossession may constitute control of use of property; for instance, control of use for public interest may also involves dispossession of property; restrictions on freedom of contract in respect of tenancies can constitute control of the use of property. In such cases, the owner is dispossessed but still using the property by collecting rent though it is the reduced one.<sup>582</sup>

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<sup>576</sup> Laurent Sermet, *The European Convention on Human Rights and Property Rights* (CE 1<sup>st</sup> ed. 1999) 17; see also Monica Carss-Frisk, *The Right to Property: A Guide to the Implementation of Article 1 of Protocol No.1 to the European Convention on Human Rights* 4 (CE 2003)

<sup>577</sup> *Ibid* 17-18; see also Crass-Frisk (n 576) 6-10

<sup>578</sup> *Ibid*

<sup>579</sup> *Ibid* 18-20; see also Crass-Frisk (n 576)

<sup>580</sup> *Ibid* 24-25; see also Crass-Frisk (n 576)

<sup>581</sup> *Ibid* 23, 25-26; see also Crass-Frisk (n 576)

<sup>582</sup> *Mellacher and Others v Austria* (n 50); see also *Fleri Soler and Camilleri v Malta Judgment* (n 50) para 54, *Hutten-Czapska v Poland* (n 50) para 160-61

In the *Fleri Soler and Camilleri v Malta* Judgment case, the European Court of Human Rights stated that such measures taken by Malta government that were aimed at subjecting the applicants' property to a continued tenancy does not amount to formal or de facto expropriation, rather constitute control of use of property under Article 1 of Protocol No. 1.<sup>583</sup>

Interference with property right is justifiable when three conditions are fulfilled; these are legality (lawfulness), legitimate aim and proportionality.<sup>584</sup> The first condition refers to the circumstances in which the limitation will be imposed are clearly delineated in an accessible law.<sup>585</sup> This condition protect the right to property from arbitrary measures.<sup>586</sup> This requirement reserves to the States the right to enact laws, as they deem necessary to control the use of property in accordance with the general interest.<sup>587</sup> This condition also enable State to interfere with freedom of contract as stated by the European Court of Human Rights '... in remedial social legislation and in particular in the field of rent control it must be open to the legislature to take measures affecting the further execution of previously concluded contract in order to attain the aim of the policy adopted'.<sup>588</sup>

The second condition refers to that, any limitation must be based on one of permissible legitimate aims listed as ground for restriction in the relevant provision such as "public order", "general interest", "public interest".<sup>589</sup> According to the European Court of Human Rights legitimate aims of "public interest", are measures designed to achieve greater social justice.<sup>590</sup> The Court stated that public interest that can be addressed by rent control measures are securing the stable, socially and economically justified housing rent for apartments that as a rule served the needs of those broad sections of the population who depended on leased accommodation.<sup>591</sup>

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<sup>583</sup> *Fleri Soler and Camilleri v Malta Judgment* (n 50) para 54; see also *Hutten-Czapska v. Poland* (n 50)

<sup>584</sup> Sermet (n 576) 32; see also Siracusa "Principles on the Limitation and Derogation of Provisions in the International Covenant on Civil and Political Rights" (1985), principle 10; see also Elizabeth K. Cassidy, 'Restricting Rights? The Public Order and Public Morality Limitations on Free Speech and Religious Liberty in UN Human Rights Institutions' (2015) 13 RFIA 5, 5; *Amato Gauci v Malta Judgment* (n 50) para 54; *Mellacher and Others v Austria* (n 50); *Hutten-Czapska v Poland* (n 50)

<sup>585</sup> Siracusa Principles (n 584) principle 14; Mohammed Elewa Badar, 'Basic Principles governing limitations on Individual Rights and freedoms in Human rights Instruments' (2003) 7 IJHR 63, 65-75

<sup>586</sup> Ibid; see also Serment (n 576) 33

<sup>587</sup> *Mellacher and Others v Austria* (n 50)

<sup>588</sup> Ibid para 51

<sup>589</sup> Siracusa Principles (n 584) principles 21-37

<sup>590</sup> *James v United Kingdom* (n 50)

<sup>591</sup> *Mellacher and Others v Austria* (n 50) para 19

The third condition, proportionality, is about establishing a balance between aims of legislation and the means it used.<sup>592</sup> The European Court of Human rights held that a fair balance must be maintained between demands of general interest of the community and the requirements of the protection of the individual's fundamental rights.<sup>593</sup> Proportionality of compensation in the context of social measures such as rent control could not be calculated based on full value on the open market, but was a matter that fell within margin of appreciation of the State.<sup>594</sup> The Court asserted that regular payment of rental price to the landlords mitigated the effects of the requisition and suffice to achieve this balance.<sup>595</sup> So long as the State's legislation remained within the bounds of its margin of appreciation, the possible existence of alternative solutions does not in itself render the rent control legislation unjustified.<sup>596</sup>

Generally, these jurisprudences of the European Court of Human Rights shows that the right to property is not absolute and it can be legitimately restricted for the purpose public interest; and the public interest it serve is, the protection of tenants from unreasonable rent increases and eviction. It also shows that rent control laws issued by different States to addressed housing problem are justified since housing is a prime social need, which requires some form of regulation, by State rather than being left to free market forces that failed to provide housing as expected.

Coming to our country, the FDRE Constitution Article 40(1) reads as:

Every Ethiopian citizen has the right to the ownership of private property. Unless prescribed otherwise by law on account of public interest, this right shall include the right to acquire, to use and, in a manner compatible with the rights of other citizens, to dispose of such property by sale or bequest or to transfer it otherwise.<sup>597</sup>

This provision shows that the right to property can be limited for the purpose of public interest. It also shows that property right need to be exercised in a manner compatible with rights of other citizens. From this provision the phrase which say '... unless prescribed otherwise by law on account of public interest...' is vital for this discussion since it provide limitation clause and legitimate aim upon which right to property can legitimately be restricted. The phrase "...

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<sup>592</sup> Badar (n 585); see also Siracusa Principles(n 584), Sermet (n 576)

<sup>593</sup> *Brumărescu v Romania* App No 28342/95 (ECHR 1999)

<sup>594</sup> *Mellacher and Others v Austria* (n 50)

<sup>595</sup> *Ibid*

<sup>596</sup> *James and Others judgment* (n 50) paras 35, 51

<sup>597</sup> FDRE Constitution (n 151) art 40(1)

unless prescribed otherwise by law...” show that the right to property is not absolute right. The existence of this limitation clause reserves to State to enact laws, as they deem necessary to control the use and enjoyment of property in accordance with the public interest. Hence, using this limitation clause the legislature can issue a law that regulate rent in the private rental-housing sector legitimately.

The legitimate aim that can serve as justification for enacting such law will be public interest. The public interest to be served by such law is to secure the stable and justified rental housing price in the private rental housing market, so that, low-income households can access affordable rental housing. As discussed above, housing market failed to provide affordable rental housing for low-income households that pictured the need regulate the private rental-housing sector in order to provide affordable rental accommodation for such groups. Thus, this can serve as a legitimate purpose that enable State to interfere with right to use and enjoyment of property of individual landlords.

Besides, according to Beyene Mellese director of residential housing study and data administration at Ministry of Urban Development and Housing there was a research conducted on this area three years ago.<sup>598</sup> The research finding reveals that currently there is high demand for the regulation of private real estate and private rental housing sector.<sup>599</sup> This can be expressed, for instance, by un-affordability of private rental sector with ratio to income up to 40-50 percent like in case of condominium rental accommodation found in Addis Ababa city; and existence of sub-standard houses with high rental price.<sup>600</sup> He also disclosed that draft law on regulation of private rental house and private real estate developers are under discussion.<sup>601</sup> The draft law on regulation of private rental sector contains provision on rent regulation and minimum time of protected tenancy.<sup>602</sup> Rent increment is capped at 10 percent of the previous rent price in case of renewal or new contract of lease.<sup>603</sup> It also set minimum standard for living condition of rented houses.<sup>604</sup>

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<sup>598</sup> An Interview with Mr. Beyene Mellese, Director of Residential Housing Study and Information Administrator at the Ministry of Urban Development and Housing on date 18/05/2017

<sup>599</sup> Ibid

<sup>600</sup> Ibid

<sup>601</sup> Ibid (I am denied to access the draft laws on the account that it is not finalized)

<sup>602</sup> Ibid

<sup>603</sup> Ibid

<sup>604</sup> Ibid

Finally, the director emphasized that there are challenges that need careful assessment. First, absence of adequate and sufficient data on private rental stock, specifically as to its size and condition, that need to be considered before the draft law was to be promulgated.<sup>605</sup> Second, possible effect also need to be analysed carefully since following rent regulation there is a possibility for emergency of black market that may undermine the purpose of rent regulation.<sup>606</sup> Third, it is highly advisable to strike a balance between public interest to be served and landlord interest which may be attained through various means such as tax incentive, subsidies since rent regulation may not work effectively unless supported by other mechanisms. This shows the need to balance between legitimate aim to be pursued and mean to be used.

In fact, the third condition of necessity or proportionality seems missing from the reading of the above constitutional provision. However, by resorting to interpretation through cumulative reading of Articles 9(4) and 13(2) we can read this test into our constitution.<sup>607</sup> Above all, even if these conditions are not fulfilled as stipulated under laws, still it is possible to come up with law that can ensure the observance of the right to adequate because the very foundation of human rights were not legislation, rather, legislation and conventions are there only to accord minimum human right protection than granting them.<sup>608</sup> Moreover, various evidence show that that prior importance of human rights plays an important role in motivating legislation.<sup>609</sup> The status and standing of human rights are given importance even before any legislation aimed to give force to it.<sup>610</sup> This can be expressed by the fact that many legislation and legal convention have certainly been inspired in some pre-existing claims of all human being.<sup>611</sup> For instance, the American Declaration of Independence and French Declaration of the Rights of Man show that legislation are do not grant human rights but only to recognize it as opposed to positivist view advocated by Jeremy Bentham.<sup>612</sup>

Generally, fair balance need to be maintained between the means used and the legitimate aim to be pursued, for instance, the law should not have to impose undue burden on individual like

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<sup>605</sup> Ibid

<sup>606</sup> Ibid

<sup>607</sup> Abebe (n 158) 59

<sup>608</sup> Amartya Sen, 'Human Rights and the Limits of Law' (2006) 27 CLR 2913, 2914-2920

<sup>609</sup> Ibid; D Chandler, 'Universal Ethics and Elite Politics: The Limits of Normative Human Theory' (2001) 5 IJHR 72, 74-77

<sup>610</sup> Ibid; see also Frank I. Michelman, 'Human Rights and The Limits of Constitutional Theory' (2000) 13 RJ 63, 64-73

<sup>611</sup> Ibid; see also Michelman (n 610)

<sup>612</sup> Ibid; see also Michelman (n 610)

freezing rental price despite existence of inflation or change of other circumstances. The government should also need to share burden by providing different incentives for the landlords, for instance, as seen in case of German experience allowing landlords to withhold some percent of money from taxes they are supposed to pay to the government, or providing supply side subsidies.<sup>613</sup>

#### **4.7. Effect of Rental Control**

Carefully crafted rent control bears the capacity to achieve the stated objective of ensuring the affordable housing besides stabilizing the rental market and maintaining investment. Such careful designing requires among others, striking balance between the interests of tenants and landlords since it will enable rent control measures to have positive effect on private rental housing market.<sup>614</sup> The development of the private rental sector and the way in which rents are regulated appear to be linked.<sup>615</sup> Strict rent control measures known for discouraging investment and produce a shrinking rental sector.<sup>616</sup> Third or second-generation rent control models seem to have positive effect better than first-generation models.<sup>617</sup> Rent control should allow rent increase linking it to fiscal measures such as inflation rate.<sup>618</sup> The rent increase structure must allow landlords to recover their investments and maintenance costs.<sup>619</sup> For instance, the European Court of Human Rights in the case of *Hutten-Czapska v Poland* stated that shortage of dwellings and high cost of acquiring flats on the market justify, rent control law that set a low rent at level below the market rent, but failure of not adopting means that allows landlords to cover maintenance cost impose undue burden on landlords.<sup>620</sup> Not adopting means for recovering maintenance or repairing cost cause deterioration of the property for the lack adequate investment and modernization on the property.<sup>621</sup> Such means may include allowing reasonable rent increase, tax incentive and subsidies.<sup>622</sup> Hence, by inculcating such

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<sup>613</sup> Scanlon and Kochan (n 20)

<sup>614</sup> Haffner and others (n 35) 218-220

<sup>615</sup> Ibid

<sup>616</sup> Christain (n 271)

<sup>617</sup> B. Turner and S. Malpezzi, 'A Review of Empirical Evidence on the Costs and Benefits of Rent Control' (2003) SEPR 10, 19

<sup>618</sup> Ibid

<sup>619</sup> Ibid

<sup>620</sup> *Hutten-Czapska v Poland* (n 50) para 184

<sup>621</sup> Ibid paras 82, 104, 138

<sup>622</sup> Ibid

mechanisms it is possible to mitigate the negative effect of rent control on the rental housing market.

With regard to interest of tenants, rent control will only have positive effect if tenant has rent protection accompanied by tenure protection otherwise landlord may evict tenants to circumvent rent regulation.<sup>623</sup> The rent control should have to accord both protection of security of tenure and control on levels of price increase.<sup>624</sup> To ensure that low-income households and vulnerable are really beneficiaries of from rent control measures, two things could be done as German experience shows. First, providing subsidies for special purpose investments, for instance, to supply housing for low-income households and those facing particular difficulties to access affordable housing such as released prisoners, homeless people, people with disabilities, etc.<sup>625</sup> Such landlord are obliged to let the dwellings only to those targeted groups at rent below market level during such tenancies relationship.<sup>626</sup> Second, maintaining uniform application of rent control measures regardless of the landlord types; such uniform application enhance the observance of the law and doing away with the possible emergency of black rental market which in turn increase positive effect of rent control law on the rental housing market.<sup>627</sup>

Generally, if the above-discussed points are considered, rent control law will have positive effect of stabilizing the rental housing market, which can be explained by high degree of security and access by low-income households to urban housing, and maintained rental investment (ensure the further development of the sector). This in turn result in the enhancement of the realisation of the right to adequate housing of the citizens and low-income households particularly. It also amount to observance of the State's human rights obligation under international human rights instruments.

#### **4.8. Conclusion**

One of the housing sectors in Ethiopia, which is greatly contributing to fill the gap in the existing housing demand, is the private rental sector. Private landlords are directly involved via building additional rooms within their own residence premise or in other premises destined for rental purpose. However, this sector is unaffordable due to various reasons. First, there is

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<sup>623</sup> Haffner and other (n 33) 221-223

<sup>624</sup> Ibid

<sup>625</sup> Peppercorn and others (n 31) 96

<sup>626</sup> Ibid; see also Scanlon and Kochan (n 20) 56

<sup>627</sup> Peppercorn and others (n 31) 95

shortage of affordable housing supply due to low-income levels of urban households, high cost of construction, shortage of public housing finance, limited serviced land supply, high population growth and inland migration to urban centres. Second, there is frequent rental price increase in the private rental housing mainly due to shortage of housing supply.

In Ethiopia, leaving terms and condition of contract of lease of house to the market play is not in-line with the country's human rights obligations that obliges government to adopt all necessary and appropriate measures in order to realize the right to adequate housing of its citizens, including protection against unreasonable rent increase and eviction by third parties.

## **CHAPTER FIVE**

### **Conclusion and Recommendations**

#### **5.1. Conclusion**

The right to housing is a basic human right the satisfaction of which serves as a basis for the enjoyment of all other human rights. Affordability and security of tenure protection comprise among the basic legal content of the right to adequate housing. The protection to these aspects of the right needs to be observed irrespective of the tenure types. Private rental sector is one form of housing tenure that provides rental accommodations to majority of urban dwellers in Ethiopia. Thus, the aim of this research has been to assess the need to regulate rent in the private rental-housing sector in Ethiopia for the realization of right to adequate housing.

The finding of the research shows that in Ethiopia there is a need for regulation of private rental sector, specifically, the rental price and security of tenure to make the sector affordable for the low-income households. Low-income households in Ethiopia are impeded from being accommodated through homeownership schemes or rental accommodations. First, due to their low and irregular income they are not in position to be beneficiary of government subsidized homeownership schemes through the IHDP. Second, the public rental sector that is supposed to serve as “safety net”, for the poor and low-income households, is not working efficiently and found in state of unfit for living condition. Third, private rental sector failed to supply affordable rental accommodation because of shortage of housing, that is, there is high demand while the supply of house is very limited one.

Moreover, the law that deals with residential rental arrangement (lease of house) leave the determination of rental price to the free negotiation of parties. However, there are evidences that demonstrates the imbalance of bargaining power in the private housing sector between tenants and landlords. Such circumstances added to the existing shortage of houses have resulted in, freedom of contract bringing socially undesirable consequences such as unreasonable rental increases and eviction. The experiences of different countries show that, under such circumstance most of the time, governments intervene into housing market in order to regulate the market in the form of rent control.

Furthermore, Ethiopia being a member to international human rights instruments, like the ICESCR, has the obligation to ensure that its agencies and private organs observe the right to

adequate housing. Accordingly, the government need to regulate the private rental housing sector since the rental housing market failed to provide affordable rental housing accommodations for low-income households because of high and frequent rental price increases or levels.

## **5.2. Recommendations**

As discussed above, Ethiopia does not have any specific housing legislation that creates obligation to realize the right to adequate housing or protect people against acts infringing their right adequate to housing. However, for meaningful realization of the right to adequate housing, such legislation is highly recommendable. Therefore, this paper recommends that Ethiopia enact specific housing laws.

Moreover, despite the laudable aim of the IHDP of making poor and low-income households homeowners, the actual beneficiaries of the program have been better-off households who could readily pay down payments or the full selling price of the condominium units. Low-income households are not beneficiary of the program because of unaffordability of down payment and high mortgage condition for bank loans due to their low and irregular income levels. Therefore, it is recommended that the government allocate some of these houses to the people who cannot afford to pay for them and/or to review the program in the way that the unaffordability problem is solved.

Related to this, as discussed above, the major reason for the absence affordable housing in Ethiopia is limited housing supply while the demand is so high. The causes for limited housing supply are shortage of public housing finance, high mortgage interest rate, high construction cost, limited serviced land and others. Unless these basic problems are solved, it is still unfeasible to meet high demand for affordable housing accommodation. Therefore, it is recommended that government should solve these causes for the shortage of housing supply.

Besides as discussed above, the current government policy is focused only on home ownership strategy to address the housing problem of the country. However, homeownership for all is neither desirable nor possible for all household groups and life-cycle stages. Rental accommodations offers a window for housing affordability and a place for equation of improving housing conditions for urban Ethiopians; since rental housing is a key components

of well-functioning and healthy housing market.<sup>628</sup> Therefore, it is recommended that Ethiopian government should inculcate rental accommodation development strategy in its housing policy and strategies framework.

Finally, the private rental-housing sector is the major housing accommodation in the urban Ethiopia despite the sector's frequent high rental increases and eviction. The sector has accommodated different categories of the society ranging from young students to vulnerable elders. On the other hand, government's obligations remain intact even if basic social service like housing is delivered by private individuals. The ICESCR to which Ethiopia is a signatory member imposes duty to ensure right to adequate is observed. Accordingly, member states' failure to intervene in the housing market, especially concerning rent levels, issues of security of tenure and prevention of undue speculation is amount to violation of right to adequate housing. Therefore, it is recommended that the government should regulate private rental housing in order to make housing affordable for the citizens of the country in general and specifically for the low-income households. Such regulation will enable to access housing provision at the affordable end of the private market and to redress the decline in public housing provision and, hence, this enhances the realization of the right to adequate housing in the country.

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<sup>628</sup> UN-Habitat, *A Policy Guide to Rental Housing in Developing Countries* (n 132) 3; see also Gilbert (n 31) 9, The African Rental Housing Conference (n 133) 8

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## **5.4 Annex**

### **A. Interview Guidelines**

- I. Interview guideline with Condominium Owner Associations Manager
  1. What initiated the site for self-regulation of standardized rent?
  2. What are the grounds for such standardized rent?
  3. How they are going to implement or what are the controlling mechanisms of complying with the standardized rent?
  4. What are the challenges?
  5. What are the outcome of such self-regulation?
- II. Interview with guideline with director of Residential Housing study and Information administration at Ministry of Urban Development and Housing
  1. What are the measures taken by government in order to realize the right to adequate housing in Ethiopia?
  2. What are the plans of government in order to ensure the affordability of private rental housing sector?

## B. Annex No. 4.1: Housing Crowding, 2007

City	One Room		Two Room		Three Room		Four +Room		Average No. of rooms per household	Average Household/ Housing unit	Average No. persons/Housing Unit
	No.	%	No.	%	No.	%	No.	%			
Adama	27013	45.5	15611	26.3	8836	14.9	7972	13.4	2.1	1.035	3.6
Addis-Ababa				25.9	99207	15.8	118735	18.9	2.4	1.042	4.2
Adigrat	9323	58.4	2850	17.8	1508	9.4	2291	14.3	2	1.026	3.6
Adwa	6581	54.3	2059	17	1421	11.7	2053	16.9	2.2	1.029	3.2
Arba-Minch	8825	48.8	4040	22.4	3264	18.1	1945	10.8	2	1.045	3.9
Asossa	5061	45.2	2728	24.4	1639	14.6	1762	15.7	NA	NA	NA
Hawassa	20710	53	7197	18.4	4619	11.8	6531	16.7	2.1	1.048	3.8
Axum	7111	55.4	2930	22.8	1465	11.4	1332	10.4		1.039	3.4
Bahir-Dar	27908	53.9	11487	22.2	6235	12	6139	11.9	1.9	1.026	3.4
Bishoftu	10663	39.7	7616	28.4	3856	14.4	4701	17.5	2.3	1.028	3.7
Debre-Markos	7153	38.7	3418	18.5	3861	20.9	4047	21.9	2.5	1.03	3.2
Dessie	11930	40.9	7896	27.1	4407	15.1	4920	16.9	2.2	1.079	4.2
Dilla	3954	32.1	4025	32.7	2551	20.7	1786	14.5	2.4	1.058	4.5
Dire-Dawa	31558	61.2	10523	20.4	4863	9.4	4663	9	1.8	1.05	4.1
Gambela	6147	64.1	1791	18.7	912	9.5	746	7.8	1.7	1.038	3.6
Gondar	29942	58.9	10202	20	6930	13.6	3744	7.4	1.8	1.042	4
Harar	13835	50.5	7107	25.9	3129	11.4	3343	12.2	2	1.03	3.5
Jigjiga	13947	60	5363	23.1	2143	9.2	1809	7.8	1.8	1.115	5
Jimma	8609	25.9	12117	34.6	6222	18.7	6306	18.9	2.5	1.056	4.1
Kombolcha	6780	44.4	3966	26	2177	14.3	2338	15.3	2.2	1.083	3.9
Mekelle	33041	60.4	9089	16.6	5206	9.5	7371	13.5	2	1.035	3.8
Nekemte	7844	40.4	3830	19.7	2928	15.1	4796	24.7	2.5	1.036	3.7
Semera	NA		NA		NA		NA		NA	NA	NA
Shashamane	9855	43.4	5926	26.1	3643	16.1	3261	14.4	2.2	1.051	4.2
Shire Endasselassie	8172	60.3	2733	20.2	1331	9.8	1316	9.7	1.8	1.026	3.4
Wollaita-Sodo	6752	39.5	4278	25.1	3342	19.6	2699	15.8	2.3	1.065	4.3
Hosanna	7577	47.1	2466	15.3	3001	18.7	3039	18.9	2.3	1.039	3.1
									<b>51</b>	<b>27.186</b>	<b>98.8</b>
									<b>1.96</b>	<b>1.046</b>	<b>3.8</b>

Source: CSA, 2007

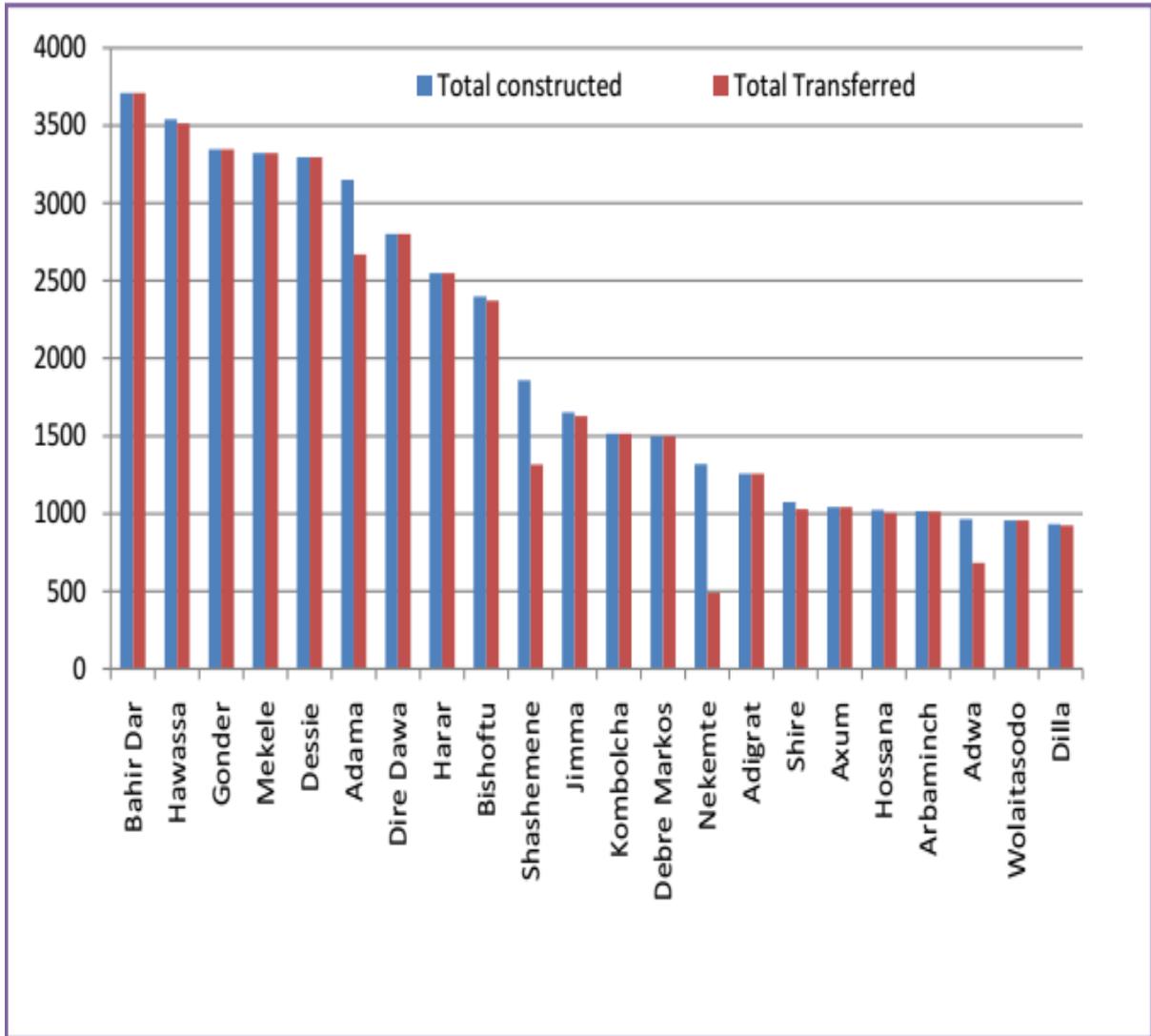
**C. Annex No. 4.2: Ratio of People Needing Access to Housing \*per 1,000 Population 2000-2006**

City	Total population	Total demand(2000-2006)	Ratio
Adama	234231	24534	104.7
Addis Ababa	2700736	974983	361.0
Adigrat	56439	3294	58.4
Adwa	53763	1728	32.1
Arba-Minch	80472	3119	38.8
Asossa	28733	1889	65.7
Axum	59269	3229	54.5
Bahir-Dar	171463	46703	272.4
Bishoftu	105099	22438	213.5
Debre Markos	71907	2627	36.5
Dessie	125327	12077	96.4
Dilla	61377	4505	73.4
Dire-Dawa	211372	37335	176.6
Gambela	38845	2562	65.9
Gondar	220960	19092	86.4
Harar	96361	2250	23.3
Hawassa	180313	NA	-
Hosanna	71954	13913	193.4
Jijiga	99959	NA	-
Jimma	126787	19308	152.3
Kombolcha	64134	290	4.5
Mekelle	226424	22207	98.1
Nekemte	76237	2967	38.9
Semera	3971	1100	277.0
Shashamane	98953	NA	-
Shire Endaslassie	62769	13393	213.4

Source: SECR Field Survey 2014

\*Include person registered for access to condominium house, public rental house and land to build house.

**D. Annex No. 4.3: Condominium Built (2006/7-2007/8) and Distributed (July 2014) in 22 SECR Report**



Source: MUDHCo 2014

**E. Annex No. 4.4: Percentage Distribution of Tenure, 2007**

City	Owner occupied	Rent Free	Kebele Rental	AARH Rental	Rent from Organisation	Private Rent	Different Rent
Adama	31.8	7.3	12.9	1	0.8	46	0.2
Addis-Ababa	32.6	5.9	23.6	1.8	0.5	35.4	0.1
Adigrat	33.3	10.1	0.1	0.5	0.3	55.7	0.1
Adwa	26.1	13.4	1.5	0.3	0.5	58.1	0.1
Arba-Minch	43.8	5.5	8.7	0.9	0.8	40	0.1
Asossa	42.5	8	1.2	1.5	1.1	45.5	0.2
Hawassa	24.5	6.3	7	1.1	3.2	60.4	0.1
Axum	37.1	7.5	0.3	0.2	0.5	54.4	0.03
Bahir-Dar	38.9	5.2	6.1	0.6	0.4	48.8	0.1
Bishoftu	30.3	7.8	21.3	0.7	0.5	39.3	0.2
Debre Markos	38	5	13.4	0.8	0.8	41.9	0.02
Dessie	34.5	5.7	22.2	0.9	0.5	36	0.2
Dilla	41.1	9.2	14	0.8	0.7	33.8	0.2
Dire Dawa	34.5	9.1	20.2	2.7	1.1	32.4	0.1
Gambela	39.4	8.2	5.4	1.9	3.2	41.3	0.6
Gondar	37.2	6.5	13	0.9	0.7	41.5	0.2
Harar	29.4	8.5	25.3	2.2	0.7	33.7	0.1
Jigjiga	43.5	9.3	0.9	0.3	34.6	11.2	0.2
Jimma	30.8	5.8	15.3	1.4	0.7	36.2	0.1
Kombolcha	38.4	6.4	7.5	6.6	0.6	42.7	0.3
Mekelle	32.7	9.8	0.9	1	0.4	55	0.2
Nekemte	36.6	4.5	7.2	0.5	0.7	50.5	0.03
Semera	NA	NA	NA	NA	NA	NA	NA
Shashamane	39	7.6	9.2	0.3	0.7	42.9	0.1
Shire Endasselassie	32.5	5.2	0.6	0.3	0.3	60.9	0.1
Wollaita-Sodo	40.2	8.4	7.8	0.4	1	41.1	0.1
Hosanna	38.7	7.7	4.2	0.5	1	47.7	0.09
<b>Total</b>	<b>927.4</b>	<b>193.9</b>	<b>249.8</b>	<b>30.1</b>	<b>56.3</b>	<b>1132.4</b>	<b>3.87</b>
<b>Average%</b>	<b>35.7</b>	<b>7.4</b>	<b>9.6</b>	<b>1.2</b>	<b>2.2</b>	<b>43.6</b>	<b>0.1</b>

Source: CSA, 2007, National Population and Housing Census

**F. Annex No. 4.5: Percentage Distribution of Tenure Type, 2011**

City	Owner Occupied	Rent Free	Rental	Diff. in rent	Others
Mekelle	40.7	5.56	51.4	2.34	0
Gondar	39.02	8.61	51.62	0	0.67
Dessie	32.6	4.44	60.66	0.2	2.09
Bahir Dar	31.33	5.52	62.65	0	0.49
Adama	29.6	8.93	59.94	0.28	1.24
Jima	41.45	4.98	51.93	0	1.64
Bishoftu	29.63	5.24	59.55	5.59	0
Jigjiga	44.26	17.29	37.84	0	0.61
Asossa	45.99	1.82	51.66	0	0.53
Hawassa	29.15	3.49	66.46	0.24	0.66
Gambela	50.83	3.28	44.47	0.16	0.88
Harar	37.46	4.91	57.38	0	0.25
Addis Ababa	33.35	6.08	58.77	0.45	1.28
Dire Dawa	44.96	6.25	48.32	0.23	0.23
<b>Total</b>	<b>530.33</b>	<b>86.4</b>	<b>762.65</b>	<b>9.49</b>	<b>10.57</b>
<b>Average%</b>	<b>37.9</b>	<b>6.2</b>	<b>54.5</b>	<b>0.7</b>	<b>0.8</b>

Source: CSA, 2011, Welfare Monitoring Survey