



# **Strategy for Polygamous Wives Registration during SLLC**

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## Acronyms

CEDAW	Convention on the Elimination of All Forms of Discrimination against Women
EDHS	Ethiopian Demographic and Health Survey Report of Federal Democratic Republic of Ethiopia
FAO	Food and Agriculture Organization
FDRE	Federal Democratic Republic of Ethiopia
FLLC	First Level Land Certification
FSCC	Federal Supreme Court of Cassation
LIFT	Land Investment for Transformation
M4P	Making markets work for the poor
PWR	Polygamous Wives Registration
RLAS	Rural Land Administration Systems
RFC	Revised Family Code
SLLC	Second Level Land Certification
SOP	Standard Operating Procedure
SWOT	Strength, Weakness, Opportunity and Threat
SNNPR	Southern Nations Nationality and Peoples Region

## Executive Summary

Land has been recognised as a primary source of wealth, social status, and power. It is the basis for shelter, food, and economic activities; it is the most significant provider of employment opportunities in rural areas. The land tenure system in Ethiopia may be characterized as highly patriarchal in which women and girls have little or no influence. Division of property and inheritance of land discriminates and often excludes women.

Considering its importance, over the past two decades the Ethiopian government has paid significant attention to land administration. Funded by UKaid and managed by the Department for International Development (DFID), the Land Investment for Transformation (LIFT) Programme is implementing second level land certification (SLLC) in Amhara, Oromia, SNNPR and Tigray. This study was conducted with LIFT's support to investigate and design a strategy to address polygamous marriage registration during the SLLC process.

A triangulation technique was employed to validate the data gathered. Documents and legislations that deal with the subject matter were analysed. In-depth interviews were conducted with women and men in polygamous marriages. Experts from various organizations dealing with rural land issues were interviewed as key informants in addition to focus group discussions. The study also captured case stories and direct observations in LIFT woredas undergoing SLLC.

Despite the prohibition of polygamous marriage under Ethiopian law, the practice is deeply rooted in religious and customary practices. Factors such as migration, son preference and search for ownership push individuals to engage in polygamous unions. In most instances, the first wives neither bring the issue to the attention of the women and children's affairs bureau nor to the justice office. Conflict among co-wives occurs when the husband shows preferential treatment to one wife over the other/s. It has been reported in conversations with women in the community, that it is known for the husband to favour the second or the new wife while the first or older wives and their children can be left without any support. This could have an impact on the land registration system during SLLC, if the husband manages to register the second or other wives preferentially to the first wife.

Throughout the SLLC process, the Woreda Land Administration Office in cooperation with stakeholders is expected to raise awareness about the benefits of participating in land certification to all members of the community. However, the participation of women can be lower than would be desirable. In polygamous households, where there is a dispute or potential dispute between wives or their husband, wives may opt to participate for fear of losing the land.

Although SLLC was implemented in more than 60 woredas during this study, due to a lack of a legal framework, no standard procedure on registering and certifying rural land in polygamous households was applied. As a result, there were different ways of registering and certifying polygamous wives within one kebele or woreda. In the absence of a clear guideline that shows how to register polygamous households, this increases the likelihood of the husband of a polygamous household solely deciding how and who should be registered during SLLC.

The diverse modes of certifying polygamous households has also created questions on the reliability and benefit of the land certificate in these circumstances and in turn may make it difficult for the land certificate to be taken as adequate and conclusive evidence in polygamous households. Moreover, it also creates a problem for courts upon division of property when one of the wives or husband files a divorce or passes away.

The Federal Supreme Court of Cassation (FSCC) passed a binding judgment that although polygamous marriage is illegal, division of property is mandatory considering the existence and prevalence of the practice in Ethiopia. Accordingly, the stand of the FSCC is to divide all property equally between the husband and the wives.

Based on consultations with various stakeholders, the Federal Supreme Court of Cassation's decision, and evaluation of the strengths and weaknesses, this strategy proposes two options to register land in polygamous marriage arrangements. The first option is to register land as a joint right holding shared by the original co-wives and thereafter, any new wives will share the husband's remaining land right. They will have no access to the existing wives joint right, thereby discouraging polygamy and protecting existing joint holder wives. The second option is to register all wives and the husband separately.

The strategy also recommends a standard operating procedure (SOP) for registering land of polygamous households when implementing SLLC. To facilitate the implementation of the SOP, a monitoring and evaluation framework is provided to guide LIFT in ensuring that the land rights of women in polygamous marriage arrangements are given proper attention.

## Introduction

Ethiopian women have a weaker position than men within households, community and society at large. Women and girls have very little influence and often have to marry a husband that their clan or family has identified for them. The husband is considered to be the head of the household and women become heads of households only if they have no husband. Few women hold local leadership positions and their role is often confined to taking care of children, preparing food and doing other household chores.

Consequently, the land tenure system in Ethiopia is characterised by a patrilineal system. Often, inheritance of land follows the male-line as the girls will leave the house and marry in other places and therefore will not be entitled to inherit land.

Land certification has been implemented in Ethiopia since 1998 and over five million first level land certificates (FLLC) had been delivered, the largest delivery of non-freehold rights in such a short time period in Sub-Saharan Africa. The federal and regional land proclamations are the basis for this land reform, aiming to increase tenure security and strengthen women's rights to land and to ensure more sustainable use of land resources.<sup>1</sup>

Of the different methods for identifying land for registration tested in Ethiopia, the use of orthophotos has been found to be the most suitable method for cost-effective large-scale certification of rural land and is the approach being implemented by LIFT.

Funded by DFID, LIFT aims to improve the incomes of the rural poor and enhance economic growth through three components: (i) the development and implementation of SLLC; (ii) improved Rural Land Administration Systems (RLAS); and (iii) increasing land productivity through the 'making markets work for the poor' (M4P) approach. SLLC aims to achieve 14 million parcels in 140 woredas covering approximately 6.1 million households (around 70% of parcels being jointly or individually owned by women). The programme is implemented in Oromia, Amhara, SNNP and Tigray regions. SLLC involves five<sup>2</sup> stages.

The table below shows the stages and the different stakeholders taking part of the process.

PROCESS	PARTIES INVOLVED
Public Awareness	<ul style="list-style-type: none"> <li>Kebele/Woreda Stakeholders</li> <li>Kebele Land Administration &amp; Use Committees (KLAUC)</li> <li>Rural landholders</li> <li>Vulnerable Groups</li> </ul>
Demarcation and Adjudication	<ul style="list-style-type: none"> <li>Land Registration Advisor</li> <li>CIS Expert</li> <li>KLAUC</li> <li>Community Leaders</li> <li>Rural Landholders</li> <li>Vulnerable Groups</li> </ul>
Data Entry and Checking	<ul style="list-style-type: none"> <li>Technical Teams</li> </ul>
Public Display	<ul style="list-style-type: none"> <li>Land Registration Officer</li> <li>KLAUC</li> <li>Rural Landholders</li> <li>Vulnerable Groups</li> </ul>
Certification	<ul style="list-style-type: none"> <li>Land Administration and Use Office</li> </ul>

One of the biggest challenges in the land certification process is the prevalence of polygamous marriage and how to register them, particularly in Oromia and SNNPR. The land laws of Oromia and SNNPR first introduced in 2002 and 2003 respectively state that the husband can have his name and only one wife, while others will be registered separately. This faced resistance and consequently a change in practice was implemented. This change suggests that the certificate could be issued jointly to the husband and his wives, or the husband's name could also be included below the name of his second and later wives, while he has his name first on the

<sup>1</sup> UN HABITAT Land Certification in Ethiopia: Early Impacts on Women Summary Report 2008.

<sup>2</sup> Ethiopia- Land Investment for Transformation (LIFT), SLLC Manual, version 2.2., 2016.

certificate with his first wife.<sup>3</sup> In practice, even if the second arrangement gives better leverage for the wives, it has no legal effect on the joint holding right of the husband with his wives. LIFT wishes to identify and understand the different forms of registration to propose a standard procedure for polygamous households' registration. Thus, this study is conducted with the aim of developing a strategy for polygamous wives' registration during SLLC.

## Background

### Land Rights of Women in Polygamous Marriage

Polygamy seriously affects women's rights to property, as it affects the distribution of income at the household level.<sup>4</sup> Laws against polygamy are rarely enforced and have little effect on behaviour. In fact, where polygamy is illegal, women may be more vulnerable; often second wives have no rights under formal law if polygamy is not recognised. Legal protections for first wives, even those who are formally married, are rare. In most instances the husband is not formally married to either wife, placing the first wife in serious economic jeopardy when her husband takes a second wife.

Most of the international legal instruments state concerns with regards to polygamous marriage. For instance, the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and its General Comment no. 28 obliges state parties to take appropriate steps to modify the social and cultural patterns of conduct of men and women in order to eliminate prejudice and customary practices which are based on the idea of the inferiority or superiority of either of the sexes or on stereotyped roles for men and women. As one of the customary practices that hinder the rights of women, according to CEDAW states are obliged to take all appropriate measures to prevent and manage the matter.<sup>5</sup>

The African Charter on Human and Peoples' Rights on the Rights of Women in Africa Protocol "recognise polygamous marital relationships as a compromise, which takes cultural and religious diversity" into account. According to this protocol, state parties are obligated to enact appropriate national legislative measures to guarantee the enjoyment of equal rights between women and men in marriage.

However, though the protocol encourages monogamy as the preferred form of marriage, the rights of women in marriage and family, including that of polygamous marital relationships are promoted and protected. It is crucial to note that it has attempted to respond to the plights of women in polygamous marital relationships by obliging states to ensure the promotion and protection of their rights in such a status.<sup>6</sup>

Despite the prohibition and criminalisation of polygamous marriage under Ethiopian law, the practice is deeply rooted in religious and customary practices. According to the Ethiopian Demographic and Health Survey Report of 2011 (EDHS), eleven percent of married women in Ethiopia are in a polygamous marriage, with nine percent having only one co-wife and two percent having two or more co-wives. Similarly, five percent of married men in Ethiopia are in a polygamous marriage having two or more wives.<sup>7</sup>

Rural women are more likely to be in polygamous marriage (12 percent) than urban women (five percent). The regional distribution also shows substantial variation. The prevalence of polygamy is the lowest in Tigray (1 percent) and highest in Somali (27 percent). Polygamy is also relatively common in Afar (22 percent), Gambela (20 percent), and Benishangul-Gumuz and SNNP (both 18 percent).

According to the national statistical report, women in the lowest wealth quintile are the most likely to be in a polygamous marriage (16 percent) compared with just six percent of women in the highest wealth quintile.<sup>8</sup>

### Polygamous Marriage under the Ethiopian Legal System

In principle, polygamous marriage is outlawed by the Federal Democratic Republic of Ethiopia (FDRE) family law and subsequently by most of the regions' family law. According to the FDRE Criminal Code, polygamy is generally casted as an offence punishable by the law. It reads as follows<sup>9</sup>:

*Whoever, being tied by the bond of a valid marriage, intentionally contracts another marriage before the first union has been dissolved or annulled, is punishable with simple imprisonment, or, in grave*

<sup>3</sup> UN HABITAT Land Certification in Ethiopia: Early Impacts on Women Summary Report 2008.

<sup>4</sup> The World Bank, Food and Agriculture Organization, and International Fund for Agricultural Development, Gender in agriculture sourcebook, 2009.

<sup>5</sup> The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW).

<sup>6</sup> African Charter on Human and Peoples' Rights on the Rights of Women in Africa Protocol, Art. 6(c).

<sup>7</sup> Ethiopian Demographic and Health Survey Report of 2011 (EDHS).

<sup>8</sup> Ethiopian Demographic and Health Survey Report of 2011 (EDHS).

<sup>9</sup> The Federal Democratic Republic of Ethiopia Criminal Code (2004), Art. 650(1).



*cases, and especially where the criminal has knowingly misled his partner in the second union as to his true state, with rigorous imprisonment not exceeding five years.*

The exception clause of polygamous marriage is stated in the subsequent article that reads "... shall not apply where bigamy is committed in conformity with religious and traditional practices recognized by law<sup>10</sup>.

The Federal Rural Land Administration and Use proclamation no. 456/2005 has specific provisions that acknowledge the equal access to and control of rural land by women and men. Under article 5(1)(c) it lays down the core guiding principles on acquisition and use of rural land declares 'women who want to engage in agriculture shall have the right to get and use rural land'. However, the law is silent when it comes to who and how to handle the rights of women in polygamous marriages.<sup>11</sup>

Similar articles are found in the Oromia Rural Land Administration and Use Proclamation 56/2002 and the Southern Nations, Nationalities and Peoples Regional State Rural Land Administration and Utilization Proclamation No.110/2007. However, none of these proclamations discuss how to register and protect women who are in polygamous marriages.

Besides the outlawing under the law, the Ethiopian judiciary system has passed diverse decisions concerning polygamous marriage. For instance, in the National Regional State of Oromia, polygamous marriages are silently recognized by courts, simply by dissolving it and liquidating its pecuniary effects. According to a judge in the Oromia National Regional State Supreme Court, judges are not highly concerned with the criminality of polygamous marriage since it is dominantly practiced in Oromia. He further noted that although polygamous marriage is an offence punishable by the Criminal Code, most polygamous marriages were revealed before the court of law, not as a dispute over their polygamous nature but on the division of matrimonial property after the dissolution or divorce of polygamous spouses has been successfully declared by the lower courts.

The practice of the Amhara Supreme Court is clearer on the illegality of polygamous marriage. In a matrimonial property dispute case between Aminat v Fatuma, the Supreme Court and its Cassation division declared the marriage of petitioner Aminat bigamous since she married Mehammad in 1990 (E.C) as a second co-wife to respondent Fatuma whose marriage was prior in time (1987). Though State lower courts passed a judgment recognising the existence of polygamous marriage, the Amhara Supreme Court and the Cassation division reasoned out that the law does not encourage bigamous marriage and the decision on the disputed matrimonial property should be given in such a way to protect the first legal marriage.<sup>12</sup>

However, the Federal Supreme Court of Cassation stated that even though polygamous marriage is outlawed it is still practiced and one cannot deny the reality. Accordingly, it was decided that each wife would have equal right to divide the property acquired with their own husband during the life of each marriage. Based on the legal presumption of equal division of common property noted before, the FSCC decided that property acquired during the first marriage should be equally divided (50 percent each) between the first wife, Fatuma and her husband, Mehammad as forming part of the distinct common property regime. In the same fashion, the FSCC also decided that, the property acquired during the second marriage between the personal or common efforts of the second wife, Aminat and her husband, Mehammad to be equally divided (50 percent each) between the two spouses.<sup>13</sup>

Similarly, on another case, the FSCC passed a guiding decision on polygamous marriage. The facts of the case indicated that a man had been married to two women and had divorced one of his wives. During post-divorce property division, the wife wanted to intervene into the proceeding claiming that she had a vested interest in the division of property between her husband and the divorcee. Her claim was rejected by the various levels of courts in the SNNPR which had stated that the house had been built using the husband's money and should only be divided between the claimant (divorced wife) and the defendant (husband).

The FSCC Division discussed the heart of the matter that was not addressed by any of the lower courts by stating as follows:<sup>14</sup>

Except the divorce decision on one of the marriages and the ensuing property division, no mention had been made of the presence of polygamous marriage in the lower courts' decisions. In circumstances where one of the marriages in polygamous marriages has been dissolved by divorce, the question of how we approach the property division becomes very crucial.

<sup>10</sup> The Federal Democratic Republic of Ethiopia Criminal Code (2004), Art. 651.

<sup>11</sup> The Federal Democratic Republic of Ethiopia proclamation no. 456/2005.

<sup>12</sup> Jetu E. Chewake Bigamous Marriage and the Division of Common Property Under the Ethiopian Law: Regulatory Challenges and Options.

<sup>13</sup> Aminat Ali Vs Fatuma Webet Cassation decision Vol. 13 File No. 45548.

<sup>14</sup> Belachew Mekuria Fikre Bigamy and Women's Land Rights: The case of Oromia and SNNPR National Regional States Ethiopian Journal of Human Rights Vol. I, 20013



Both the federal and the region's family laws have anticipated only the conclusion and dissolution of monogamous marriages which is partly because they both have expressly outlawed polygamy. However, because of the widespread practice of polygamous marriages, it is the judiciary's responsibility to cautiously adjudicate the consequent disputes in such circumstances even if not foreseen by the law to reduce the undesirable social ramifications.

The cassation court reversed the lower courts' decision which had divided the property into two halves for the husband and the divorced wife by bringing the second wife to partake in the half of the husband's share.

From the above discussion the complex nature and challenge faced by courts in passing decisions when it comes to polygamous marriage issues can be seen very clearly. However, as the Federal Supreme court is the final and authoritative court in the country, this will be the guiding decision to be followed in all polygamous decisions.

The prevalence of polygamous marriage coupled with outlawing of the practice under the Ethiopian laws has created a big challenge during certifying rural land in cases involving polygamous marriage.

### Experience of other Countries

Several countries have attempted to legislate land rights for women in polygamous marriages. No effective and gender-sensitive titling procedures have been developed for polygamous households. For instance, the government of Rwanda started regularization of land tenure. Legal changes provided for the compulsory registration of property and of transfers of land and customary law was no longer given legal standing. Reforms protected property rights of women on land held by their husbands, provided they were in a legally registered marriage. However, women in traditional marriages such as polygamous marriage did not enjoy the same benefits as women in monogamous marriages that were formally registered. Households were unclear about whether wives in a polygamous household should have joint titling of land with their husbands, as that of monogamous marriage land certificates. Since, husbands wanted to clarify inheritance for their children in ways that would not lead to ambiguity about which children of which mother would inherit, the husbands ended up in many cases having land registered in none of their wives' names rather than jointly.<sup>15</sup>

Under Burkina Faso's 1990 Family Code, if a couple is monogamous, their property is marital property, but if there is more than one wife, all property is separate property. Where polygamy is widely practiced but illegal, however, it is ignored in relation to land rights.<sup>16</sup> On the other hand under Senegal family law, a polygamous household must allocate property or land for each marriage.<sup>17</sup>

In Kenya, on average "sixteen percent of currently married women live in polygamous marriages. In some regions of Kenya, such as the North Eastern Province, the proportion of women in polygamous marriages is as high as 34 percent. Polygamous marriage is prohibited by law but practiced due to customary and Muslim law. Women in polygamous unions are required to present a valid marriage certificate, without which women cannot claim any rights in the marriage or upon divorce. For this reason, wives in polygamous marriages lack legal claims to property if their names do not appear on the title to the matrimonial home or land."<sup>18</sup>

The experience of Lesotho differs from the other countries, as it has promulgated a land act that proposes for each wife in a polygamous marriage to have a separate share of land. It states:<sup>19</sup>

1. Where persons are married in community of property, either under civil, customary, or any other law and irrespective of the date on which the marriage was entered in to, any title to immovable property allocated to or acquired by anyone of them shall be deemed to be allocated to or acquired by both partners, and any title to such property shall be held jointly by both.
2. Subsection (1) shall apply in the same manner in the case of polygamous marriages as if each household was a monogamous marriage.

The above illustrations about the experience of certifying polygamous households in land issues shows the complexity of the issues and the difficulty faced by countries. Considering the challenge, the World Bank recommends countries where there is polygamy and neither land nor marriage is registered, to draft consent provision that;

<sup>15</sup> Anne Coles, Leslie Gray, Janet Momsen The Routledge Handbook of Gender and Development 2015.

<sup>16</sup> The World Bank, Food and Agriculture Organization, and International Fund for Agricultural Development Gender Issues in Land Policy and Administration: Gender in agriculture sourcebook, 2009

<sup>17</sup> UN-Habitat Shared Tenure Options for Women: A Global Overview 2005.

<sup>18</sup> The International Women's Human Rights Clinic, Georgetown Journal of International Law Women's Land and Property Rights in Kenya 2008.

<sup>19</sup> LANDESA Gender and Land: Good Practices and Lessons Learned from four Millennium Challenge Corporation Compact-Funded Land Projects.

1. Requires the consent of both husband and wife to authorise transfers of land,
2. States that a sale or mortgage is valid even if later contested for lack of consent, if the purchaser or mortgagee made a reasonable effort to obtain consent, and
3. In the latter case, requires the offending party (the seller or mortgagor) to provide land or equivalent compensation to the offended party (the wife who did not provide her consent). Where polygamy is practiced, even if it is illegal, draft legislation stating that where the husband takes a second wife, all property belonging to the first marriage or consensual union would be partitioned, and the husband would only have his share to distribute to his new wife and any children.<sup>20</sup>

### Objective of the assignment

The main objective of this research is to develop a strategy that contains standard procedures for SLLC registration to protect polygamous wives' land rights as well as their children during the certification process and follow up land transactions in a consultative and participatory manner with the aim to provide federal and regional stakeholders to agree on polygamous wives' registration modality.

### Specific Objectives

1. To identify the different modalities for polygamous wives' registration in SLLC
2. To identify the challenges facing co-wives, husbands and field teams in the registration of polygamous households
3. To examine the advantage and disadvantages of the different modalities of registration
4. To analyse the legal consequence of the different modalities of registration on individuals living in polygamous marriages
5. To examine the existing challenges of co-wives and propose recommendation for securing their land use right
6. To identify the most preferred registration modality for polygamous wives and develop Strategy

### Methodology

#### Data Gathering

Based on the objective of the assignment, the research team selected a methodology that best served to achieve the desired goals. The research team triangulated data collection methods, mostly focusing on drawing qualitative data to obtain an in-depth understanding of the complexity of registering women in polygamous households.

By 'unpacking' issues, the research team was able to see what lies inside polygamous marriage and explore how it affects the land rights of women and their children. Such evidence is used to generate the following main aspects:

1. Contextual - describing the form or nature of polygamous marriage
2. Explanatory - examining the reasons for, or associations between polygamous marriage, social and legal contexts
3. Evaluative - Examining the extent of polygamous marriage within the study area
4. Generative – Based on the data, generate strategies or actions

Hence, the study employed an assessment strategy and methods that included a mix of qualitative and quantitative data collection and analysis approaches, described below.

#### Document and legal analysis

The research team analysed the federal family law, property law, federal rural land proclamation, decisions passed by the FSCC, the SNNPR and Oromia family laws and rural land proclamations. Moreover, experiences of other countries, as well as rural land certificates of polygamous households in SNNPR and Oromia regions were reviewed.

<sup>20</sup> World Bank Land law reform: achieving development policy objectives John W. Bruce . . . [et al.] 2005.

### In-depth Interview of Polygamous Households

Co-wives and the husbands who are in polygamous marriages participated in the study. In this regard, 30 households were involved from the selected six Woredas as indicated in the table below.

Due attention was given to include the different categories in polygamous families (first wife, second wife, third wife and additional wives and husbands). Using a snowball purposive sampling technique, a total of thirty (30) individuals in a polygamous marriage were interviewed. Moreover, the interview for each co-wife and the husband were conducted separately because: a) the perspective between the husband and the wives may be different, b) the perspective between the co-wives may be different and c) due to cultural barriers, it is easier for them to talk freely while they are independent. The researcher made clear confidentiality issues and that the information by no means affects the household, but to understand the dynamics so that interviewees can be comfortable to give the right information. The following tables show the geographic profile of the study participants (Table 2) and the relationship of the participants within a polygamous marriage (Table 3).

**Table 2 - Geographic Profile of Study Participants**

Region	Name of Woreda						Total
	Dodota	Hetosa	Sodo	Siti	Bakko Tibbe	Shashego	
Oromia	5	5	0	0	5	0	15
SNNPR	0	0	5	5	0	5	15
<b>Total</b>	<b>5</b>	<b>5</b>	<b>5</b>	<b>5</b>	<b>5</b>	<b>5</b>	<b>30</b>

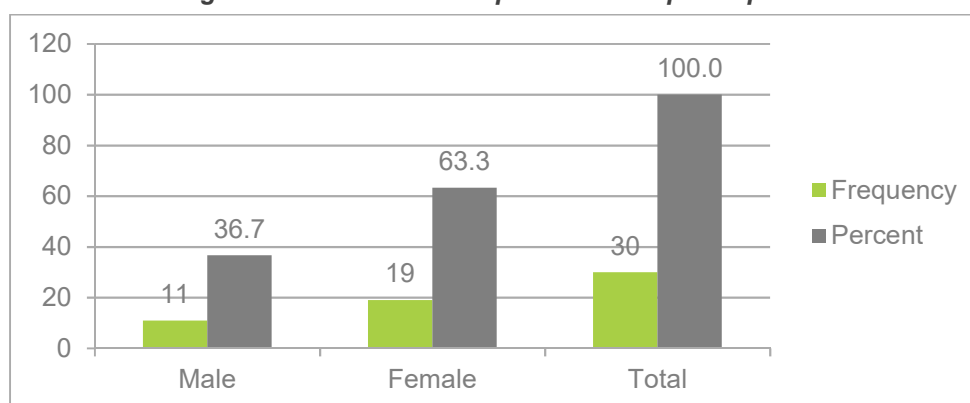
**Table 3 - Relationship of participants in polygamous marriage**

Relationship in the marriage	Frequency	Percent
First Wife	8	26.7
Second Wife	9	30.0
Third Wife	1	3.3
Seventh wife	1	3.3
Husband	11	36.7
<b>Total</b>	<b>30</b>	<b>100.0</b>

The average age of the in-depth interview participants was 47 while the minimum and maximum age were 26 and 70, respectively.

Around 63.3% of the in-depth interview participants were female (co-wives). The study purposefully increased the proportion of women as they are the most disadvantaged ones in land ownership affairs compared to their male counterparts.

**Figure 1: Sex of the in-depth interview participants**



### Key Informants Interviews

Key informant interviews (KII) were selected as one of the methods to understand the context of polygamous marriage and the different modalities of land registration in the study area. In this connection the research team interviewed LIFT staff including Field Teams engaged in SLLC, rural land administration officers at the federal, regional, woreda and kebele levels, land administration committees, women and children affairs officers, community leaders, public prosecutors and judges. In interviewing key informants, semi-structured questionnaires were developed, that are shaped according to the objective of the study and at the same time allowing flexibility. Accordingly, a total of 36 experts were interviewed. In addition to KII, the research team conducted nine group discussions with woreda land administration heads and experts who actively participated in SLLC. The group discussion is designed to generate as much information as possible through an interactive session among participants.

## Case Studies

The use of case study reinforces the findings of the research through citing of concrete and real-life contexts. Five cases were used in the study and it contributes positively as it will clearly show the advantage and disadvantage of the issue at hand in a real-life situation. A guide that helps to capture relevant information was developed ahead of the field work.

## Location of the Study

The study was conducted in two SLLC completed and one SLLC ongoing woredas of Oromia and SNNPR regions (Table 4).

**Table 4: List of the study Woredas**

Name of the Woredas	Region	SLLC status during the study
Hitosa	Oromia	Completed
Dodota	Oromia	Completed
Bakko Tibbe	Oromia	Ongoing
Sodo	SNNPR	Completed
Silti	SNNPR	Completed
Shashego	SNNPR	Ongoing

## Ethical Considerations

As in any research, the researchers secured informed consent from all participants involved in the research. This means providing them with information about the purpose of the study, the funder, who the research team is, how the data will be used, and what participation will be required of them. Participants of the study will be anonymous, and their words will be kept confidential. In taking pictures for case studies, the researchers have obtained the full and free consent of the participants.

## Analysis

The analysis of quantitative data and qualitative information was done separately and merged later. The quantitative data collected through in-depth interview with polygamous families was analysed using SPSS. Qualitative data was analysed by categorizing and consolidating the data collected under the different themes.

## Limitations

Though, the study is well designed, it is not without limitations. The study was limited to six specific Woredas of Oromia and SNNPR. Given the large number of woredas and size of population of the two regions, the findings may be limited in covering the diverse experience that may exist. Increasing the sample size could have increased the accuracy of the findings. However, the sample size of 30 was taken as it is statistically agreed upon approximation of an infinite normal distribution and is considered an adequate sample size for a large number of populations or observations and is the minimum size to conduct a statistical test. Central Limit Theorem also justifies the use of 30 sample size when there is normal distribution of population. Moreover, the focus of the study was on LIFT SLLC experience of the two regions, which limits the inclusion of experiences from other regions and similar programs including government run SLLC.

## Findings

The following topics discuss in detail the findings obtained from study areas. It starts by discussing the profile of participants, reasons to engage in polygamous marriage and the current prevalence of the practice. Other topics discuss its social, economic, psychological and legal impact on the wives and the husband.

## The Nature of Polygamy in the Study Area

In almost all woredas, the dominant reason to engage in polygamous marriage is cultural. Most participants agree that religion is used as a cover to engage in polygamous marriage while culture is the main push factor to engage in polygamous marriage. Due to the culture, often polygamous marriages are initiated by the wife or upon the agreement of both the spouses. This usually happens when wives need support due to age or workload. Consequently, the first wife with her husband are responsible to organize the wedding for the second wife. This is also observed even among Christian households.

Another push factor is the disadvantage of most women in numerous factors such as economy, education, ownership and social status within the community. Polygamy may be the best option available for them. Historically, and still now, polygamy has possibly served as a protective function for poor, orphaned, or widowed women. Many of the women who are engaged in polygamous marriages are from a very low economic status, illiterate and looking for a male figure that will support them.

There are also incidents of men seeking to take advantage of a woman's status if she owns property. Women, who are single mothers, due to divorce or death of their husband and own assets (mainly land in rural areas) are expected to become a co-wife. This has two reasons, firstly, society expects her to be 'protected' by a male figure and thus to be married. Secondly, some men who are eager to acquire more property will propose polygamous marriage.

Out-migration of wives is also identified as a push factor for individuals to engage in a polygamous marriage. Many of the participants particularly in Hitosa and Silti said, migration is a catalyst for husbands to engage in polygamous marriage. There are a few cases in which the husband will take a second wife when the first wife moves to another area for employment. Unlike other polygamous marriages, this kind of union is not acceptable by the first wife and the community. For this reason, many of these unions end up in court. The experience of Shashengo is also related with migration; many of the youngsters and children in this woreda leave their home to go to South Africa in search of economic opportunities. This has been one of the push factors for the husbands to engage in polygamous marriages. The families claim that they don't have children to look after the herds and to assist them in their day to day activities and this led them to another marriage.

Son preference has also been identified as one of the reasons to engage in polygamous marriage. A small number of respondents stated that they were forced to engage in polygamous marriages, as they were not able to have a son with their first wife. According to these respondents, daughters will get married and will leave their family; this creates a problem for families who are looking for support in older age.

In both regions, key informants disclosed that many polygamous unions do not surface as complaints to the women and children affairs office or to the justice sector at the start of a new marriage. More likely, they will encounter polygamous cases after five or more years and when there is an instance that requires division of property. Usually these instances arise when one of the partners in polygamous marriage dies or requests for a divorce.

In all the study woredas there is no data that shows the prevalence of polygamous marriage. However, based on the estimate made by the women and children affairs office 25% of the community in Dodota and 50% in Hitosa are believed to live in a polygamous family. However, it is agreed that this figure is decreasing gradually due to scarcity of land. In confirmation of this one of the informants said:

*"my father has married three wives and he had adequate land to distribute to all of his 16 children and when it comes to me I could only marry two wives because I have limited land size and the fate of my son is to marry only one wife as he doesn't have sufficient land to support two wives."*

Another reason for the declining trend of polygamous marriages is women's improved access to education. In discussing this issue one of the women said:

*"because of access to education for girls, the current generation of girls prefer to further pursue their education than marriage at early ages as we were doing, and the law is strict on child marriage, which as a result the practice is being highly reduced."*

### The Experience of Co-Wives and Husbands

Polygamy has long been associated with gender inequality by Western commentators. Lord Kames wrote in 1796 that "polygamy sprang up in countries where women are treated as inferior beings: it can never take place where the two sexes are held to be of equal rank." Polygamy is inherently unequal where men can take more than one spouse, but women cannot. In addition, some have concluded that polygamy "entails inequality between men and women because usually there is a difference of 20 to 30 years between the second (or third) wife and her husband."<sup>21</sup>

In almost all the study Woredas except Sodo, participants have explained that it is the second wife or the new wife, who is often preferred by the husband. In the normal course of things this will create psychological, social and economic challenges for the first wife. Often, after concluding another marriage the husband will not continue supporting his first wife and their children as before.

The study identified that in most of the cases (76.7%), the husbands have good relationships with all co-wives and live with them. However, the other interesting finding in this study is the existence of situations whereby husbands live with only one of the co-wives, but the marriage is not dissolved. As indicated in Table 5, about 20% of husbands reported living with a second wife, while only while 3.3% live with first wife only.

<sup>21</sup> Polygamy in the Monogamous World Multicultural Challenges for Western Law and Policy Martha Bailey and Amy J. Kaufman 2010



**Table 5: Mode of Residency in Polygamous Marriage**

Husband's relationship with co-wives		
With whom husband lives with	Frequency	%
First wife	1	3.3
Second wife	6	20.0
With all	23	76.7
<b>Total</b>	<b>30</b>	<b>100</b>

It was observed that there are high tendencies of living with the second wife. This behaviour has implications on land allocations and registration among co-wives. The engagement of husbands in polygamy and/or subsequent preferential treatment of either of the co-wives were reported as the major cause for divorce. The assessment has also evidenced that as the number of co-wives increases, the relationship in the marriage gets complicated and increased tension within the families.

In discussing her experience W/ro Lemaye stated:

*'My husband is a much-respected person within the community; he married me as his third wife. His first wife has passed away and his second wife has left him. After we were married, he has brought four wives and I never asked him why he gets married. My husband's wife might cross over on their way to his home (laughing). Now, I am even raising some of his children from his wives who have left him. I will never advise another woman to be engaged in polygamous marriage, it is not worth living in such arrangements.'*

On the other hand, though the newly wedded wife is often preferred by the husband, she can often feel like an intruder and lacks a feeling of ownership over the property. Even if her name is registered on the land certificate, the new wife does not have a strong sense of ownership in comparison to the first wife.

In response to this issue, most husbands argue that they are more attentive to the second or newcomer wife as her children are younger than the first. They claim, as most of the children of the first wife are older, they can support their mother by farming or any other activities she might need.

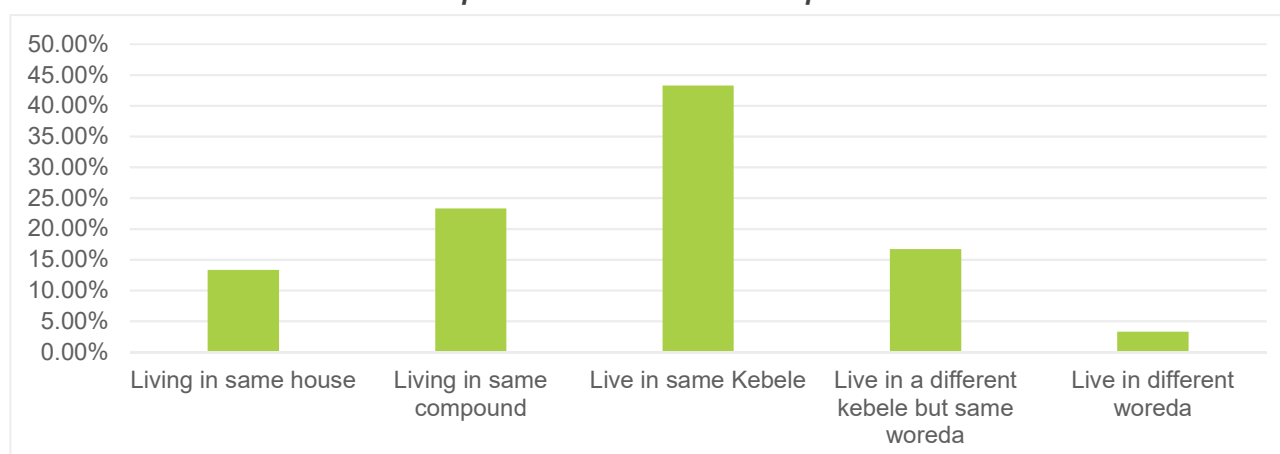
In addition, the first wife is the first to confront the consequences of another marriage. When the husband marries his second wife or more, usually he is required to present a dowry to the newcomer. In most rural areas, the dowry would be a plot of land. In such instances, it is from the share of the common property that was under the holding right of the first wife and the husband, that will be allocated for the second or third wife (wives). In effect, this will automatically reduce the plot of land the first wife would get.

On the other hand, there are a few wives in polygamous marriages who are comfortable with the arrangement. Despite the problem relating to polygamous marriage there are women who welcome additional wives who can help share their workload. One interviewee woman in Dodota explained this as follows;

*"Now our husband has already become too old and it is we who support each other in administering the family and we live together as sisters."*

With regards to the place or modality of residence, the most interesting finding of this study is the existence of a significant proportion of co-wives (13.3%) live in the same house while 23.3% live in the same compound but in different houses. The larger proportion of co-wives (43%) live in different places but in the same kebele while those living in different kebeles in a woreda and those living in different woredas makes-up 16.7 and 3.3% respectively. The existence of different spatial proximities partly shows the strength of relationship of co-wives while it becomes important to identify/consider marriages existing across woredas.

**Graph 2: Co-wives' residential places**



## Challenges in Registering Polygamous Households

The rural land certification process, SLLC, should involve stakeholders such as women and children affairs, justice office and courts throughout its process. However, some key informants from the indicated organizations did not know how the process was undertaken. As the issue of land rights is highly related with women's issues, particularly the Women and Children Affairs Bureau at woreda level should play a big role to ensure the participation of women during public awareness, demarcation public display and certification levels. However, in all the study woredas, the Women and Children Affairs Bureau were/are not involved in the SLLC process and they are not aware how (the modality) the registration is undertaken.<sup>22</sup> In this regard, one of the drawbacks is its failure to give emphasis and include land issues as one of 'Women Empowerment' issues that it is working on.

The land administration office in all the study woredas said they had taken efforts to reach out all parts of the community, particularly women and vulnerable groups. They worked with kebele administration, kebele land administration committees, women's leagues, churches, mosques and one to five arrangements. In some woredas (Sodo of SNNPR), Health Extension Workers were used as agents of awareness creation for women as they have good opportunities to meet them. Despite the many efforts, they said the participation of women in the SLLC process was low. However, they pointed out, the participation of women in polygamous marriages is better in comparison to monogamous marriages. This is particularly the case if the wives are in conflict over land issues.

When it comes to the rural land administration system, polygamous union is also creating issues. First, the land administration experts who are engaged in the SLLC process have an awareness about monogamous marriages but lack clear direction on how to register and demarcate polygamous land holdings. For this reason, most of the experts register polygamous marriage holdings based on the opinion of the 'family', mainly the husband. For this reason, one can find several modalities of registering polygamous land holdings within one kebele.

Another challenge is in cases where all the wives are registered on one certificate, one of the wives might come and claim to take the certificate. The woreda land administration bureau are highly challenged on what to do in such situations. This is particularly true in SNNPR in which the land certificate does not have any photograph.

On the other hand, there are few instances in which the plot of land is registered in the name of the first wife, but in practice it is the second wife who cultivates and benefits from the production. Such cases create a problem upon division of property, as the land certificate does not go together with the use of land.

Some land administration officials indicated that SLLC in polygamous marriage is creating a problem. Because, first level land registration system in the SNNPR captured individuals who are categorised as 'family members'. Consequently, some of the wives may have been registered as a 'family member' by the husband and therefore they are entitled to benefits. However, the second level registration does not have room to register 'family members' and as a result, the land administration office is forced to refer back to the first level certification in order to recognize co-wives as joint holder in the SLLC. Moreover, some claimed that information requested for SLLC has become more expert oriented in comparison to the previous registration system and that in comparison to FLLC where a farmer could read the information himself, SLLC requires experts to do this and they must be present to explain what the codes mean to the farmer and courts.

One of the main challenges of polygamous marriage is upon divorce or death of one of the partners. Because of these, there are hundreds of cases in each woreda that clearly show the consequence of polygamous unions. Succession and divorce results in division of properties and the presence of polygamous union complicates the problem. One of such instances is the case that was shared by the Sodo Woreda court;

A farmer in Sodo woreda had lived with his wife for more than ten years, during this time they had given birth to five children. Afterwards, he concluded another marriage in an urban area of Sodo and had four children from the second wife. After 34 years of marriage from the second marriage, he passed away. The second wife had been living independently and used to visit and provide the first family with food items. However, she was not directly farming or cultivating the land with the first wife. Upon his death, the first and the second wife went to court to divide the property upon which the court provided all property to the first wife.

<sup>22</sup> This is interesting feedback in as much as LIFT has taken steps to involve the Women and Children's Affairs Bureau in orientation and training activities and to the extent possible in field monitoring.



## Participation and Challenges of Co-wives during SLLC

The study findings indicate that the overwhelming majority which constitutes 80% of respondents know land regulations do not allow individuals to engage in polygamous unions. However, they reported they did not know the law when they were married while others say they are governed by Sharia law.

During public awareness activities individuals or couples who have a land holding right should be present at the kebele level to get information about the SLLC process and to give details about their partner(s). As described, often it is the husband who will take part in the public awareness activity and the land administration process will commence taking the name(s) of wives he has registered.

Similarly, during the demarcation process a husband is expected to be present on the land with his wife (wives) and sign the FRF (field registration form). However, in instances where women are not present the demarcation process, it is only the husband who will sign on behalf of the household. Most participants said, even if the husband or the wife (wives) are not present during the demarcation process, the land administration committee and representatives from the kebele will inform the land registration officers about the existence of additional wife (wives).

**Pic 1: Land Demarcation process at Shashego**



**Pic 2: Picture taken during demarcation in on-going kebeles showing only males present at the event in Bakko Tibbe Woreda**



The public display and certification processes have similar criteria; for the husband and the wife (wives) to be present together and express their agreement by signature. Participants in group discussions said they have taken efforts to stick to these principles and were requesting all parties to be present during public display and certification, but it was logistically difficult to enforce in every individual case. For this reason, they said, they do give out the land certificate if one of the parties is present.

For this reason, some co-wives may not know whether they are included as a joint owner or not and don't visit the public display or ask the kebele land administration committees about the case. Most of the women contacted believe that the engagement in photo capturing by the implementing unit ensures their ultimate joint ownership of land and hence they do not have to attend the subsequent phases of certification.

Some women do not know if they were included in the land certificate as they believe it is done and believe as it is role of the husband to participate in certification process. Some of the co-wives, especially the second and third wives think they are not entitled to attend the different phases.

Some of the wives in polygamous marriages have disclosed that, they do not want to participate in the SLLC process for the fear of the senior wife. One respondent explained -

*'If I go and attend the public awareness, this might create a problem in our life and I don't want to disturb our good relationship. So, I prefer to abstain from such events'*

However, this is creating a problem particularly in polygamous marriage registration where all the wives are registered in one certificate, one of the wives might take the certificate and the other(s) will come and demand the certificate.

## Existing Modalities of Polygamous Wives Registration

The Second Level Land Certification (SLLC) process uses orthophoto imagery to produce high-resolution maps on which land holders, assisted by trained field teams, identify their parcel boundaries in the field in the

presence of their neighbours, Kebele Land Administration Committee members and Village Elders. The resultant “crowd-sourced” boundaries and occupancy data are computerized at the Woredas by the LIFT technical support teams.

After verification, this data is further processed and approved for inclusion on a register of land rights. Hard copy certificates demonstrating the parcel boundaries, occupancy and land rights are printed and made available to land holders. The SLLC process and the implementation of the Rural Land Administration System will take place at the same time so that the one-off SLLC and the processes for the sustainable maintenance of the register of land rights are put in place simultaneously as outlined below.

SLLC operates in a well-organized manner having a standard manual that outlines each step and the required input at each stage of SLLC. The rural land law is silent on how to handle certification of polygamous marriage land holdings.

For these reasons, various modes of certifying polygamous marriages occur as experts engaged in SLLC are not able to recommend or confirm a consistent approach to best register polygamous households. One of their main reasons is the nature of polygamous land holdings differ and it is therefore up to the household to decide and inform the experts on the modality of certification they desire. As a result, the registration and certification of polygamous land holdings is likely to be influenced by the wishes of the husband as in almost all woredas where the study was conducted, husbands were found to be the most influential member of a household to determine the modes of land certification.

The different modalities have impacted the reliability of the certificates in courts. In discussing this issue, judges have said that, the certificate has lost its reliability when it comes to polygamous marriage, as what is stated in the certificate is not uniform and does not show the fact and reality on the ground. For this reason, when they pass decisions concerning polygamous marriage, they do not rely solely on such kinds of evidence and prefer to rely on witnesses also.

Moreover, although it was mostly the first wife who was the only person registered with the husband during the first level land certification, all wives will be registered in SLLC unless the first wife contests not to divide the land or refuses registration at all. However, only a few can do this and have the power to influence their husband’s intention to register additional wives.

In this study, the finding indicated in Table 6 below, shows that for most (53.3%) of polygamous families prefer to register on one certificate (the husband and all wives). A further 23.3% prefer the co-wives registered on a separate certificate, but the husband registers with all the co-wives. On the other hand, 10% of respondents used separate registration of co-wives and the husband registered with one of the wife only approach. The other 10% used other modalities such as all (husband and co-wives) registered separately, the co-wife registered with older children (when one of the co-wives passes away).

**Table 6: Existing Modality of Registration**

No.	Modality of registration	Frequency	Percent
1	Co-wives registered in one certificate with the husband	16	53.3
2	Co-wives registered on separate certificate of their own, but the husband registers with all the co-wives	7	23.3
3	Co-wives registered separate and the husband registered with one of the wives only	3	10
4	Any other form of registration	3	10
5	I don't know	1	3.3
<b>Total</b>		<b>30</b>	<b>100</b>

The study identified seven different registration modalities used by the field teams. The detailed analysis of the modalities and reasons behind adopting are explained below:

#### **Modality 1 - All wives and the husband registered separately**

This kind of registration is very rare, but in some instances, husbands prefer to divide the land and register separately to avoid future conflicts. Thus, the husband and all the wives will have independent and separate parcels that is not related to the marriage. This kind of registration is highly preferred by the land administration and justice office to mitigate future conflicts. However, given the scarcity and small size of land at present, this modality is difficult for most households.

#### **Modality 2 - All wives register with the husband on one certificate**

The husband with his wives will be registered on one certificate. Though, if the husband has multiple plots of land, he will be registered in one certificate with all his wives. This kind of certification is widely used in Oromia and in some parts of SNNPR (Shashago). This kind of certification is the most difficult and often creates conflict in the long run. Usually, this registration approach is employed for polygamous marriages with positive relationship among all co-wives and husband.

### Modality 3 - The husband registers with only one of the wives

There are a few instances in which the husband will register with only one of his wives and the other wife will get a certificate only in her name. This type of registration is different from the first one, as one of the wives will be registered with her husband as joint holder, while in the first modality of registration each of the wives and the husband register independently. This modality was applied because: co-wives were allocated land during land distribution or registered by their name during FLLC often, or due to conflict, the first wife or senior wives ask for their separate land and the certification follows accordingly. In some cases, Woreda Land Administration offices facilitated polygamous households to divide their land ahead of SLLC and registered accordingly (e.g., Dodota, Oromia).

### Modality 4 - The husband registers with all wives on a different certificate

There are significant numbers of polygamous households registered separately but the name of the husband appears on the entire certificate. This kind of registration is particularly prevalent in SNNPR, where the husband registers with his first wife as husband and with the others in the second place. Although, the husband is registered in the first row or the second, in practice this has no legal implication of the man's joint holding right with all the wives and does not prevent future conflicts.

### Modality 5 - The husband registers with his wives but preserves some separate portion for himself

This kind of practice is prevalent in Silti and Shashego in which the husband will be registered with his wives. However, he will reserve a portion of land only for himself. They claim, this is for their income as pocket money and none of the wives can claim from it.

### Modality 6- Only one of the wives registers separately and the husband and the other co-wives do not have land

This modality was found when the husband does not have land ownership and one of the co-wives own plots of land and children from her previous marriage. In this case, the land-owning co-wife is entitled to deny her husband the right to be registered with her, however as a polygamous union the family might benefit from land produce.

### Modality 7- Co-wife independent registration

This modality excluded the relation between marriage and property such that although marital relation exists, women in a polygamous marriage could be entirely independent. This includes ownership and management of resources that leads to an independent registration of land. Such relation could happen for a different reason from the man's or the woman's side other than being tied economically. Some of the reasons could be (i) women seeking acceptance by their community or needing protection, (ii) men need to have more children, especially sons, or for wider connection through marriage, or (iii) access to land at least in the long run.

The following table shows the prevalence of different modalities in the study Woredas.

**Note:** - The table shows the most common type of land registration and does not indicate the absence of other modalities in the indicated Woreda.

**Table 7: Most common practiced modalities in different woredas**

Name of the Woreda	Modality I	Modality II	Modality III	Modality IV	Modality V	Modality VI	Modality VII
Dodota							
Hitosa							
Sodo							
Siti							
Shashego							
Bakko Tibbe							

### Preferred Registration Modalities

Given the various modes of registration between woredas, kebeles and even households, the study sought to learn the thoughts and views of different stakeholders engaged in land registration. The Woreda Land Administration and Use Offices involved in the study have a similar view towards the registration of polygamous households. They strongly believe that polygamous marriage is creating a problem, and can create doubts on the credibility of the certificate if it is not used as significant evidence in courts.

For this reason, almost all professionals involved in the focus group discussion strongly believed in the need to have a uniform working procedure for polygamous households. Based on their experience, from the different modes of registration they prefer registrations in which the husband and the wife register separately.

Other stakeholders who participated in the study, namely the justice office, courts and women and children affairs office were found to lack a clear understanding on the registration modality of polygamous households. In all the study woredas the women and children affairs office claimed they know that SLLC certificate is

provided in both the husband and the wife's name, but they are not aware how polygamous households are registered.

## SWOT Analysis

To evaluate the advantages and disadvantages of the different modalities of registration, a SWOT (strength, weakness, opportunity and threat) analysis was used. It shows the strengths, weaknesses, opportunities and threats of each mode of registration and its conformity with the Ethiopian legal system. The subsequent topics will then be discussed in detail.

### *All wives and the husband register separately*

This kind of modality is advantageous as it reduces possible future conflicts, creates a sense of ownership and helps keep family harmony. It also eases division of property upon death and divorce of one of the wives or the husband. Moreover, as the portion of each of the wives and the husband is known, it makes it easier for children to get a share from their respective parents.

The drawbacks of this modality are that it puts the first wife at disadvantage as it is from her share that land will be distributed to the others. Moreover, many husbands as well as the community view this modality as absurd to be implemented in the presence of a valid marriage.

From the legal perspective, this modality of registration is the most preferred to protect the rights of all wives, children and the husband and this has been confirmed by the FSCC decision on similar facts. However, this modality is not common compared to the other modalities.

### *All wives registered with the husband on one certificate*

In this modality, all wives will be registered and creates the opportunity to share land products (crop harvests and other resources) by all co-wives. However, it is highly criticised as it takes the share of the first wife and distributes it to others. From the legal point of view, it is criticised, as it complicates the division of property upon death or divorce. It also poses a threat for future family peace and harmony, as the land registration is not clear.

### *The husband registers with only one of the wives*

This modality creates a better sense of ownership and avoids possible future conflicts over the land. It reduces disputes over sharing crops and other products. It also makes it easier for courts to divide the property upon request. In some instances, where the plots of land are in different places, there might be a difference as to size, distance and fertility of the land. However, this modality is not preferred by most while they are still married, as there is a perception, it could lead to divorce. However, some argue access to one's land use right should not be attached to marriage, but rather to citizenship. Moreover, separate registration will not necessarily forbid sharing the fruits of the land among family members in the polygamous union.

The limitation of this modality is its disadvantage to the wife/wives who have a prior joint holding right and who will be forced to accommodate the new wife (it is often practiced as such). Sometimes this will lead to a lack of resource for agriculture particularly for the new wife with no grown-up children and encroachment by the children of the senior wife.

### *The Husband registers with all wives on different certificates*

This modality is valued as all wives will be registered and it creates legal rights. However, it is highly criticised as it puts the first wife in a worse ownership position while making the husband benefit more. In this kind of registration, the husband is entitled to half of the land from each wife.

This modality makes the division of property complicated, particularly upon the death of the husband. Children will be entitled to get the share of their father from each marriage. Analysing the decision passed by the FSCC, it can be concluded that this modality is in contradiction with its decision (W/ro Zeyneba Vs W/ro Kedija, Federal Supreme Court Cassation Decision File No. 50489).

### *The husband registers with his wives but preserves some separate portion for himself*

This is a rare kind of registration that totally excludes all wives and only gives right for the husband. This kind of registration is contrary to the rural land proclamation that requires married couples to be registered together.

### *Only one of the wives registers separately and the husband and the other co-wives do not have land*

When the husband does not have land ownership and one of the co-wives owns plots of land and children from her previous marriage. In this case, the land-owning co-wife is entitled to deny her husband the right to be a registered owner with her. However as polygamous union the family might benefit from the fruits of the



land. The experience could be rare; however, it is a recommendable practice that women who have land right from their prior marriage or through inheritance do not give away their land use right to the new husband or the co-wives. This practice is particularly important in protecting widows and their children.

### **Co-wife Independent Registration**

Although it is rare, this is a good practice of indicating women's access to land should not necessarily be linked to their marital status. It shows marriage goes beyond sharing of economic benefit, although it is key. And when women have economic empowerment, they have the freedom to make decision that matters to them and their children, in this case independent registration of their land even if they are in marriage.

## **Division of Property under the Ethiopian Legal System**

According to the Ethiopian legal system matrimonial property is indivisible for the time being the marriage stays intact. Division of property will come into consideration when the marriage ends due to divorce or death of one of the partners. The rule in partition, as is reflected under article 90 the Revised Family Code (RFC) is that common property shall be divided equally between spouses. This reflects the constitutional provision which gives both spouses equal right in respect of property at the time of entering, during and at the end of marriage.

However, it does not mean that the law negates personal property ownership. Marriage results in the unification of the spouses and not their property. As a result, the law recognizes the existence of personal property in marriage. Hence, the property which the spouses possess on the day of their marriage, or which they acquire after marriage by succession or donation, will remain their personal property. In addition, if the spouses get property through either succession or donation, then that property will remain to be the personal property.

In principle properties acquired by onerous title after marriage through the exchange of personal property will remain to be personal property of the spouses. However, for this principle to work, the party claiming to retain the personal property must apply for the declaration of the court of such facts. Failure to get the declaration has the effect of making the property common property. Taking this principle in the case of land administration, unless the husband or one of the wife/wives have declared and registered the land in their name as personal holding, the law presumes it to be common property (Article 63 of the RFC).

The RFC incorporates several provisions that discuss the right of spouses on personal and common property. These principles apply for spouses that are in monogamous unions and the law is silent about the property rights of individuals who are in a polygamous marriage. As both the RFC and the rural land administration laws are silent about the property right of polygamous marriages, the different registration modalities of rural land are not backed by legal principles.

This in turn has created a question and doubt on the reliability of the rural land certificate that is given to polygamous unions. One of the key roles of certifying rural land is to provide reliable and admissible certificate that shows the land holders without doubt. However, the multiplicities of land registration modality in polygamous households have created a doubt defeating its main purpose. For this reason, courts may neglect or refuse to rely on the land registration of polygamous unions certificate in passing decisions. As discussed in the previous topic, there are seven modalities of registering polygamous households; however, none of them are supported by law.

## **Legal Consequences of the Different Registration Modalities**

The main effect of polygamous marriage is felt in instances that trigger division of property such as upon divorce or upon death of one of the individuals. In the normal course of things, all common properties of a husband and a wife are equally divided upon death and divorce.

However, as stated above Ethiopian laws, in general, are silent on how to handle the division of property of polygamous marriages. For this reason, the different modalities are not backed by any defined law up until now. Considering the gap, the Federal Supreme Court of Cassation (FSCC) has ruled on numbers of cases that are taken as authoritative.

For instance, upon the death of a man who lived in Dodota the court encountered five marriages that were 'legally' concluded in Assela, Addis Abeba, Adama, Dodota and Hitosa.

With regards on how to divide property in such instances, the Ethiopian justice system seems to have two conflicting positions:

1. The first wife is legal, and her rights should be protected. All marriages that follow from the first marriage are illegal and allocating share of property for them would amount to legalising polygamous marriage. Hence, it is only the first wife, who is entitled to property upon division.

2. Though, marriages that come afterwards are illegal and outlawed in our system, we cannot deny the fact that they exist. And often, these marriages are concluded upon the request or agreement of the first wife. Hence, it can be concluded that she has implicitly agreed for the division of property among the subsequent wives. Moreover, they argue that 'land' is different by its nature from other kinds of property. According to our land policy it is not owned by individuals but by the state and when wives in polygamous marriages are requesting for division of land holding, they are requesting as a citizen to get a fair portion of land.

The two different positions taken by lawyers and judges are further explained by a judge who has worked for more than two decades on the matter. He explains the issues as follows:

*'I am working as judge for the past 24 years and know the challenge we face due to polygamous marriage disputes. Before five or more years, when there is a dispute over the land in polygamous marriage, we used to allocate land only for the first wife and we consider the other marriages to be illegal. However, now the supreme court has ruled out that, women who are in polygamous marriages should get equal share of the property and we are sticking to that.'*

Almost all professionals who work in the justice system pointed out that the law has gaps. They stated, the law has outlawed polygamous marriage; however, there are numerous cases that require the courts to pass decisions, particularly on division of property upon divorce or death. In such instances, courts are confused on how to handle the case and pass fair judgment. Due to this reason, courts have disclosed that the silence of the law on polygamous marriage is challenging them in the process of ensuring fair justice.

With the aim to protect the rights of children and women who lived in polygamous marriage, courts go further to investigate and validate such cases. For instance, if one of the litigants presents a land holding certificate in their name, it would have been very strong evidence that would rebut other evidence. However, considering the practical problems, that some of the wives might not have their name on the land certificate, courts open their doors for litigants to bring witnesses who will testify that the woman was living as a wife and benefiting from the produce of the land. For this reason, even though the woman is not registered together with the husband, if she can prove that she has lived as a wife benefiting from the produce of the land, she will get a portion of the land upon the divorce or death of her husband.

For this reason, in all the study woredas the stand and decision passed by judges is similar. When they face disputes over property owned by polygamous marriage, they divide the property equally between the husband and all the wives. This decision is in line with and guided by the decision of The Federal Supreme Court Cassation. If the division of property came to court on a succession issue, children will be entitled to share only the share of their father's property.

However, this has created its own problem. In most of the cases, when the portion of the husband is shared by numbers of children, it will be indivisible, as it would be below the minimum land size requirement. Consequently, children from different mothers (households) will be forced to share and use the same plot of land throughout their life.

## Strategy for Polygamous Wives Land Registration

As discussed in previous topics there are diverse modalities of registering polygamous wives during SLLC. This calls for the development of a strategy that can make the registration system uniform, indicating the step by step procedures that needs to be taken by different stakeholders with respect to their duties and responsibilities. To bring uniform land registration system for polygamous wives, the strategy makes calls for the improvement of laws, working procedures and cooperation among different stakeholders.

In doing so, the main guiding principles in developing the strategy are:

1. The decision taken by the FSCC
2. Guaranteeing the key aims of land tenure
3. Comments and suggestions forwarded by different participants during the study

The research team has taken the decision of the FSCC as a guiding principle for two reasons. Firstly, it is the ultimate and final judicial decision-making organ in the country and its decisions are equivalent to law. Secondly, all activities including the registration system should be in line with the decision by FSCC.

## Objective of the Strategy

The main objective of the strategy is to develop and recommend a uniform or preferred mode of land registration for polygamous households by evaluating the strength and weakness of each modes of land registration.

## The Strategy

In considering the first principle in developing the strategy the FSSC has passed a binding judgment in which it stated that, although polygamous marriage is illegal, division of property is mandatory considering the existence and prevalence of the practice in Ethiopia. Accordingly, the stand of the FSSC is to divide all property equally between the husband and the wives. From this we can infer that, the land certification modality for polygamous households should be in conformity and in support of the FSSC decision.

Moreover, the modality of certifying rural land should target to achieve the aim of securing land tenure, reducing conflict in the long run, and creating a sense of ownership to increase productivity. This idea was also supported by participants in the study, particularly by land administration experts and judges whom they stated it would be better if the land registration system takes into consideration issues surrounding polygamous families.

In addition, the SWOT analysis clearly shows the strengths, weaknesses, opportunities and threats of the different modes of registration from different angles. From this analysis, it is easy to learn that there are more disadvantages when the husband and the wives are registered together; on the other hand, it is more advantageous for children, wives and the husband when the registration is done separately.

For this reason, the study suggests two options that can be applicable in registering polygamous households land holding.

### ***Option 1: Husband registers his share of the land with one wife. The rest of the wives register their own shares by themselves.***

First, the land is divided into equal parts, according to the number of wives (and includes the husband). The husband then chooses one wife to register with. The rest of the shares are owned only by the wives. For example, if a husband has three wives, the land is divided by four. The husband and one wife combine their shares to create a joint share. Each of the other wives has sole rights to a  $\frac{1}{4}$  of the land. This option is thought to discourage polygamy, particularly because if the husband decides to take yet another wife, the new wife would share from the husband's land, which would shrink further.

This modality is supported by the FSSC decision in the case of Zeyneba Vs Kedija, FSSC Decision File No. 50489. In this case; upon the request of divorce by one of the wives; the court ordered for the division of the property of the husband and the first wife and ordered the second wife to take half from the husband's share.

As indicated in the study, the difference in residential location of wives is associated with the land they depend on. So, separate registration for some of the polygamous household is a matter of recognising the co-wife(ves)' right that they depend on for their livelihood. Yet, the husband can choose one of the wives he prefers to register jointly.

### ***Option 2: All wives and the husband register separately. Every wife and the husband get an individual, equal share in their name.***

In this option, everyone is separate, and each person has rights to his or her own equal share of the land size. This option works when the husband has difficulty in choosing one of the wives as his joint landholder or when rivalry exists among the wives wishing to register with the husband as the joint holder.

This modality of registration is currently rarely implemented. But should be promoted as it provides better levels of security for all involved in a polygamous household and prevents the risk of future conflict between children and co-wives.

The decision of the Federal Supreme court also goes in line with this proposal, in the case of Aminat Vs Fatuma Cassation Decision Vol. 13 File No. 45548, upon the death of the husband, the court ordered for equal division of the property between the wives and the husband. Moreover, all courts in the study woreda are passing a decision in conformity to this decision and the registration process should also be in line with the decisions of the courts.

Considering the above proposed two options, concerns were raised around fragmentation. However, most polygamous households have larger plots of land or have a number of parcels. As indicated by the study, the difference in residential location of wives is associated with the land they depend on. So, separate registration for some of the polygamous union is a matter of recognising the co-wife/ves' right that they depend upon for their livelihood. Yet, when land size is below the minimum standard for division, it will be administered according to the regional laws applicable to the provision.

## Standard Operating Procedure for Polygamous Registration during SLLC

This Standard Operating Procedure (SOP) is issued to specifically instruct employees working on SLLC areas as to the appropriate steps and required information while registering polygamous families.



### ***Applicable Regulatory Statutes***

The applicable laws that deal with rural land administration is proclamation no. 456/2005 and the regional rural land proclamations and regulations such as; the Southern Nations, Nationalities and Peoples Regional State Rural Land Administration and Utilization Proclamation No.110/2007, Oromia Rural Land Administration and Use Proclamation 56/2002 should be used throughout the SLLC process.

As there is no federal or regional law that deals with how to register polygamous marriage during SLLC, it is the FSSC that will serve as a binding law. Hence, cases that were passed by FSSC on polygamous marriage (Aminat Vs Fatuma Federal Supreme Court Cassation Decision Vol. 13 File No. 45548 and W/ro Zeyneba Vs W/ro Kedija, Federal Supreme Court Cassation Decision File No. 50489.) will guide the principle of registration.

### ***Create common platform to discuss and agree on the proposed registration modality for polygamous households***

Concerned stakeholders need to come together to discuss how to make SLLC compatible with the laws without compromising women and children's land use rights. These stakeholders are:

1. Federal Supreme Court of Cessation
2. Sharia Court (federal and regional)
3. Regional Supreme Courts
4. Civil Law Judges from regional higher courts
5. MoANR, Rural Land Administration and Use Directorate
6. Regional Land Administration and Use Bureaus (SLLC practicing regions including non-LIFT regions)
7. Women and Children Affairs (federal and regional)
8. Regional Women Associations Offices
9. Projects working on SLLC
10. Senior Civil Law practitioner to facilitate the discussion

### ***Integrate into the revised land laws***

Legal drafters at federal and regional level should be aware of the extent of problem created during property division of polygamous marriage. Hence, the rural land laws should be amended and include provisions that clearly state how the matter should be handled (the modalities adopted).

### ***Training and cascading to lower level structures***

Judges (higher court and lower instance courts) as well as regional and woreda land administration staff shall be updated with the new arrangement, through training and orientation as applicable. Moreover, before conducting land registration the Kebele land administration committee should identify polygamous households, so that all of them can be traced and registered in similar modalities.

### ***Monitoring of polygamous household land registration and property division***

There should be a strong system in place that monitors the uniformity of polygamous households' land registration.

**Table 8: Responsible institutions to monitor polygamous household registration**

What to monitor	Owner of the action	Who monitors	When to monitor	Source of Data and MOV
Numbers of polygamous households	(PWR)and administration	Kebele land administration committee	Before demarcation	Kebele administration
Land registration	Land administration	Regional LAUB	Quarterly	SLLC Books
Property division	Courts	WCA, WA	Quarterly	Court files
Integration of Polygamous Wives Registration (PWR) to revised laws	Drafting committees (federal and regional)	WLRTF, WCA, WA	During drafting	Appeal cases at FSCC

### **Conduct review and feedback session**

Findings of the monitoring shall be discussed on a regular basis to identify shortcomings and implement actions that helps to realize the strategy. Learning and lessons shared will also be drawn to review the strategy when necessary, based on practical experience. This forum will strengthen stakeholders' fair engagement in other land administration issues, using the PWR as an entry point.

### **Monitoring and Evaluation Framework**

The monitoring and evaluation framework functions as a guide to measure the results achieved in inclusively engaging polygamous families in implementing the SOP implementation in SLLC interventions. Its main purpose is to clearly guide on what to monitor and evaluate, how to monitor and evaluate, and what tools to use when monitoring interventions which consequently assist in identifying gaps/challenges and achievements of implementation of SOP in the registration of polygamous families at each stage of SLLC interventions.

The framework suggests key data collection points for use in devising project strategies and activities for tracking the implementation process, the outputs and in assessing the outcomes particularly for registration of polygamous families during SLLC. Accordingly, it articulates what will be monitored and evaluated and how it will be used for decision making.

- 1. Monitoring:** monitoring helps managers understand whether the implementation of the SOP and preferred registration modalities are progressing as intended to ensure the protection of women in polygamous marriage. It also assesses the level of participation of pertinent stakeholders in the registration of polygamous families. To this end, the table below gives us a guide on how to monitor the process and the intermediate results being achieved with the SOP set regarding polygamous families SLLC registration modalities in place and follow-up how procedure is implemented effectively.
- 2. Evaluation:** Evaluation serves as a tool to assess the extent to which the SOP have achieved the objectives set in addressing the challenges evident in polygamous families' registration. In this regard, the strategy needs to have a baseline survey to generate data that allows measuring the impact at a given interval (basically at the mid-term and completion of the phases of the project). Following the baseline survey indicators along with targets shall be set and its progress be evaluated.

**See Annex 2 for Monitoring plan for the implementation of polygamous households' registration and SOP**

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### Court Cases

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- W/ro Zeyneba Kelifa Vs W/ro Kedija Siraj, Federal Supreme Court Cassation decision File No. 50489.

## Annex 1 - Selected cases decisions passed by the Federal Supreme Court of Cassation Division on Polygamous issues

**Table 10- ቢጋብቻ ላይ ጋብቻን በሚመለከት በሰበር ሰሚ ችሎት የተሰጡ አስገዳጅ ውሳኔዎች<sup>23</sup>**

ተ/ቁ	ቅጽ	ገጽ	ሰ/መ/ቁ	የሰበር ውሳኔው ዋና ሃሳብ	ምርመራ
1	5	185	23493	በፍርድ ቤት ያልፈረሰ ቢጋብቻ ላይ ጋብቻ በፈፃሚው ሞት ምክንያት የፈረሰ እንደሆነ የሚችሉ ባለቤቶችን እኩል የጡረታ አበል የመከፈል መብት የሚሰጥ ስለመሆኑ፤	ወ/ሮ እንማው ዘገየ እና ወ/ሮ ወርቄ መኮንን
2	5	195	24625	በህግ ፊት ያልፈረሰ ቢጋብቻ ላይ ጋብቻ በፈፃሚው ሞት ምክንያት የፈረሰ እንደሆነ የጋራ ሀብትን ሁለቱ ባለቤቶች ግማሹን ለሁለት ቀሪውን ግማሽ ልጆች የሚካፈሉ ስለመሆኑ	ወ/ሮ ሳድያ አህመድ እና ወ/ሮ ሊህማ አሊ
3	5	240	31891	የተጋቢዎች ተለያይቶ ለረዥም ጊዜ መኖርና በዚህም ጊዜ ሌላ ትዲር መስርቶ መገኘት የቀድሞው ጋብቻ በህጋዊ መንገድ ተቋርጧል የሚያስብል ስለመሆኑ /የሰ/መ/ቁ. 14290/	እነ አቶ አንለይ እንደው (ሰባት ሰዎች) እና ወ/ሮ መሬም ጠሃ
4	10	5	39408	<ul style="list-style-type: none"> <li>- ቢጋብቻ ሊይ የተደረገ ጋብቻ ከጅምሩ ውጤት አልባ ነው (void ab initio) ሊባል የሚችል ስላለመሆኑ</li> <li>- የጋብቻ ውል ተጋቢዎች ንብረታቸውን በተመለከተ ጋብቻው የሚያስተለውን ውጤት ስምምነት የሚያደርጉበት ሰነድ ስለመሆኑ</li> </ul> <p>የተሻሻለው የቤተሰብ ህግ አንቀጽ 42፣ 44፣ 33፣ 11</p>	አርጋው አባቼ እና የወ/ሮ አስቴር አበጋዝ ወራሾች (ስድስት ሰዎች)
5	11	-	50489	<ul style="list-style-type: none"> <li>- ባል ሁለት ሚስቶችን በአንድ ጊዜ አግብቶ የሚኖር በሆነ ጊዜ በመካከሊቸው የሚፈራ ንብረት ለተጋቢዎቹ ሊከፋፈል የሚችልበት አግባብ</li> <li>- ሚስቶች ጋብቻ እንደተፈፀመ ከሚቆጠርበት ጊዜ ጀምሮ ከባል ጋር ያፈሩትን ሀብት ብቻ መካፈል ስለመቻላቸው</li> </ul> <p>የተሻሻለው የቤተሰብ ህግ አዋጅ 213/96 አንቀጽ 62/1/</p>	ወ/ሮ ዘይነባ ከሊፋ እና ወ/ሮ ከድጃ ሲራጅ
6	13	167	45548	<ul style="list-style-type: none"> <li>- አንድ ወንድ ሁለት ሚስቶች ጋር ተጋብቶ በሚገኝ ጊዜ የንብረት ክፍፍል ሊደረግ የሚችልበት አግባብ፤ የፌዴራል የተሻሻለው የቤተሰብ ህግ አዋጅ ቁ. 213/92 አንቀጽ 102(1)፣ 86(1)፣ 62(1)፣ 63(1)፣ የአማራ ብ/ክ/መ/ የቤተሰብ ህግ አንቀጽ 113(1)፣ 97(1)፣ 73(1)፣ 74(1)</li> </ul>	ወ/ሮ አሚናት አሊ እና ወ/ሮ ፋጡማ ወበት

<sup>23</sup> ውሳኔዎች በአጭር ጊዜ ዳሰሳ የተሰበሰቡ በመሆናቸው እነዚህ ብቻ ናቸው ብሎ መናገር ያስቸግራል፡፡

## Annex 2 - Monitoring plan: polygamous households registration and SOP

SLLC Stage	What will be monitored?	Key questions to be addressed	Data collection Method and Source	How Often?	Who will be using the findings?
<b>Public Awareness</b>	a) The extent of participation of entitled co-wives and husbands. b) Existence of influence on co-wives or husbands. c) Does SLLC provide training in inclusive polygamous families' participation in awareness rising? d) Is there common platform to discuss and agree on the proposed registration modality for polygamous households e) Is there practice of monthly monitoring visits on awareness creation of polygamous families?	<ul style="list-style-type: none"> <li>How many polygamous co-wives are there in the kebele? And how many of co-wives participated in public awareness creation?</li> <li>Do we have mechanisms in place to check the full participation of polygamous wives?</li> <li>Did any problem occur due to participation of co-wives?</li> <li>Are the staff provided with relevant training?</li> <li>Are different actors working coherently together to implement the SOP?</li> </ul>	<ul style="list-style-type: none"> <li>Records of number of polygamous entitled co-wives participating</li> <li>Mini surveys with polygamous families</li> <li>Awareness creation registration records</li> <li>Monitoring visit reports</li> </ul>	On monthly basis	Woreda Land admin office, the M & E findings will be included in periodic reports.
<b>Demarcation and Adjudication</b>	a) The extent of participation of entitled co-wives and husbands in demarcation & adjudication. b) Conflicts among co-wives and husband c) Are the project staff provided with relevant training on demarcation and adjudication process of polygamous families? d) Is there practice of regular monitoring visits for this stage of polygamous families' registration?	a) How many polygamous co-wives are there in the kebele? And how many of entitled co-wives participated during demarcation and adjudication? b) Was there any dispute/challenge during this stage? c) What was the cause of the dispute and how was it resolved? d) Did co-wives feel they have the rights to present at this event? e) Did all the entitled co-wives get registered? f) Are different actors working coherently together to implement SOP?	<ul style="list-style-type: none"> <li>Records of number of polygamous co-wives participating</li> <li>Mini surveys with polygamous families</li> <li>registration records</li> <li>Observation</li> <li>Monitoring visit reports</li> </ul>	On monthly basis	Woreda Land admin office. The M & E findings will be included in periodic reports.

SLLC Stage	What will be monitored?	Key questions to be addressed	Data collection Method and Source	How Often?	Who will be using the findings?
<b>Public Display</b>	a) Whether co-wives have consciously attended the public display b) To check if there are challenges in conducting public display? c) Does SLLC have adequate training/skills in inclusive polygamous families' public display? d) Is there practice of regular monitoring visits public displays of polygamous families?	a) Did all the co-wives visited public displays? b) Was there any challenge in this regard? c) Are staff provided with relevant training? d) Are different actors working coherently together to implement SOP?	<ul style="list-style-type: none"> <li>• Mini surveys with polygamous families</li> <li>• Observations</li> <li>• Monitoring visit reports</li> </ul>	On monthly basis	Woreda Land admin office. The M & E findings will be included in periodic reports.
<b>Certification</b>	a) To check the inclusion of all co-wives in certificate b) To identify the inclusion of entitled co-wives and identify if they know their inclusion/non-inclusion in the certificate c) Does SLLC have adequate training/knowledge in certification of polygamous wives? d) Is there platform to discuss and agree on the certification of polygamous households? e) Is there practice of regular monitoring visits in certification practice of polygamous wives?	a) Did entitled co-wives present during certificate provisions? b) Are entitled co-wives aware of their inclusion during certificate provisions? c) Did the entitled co-wives have their copy of certificate? d) Are the project staff provided with relevant training? e) Are different actors working coherently together to implement SOP?	<ul style="list-style-type: none"> <li>• Records of number of polygamous co-wives participating?</li> <li>• Mini surveys with polygamous families</li> </ul> Certificate handing over records •Observations Monitoring visit reports	On monthly basis	Woreda Land admin office. The M & E findings will be included in periodic reports.

## Annex 3 - SWOT Analysis Description Tables

**Table 12 – All wives and the husband registered separately**

All wives and the husband registered separately			
Strength	Weakness	Opportunities	Threats
Reduces future conflict	The first wife will be losing her share	The presence of the practice is a positive opportunity that needs to be scaled up	Often viewed negatively by the community as they are together (within marriage)
Easy for division of property upon death and divorce		The decision of the FSCC supports this kind of registration	Most husbands might not prefer this modality
All wives and their children will be entitled to some portion of land			
Creates a sense of ownership for all wives and the husband			
Keeps the family in harmony as it avoids conflict			

**Table 13 – All Wives Registered with the Husband in one certificate**

All wives register with the husband in one certificate			
Strength	Weakness	Opportunities	Threats
All the wives are registered	Very difficult for division of property upon divorce and death		This kind of registration is highly prevalent, and it might persist to continue
It creates the opportunity to share land products (crop harvests and other resources) for all co-wives	It is on the share of first wife other wives will be registered		
	Some of the wives particularly newcomers do not feel they have a right over the land		
	The first wife is the most disadvantaged as it is her share that will be distributed to other wives		

**Table 14 – The Husband Register with Only One of the Wives**

The Husband Register with only one of the wives			
Strength	Weakness	Opportunities	Threats
Easier for property division upon divorce or death	Often it is the second wife who will be registered with the husband	The presence of the practice is a positive opportunity that needs to be scaled up	The size, distance and fertility of the land might vary
It creates a better sense of ownership	It is the husband who chooses with whom to register		Often viewed as negative by the community as they are together (within marriage)
Avoids future conflicts	The first wife is the most disadvantaged as it is her share that will be distributed to other wives		



The Husband Register with only one of the wives			
Strength	Weakness	Opportunities	Threats
It reduces disputes of co-wives over land and over sharing of crop and other land products			
	The co-wife registered with the husband and children of these families will be at a disadvantage as children of the separately registered wife can claim their fathers share from the ownership of co-wife registered with husband.		Co-wife with separate registration may face challenge of labor to work on land owned.
			May face encroachment, mainly from children of the other co-wife

**Table 15 - The Husband registers with all wives in different certificates**

The husband registers with all wives in different certificates			
Strength	Weakness	Opportunities	Threats
The name of all wives are registered	Very difficult for division of property		This kind of registration creates a doubt on the reliability of the certificate in the future
Creates a sense of ownership in all the wives	The registration system conflicts with FSCC decision		This modality is short sighted and in the long run it becomes a source of conflict
	The first wife is the most disadvantaged as it is her share that will be distributed to other wives	Only either family may be affected in case of land and crop loss due to a few reasons.	The land allocation share may be influenced by preferred/dominating co-wife and it may turn-out to be unfair and this in-turn may negatively affect the children of less privileged co-wife.
	The husband will benefit unfairly as he will be entitled for 50% from each wife		

**Table 16 – The husband registers with his wives but preserves some separate portion for himself**

The husband registers with his wives but preserves some separate portion for himself			
Strength	Weakness	Opportunities	Threats
	All the wives are not entitled		The practice might expand through time
	It only benefits the husband		

## Annex 4 - Data Collection Tools

**Instruction:** Hello! My name is \_\_\_\_\_. I am a consultant hired by The Land Investment for Transformation (LIFT) Programme to conduct a study on the development of strategy for polygamous wives registration during SLLC.

The objective of the assignment is to identify and verify the various polygamous wives registration modalities and analyse the advantages and disadvantages. It also aims to propose solution based on the law and desired outcomes related to land rights, social cohesion and harmony, inclusion etc.

We, therefore, would like to request your willingness to participate in this evaluation process by providing the necessary information. We would like to assure you that the information you give us would be kept strictly confidential.

As part of the study we are requesting your permission to conduct an interview with you that should take about -----minutes. Please understand that you are not being forced to take part in this study. However, we would really appreciate it if you do share your thoughts with us. If you choose not to take part in answering these questions, you will not be affected in any way whatsoever. If you agree to participate, you may stop participating in the interview at any time and tell us that you do not want to continue.

We thank you in advance for your cooperation!!!

### *In-depth Interview for polygamous families (husband and wife/ves) <sup>24</sup>*

#### General Questions

- I. Date .....
  - II. Respondent's Name .....
  - III. Sex.....
  - IV. Location .....
- 
1. How many co-wives in the household? Are they living in the same house, same compound, or in different location?
  2. How does the registration of co-wives happen during the SLLC? A) All wives registered, b) not all the wives registered?
  3. If all the wives are registered, how could that happen?
    - a) All co-wives were having prior registration (FLLC),
    - b) There was no prior registration and all the wives have equal right,
    - c) Those wives registered before were willing for the non-holder co-wives to register,
    - d) The husband forced right holder wife/ves to approve registration of the non-holder wife/ves,
    - e) the non-holder wife is powerful to influence others (favoured by the husband, have grown up children, affiliated to the formal system, better educated or informed, etc).
    - f) Any other means please discuss in detail
  4. What is the advantage and disadvantage of registering non-right holder wives vis a vis the different reasons discussed above.
  5. If all the co-wives are not registered, why not? What is the implication for the non-registered wife to herself and her children if the husband dies or she is divorced?
  6. For registered co-wives, how does the registration take place?
    - a) Co-wives registered in one certificate with the husband,
    - b) Co-wives registered on separate certificate of their own, but the husband registers with all the co-wives,
    - c) Co-wives registered separate and the husband registered with one of the wife only.
    - d) Please discuss in detail if they registration have used any other form
  7. Discuss the advantage and disadvantage of these registration modalities?
  8. Do you know what the law says about polygamous marriage and the legal implication in land registration? Please discuss in detail.
  9. If land is allocated for co-wives for separate registration, from where the initiative comes?
    - a) The husband likes that way to avoid family tension,
    - b) Joint holder co-wives insisted
    - c) Non-joint holder wives insisted,
    - d) The woreda land administration office guide for such an arrangement.
    - e) Please explain if the initiative comes from others than indicated above.

<sup>24</sup> The analysis of the husband and the wife will be treated separately as their interest, experience and needs differ.

10. For separate registration of co-wives and the husband only with one of the wife, how does parcel allocation happen?
  - a) Have prior separate registration,
  - b) Allocated from joint holding of the husband and co-wife/ves.
  - c) Allocation from the share of the husband only,
  - d) the co-wife lives in a different location with full responsibility of managing the land,
  - e) Although the woman is married to the man, leads an independent life including land registration.
  - f) Please discuss in detail if the parcel allocation took place in other forms than stated above.
10. What is the advantage and disadvantage of each arrangement for the co-wives and their children?
11. For allocation of parcel/s for co-wives, what is the basis of allocation in terms of size and fertility of parcel?
  - a) good will of the husband,
  - b) size of children
  - c) influence of grown up children,
  - d) influencing power of the co-wife/ves,
  - e) Other reasons.
12. Does allocation turn out to be fair to all the co-wives? What grievance redressing mechanisms are there for co-wives with complaints over allocation? Which institutions are responsible to entertain it? Please discuss in detail.
13. What other problems co-wives face after separate registration? For example boarder encroachment by children of the other co-wife, threatened by the husband or the co-wives? List any problem and analyse the causes and effects.
14. Does the husband have separate registration of parcel/s unrelated to any of the wives? What is the purpose of such registration? Who and how does the produce from such land be divided and used among co-wives? What is the advantage and disadvantage of such registration?
15. From the different registration modality, which form of co-wives registration do you propose? What is the justification for choosing the modality?
16. What do you think are the reason behind to engage in polygamous marriage? What are the benefits or vice versa for the men, for the women?
17. Are you aware of what the law says about it? How is the trend? Is it declining or increasing? What are the reasons for the declining or increasing trend?
18. What is the level of polygamous marriage currently?

### **Focus Group discussion for Woreda Land administration Office**

#### **General Questions**

- I. Date .....
  - II. Respondent's Name .....
  - III. Respondent's organization and position .....
  - IV. Respondent's Responsibility .....
  - V. Sex.....
  - VI. Location .....
1. What do you do to ensure women participation (particularly in polygamous households) in SLLC public awareness programs? Was it successful? Why or why not?
  2. What do you do to ensure women participation (particularly in polygamous households) in adjudication and demarcation? Was it successful? Why or why not?
  3. Who should be present during demarcation of the land? What is the effect of absence of the husband, wife/wives during demarcation? Does this affect the modality of certification? Please discuss in detail.
  4. Is there any difference among the treatment of wives during demarcation as to
    - a) women who were registered before
    - b) landless women
    - c) Childless women
    - d) 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> wife
    - e) any other criteria please discuss
  5. How do you reach out to women and men about public display in SLLC?
  6. What is the effect if the husband did not appear with his wife/wives? How do you asses that?
  7. What are the modalities of public display for polygamous wives?
  8. What is the level of co-operation with the justice sector (courts and prosecution office) during SLLC process? Do you encourage them to pass timely decision or stop from passing decision?
  9. What is the modality of certifying polygamous wives?

10. What kind/kinds of registration modality applied for polygamous wives in your woreda? Refer the kind of registrations discussed above.
11. Is the modality the same across kebeles or differ from kebele to kebele or even from household to household? Why is it different from kebele to kebele and even from household to household?
12. What is the advantage and disadvantage of the modalities for the co-wives and their children?
13. Which registration modality is preferred by the land administration office? For what reason?
14. What level of influence can the land administration office make on households to adopt the preferred registration modality?
15. How does staff of the land administration office take common position on the kind of registration and pursue for that?
16. What should be done to standardize polygamous wife registration procedure for the future?
17. From your experience, what are specific challenges of first wife, last wife, childless wife as well as difference in number of children at time of public awareness, demarcation and adjudication, public display and certification process?
18. Does this have any positive or negative impact on land registration process? How? Please explain in detail – are there any cases that can be cited?
19. What do you think to solve these problems around polygamous wives during SLLC? (If it is a problem)

### **Key Informants Interview – for kebele Land Administration officers<sup>25</sup>, and kebele Land Administration Committee**

#### **General Questions**

- I. Date .....
- II. Respondent's Name .....
- III. Respondent's organization and position .....
- IV. Respondent's Responsibility .....
- V. Sex.....
- VI. Location .....

1. Did the message for co-wives attendance of the SLLC process reached well?
2. Was there a good turnout of co-wives for the adjudication and demarcation, public display and certification (for SLLC completed woredas)? If not why not? If yes, what helped their participation?
3. If yes, was there any dispute among co-wives? What was the cause for the dispute? How was the dispute settled?
4. What was the role and duties of elders and land administration committee in resolving polygamous household land dispute?
5. What registration Form was taken in the kebele for polygamous households? Is it similar across households or different from HH to HH? What is the reason for the difference?
6. What are the advantages and disadvantages of the different registration modalities?
7. What is the preferred registration modality for the co-wives and their children?
8. What could be done to push polygamous households to the preferred registration modality?
9. What role you can play to enforce the preferred registration modality?
10. What experience you have in regard to polygamous wives land right issues in times of death of a husband or divorce? Discuss them.
11. How could the SLLC overcome all or some of these problems? discuss
12. What do you think are the reason behind to engage in polygamous marriage? What are the benefits or vice versa for the men, for the women?
13. Are you aware of what the law says about it? How is the trend? Is it declining or increasing? What are the reasons for the declining or increasing trend?
14. What is the level of polygamous marriage currently?

### **Focus Group discussion for Women and Children Affairs Office**

#### **General Questions**

- I. Date .....
- II. Respondent's Name .....
- III. Respondent's organization and position .....
- IV. Respondent's Responsibility .....

<sup>25</sup> Kebele land administration offices are present at Oromia Region but not in SNNPR.

- V. Sex.....
- VI. Location .....

1. What is the level of polygamous marriage in the woreda?
2. As women and children office, what are you doing about polygamous marriage?
3. Under your normal official capacity, what are the issues you came across involving polygamous wives land holding right?
4. How is the women and children office involved in SLLC land registration?
5. What is your role in the SLLC land registration process?
6. What do you do to ensure women participation (particularly in polygamous household) in community awareness programs?
7. Do you experience any challenges with regards to polygamous wives? Please discuss it in detail at times of – public awareness, demarcation and adjudication, public display and certification process?
8. Do you know the modality of certifying polygamous wives? What is your thought about this? Is there anything you have done in this regard?
9. What modalities do you propose and why?
10. From your experience, what are specific challenges of first wife, last wife, childless wife as well as difference in number of children in regard to securing their land use right?
11. Does this have any positive or negative impact on land registration of polygamous wives? How? Please explain in detail – are there any cases that can be cited.
12. What do you propose to solve these problems around polygamous wives' land right security (If it is a problem)?
13. What do you think are the reason behind to engage in polygamous marriage? What are the benefits or vice versa for the men, for the women?
14. Are you aware of what the law says about it? How is the trend? Is it declining or increasing? What are the reasons for the declining or increasing trend?

### **Key Informant Interview for Prosecutors and Judges**

#### **General Questions**

- I. Date .....
- II. Respondent's Name .....
- III. Respondent's organization and position .....
- IV. Respondent's Responsibility .....
- V. Sex.....
- VI. Location .....

1. Have you come across disputes on land certification involving co-wives? If yes, how often? Or how do you describe the magnitude of these cases?
2. What are the modalities of registering polygamous wives in SLLC land registration? What are the legal consequences?
3. What are the existing laws/regulations to protect the right of co-wives (first, second,...) to ensure their land holding right during SLLC land registration?
4. Is there gap in the law to protect the land holding rights of co-wives in polygamous marriage? If yes, please explain?
5. What kind of evidences would the court expect from co-wives that appeal to court claiming land certificate?
6. Would you tell us a fact of the case and how the court frame issue and give decision by exemplifying real cases that you remember from a wife in a polygamous marriage who win the court case and those who lost?
7. Do you think polygamous marriage particularly in land registration is creating a problem? If yes, what is your suggestion to manage the problem?
8. What do you think are the reason behind to engage in polygamous marriage?
9. What are the measures being taken to prevent or discourage polygamous marriage by your office?
10. What complementary roles prosecutors and judges play in settling land registration disputes of polygamous households in meeting SLLC deadline?
11. What sort of work relation you have with other offices, e.g. land administration, women and children.

## **Key Informant Interview for LIFT FTL (Field Team Leaders) at SLLC ongoing kebeles**

### **General Questions**

- I. Date .....
  - II. Respondent's Name .....
  - III. Respondent's organization and position .....
  - IV. Respondent's Responsibility .....
  - V. Sex.....
  - VI. Location .....
1. Did co-wives in a polygamous household participate in the adjudication and demarcation, public display and certification process?
  2. Do all the co-wives appear to every parcel or do they have allocation for each of them?
  3. Does the husband happen to be with all the wives or with one or the two?
  4. Have you come across dispute among co-wives and the husband? What are the disputes and how are they settled?
  5. Do you experience similar or different form of polygamous households' wives registration? If different forms, what are they and what is the cause for the difference?
  6. Who guides the type of registration of co-wives in your registration process? A) the husband, b) the husband and co wives, c) land administration committee, d) woreda land administration office, e) it is up the field teams' convenience
  7. From your experience, which registration modality of polygamous households you prefer in order to protect the rights of co-wives and their children?

### **Field Observation at SLLC ongoing kebeles**

1. Check and interview husband and co-wives at the adjudication and demarcation as well as public display sites
2. Observe how husband and co-wives interact during the adjudication process
3. Check on the spot how field teams conduct adjudication and demarcation of parcels owned by polygamous household
4. Observe how elders and land administration committee help to settle land disputes of polygamous households