Strategy to Address Legal Constraints of Women and Vulnerable Groups to Secure Their Land Rights

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Acronyms

ADR	Alternative Dispute Resolution
CSO	Civil Society Organization
ETB	Ethiopian Birr
EWLA	Ethiopian Women Lawyers Association
FDRE	Federal Democratic Republic of Ethiopia
FHH	Female Head of Household
FLLC	First Level Land Certificate
KA	Kebele Administrator
KLAC	Kebele Land Administration Committee
LIFT	Land Investment for Transformation
LSAO	Labour and Social Affairs Office
NGO	Non-Governmental Organization
OC	Orphan Children
PAC	Public Awareness and Communication
POL	Period of Limitation
ROJ	Review of Judgement
SDOs	Social Development Officers
SLLC	Second Level Land Certificate
SNNPR	Southern Nations Nationalities and Peoples Region
VGs	Vulnerable Groups
VLAC	Village Land Administration Committee
WCAO	Women and Children Affairs Office

Executive Summary

The Land Investment for Transformation (LIFT) Program is a six-year (2014 to 2020) DFID- funded programme that aims to improve incomes of the rural poor and enhance economic growth through three components: Second Level Land Certification (SLLC); improved Rural Land Administration Systems (RLAS); and increasing land productivity through the 'making markets work for the poor' (M4P) approach.

The SLLC component plans to register 14 million parcels in the four regions of Oromia, Amhara, SNNP and Tigray. Although the project to date has shown significant positive results in terms of high percentages of women appearing either as joint or individual land holders on the titles, information from the field has indicated a number of issues of concern to women and vulnerable groups (VGs) such as: low participation during field registration exercise; limited ability to successfully claim legitimate land rights through the court systems; difficulty in obtaining land rights through inheritance or donation from parents; inequitable distribution of land rights following divorce; failure to jointly register women for land which should be marital property; and other laws or practices with a disproportionately negative impact on women and VGs.

Strategies to address discrimination during the SLLC registration process includes the creation of the Social Development Officer (SDO) position which is being piloted in a number of woredas, with successful results. The current study is meant to address other constraints, primarily in the legal framework and its implementation. The study involved field work, combined with legal analysis and research, in order to develop a strategy and recommendations to overcome the legal constraints experienced by women and VGs. These constraints, depending on which ones, come into play before, during, and after the SLLC exercise.

Land rights in rural Ethiopia essentially consist of a possessory or holding privilege which allow farmers the rights to use land, exploit it agriculturally, and rent it in or out for specified durations of time. The Federal Government, by virtue of the Constitution and federal legislation, has established the overall extent of this holding right, but the details of the land right vary significantly among the nine regional states that comprise the Ethiopian Republic. The land use right can be donated and inherited, but usually only under conditions that pertain to whether the grantee is a family member of the grantor. Such restrictions differ dramatically from state to state. Although the state technically owns the land in the name of the Ethiopian people and regulates its usage, rural peasants and pastoralists are guaranteed a lifetime "holding" right as long as they comply with certain restrictions, such as continued exploitation of the land and, in some regional states, residency requirements. This holding right includes most rights associated with ownership except outright sale and, in most of the country's regions, the right to mortgage. Land can be rented out for limited periods of time (the maximum duration differs among the regions), but the land holding right itself cannot be permanently sold.

The complex federal and regional legal framework governing land rights in Ethiopia, especially as regards to inheritance, transferability, and reallocation, deeply affect the rights of women and Vulnerable Groups (VGs) and, in several respects, present certain obstacles to achieving equitable land access for these sectors of the population. The legal framework in Ethiopia governing rural land law, like any other legal framework, consists of an inter-related network of different sources of authority (both legislative and judicial opinions), which must be interpreted together, rather than in isolation, in order to predict and understand the "answers" to legal questions. For some land tenure questions, the legal framework does not yield a simple or clear answer, and experts come to different conclusions. With regard to the rural land law in Ethiopia, the federal land proclamation must be read in conjunction with regional land proclamations, which are not always consistent. In addition, when the land law does not explicitly address all issues, then it is necessary to refer to secondary authorities—such as the family code, civil code, criminal code and others to guide us. However, interpreting these laws together with respect to land rights does occasionally lead to inconsistencies and unresolved gaps, especially in areas critical to women such as marital property, succession, donation, and divorce, which we discuss further below.

In terms of legal instruments that seek to guarantee equitable land rights for women and VG, it is important to note that there are several relevant international agreements and conventions which Ethiopia has ratified and that include provisions for equitable land rights for women and VG. In addition, there are national laws that recognize the land rights of women and vulnerable groups. The FDRE Constitution recognizes gender equality and accords women equal rights with men in regard to the use, transfer, administration, and control over land. Under the Constitution, women should enjoy equal treatment in the inheritance of property and the disposition of marital property. Moreover, the Constitution explicitly prohibits laws and customary practices that discriminate against women. The federal Rural Land Proclamation and the Family Code also clearly and expressly stipulates that women who wish to engage in agriculture shall have the right to obtain access to and use rural land. There are also provisions in the family law which give men and women equal rights at the time

of marriage in the administration of property, though there is a legal debate on as to whether "property" in the context of the family should apply to the land holding right.

Despite all these provisions meant to safeguard the rights of women and VG, the reality on the ground often does not match the ideals reflected in the legal framework. Notwithstanding such provisions, women and VGs are often at a disadvantaged position regarding control over land, due in many cases to the customary practices governing the land tenure arrangement, as well as to cultural patterns.

Moreover, some provisions in the legal framework are gender neutral, but when applied in the cultural context of rural Ethiopia have a negative impact on women. A good example of this phenomenon are the residency requirements common in the regional land proclamations and in the federal legislation. The cultural context, and reality, is that women are more likely than men to leave their parents' household and even town. This is often related to marriage, when women are more likely to move to their husband's town than vice versa. We have recommended certain changes to reduce this discriminatory impact. The existing gender inequality in access to and control over land is an obstacle to sustainable land use and to sustainable development in general.

In this study, both primary and secondary sources have been used. Primary qualitative data was collected through semi-structured interviews conducted at the federal, regional and woreda level. At the woreda level, two woredas were visited in each of the four project regions. A total of 73 officials and experts were interviewed, among them government officials and experts from land administration entities, the justice office, courts, as well as, on occasion, police, community members (women and children), and social affairs institutions. In addition, secondary data sources were analysed, mainly consisting of: laws (both federal and regional, and both land laws and laws such as the family, civil, and procedural codes).

A number of specific legal constraints were identified prior to the study, while others arose during the field work. The primary issues, gaps, risks and constraints researched and validated in this report are:

1. **Matrimonial Property and Joint Titling**

- FLLC recorded solely in the name of the husband (Tigray) or has the photo of only the husband (Oromia) during FLLC, when often it should have been jointly titled.
- Joint titling is not always allowed by the land administration entities (or courts) if the land clearly belonged to only one of the spouses prior to marriage, even if both spouses give consent to make it marital property (e.g. in Tigray). Oromia and SNNPR laws are not clear, while Amhara explicitly permits.
- Mandatory joint titling of a private holding (i.e. acquired by one spouse prior to marriage) over the objection of that original holder (practiced in Oromia and SNNPR). However, courts may reverse the joint titling because of the weak legal justification. Also, the practice creates undesired societal results--parents avoid donation; marriage may be sought (or avoided) as means to acquire (or retain) land rights.
- When spouses consent during SLLC to jointly title, some regions (e.g. Amhara) allow such registration, but only afterwards in a separate application and transaction. This adds a layer of bureaucratic procedures.
- Persistent cultural bias that women should not hold land rights.

2. **Period of Limitation (POL)**

- Women and VGs are at risk of losing their land rights when land encroachers raise POL as a defence.
- Insufficient awareness on POL and its consequences by landholders at the community level (and thus lack of documentation in cases of informal rentals). Women and VGs are at a disproportionate risk of losing their land rights as they are often the informal renters-out of land.
- Application of POL for minor children (should not start to run until children attain majority age of 18).

3. **Forgery and Perjury of Evidences**

- Laws related to forgery and perjury of evidences are not enforced properly. Women and VGs are more affected because they have less resources to fight claims in court.
- Lower level institutions are very weak and there are instances of corruption. This negatively affects women and VGs disproportionately, as they generally have weaker social connections and a weaker financial position to influence LAC and other decision-makers.
- Forgery exists during land registration. This negatively affects women and VGs disproportionately for same reasons as above.

4. **Illegal Loans and Mortgages**

- Informal loans using land as collateral, which illegally results in borrowers permanently surrendering land rights when there are payment defaults. Women and VGs are disproportionately affected since they often have no cash reserves and thus agree (as borrowers) to these informal loans, with harsh repayment conditions.

5. **Review of Judgment**

- Women and VGs are often not aware about review of judgment, and thus fail to take advantage of this comparatively less expensive and easier procedure (versus a direct appeal).
- Cassation Bench decisions which allow the Review of Judgment procedure are not fully known by judges, prosecutors and other experts.

6. **Enforcement of Criminal Law Provisions**

- Land right violations are often not diligently or vigorously prosecuted. Women and VGs are disproportionately affected, because they are often the aggrieved parties who are taken advantage of by stronger members of the community (in terms of societal and financial influence).

7. **Mediation**

- Mediation is not clearly and uniformly applied per the law and in practice (often the practice and legal framework confuses mediation with arbitration, inappropriately giving decision-making powers to mediators, turning them into arbiters). Women and VGs are generally more negatively affected by the over-reaching of mediators into decision-making, because the mediators are more easily influenced by the party opposing women and VGs, and/or the mediators are culturally biased.

8. **Execution of Court Judgments**

- Execution of court judgements can be very difficult for women and VGs after getting court decisions. Corruption and other illegal relations are some of the causes.

9. **Naming Conventions for Women**

- Married women, in some areas of Oromia and SNNPR, use their husband's name as their second name (surname), instead of their father's name. Using the husband's name as a married woman's surname creates confusion and a double burden on women to prove their natural father in cases of inheritance or disputes, contributing to the loss of women's land rights.

10. **Agency (Representation and Power of Attorney)**

- Agency is not being conducted formally. Informal agents and others infringe the land rights of women and VGs (i.e. the people whose rights they should be protecting when they are acting as an agent).
- The agency service is often not accessible to landholders (though better in Amhara and Oromia).
- Those who misuse their power of agency are not criminally prosecuted, most of the time.

11. **Tutor Appointment and Orphan Children**

- Tutor appointment is not being conducted formally. Informal tutors and others can infringe the land rights of the OCs whom they are supposed to protect.
- In Tigray land inherited by a minor child stays registered in the name of the deceased. Although well-intentioned, leaving land in the name of the deceased may make it easier for others to infringe, harder to conduct transactions, and may cause confusion or conflict between heirs who attain majority of age at different times.
- In Tigray, landholders including minors cannot move to another area for regular education, otherwise they may lose their land rights.

12. **Donation and Inheritance**

- "Family member" in federal framework and most regions (except Oromia) excludes completely those children who have moved away from their families' household. Donation and inheritance of land use rights are restricted to "Family Members," with a negative impact on women who have moved away from their village due to marriage.

- During succession, the Amhara land law requires a person to support the deceased prior to his/her death for three consecutive years in order for him/her to inherit the land rights. Since women usually leave their family household (and often village) as a result of marriage, they will not have the chance to support their families. This provision presumably was not intended to exclude women from inheriting land. Nevertheless, it has a negative impact on the inheritance rights of women.

For each of the issues described above, we have recommended solutions that include a range of actions, depending on the specific challenge, including: (a) reforms or clarifications to existing laws, proclamations or regulations; (b) changes in the practice and understanding of the way certain laws should be implemented; (c) capacity-building of government officials including judges and prosecutors to better understand the relevant legal framework and create awareness about how to improve protection of legitimate rights; and (d) public education and awareness creation among the community members (women, men, VGs and others) to also better understand the relevant legal framework in terms of both their rights and obligations.

The strategy thus consists of a series of recommendations aimed at overcoming these constraints. The following are highlights of the strategy and recommendations, but does not include all of them:

- Review SLLCs issued in early phases of the program, to ensure that women entitled to be joint holders were indeed registered as such, in those regions where the FLLC was improperly titled only in name of the husband (e.g. Tigray).
- Make mandatory in the regional land laws that the name and photo of each joint holder appear on the land certificate.
- Further research is required on mandatory joint titling because: (a) is a practice which has an extremely weak (or no) legal basis; (b) is being reversed by many judges; and (c) has unintended negative impacts.
- Implementation of LIFT Audience Segmented Message for any land related public awareness activity and reinforce the message of equal land rights for women and men.
- Create more public awareness that land encroachers may try to raise POL as a defence, but that the formalization of transactions, including rental contracts, can help protect the original land rights holder, and therefore formal agreements should be used.
- Clarify the law that the POL will run against children only after they attain the majority age of 18;
- Create greater awareness on the criminal nature (and liability) of perjury and forgery and promote more pro-active criminal prosecution of such acts.
- Promote women LAC members to the chairperson position (number of women members alone is not making a difference).
- Regulation of the loan market and broadening the opportunities for access to credit, based on land right collateralization in an open manner or way, such that the land right can be lost only temporarily upon default. The Amhara proclamation can be replicated as a best practice which gives the right to decide the time to the parties.
- Legal training on the Federal Cassation Bench decisions related to Review of Judgment, which is an easier, quicker and less costly option for claimants than a direct court appeal.
- Mediation should be made optional, where mediators are chosen by the parties and the legal framework is clear that the role of the mediators does not involve imposing decisions.
- For Oromia and SNNPR, the legal regime of mediation should be clarified to avoid confusion with arbitration.
- Train community level mediators in the law and the protections of land rights of VGs against gender discrimination.
- Promote involvement Justice Offices in capacity-building of mediators, and institutionalization of mechanisms for support, supervision and accountability of the mediation process.
- Amend relevant legal instruments to require women, whether married or not, to use their father's name in official documents (though married woman would still be able to use their husband's name as their second name in social settings).
- Provide public awareness and education to the community about the importance of agency and how to correctly formalize it.
- Establish a mobile court (bench) at kebele level with social courts and provide service for Agency and Representation. Encourage house-to-house service for landholders with critical mobility constraints.

- Promote awareness and provide public education to the community about the importance of formal Tutor appointment (especially of OC) and how it should be done properly.
- Revise the Tigray regional law to register land inherited by Orphan Children in their own name (and name of Tutor may appear at another, appropriate, place on the document).
- The federal and regional land laws should be revised such that “Family member” should not exclude completely those children who have moved out from the family residence.
- The current rule in Amhara that heirs must support their family for three consecutive years prior to deceased’s demise, in order to inherit land rights, should be re-considered because it has a negative impact on the land inheritance rights of women.

Some of these recommendations may be implemented in the short term, while others will require a process of consensus-building and advocacy. It will be important to share these recommendations with stakeholders, via workshops and other means, and then develop a refined or adjusted strategy, work plan, and tracking system which can be considered as feasible goals with realistic timelines. If some of the recommendations are considered feasible within the current political, cultural and legal setting, then they can be considered for a later phase of implementation.

Introduction

Background

Land rights in rural Ethiopia essentially consist of a possessory or holding privilege which allows farmers the rights to use land, exploit it agriculturally, and rent it in or out for specified durations of time. The Federal Government, by virtue of the Constitution and federal legislation, has established the overall extent of this holding right, but the details of the land rights vary significantly among the nine regional states that comprise the Ethiopian Republic. These land use rights can be donated and inherited, but usually only under conditions that pertain to whether the grantee is a family member of the grantor. Such restrictions differ dramatically between regions. Although the state technically owns the land in the name of the Ethiopian people and regulates its usage, rural peasants and pastoralists are guaranteed a lifetime "holding" right if they comply with certain restrictions, such as continued exploitation of the land and, in some regional states, residency requirements. This holding right includes most rights associated with ownership except outright sale and, in most of the country's regions, the right to mortgage.1 In short, individuals have land use rights, with limited rights to the transaction of such rights. Private sector investors are governed by slightly more flexible rules, with more permissible schemes for rentals and mortgages.

The federal and regional legal framework governing land rights in Ethiopia, especially as regards to inheritance, transferability, and reallocation, deeply affects the rights of women and Vulnerable Groups (VGs) and, in several respects, present certain obstacles for them achieving equitable land access. The legal framework in Ethiopia governing rural land law, like any other legal framework, consists of an inter-related network of different sources of authority (both legislative and judicial opinions), which must be interpreted together, rather than in isolation, to predict and understand the "answers" to legal questions. For some questions, the legal framework may not yield simple or clear answers, and experts may come to different conclusions. Regarding the rural land law in Ethiopia, the federal land proclamation must be read in conjunction with regional land proclamations, which are not always consistent. In addition, when the land law does not explicitly address all issues, then we need to refer to secondary authorities—such as the family code, civil code, criminal code and others—to guide us. It is not possible to cover all potential scenarios in a single proclamation, so cross referencing to other laws is very important. However, interpreting these laws together with respect to land rights does occasionally lead to inconsistencies and unresolved gaps, especially in areas critical to women such as marital property, succession, donation, and divorce, which is discussed further below.

In terms of legal instruments that seek to guarantee equitable land rights for women and VGs, it is important to note that Article 9(4) of the FDRE constitution provides that all international agreements ratified by Ethiopia become an integral part of the law of the land. There are many relevant international agreements and conventions which Ethiopia has ratified that include provisions for equitable land rights for women and VGs. In addition, there are national laws that recognize the land rights of women and vulnerable groups. The FDRE Constitution recognizes gender equality (FDRE Constitution, Arts. 25, 34, 35, and 40). The Constitution accords women equal rights with men with regard to the use, transfer, administration, and control over land (art. 35 (7)). Under the Constitution, women should enjoy equal treatment in the inheritance of property and the disposition of marital property (Ibid). Moreover, the Constitution explicitly prohibits laws and customary practices that discriminate against women (art. 35(4)). The gender equity provisions of the Constitution are reinforced through other national legislation such as the Rural Land Proclamation and the Family Code. Under article 5(1(c)) of the proclamation it is clearly stipulated that women who wish to engage in agriculture shall have the right to obtain access to and use of rural land. There are also provisions in the family law which give men and women equal rights at the time of marriage in the administration of property, presumably including the land holding right, though there is a legal debate on this specific point of applicability.

Despite all these provisions meant to safeguard the rights of women and VGs, the reality on the ground often does not match the ideals reflected in the legal framework. Notwithstanding such provisions, women and VGs are often at a disadvantaged position regarding control over land, due in many cases to the customary practices governing the land tenure arrangement, as well as to cultural patterns.

Moreover, some provisions in the legal framework are gender neutral, but when applied in the cultural context of rural Ethiopia have a negative impact on women. A good example of this phenomenon are the residency requirements common in the regional land proclamations and in the federal legislation. The cultural context, and reality, is that women are more likely than men to leave their parents' household and even town. This is

[1] Note that Amhara Region has started to liberalize rules regarding the collateralization of the land holding rights.

often related to marriage, when women are likely to move to their husband's town. The Federal Land Proclamation defines family member as a person living "permanently" with the land right holder and restricts the authority to transfer the holding right to such family members. This rule, although gender neutral, has a disproportionate negative impact on women due to women moving away from their parents' household to marry. Furthermore, the wife is not considered a "family member" of her matrimonial family, which has consequences in divorce proceedings, or death of the husband, for her to be able to access the "family land" of her former or deceased husband (whether she has children or not). Regional land proclamations are varied in how they define "family members," leading to an inconsistent legal framework. The inconsistencies create tenure insecurity as it is unclear how courts will resolve the contradictions between the federal and regional law. Although in theory the federal law takes priority over regional law, courts (especially regional courts) are known to give the regional law priority when it comes to land rights, with some jurists even arguing that the federal land law has overstepped its authority by regulating details that should be left to the states.

Another inconsistency concerns inheritance rights in Amhara. During succession the Amhara land law requires a person to support the deceased prior to his/her death for three consecutive years in order for him/her to inherit their land. Since women often leave their families as a result of marriage, they have reduced opportunities to support their families. This provision presumably was not intended to exclude women from inheriting land, but it nevertheless has a negative impact on the inheritance rights of women.

The existing gender inequality in access to and control over land is an obstacle to sustainable land use and sustainable development in general. Women's access, use, and control over resources are shaped by complex systems of civil law as well as customary and religious laws and marriage practices, especially in the case of polygamy, widowhood, and divorces. In Amhara, for example, as Daniel Ambaye 2 has described, equality and special attention is provided to women and VGs by law, but in practical terms these groups are not fully benefiting from their legal rights due to the deep-rooted societal traditions and patriarchal culture.

Orphan Children (OC) in particular and more generally VGs, also have legally protected rights to obtain access to and use rural land. However, OC and other disadvantaged persons also face practical problems in accessing and using land rights. There are cases where minor children face difficulty in accessing and using their parents' land which may be under the control of their Tutor after their parents' death.3 There is a vast difference between the formal legislative provisions, and the customary rules and norms that in practice are often used to govern land disputes.

Studies commissioned by LIFT identified some factors why women and VGs have lost their parcels or why their parcels are still under dispute (Abate et al. 2017)4. These included the following: (1) defence of encroachment by Period of Limitation; (2) perjury and forgery of evidence; (3) forceful annexation by someone who rented the land or by a neighbour; (4) land possessed by a lender after failure to repay a loan; (5) an absence of official representation for the elderly and persons with disability; and (6) the absence of official guardian or tutor appointments for OC. As a result of these studies, the program has sought to take actions to address these and ensure that the land rights of women and VGs are upheld. One decision was to conduct a study that would assess: (a) what the law says (regional and national as applicable) about these issues, (b) how is it understood by those who interpret the law, (c) how the law is implemented in practice and (d) how related services are accessed. Some of the issues that needed to be analysed due to their potential impact on women and VGs included the following: period of limitation; review of judgment; provisions in the Criminal Code and its enforcement regarding land rights infringement; arbitration and mediation (mandatory or optional) as a prerequisite to filing a formal lawsuit in court; evidentiary rules in court; perjury and forgery of evidences; possessing land used as collateral for a loan (thought illegal); accountability of wrong doers as far as land right infringement is concerned; accountability for delayed execution of court decision; naming conventions of women (specific to some localities of SNNPR & Oromia): gaps between the formal statutory law and its practice in reality; guardian appointment for OC and accessibility of the service; how VGs represent or give power of attorney and the accessibility of the service; and the correlations and inconsistencies that exist between different laws.

As part of the wider LIFT program that aims to increase rural land tenure security through second-level land certification and improved rural land administration systems, maximizing benefits to and economically

[2] Daniel W. Ambaye et al. 2015, Assessment of the Implementation of Rural Land Laws in Amhara National Regional State, The Institute of Land Administration, Bahir Dar University, In Collaboration with ANRS BoEPLAU, Supreme Court, and Justice Bureau
[3] Gadissa Tesfaye, Mulugeta Getu, Debebe Tollosa, Sultan Kassim, and Richard Wentzell, 2013, Review of Rural Land Laws and Assessment of its Implementation in the Oromia Regional State, Haramaya University Land Tenure, Supported By USAID/Ethiopia – Strengthening Land Administration Program (ELAP)
[4] Hana Abate *et al* (2017). Strategy for Preventing and Mitigating SLLC Related Violence against Women and Vulnerable Groups.

empowering smallholder farmers in four regions of Ethiopia, this study will seek to identify the legal constraints of women and VGs to secure their land holding rights as per the issues listed above; and develop a strategy to overcome these constraints. The study is organized into 12 thematic areas covering the different types of constraints focused on the four regions of the LIFT program, namely Oromia, Amhara, SNNPR and Tigray. Each thematic section includes: (a) an analysis of the legal framework pertaining to each issue, including regional variations; (b) a description of the implementation and treatment of these issues by local and regional authorities, based on a field visits to two woredas in each of the four regions (details below); and (c) recommendations for how to reduce or eliminate the challenges and constraints faced by women and VG in asserting their legitimate land rights. A summary strategy chart (and tracking plan based on the strategy summary) are also included.

Rationale for Developing the Strategy

The strategy aims to protect and promote the land rights of women and VGs. These groups of people are at a higher risk of losing their land rights, or having their rights infringed, because: (1) critical aspects of the law are vague; (2) awareness about the laws is minimal; and (3) implementation of the laws has gaps. Women and VGs are affected disproportionately because these groups are physically, emotionally, financially and socially weaker compared to others, and this affects their ability to claim their land rights in both formal (courts) and informal (within the community) settings.

Objectives of the Study

The overriding objective of the assignment is to develop a strategy to address legal constraints that affect women and VGs in securing their land rights.

The specific objectives are to:

- Assess differences among the regional laws and their impact on women and VG's land right security, specifically in regard to the issues listed above;
- Assess differences in the implementation of the legal framework even within the same region;
- Assess compatibility and enforcement of national and regional laws in protecting land right security of women and VGs;
- Assess the gaps in the provision, understanding and implementation of laws/articles and the impact on women and VGs with respect to land use rights; and develop a strategy to overcome the legal constraints that affect women and VG land right security.

The strategy is comprised of three categories of potential interventions: (a) recommendations to close gaps (or clarify ambiguities) in the legal framework; (b) approaches to promote consistent understanding and interpretation of the legal framework by both public officials and private citizens; and (c) recommendations to improve implementation of aspects of the legal framework that are being disregarded for whatever reasons.

Methodology of the Study

For the study, both primary and secondary sources have been used. Primary data has been collected through semi-structured interviews. Qualitative data collection and analysis was selected as the main means of data collection to obtain an in-depth understanding of the respondents on legal constraints of land use right of women and vulnerable groups. From the federal, regional and woreda levels, government officials and experts from land administration entities, the justice office, and courts have been interviewed, as well as, on occasion, police, community members (women and children), and social affairs institutions. A total of 73 officials and experts were interviewed.

Semi-structured Interviews have been conducted with:

- Regional and Woreda Land Administration and Use Institutions
- Regional and Woreda Court/Judge who handles land cases
- Regional and Woreda Justice Institutions
- CSOs such as EWLA, etc.

Secondary data sources mainly consisted of desk-based research such as: laws, previous studies, reports from land administration offices at federal, regional, and woreda level, and from court decisions. As a result, federal and regional laws were reviewed with special attention paid to the strength and limitation of the articles vis a vis protecting land rights of women and VGs. Moreover, legal analysis of the federal and regional land

proclamations as well as related articles in the different laws (civil law, family law, criminal law), was undertaken to identify gaps, and potential challenges that women and VGs may be facing. Finally, the level of understanding and implementation of the provisions among judges and prosecutors was identified in stakeholder meetings; and the impact of differential understanding and interpretation of the articles on women and VGs assessed.

As part of the methodology, case stories of challenges or successes encountered by respondents on the land use right of women and VGs on the points mentioned above are captured.

Two woredas from each of the four regions were selected based on the level of land disputes (one woreda with high levels of conflict over land rights, and another with a comparatively low level) and SLLC being completed. These woredas were selected in consultation with LIFT's GESI team at federal level.

A mix of convenience and purposive sampling techniques were used to identify interviewees for convenience, taking into account the purpose of the study.

Scope and limitation of the Study

The study focuses on the regional and national laws (selected articles related to issues listed above) that affect women's and VG's land rights security. The study reviews regional and national laws/articles and their implementation. It also analyses regional variations along with their strengths and limitations regarding protecting land rights of women and VGs. It engages the justice sector (judges and prosecutors) and land administration offices from the four regions down to the Woredas, selected for the study. It also engages the Rural Land Administration and Use offices at the different levels.

The Ethiopian Women Lawyers Association (EWLA), NGOs, and CSOs are also included at federal level to further broaden the base of respondents. Within the targeted four regional states, two Woredas were identified to be part of the study. Below is a table showing woredas chosen in each regional state for the study:

Table 1: Visited Regions and Woredas for the Study

No.	Region	Zone	Selected Woreda
1	Amhara	West Gojjam	Jabi Tehnan
		East Gojjam	Baso Liben
2	Oromia	S.W.Shewa	Tole
			Dano
3	SNNPR	Gofa	Chencha
		Hadya	Misrak Badewacho
4	Tigray	South East	Hintalo Wajirat
			Sahrti Samre

The study faced the following limitations:

- Due to the complexity of the issue, and as only one interview with each expert or official was possible, varying opinions and perceptions of these experts should be treated as anecdotal.
- Fieldwork was conducted in only two woredas per region, with no field visits at the kebele level, and limited contact with landholders, due to time constraints.
- Language barriers was another problem which might have affected the quality of information, with multiple translations from English to Amharic and then Amharic to local languages and vice versa.

Results and Findings

Matrimonial Property and Joint Titling

Table 2: Matrimonial Property and Joint Titling: the law and practice

Regions	Interpretation of laws (land and family) regarding marital property	Joint Titling as Implemented in Practice
Amhara	Land acquired by spouses together (during marriage) is marital (i.e. common) property. Land acquired by one spouse prior to marriage (or during, but by inheritance or donation) is presumed to be private and remains so.	Joint holdings are titled jointly. It is possible to convert a private holding to marital property (with consent of the granting party) and thereafter jointly titled-but not during the systematic SLLC registration. An application to convert the private holding to a marital property must be done subsequently in a separate process.
Tigray	Land acquired by spouses together (during marriage) is marital (i.e. common) property. Land acquired prior to marriage (or during, but by inheritance or donation) is private, and cannot be converted to marital property.	Marital property is titled jointly. Land acquired prior to marriage (private holding) may not be titled jointly, even if the spouse holding such a land right desires to convert it to marital property. A private holding cannot be converted to marital property because donation is restricted to ascendants and descendants, and conversion of a private holding to marital property is considered as an unpermitted de facto donation. However, some judges at the region disagree.
Oromia	All land holdings of a married couple, whether acquired during marriage or by one of the spouses prior to marriage, are presumed to be marital property. However private holdings can be recognized.	All land holdings of a married couple, whether acquired during marriage or by one of the spouses prior to marriage, are jointly titled. If the spouse bringing property into the marriage objects, then he/she may have to go to court to have the holding declared private (or at least lodge an application to do so with the local land administration entities).
SNNPR	All land holdings of a married couple, whether acquired during marriage or by one of the spouses prior to marriage, are presumed to be marital property.	All land holdings of a married couple, whether acquired during marriage or by one of the spouses prior to marriage, are jointly titled, unless the spouse who has brought a private holding into the marriage objects. In that case (though there is some disagreement), the private holding shall not be converted into marital property and jointly titled.

The treatment of land holding rights in the context of marriage is a critical and sensitive issue regarding the protection and assertion of women's land rights. The interpretation of what constitutes marital property (and thus should be jointly titled) involves the intersection of family law with land law, with the two bodies of law sometimes yielding inconsistent guidance. To complicate matters further, federal law (which also has both land law and family law proclamations) is not always consistent with regional laws on these issues. Finally, when spouses get married, they often agree in a marriage contract how to treat their past and future acquired property. All these sources of authorities must be reconciled to resolve the question of what land should be titled jointly or individually.

At the federal level, Article 6(4) of the rural land administration and use proclamation 456/2005 establishes that where land is already known and acknowledged by community members and/or local land officials to be held jointly by a husband and wife, the holding certificate shall be prepared in the name of both spouses. At first glance, this can be seen to state the obvious, but it is presumably meant to address and correct the phenomenon that was prevalent during FLLC registration in which land that was known and acknowledged to be held jointly by a couple was titled on the FLLC in the name of only one of the spouses, almost always the husband. Therefore Article 6(4) does not explicitly address the situation where private holdings acquired before marriage are subsequently brought into the marriage.

The regional proclamations contain similar provisions. For example, Article 15 (8) of the Oromia national regional state rural land administration and use proclamation number 130/2007 and Article 15(11) of the implementing regulation state that a husband and wife holding a common land holding, shall be given a joint certificate of holding specifying both their names. Again, this applies only for land which is already

acknowledged to be a joint holding. Article 15(9) of the Oromia proclamation recognizes that spouses may independently have private land holdings (and Article 15(17) of the Oromia land regulation states the same). Notwithstanding the weak legal justification, many woreda land administration offices from Oromia, push for joint titling of all the couple's holdings, following guidance from the Regional Land Administration Bureau. These officials state that an objecting spouse would have to obtain a court order permitting independent registration, but there is no legal backing for their assertion.

There are no major differences between the federal and regional family laws, which in essence provide that any property which the spouses possess on the day of their marriage, or which they acquire during their marriage by succession or donation, shall remain their personal property unless they decide otherwise and register the property accordingly (see, e.g., Article 57 of the federal family code). The larger question as we shall see further below, and which is debated by legal experts, is whether or not the land holding right is an asset or type of property to which the family law should properly apply.

However, if we assume for the moment that the land holding right is treated as other property under the family law, then it is clear that land already held by one spouse at the time of marriage is considered as his/her personal holding. In addition, any land which one of the spouses acquires during marriage via succession or donation is also his/her personal holding. However, family law also presumably allows one spouse to convert property which he or she brings into the marriage as a private asset into a common (i.e. marital) asset – and this becomes controversial because such conversion can be viewed legally as a quasi or de facto donation, and donation of land rights is typically restricted to family members, a term which is normally understood to mean descendants or ascendants (with some regional variation), but excluding spouses.5

We shall return to the issue of conversion of private holding to marital holding later, but the family law also provides some guidance in terms of how usage, effort or investment in a property can affect rights over derived income from such property. Article 62 of the federal family code states that all income derived by personal efforts of the spouses and from their common or personal property shall be common property. This shows that even where the land may be the private holding of one of the spouses, the produce collected from the land will become their joint property. Unless otherwise stipulated in the act of donation or will, property donated or bequeathed jointly to the spouses shall be common property. The family code in Article 63 proceeds to state that all assets or property shall be deemed to be common even if registered in the name of one of the spouses, unless such spouse proves that he is the sole owner thereof, but as we have seen the central question is whether the "property" referred to in the family law includes the land holding rights (in addition to "normal" property, such as vehicles or other household assets).

The legal framework is interpreted and applied in different ways among the regional states, particularly when it comes to the question of joint titling in systematic titling campaigns (such as SLLC). In Amhara and Tigray, the legal framework is interpreted more strictly to limit marital land holdings to land which is acquired during marriage. Therefore, land which has been acquired prior to marriage (or acquired during marriage, but via inheritance or donation from that spouse's family members) is presumed to be the private holding of that spouse and normally shall remain so in both regions.

In Tigray, the legal rules are applied in even more restrictive manner than in Amhara. If the land right is acquired before marriage by one spouse (or during marriage via donation/ inheritance by that spouse), then:

(a) If the land-holding spouse does not agree to joint title, consensus exists that joint titling is not possible (unless the marriage dated back to before FLLC, and the FLLC certificate should have been given jointly but was not (in essence, the land holding was already joint but the FLLC did not reflect the joint holding)

(b) If the land-holding spouse does agree to joint titling then there is a difference of legal opinion and practice.

(i) All land administration experts and some judges said this is not legal (unless marriage dated back to before FLLC, and the FLLC certificate should have been given jointly, but was not). This position is based on the Tigray regional land proclamation which limits inheritance and donation of land holding rights to direct ascendants and descendants. Joint titling with the spouse is seen as, essentially, a form of quasi or de facto donation, and thus contrary to the regional land law on who may be an eligible grantee of a donation. It is

[5] The family law also states that property acquired by onerous title (i.e. by purchase or exchange of valuable assets) by one of the spouses during marriage is personal property of that only when the acquisition was made with money or asserts already owned personally (Article 58 of the family code) and declared personal. Otherwise the presumption is that property acquired during marriage is common. However, "property" is this provision cannot include the land holding right because land holding rights per se cannot be legally bought or sold

important to note that even the Federal land proclamation limits donation to "family members," which is usually interpreted to exclude spouses.

It is the interpretation in Tigray that treats a consensual conversion from a private to marital land holding as the de facto equivalent of a donation which then makes the conversion improper under this perspective. In addition to that legal restriction, experts said that land in Tigray was re-distributed for all residents (women and men) equally without discrimination. In addition, women benefit from affirmative action to obtain land prior to their male counterparts during annual redistributions of available land. This shows that women have a better chance of obtaining landholding rights than men. If private holdings are allowed to be converted into joint holdings, there is a concern that women may be disadvantaged by males taking advantage of this scenario. This is one of the reasons underlying the Tigray legal interpretation is against converting private holdings into joint holdings.

During 2014 when the regional land administration and use proclamation was amended, studies were conducted by different authorities (the regional council, women consortium etc.). The interviewees said that these studies revealed the negative impact on women if conversion of private holding to joint were to be allowed (NB: the study team did not see these studies).

(ii) Some judges and experts say that if the holding spouse agrees, then the land can and should be jointly titled. These judges and experts acknowledge that an ambiguity in the law exists which should be addressed. One woreda court judge (in Saharti Samre) has issued two rulings in recent years that ordered the land administration office to make a private holding joint, based on the consent of the parties.

(iii) A cash investment by the non-land holding spouse to improve the land held privately by the other spouse may convert that private holding into common marital property over time, but the contribution of mere labor does not. This is quite prejudicial to the typical female farmer who mostly contributes labor and has little or no cash to invest in the land.

Legal Analysis Summary: Inconsistencies Between 3 Legal Instruments.

1. Federal Family Code: typically interpreted to allow spouses to declare/convert personal property to communal/marital property by consent. (But the question remains as to whether a land-holding right should be considered as "property" in the context of that family law, i.e. an asset or property that can be declared communal, or whether, on the contrary, a land-holding right that must be treated as an asset/right which is governed separately by the land law proclamations and regulations).
2. Federal Land Proclamation: encourages joint titling in Article 6(4), but this clause can be interpreted to mean simply that if both spouses already held rights jointly over the land, then the certificate must reflect that truth (i.e. correcting the practice that occurred during FLLC where just the head of household was listed). However, the federal proclamation is silent, or at least not explicit, on the issue of whether land brought privately into the marriage by one spouse may be jointly titled. Some judges will not apply the family or civil code to cover the gap. [We therefore will consider a recommendation below regarding alternatives on how the federal law proclamation can be amended to clarify that a private holding can be converted to joint holding by consent.]
3. Tigray Land Proclamation: the strict donation and inheritance rules are interpreted to bar joint titling of a land holding brought into marriage as a private holding by one spouse.

In Amhara, the initial legal analysis presented is not significantly different from Tigray, but with the important difference that the regional land proclamation does explicitly allow for the conversion of a private holding to a common marital holding.6 Land acquired before marriage by one of the spouses will remain his/her personal land. The reasons to justify this position are given as: (1) a land holding right is different from ownership, and thus should not be treated as other, normal, owned "property" under family law; (2) the spouse bringing land into the marriage obtained his/her land legally and ethically should not be obliged to make it joint; (3) marriage should not itself become an automatic means of acquiring property; and (4) if the law were to require the automatic conversion of private land holdings acquired before marriage to become joint, then single men and single women, who have private land holdings, might not marry, out of concern they will lose half of their holding. In addition, parents will avoid donating land to their children because if those children marry, then the land would become automatically common marital property with their spouses and thus leave the family's control. These consequences are said to create social problems.

[6] See Article 35(4) of the Amhara land proclamation (proclamation 252/2017).

The solution in Amhara is that the land holding can become common by mutual consent, and this is a departure from the practice in Tigray where it is not even allowed in that case. However, if the couple wants to convert a private holding to common, it may not be done during SLLC registration. The parties must bring a separate application after registration to update the data. (Likewise, if the land is registered during SLLC systematic registration is done in the name of the husband, for example, because the FLLC records are followed strictly, then the wife, if she claims it should be joint, can bring other evidences to change the record.)

Once a certificate is registered in both names of a married couple, it is considered conclusive. However, if the certificate contains only the name of one spouse, then it is usually considered a mere presumption which can be overturned by evidence brought by the other spouse to support the allegation of joint holding. Some of the land administration experts support the conclusiveness of the certificate and others do not. Those who support it said that this is very important to give appropriate weight to the certificate and thus strengthen tenure security. Those who are against the conclusiveness said land which is registered in the name of one spouse can be contested if the land was given for both parties at the time of re-distribution in 1996. In this case land administration office officials will go to the location of the land and gather the public to obtain correct evidence.

One problem is that judges do not have complete trust in the land holding certificate, owing to scepticism concerning the FLLC. There are reported instances that in the event of a dispute, they prefer to call witnesses who were officials in power during the re-distribution of land in 1996. This undermines the regional land law proclamation. The redistribution was conducted more than 20 years ago and thus it is very difficult to obtain accurate evidence through witnesses. Yet often judges do have a legitimate reason for not accepting the certificate. For example, there are instances in which multiple certificates were given for a single plot during FLLC. In this case, calling witnesses would be logical. In other instances, however, witnesses cannot give more reliable evidence than that obtained from the certificates. Carrying this scepticism from the FLLC to the SLLC, by not giving SLLC its due legal weight weakens tenure security as well as the credibility of the land administration offices because it: (1) overburdens both the land holders and land administration officials because they are requested many times by the court to produce evidence; (2) risks situations where new input from the public may produce false evidence in favour of those who have strong societal influence (to the detriment of women and VGs). In this year alone, Jabi Woreda has sent 350 evidence responses to the court.

Even though the land administration may have more accurate information, if a public gathering is held in which misleading evidence is given, the information from the public gathering must still be given significant weight. This also increases the cost of litigation for the parties, disproportionately negatively affecting women and VGs, who compared with the general population generally have fewer cash resources. Undermining the authority of the land certificates also creates a false assurance for certificate holders, undermining the tenure security benefits of SLLC.

When courts investigate the accuracy of FLLC and the proposed SLLC, the reference is often the 1996 re-distribution whereby if it can be proved that the spouses were living together at the time of re-distribution, then the land is presumed to be joint, regardless of whether the FLLC certificate was issued jointly or not; as in some cases husbands deliberately excluded their wife from the certificate. However, some judges only consider the FLLC certificate as evidence and issue orders that the landholder is deemed as “whose name the land was registered in 1996,” which just creates more confusion and may be wrong if the FLLC was issued only to the husband, thus disproportionately negatively affecting women. They have to investigate whether the spouses were living together at that time or not. Courts usually opt to conduct a public hearing, while Land Administration Offices generally rely on records of the certificates.

The Amhara region’s officials and experts maintain that mandatory joint registration of private holdings is against the laws of both the federal and regional states and may even affect those women disproportionately, who have considerable private holdings.

In Oromia and SNNPR the interpretation by the land administration offices of what constitutes marital property is different from Tigray and Amhara, and arguably contrary to governing law. From LIFT’s experiences of working with the Regional Land Bureau, most of the Oromia land administration offices usually apply mandatory joint registration of all land holdings by married couples, even when the land clearly comes from the family of one of the spouses. When disputes are brought to courts, the judges may place emphasis and importance on whether the couple has been using the land jointly, though there is much variation as seen in the following approaches:

(1) A husband and wife who have lived together for more than 10 years will become joint holders of land which was brought into the marriage as a private holding of one of them. These judges base their argument on the fact that these spouses were both contributing labor and financially investing in the land.

(2) Other judges use three years as the standard for which to rule that a private holding be converted to common. These judges argue that a standard of 10 years is too long. This is not based on any legal rule but judges consider it as a reasonable standard time.

(3) Finally, other judges will decide that as soon as a couple is married, the land holdings that each spouse brings into the marriage automatically becomes joint (which is the position of most of the land administration offices). This interpretation is criticized by some who argue that it opens the door to unethical "free riding" behaviour in which a single person may marry to obtain half of the land holding rights and then quickly seek to dissolve the marriage, taking the new land right with then. There are examples of such behaviour.

(4) The final group of judges are those who said that private properties prior to marriage should continue to remain private if that spouse can prove that the land was their private holding prior to marriage (unless that spouse consents to making it joint).

As already discussed, the federal land proclamation does not directly address the issue of jointly titling land which was brought into the marriage as a private holding. Article 6(4), referring to joint titling, is usually interpreted only to apply to land that was already jointly held (whether FLLC correctly titled it as joint or not). The Oromia land proclamation7 in article 15(8&9) essentially follows the federal proclamation with a bit more detail, saying that a "husband and wife holding a common land holding, shall be given a joint certificate of holding specifying both their names. Husband and wife having equal rights in using the land registered in their names can also independently have a holding certificate for their private holdings."

Therefore, the practice of mandatory joint registration in Oromia (even over the objection of the spouse who stands to lose his/her full rights) is unsupported by the Oromia land proclamation provisions just cited, as well as by the federal land proclamation. However, the regional land administration agency is insisting on this practice and giving such guidance to the woreda level land offices. Apparently, this stems from a belief that, in essence, some degree of pro-active affirmative action must be implemented to address discrimination in the past. Some judges are supporting this practice, and others are not.

The family law of Oromia8 also has provisions which govern the private and joint properties of spouses, and if these provisions are applied to the land holding right, then the practice of mandatory joint registration is likewise inconsistent with this family law. Per article 73 of the Oromia family law, "the property which the spouses possess on the day of their marriage, or which they acquire after their marriage by succession or donation, shall remain their personal property." The issue again is raised as to whether the land holding right should be considered "property" under family law, with some legal experts arguing yes and others no. Because property is defined in the civil code as both movable and immovable property (immovable property typically refers to land and buildings), then a good argument can be made that the land holding right is covered by that law, adding another legal basis (in addition to the land proclamations) to question the legality of the mandatory joint titling practice. There may be a presumption in the family that property of the spouses is common (Article 79 of Oromia family code), but it is rebuttable if the affected spouse can prove he/she is the sole owner (or in the context of land, sole holder) of the property or asset.

Finally, there is a House of Federation decision, which, while interpreting the constitutionality of a federal Supreme Court cassation bench decision, stated that land acquired before marriage remains the private holding of such person who acquired it. In effect, this casts doubt on legal validity of the decisions given by the Oromia courts which use the number of years during which spouses live together, using the land for their livelihood, as a basis for deciding, in cases of divorce, whether the non-holding spouse (i.e. the spouse who did not bring the land into the marriage) is entitled to a share of the land holding right.

On the other hand, if there is consent, then there are aspects in both the federal and Oromia legal framework which can support joint titling, and when it comes to inheritance and donation (which can enter into a case involving joint titling too), the Oromia legal framework is more flexible than the federal and other regions because of the way it defines "family member" so as not to totally exclude children who move away.

SNNPR is applying similar rules as Oromia in the mandatory joint titling of land held by married couples, including land acquired by one of the spouses before marriage. The justification is that traditionally in SNNPR it was very difficult for women to obtain land and thus joint titling via marriage may be the only viable

[7] Proclamation to amend the proclamation No. 56/2002, 70/2003, 103/2005 of Oromia Rural Land Use and Administration, Proclamation No. 130/ 2007

[8] Oromia region family law, proclamation number 69/2003

mechanism to correct the past imbalance. It is still difficult for women to obtain land holdings via inheritance and donation, even though on paper the laws are gender neutral.

During FLLC registration, the certificate was usually issued solely in the name of the husband. When the husband moved to another area or died, the land was typically re-registered in the name of the couple's elder son. According to traditional local culture, women should not be able to hold land and cannot inherit land rights from their parents. There are many wills which have provisions such as: "My daughter can use the land as long as she is not married." The underlying purpose of such provisions was to avoid that land falling under the control of the woman's future husband (especially when he may be from a different clan). In the past, when LACs were asked to produce evidence of land rights to resolve disputes, they tended to ignore the land use rights of women. They have not considered women as having land use rights. To counteract this past and potentially ongoing discrimination, SLLC introduced a paradigm shift from this customary practice by mandating joint titling.

The other specific problem in SNNPR is the absence of picture(s) of the landholder(s) on the certificate. The regional land law is silent as to the inclusion of photos while it is very important for tenure security of women joint landholders. They will be more secured when their photos are included in the certificate.

Even with this policy, there are risks that women do not obtain their land rights. Women do not attend demarcation and public display as much as men. As a result, there is a chance that land which should be titled jointly, may only be titled in the name of the man (though a woman may later claim a land right if she can prove she is the wife of the land holder).

On the positive side, if a single woman does manage to obtain land through inheritance or donation before she marries and travels to another village (i.e. another rural area) to join her husband, then she does not lose her land rights. However, if she marries and moves out of her village before obtaining land rights through inheritance or donation, then she cannot inherit, due to a strict interpretation of the "family member" definition in the SNNPR land proclamation (Article 2(7)),9 which, like the federal proclamation, restricts the definition of "family member" to those living with the landholder.

This rule exists in the other regions with the exception of Oromia. But in practice, courts in SNNPR and, to some extent in other regions too, do not strictly apply this definition. They often grant inheritance rights to all the family members listed on the FLLC, whether or not they have moved to another area. There is however a decision by the Federal Supreme Court Cassation Bench [Volume 20 CFN. 16340], which says that those whose names are listed on the certificate may not continue to be family members at the time of inheritance because the definition of "family member" in the law takes priority over the list on the FLLC.

Regarding the mandatory joint titling of land holdings upon marriage, husbands often oppose it, but this may due to the following understandings, which are not strictly legally required:

(a) In the event of divorce, the spouses will initially partition the land equally. However, if a woman remarries, she will give the land she obtained from her former husband to her children and share in the land acquired in her marriage. In practice, the husband's clan often pressures the divorced wife to leave empty-handed. This is compounded by the fact that judges of the regional Supreme Court support the family law principles that the land should have remained private and never jointly titled in the first place. However, as in Oromia, some judges place importance on whether the couple jointly used the land and for how long. There is no consensus among judges. Some say that the land will be considered as a joint holding even if they have used the land only for a short time, such as less than even a month. Others say they should use the land for a long period of time, at least three years, before the court is willing to consider the land joint. For these judges, it is not the certificate that matters, but rather joint usage. Prosecutors and some judges said that the duration of the marriage is not a requirement or factor in deciding whether the land right should be considered joint. A land belonging to one of the spouses before marriage will be joint even though the marriage lasts only for days.

(2) A contrary view relies more strictly on the family code, saying that the land acquired before marriage was and should remain personal property, regardless of the length of the marriage (and joint marriage) and regardless of an issued joint certificate. Supporters of this approach argue that it is necessary in order to avoid sham marriages conducted solely to obtain land rights.

[9] Proclamation 110/2007

Recommendations

Having analysed the differing practices and legal interpretations regarding marital property and joint titling in the four regions, we believe that the preferred approach should be as follows:

1. Any land which in the past was already meant to be joint marital land, should be titled jointly, regardless of whether a former certificate was issued in one or both names. This primarily addresses land which was incorrectly titled in one name during FLLC due to the practice of titling the land solely in the name of a male head of household. In regions where there was a past redistribution of land (such as Amhara, Tigray and SNNPR) made to a couple, for example in the 1990s, this re-registration in both names is important. Where the practice during FLLC was to only issues titles in the man's name, there is, in essence, a shift in the burden of proof during SLLC campaign to the non-titled spouse (i.e. woman) to assert she indeed had that right originally at the time of the land reform/redistribution. Therefore, in those areas, special assistance, to be provided either by field teams, SDOs, or the justice offices, should be given for women at the time of SLLC demarcation and registration. One additional option would be to take advantage of the "Good Governance Task Forces" where they exist (or promote their creation where they do not), which could provide the court with more reliable and less biased information as to past legal history of the parcel in question.

2. Where one spouse has acquired a private land holding before marriage, the land administration entities should encourage joint titling by consent of the sharing spouse (with the exception of Tigray), but not mandatory joint titling over the objection of the sharing spouse. The rationale for this position is comprised of various reasons:

(a) In the case of mandatory titling over the sharing spouse's objection, we have seen that judges may later revoke the land right from the grantee spouse--for example, judges in SNNPR and some in Oromia reversed the joint tilting relying on the ample support of both federal and regional laws, both land laws and family law, which do not provide legal support for that practice. In addition, there is also authority from the House of Federation that a forced mandatory join titling (over the sharing spouse's objection) should be reversed. The result is that such a joint certificate may give its holder a false assurance of security, thinking she had a shared right to it, only to have it taken away from her later in court case. This creates a risk for women that is best to avoid. However, consensual joint titling should be strongly encouraged as further elaborated below.

(b) As noted earlier, a regime of mandatory titling (over the sharing spouse's objections) leads to undesired societal results which have been observed and include: parents will informally donate or lend land to their children (or a new couple) but will refuse to formally donate it, i.e. refuse to allow its registration in the name of their child (because they seek to avoid the land falling into a current or future spouse's hands); and single persons seeking to marry primarily to obtain land rights and then dissolving the marriage subsequently.

(c) Finally, it has been reported that parcel registered by only the name of women is higher than only by the name of men during SLLC that a rule of mandatory titling would risk a reversal of these gains, threatening women with a partial loss of these hard-earned rights.10

We therefore recommend that the practice of mandatory titling (over the objection of the sharing spouse) be phased out in Oromia and SNNPR. No legislative reform is necessary, because there is little or no support in the legal framework to support this practice anyhow.

1. To facilitate joint titling where there is consent of the sharing spouse (i.e. the spouse who brings a private holding into the marriage), the legal framework, on both the federal level and in the regions, should be amended to clarify that such a practice is clearly permitted (except Tigray). The donation language in the federal and most regional land proclamations are similar in such restrictions (with the exception of Amhara, whose donation provision is very broad), but, at least among the four study regions, it is only in Tigray that such a restrictive interpretation is made to bar consensual conversion of private holdings. To avoid this restrictive interpretation a few different statutory solutions are possible. One option would be to expand the definition of family member in the federal proclamation in Article 2(5) (and similar articles in regional proclamations) such that a donation, addressed in Article 8(5), may include a spouse under the rubric of a "family member," thus eliminating the argument that joint titling is an impermissible quasi-donation in the

[10] See "Protecting Land Tenure Security of Women in Ethiopia: Evidence from the Land Investment for Transformation Programme" (2019).

context we are discussing. Alternatively, Article 6(4) and/or Article 8(5) can be amended to explicitly address (and allow) donations to spouses and joint titling by mutual consent.

2. Amend the legal framework appropriately such that it is clear, in cases where the non-land holding spouses invests money in land held by the other spouse, that such land will become joint over time (and thus should be titled jointly at the appropriate time). Family law dictates such a result, but as we saw above courts and land administration entities are divided as to whether such family law provisions should apply to the land holding right. We recommend that the appropriate laws be amended to explicitly state that land holdings rights should follow that rule. A more difficult circumstance is where husband and wife are jointly using the land, and both spouses are contributing labour (but no additional cash or resource investment is being made). Neither the family law nor land law proclamations currently support joint titling in such circumstances, though we have seen that some in Oromia and SNNPR believe such a conversion to be appropriate. We suggest that this issue be re-evaluated on a regional basis (not federal), and public sentiment and opinion sought. If consensus exists in the region, then such a reform shall be made in appropriate regional proclamations.
3. Where the sharing spouse consents to jointly title his/her private holding, then this should be allowed during SLLC registration. Amhara explicitly allows spouses to convert private holdings to joint,11 but the practice is that this may be done only via a separate subsequent application. This is in effect a barrier and disincentive to joint titling, which should thus be corrected. It is more efficient, and less burdensome on the parties in terms of time and money, if the joint titling can be done at the same time as SLLC registration.
4. The term “family member” should not exclude completely those children who have moved away, as this disproportionately affects women more than men, given the prevailing cultural pattern that more women move to their husband’s village, than vice versa. Therefore, an amendment to the term “family member” should be redefined as all children living or not living with the land holder should be adopted by the federal and other regions to protect land rights of daughters who moves out from the family. This will make all children eligible to inherit, although children with no other source of income shall be given “inheritance priority” (see Article 9(2) of the Oromia land proclamation).
5. The requirement of three years of consecutive support for the deceased prior to death, as a pre-requisite for inheritance in Amhara, has a negative consequence on the inheritance right of women and this should be reconsidered.
6. Further public education and awareness building must be carried out to counteract persistent cultural bias and customary practices which essentially assert that women should not hold land rights. These cultural biases result in situations where some husbands attempt to register land without the knowledge of their wives, deny they are married when talking to land administration or registration teams, or falsely present other people as their wives during registration (people whom they know will not later claim that land to the holder’s detriment). The same biases and customary practices also work to deprive women of their legitimate inheritance rights, even where the statutory or formal law is gender neutral. Therefore, although these deep-rooted prejudices are beginning to lessen, continued sensitization and social and behaviour change communication (SBCC) is needed.
7. Make the photo (picture) of each joint holder mandatory to appear on the land certificate in the regional land laws.

Period of Limitation

Introduction

The legal principle of Period of Limitations (POL) comes into play in certain land-related disputes, when one party (the claimant) accuses another party (the allegedly encroaching party) of illegally encroaching upon all or a part of the first party’s land.

The Period of Limitation is the amount of time after which the claimant no longer can assert their rights to the property (in this case the land holding right), because the encroaching party can raise the “Period of Limitation”

[11] See Article 35(4) of the Amhara land proclamation (Proclamation 252/2017).

as a defence to the claimant's assertion. The encroaching party is usually unable to obtain Title, but if the POL defence is successfully recognized, then the claimant cannot evict the encroaching party from the land.12

The reason that the POL issue has special relevance for women and VGs, is that they are often disproportionately found among claimants who have their land claims shut down by the assertion of POL on the part of the encroaching party. One typical category of cases where this risk occurs is when a land holder cannot fully exploit the land (perhaps because the land holder has a certain physical disability or is a single/divorced/widowed woman who is less able to farm the land alone) and therefore decides to rent out the land. If this landholder cannot prove the rental relationship, then the rentee, after the POL period passes, can remain on the land and assert POL as a defence to eviction. In this category of cases, the renters who are harmed by this rule are disproportionately women and VGs. However, we shall also see below instances where the inability to assert POL as a defence may also harm women and VGs.

Table 3 below summarizes the regional variations in the application of the POL. The regional land laws of Tigray and SNNPR are silent on the application of POL to land holding rights disputes, whereas the Amhara land proclamation and the Oromia land regulation contain guidance which is altogether unclear. The federal land law is silent on the application of POL to land holding rights disputes, but judges in the regions do rely on various provisions of the civil code to come up with rules.

Table 3: POL: the law and practice

No.	Region	POL in inheritance case between heirs	POL in inheritance case between heir and non-heir	POL in non-inheritance case between private individuals	POL in cases where the land occupied is state (public) land
1	Tigray & SNNPR	3 years applied (based on federal civil code)	10 years (based on federal civil code)	10 years (based on federal cassation bench opinion)	No POL applied
2	Amhara	3 years usually applied (but some disagreement on applicable of the regional law provision)	10 years (but some disagreement on applicable of the regional law provision)	No POL applied (citing regional land proclamation)	
3	Oromia	3 years applied (based on federal civil code)	10 years (based on federal civil code)	12 years (regional land regulation)	

In general, the POL defence arises in both inheritance and non-inheritance cases. The following scenarios summarize the legal analysis:

(1) In a land holding dispute between putative heirs, the period of limitation is commonly accepted to be three years. This is based on articles 999 and 1000 of the federal civil code provision. Those provisions are not specifically aimed at land holding cases, but they have been applied in the absence of other overriding authority. The provisions read as follows:

- Where a person without a valid title has taken possession of the succession or of a portion thereof, the true heir may institute an action of "petitio haereditatis" against such person to have his status of heir acknowledged and obtain the restitution of the property of the inheritance.
- An action of "petitio haereditatis" shall be barred after three years from the plaintiff having become aware of his right and of the taking possession of the property of the inheritance by the defendant.
- It shall be absolutely barred after fifteen years from the death of the deceased or the day when the right of the plaintiff could be enforced,

(2) If the land holding right case is between an heir and non-heir, then POL is commonly accepted to be 10 years, based on articles 1677 and 1845 of the federal civil code. As in the scenario between heirs, those provisions are not specifically aimed at land holding cases, but they have been applied in the absence of other overriding authority. According to article 167, the relevant provisions of that section of the code (Title XII of Book IV of the Civil Code), governing contracts, shall apply to obligations notwithstanding that they do not arise out of a contract. A person who is not an heir has duty to give back property (including land holdings) he took or occupied illegally to the heir and this is treated as an obligation under these provisions. Therefore article

[12] The Period of Limitations as applied in the Ethiopian context has elements both of adverse possession and estoppel, as those terms are typically used in other western legal system. Because the encroaching party does not obtain title, it differs from adverse possession.

1845 regarding the POL is applied to these land holding disputes, and reads that “unless otherwise provided by law, actions for the performance of a contract, actions based on the non-performance of a contract and actions for the invalidation of a contract shall he barred if not brought within ten years.”

(3) When the landholding claim is unrelated to inheritance and does not involve heirs, then most regions (with the exception of Amhara and Oromia) apply a recent ruling from the recent federal cassation bench in which 10 years is applied. (The ruling is also based on articles 1677 and 1845 of the civil code). A separate federal cassation bench ruling clarified that the assertion of the POL defence does not apply to occupancy of state land. In another words, there is no period of limitation if the claimant party is the government.

Regional Variations

In Amhara, there is a difference of opinion regarding application of POL if the dispute is between private individuals. This stems from how to interpret Article 55 of the Amhara land proclamation13 which states: “Any person found to be using rural landholding in invasion or in any illegal means cannot raise the period of limitation as objection when he is asked by any other person or authorized government body or accused before court.” There are two views among judges, prosecutors and land administration experts:

(1) There are some experts who maintain that Article 55 has not totally eliminated the use of POL as a defence against eviction because the language focuses on invasion (which is taken by some to refer only to encroachment on communal land) and illegal means (which is interpreted by some to exclude occupation in good faith). Judges who subscribe to this interpretation apply 10 years as the POL for land holding cases arising between private parties (relying on articles 1677 and 1845 of the federal civil code).

Those who support the continued use of POL in Amhara also cite the general policy justifications for POL. One of the objectives is to punish those negligent landholders. The other is not to disturb those who establish their livelihood on the land for a long period of time (for more than 10 years). This POL can penalize those lazy and non-diligent landholders and benefit those who base their livelihood on the land. Of course, families who have based their livelihood on using a particular parcel of land may very well include women and VGs for which finding a replacement livelihood may be harder than for others in the general population. This type of displacement could disproportionately impact women and VGs negatively.

(2) Other experts and judges in Amhara said that POL can no longer be raised as a defence in Amhara because they interpret article 55 of the regional proclamation to completely eliminate such a defence in the cases of rural land encroachment (except, according to some of these judges, in inheritance-related cases, in which a POL of three years is applied between heirs, or 10 years between a heir and non-heir).14

There are also some regional variations, as well as differences of opinion within regions, with respect to when the POL period begins to run against a claimant who is an orphan child (OC). In Amhara and SNNPR, some stakeholders said that the POL period may pass even before OC reach the age of 18. Yet the more common (and we believe correct) legal rule is that a POL can only begin to run against an OC claimant once he or she reaches 18 years old.

In Oromia, when the dispute is unrelated to inheritance but is a land holding issue, it is stipulated by the Oromia regulation under article 32 that the POL is 12 years. The provision states: “Any person squatted rural land shall not be limited to leave the land up to 12 years by termination of periods.”

In SNNPR, a POL of 10 years is applied in non-inheritance cases, based on the federal cassation decision. Because land rental activities are often informal and undocumented, POL is sometimes asserted by the rentee. Cases occur when land was rented out for 20 or 25 years. Such a long-term rental is basically seen as quasi-sale. The original land holder may seek the return of the money he took and get his/her land back. However, the rentee (quasi-buyer) may raise POL as a defence. There are a lot of these types of land transactions in SNNPR which were conducted during the imperial and Derg regimes. There are also landholders who gave their land to somebody via trusteeship and travelled and stayed abroad for a long period of time. All experts agree there is no POL if the parties (or parties’ antecessors) engaged in an illegal land sale. Landholders who sold their land during the Derg or imperial regimes are now claiming their land. The current land occupant (buyer) cannot raise POL as a defence because the way he/she obtained the land in the past was illegal (a

[13] Amhara proclamation number 252/2017

[14] Making objections during the systematic SLLC registration is a different situation, in which typically claims can be raised with one month, or 2 months for VGs.

land sale). Per the federal cassation decision, encroaching parties who acquired through illegal means cannot raise POL as a defence. On the other hand, returning the land to the original landholder on the basis of rejecting POL due to the illegality of the prior transaction, will create chaos and is arguably unjust. The argument of unfairness is seen in cases where families who bought land 30 to 40 years ago and established a livelihood based on the land, and perhaps made investments such as planting perennial crops, are sometimes being evicted because they cannot raise POL as a defence.

In general, there are two views heard in SNNPR as far as POL is concerned in cases where the land in question had been sold (illegally) in the past:

(1) Some said that POL should not be applied for land cases in which a purported land sale is now being reversed. These persons argued that the land sale is unconstitutional. A person who obtained land through illegal means should not acquire a right just because they continued to use it. The justification is that they should not benefit from the wrong.

(2) Others argued for application of POL for these land cases because land is a property like others, to which the principle applies. Individuals who have held land for a long period of time have developed a livelihood on that land that may go back 30 to 40 years to when those illegal land sales were conducted. By not applying POL, this argument goes, these dependent landholders will be evicted, which will be harder for women and VGs. Judges said that by not applying POL (i.e. following strictly the rule that POL is not applicable when the land occupation was the result of an illegal act), they are issuing decisions they find morally questionable. In such illegal land sale cases, both parties (seller and buyer) were engaged in illegality. Rewarding the seller (who received money!) and penalizing the buyer is not moral and should not be legal. Some of these evictions are creating social chaos.

The applicability (or inapplicability in other instances) of POL has been creating a series of challenges for the land rights of women and VGs.

- POL is not applied in a legally consistent and predictable manner. This inconsistency undermines land tenure security, with a negative impact on those least able to adjust to adverse court decisions, namely women and VGs.
- VGs who cannot cultivate their land by their own may thus informally rent out their land. They may not be able to produce evidence of the rental (or exchange) relationship, and not be sufficiently aware of a potential POL defence. Rent-outers may also hesitate to formalize/record rental agreement to avoid potential tax consequences. In any case, rentees are then able to wait until the 10 years lapse and raise POL. If there is not sufficient evidence of the rental or sharecropping arrangement, the original rights-holder may lose their holding right.
- Divorced women who have rights to the former marital property may leave the village and, if enough time passes without their using (or having a financial arrangement for the land's produce) may lose their land to their ex-husband by him raising POL.
- The problem that disproportionately affects women and VGs is that they cannot properly make their cases to the court and produce adequate evidence due to their disadvantaged position. For instance, they may not raise points of arguments that can terminate the running of the POL. If they don't raise these arguments, the courts cannot help these parties and they will lose the case because of POL. It will be harder for them to defend claims in court due to fewer resources and low exposure to express themselves, especially in front of the court, which has its own limiting factor.
- People who can give oral evidence for those women and VGs may fear the other party and opt to keep silent, which affects women and VGs at the time when POL is raised against their cases. Oral testimony defending them may be less forthcoming because of intimidation or hesitation by potential witnesses.
- The 12 years POL in Oromia is found in the regulation, rather than the proclamation which is silent on the issue of POL. In general, regulations cannot contain provisions which cover issues not found in the proclamation, or which significantly change rights and obligations found in the proclamation. As a result, the legality of the POL clause in the regulation is questionable.

Forgery and Perjury of Evidence

Forgery and perjury of evidence are serious problems in land-related cases, in all four regions which are the subject of this report. The federal criminal code penalizes perjury conducted by disputant parties and witnesses (Art. 452-453). If such persons knowingly give false statements relating to material facts in the case, such action is a crime. Likewise, material forgery is a crime, governed by articles 375 and 376 of the criminal code.

According to these provisions, (a) production of a false document; (b) falsely signing, marking or stamping an official document; (c) falsifying a document by modifying, deleting, adding or altering it, including changing the name or signature on it, are all punishable.

The nature of forgery related to land documents vary in the regions. In some instances, anecdotal evidence indicated there are repeated instances where KLAC/KA members issue documents (normally First Level Land Certificates) after leaving office (SLLC may correct this but this line of investigation was outside the scope of this study). They officially stamped blank documents before leaving office, and then fill out the names, and pre-date the documents, for people who pay them bribes. It was reported that for residential areas they were receiving 1,500 birr per person, to grant FLLC for vacant lots. The abuse of this substantial power (issuing certificates, conducting re-distribution, taking away land based on the law etc.) by lower level institutions (VLAC and KLAC), has created problems for women and VGs.

In Amhara, cases of forgery are different. Multiple certificates are issued for a single plot of land, sometimes deliberately and sometimes negligently during the FLLC. There are many cases in which rentees and sharecroppers have easily obtained FLLC in their own name. There are also many cases in which the joint holding of a husband and wife is registered in the name of the husband only, or the wife appears as a family member instead of a joint holder. There are also cases in which tutors (guardians) obtain certificates in their name the land of Orphan Children. Courts therefore lose trust in the landholding certificate and insist on calling witnesses in these circumstances.

Unfortunately, sometimes once land administration offices have provided incorrect evidence unknowingly (based on information they gather from the public), they hesitate to admit fault and correct the misinformation. Public gatherings (testimonies) often result in false evidence, as community members are influenced or are biased. False evidence has been given by: (1) land administration committees; (2) land administration offices (multiple certificates for same plot); (3) by the public at the time of quality assurance made by public gatherings.

Women and VGS are particularly prejudiced in the following ways: (1) when they rent out their land, the rentee may end up obtaining a landholding certificate in his own name; (2) during divorce the husband organizes false witnesses to exclude the wife from partitioning the land; and (3) during succession, male successors exclude their sisters from succession through forgery or perjury (or convincing others to give false information).

Even though the SLLC data quality is better than that of FLLC, the latter can be used as the basis for the former creating a potential risk of SLLC also being corrupted. This risk is however decreased through good public awareness which results in high participation and the presence of land holders during the demarcation process (especially women and other VGs).

In Amhara region, Jabi Woreda, the Attorney General and land administration office are working together to cancel fake landholding certificates as a solution. Their argument is that the one who gave the certificate has an inherent administrative power to cancel the same based on due cause. Since the land administration office is not strong and its data management is problematic, it may inadvertently cancel correct certificates and legalize fake ones. This has its own negative impact if not conducted based on real evidence.

False evidence is given using different mechanisms: (1) when there is a land sale (illegal by definition), a landholding certificate is given to the buyer after bribing the Kebele administration and kebele land administration committee; (2) when landholders move out of the locality, they may transfer control of their land in different forms (rent, sharecropping etc.) In this case, the one who received the land may improperly obtain a holding certificate in his/her own name; (3) when the land belongs to a woman or weaker member of the community, witnesses are unwilling to testify on her behalf. Cultural pressure influences witnesses to give false evidence by saying that the land does not belong to the woman, when in fact it does.

In general, bribes to produce forged evidence can happen in the land administration context, and women and VGs can be disproportionately negatively affected because corruption tends to favour those with better social access, and financial resources to influence LAC members; and experts as well as officials. Victims of forgery and false evidence are then doubly disadvantaged because they face difficulty in defending their claims (e.g. via courts or review of judgment) for the same reasons. They often do not have social and financial resources nor the ability to influence the committees as well as public gatherings. Even the Justice Office is known to lose VG cases when representing them because the evidence collected in public gatherings; which is given a lot of weight by the court, is often biased. The lack of understanding of the SLLC process by judges that it is being implemented entirely with the participation of landholders, led further to the lack of trust in the certificate by courts.

This affects women and VGs since they are less able to find witnesses and sometimes evidence when required as an additional verification mechanism of rights during the public hearing. On the other hand, when there is FLLC that has been wrongly acquired and that progresses to SLLC, it could potentially help to legitimize the wrong holder. In that case, judges demand for additional evidence on top of the SLLC might help weaker holders such as women and VGs. It is therefore recommended that if there is a question about the legitimacy of the SLLC and especially if it involves women and VGs, judges should demand additional evidence.

This again adds another obligation to women and VGs to bring other evidence and this is very difficult for VGs more than others. Once evidence at the lower court is fortified, the higher court bases its decision on the evidences collected at lower court. This affects the appellate right of women and VGs disproportionately. Other negative factors include: the option for review of judgment is not well understood and thus not often applied; criminal prosecution of wrong doers (who give wrong evidence) is rare, which thus does not deter wrong doers from such practices. The Women and Children Affairs is better involved in supporting its clients. However, they lack the capacity to provide the necessary level of support, and when they do, they may disadvantage women because they do not have legal expertise. Such offices offer incomplete or blanket recommendations. One such example identified during the field study was the case of a woman whose husband had died. The husband's land was registered solely in his name and the Women and Children's Affair office informed her that she wasn't entitled to inherit the land but did not inform her that her children were eligible. This may even cause women to lose cases. If these institutions were to provide better support, they would need to have legal expertise.

The reason that criminal cases based on forgery, perjury and other false evidences are rarely brought against the wrongdoers or won as mentioned by interviewees includes:

- Criminal charges against KLAC members: forgery is hard to prove (Tigray). The signatures are not very visible, and the national forensic authority is unable to make a strong case.
- Some of the land administration officials and experts who gave false evidence did it in good faith depending on the information they gathered from the public (Amhara). So, it is not logical and legal to bring criminal action on these individuals.
- Those individuals who are affected by such false evidence do not have the interest to bring criminal action to the attention of the police and justice office once they win their civil case or are defeated. Especially in SNNPR people have interest to finish such cases via mediation by using elders.
- There are some experts who have received disciplinary measures (removal from office for instance) for giving forged evidence and receiving bribes, but attention is not usually given for criminal prosecution by justice offices for land rights infringements.
- The cause of some false evidences is simple error and negligence. Turnover of experts contributes a lot to providing false evidence. High turnover of experts often leads to a loss of institutional memory and gaps in maintaining transaction data and updating the woreda's registry to be referred when requested.
- Although some experts have been convicted it is very difficult to prove that certificates have been given as a result of a bribe.

Recommendations:

1. Awareness creation to the general public, justice institutions (justice, police and court) about forgery and perjury of evidences; and pro-active justice prosecution strict application of criminal provisions on perjury and forgery.
2. VLAC and KLAC should not be allowed to execute very high-level land administration functions (like issuing landholding certificate, re-distribution of land and the like). Furthermore, increase representation and capacity building of women in VLAC, KA, and KLAC is important to hear the concerns of female claimants.
3. Judges, justice offices lawyers, and landholders should be given more information about the option of applying for a review of judgment. More PAC should be undertaken prior to SLLC by other institutions to better target women and VGs as per LIFT's SDO initiative to enable them to protect/claim their land rights as a result of forgery done during the FLLC.

4. Increased legal aid for women and VGs who face land rights violations. The Women & Children Affairs and Labour and Social Affairs offices need to have legal experts who are empowered to represent VGs.15
5. More importantly, there should be a Social Expert (responsible mostly for women, children and other VGs) at the Kebele level who can identify women and VGs whose land rights are violated. The expert must be easily accessible and able to provide the needed support. SNNPP is in the process of hiring these experts at Kebele level and should be supported in this implementation.

Since SLLC data is comparatively better than FLLC and may benefit women and VGs more than bringing other evidences, courts should develop comparative trust in SLLC and give it more weight. To do so awareness should be given for judges on how SLLC is implemented.

Illegal Loans and Mortgages

Mortgaging land per se (as opposed to collateralizing the land holding rights for a limited time period) is not permitted under the Ethiopian constitution. This basically follows from the prohibition on selling land. However, land use rights can be collateralized under certain circumstances, and that practice is becoming more open and regulated, with some regions (such as Amhara) adopting laws to regulate such transactions.

Nevertheless, there have always been informal (and technically illegal) mortgage transactions, as well as illegal sales, sometimes disguised by the parties to appear as rentals. In the case of these informal mortgages, control of the land will pass informally to the lender in the event of the borrower's default (and often with no provision for its return to the original holder). Disputes naturally arise, and when such cases make their way into the courts, reinstatement (i.e. return of the land to the original holder) is usually ordered. However, sometimes reinstatement may be difficult given equity concerns. One instance we heard about is that of a borrower who received 100 birr for mortgaging his 0.25 hectare of land and when the creditor utilized the land for more than two years, re-instatement is not justifiable. The decision will be giving the land back to the land holder only. The landholder should not be ordered to return the 100 birr during reinstatement, rather he should get some kind of compensation for the unlawful enrichment from the side of the lender.

There are also de facto land sales disguised as long-term rentals. Often these may be women or VGs who do not have the ability to work on the land themselves. Such transactions may be registered as a 25-year rental, because the buyer cannot obtain a land certificate in his own name (given the prohibition on land sales). However, the parties have an informal agreement that the land will not return to the seller (even though the formal paperwork and contract refers to a rental). Even irrigable land is sometimes "sold" in such an arrangement. For example, in Amhara, under the prior land proclamation 133/2006, people "rented" out their land for 25 years, but it paved the way for these de facto sales. Even the existing rule, allowing 10-year land rentals, is negatively affecting women and VGs because they tend to agree to unfavourable terms, given unequal bargaining positions, and lose control of their land for a relatively long period of time for little revenue. To address this situation, the land rental period could be less than 10 years for women and VGs, or they could be given special assistance by relevant government offices in the rental agreement negotiation process such that the economic terms are equitable.

In Tigray, there are informal loan programmes between financial institutions and individuals, whereby the land certificate is kept by the institution as a psychological guarantee which is returned upon repayment of the loan and the lenders don't have the intention to claim the land rights when the debtors default.

In Oromia, informal loans exist among private parties, but these are not recognized by the formal governmental institutions. In case of disputes due to defaults, the disagreement is resolved without going to court through mediation.

Respondents in the study group indicated that in SNNPR illegal and informal loans exist. Borrowers give up control of their land in the form of a land rental agreement and when they return the loan, they can take back the land. The loan in some cases does not have interest charged—instead the land use right is temporarily transferred to the lender as a substitute for interest. In other cases, the loan is made with interest (compound interest), which some respondents in the group suggested could sometimes be as high as 100%. The problem is the borrower may not have the capacity to return the money and may unfairly lose indefinite control of the land (for a value much smaller than the value for using the land). This is less of a problem in situations where public information and awareness is conducted in advance of SLLC operations, because information about the

[15] General Attorney (justice) to protect the land rights of women and VGs alone is not enough. For instance, during the 2018/2019 budget year in Amhara, the Attorney general institutions from Woreda to Region has represented only 1790 VGs (women, children, disabled, elders, and persons with HIV) which could be valued more than 20 million ETB, according to Amhara Mass Media Agency.

true landholder is known by the land administration entities, and the lender will not be as able to take advantage of the situation and retain indefinite control of the land. This means that the true landholder can claim his/ her land back and register it in his/ her own name.

In SNNPR, Chencha Woreda, Losha Kebele is known for such kind of loans and land sales because the area is near to town, where land use is more valuable. When the lender uses the land for a long period of time, he may raise POL as a defence, which most of the time courts call local elders to testify as to whom the land really belongs. The courts' decision would be to return the parties to the original pre-transaction position—i.e. return the land to the land holder and the money to the lender (without interest). Still the lender benefits unfairly since he was using the land for a potentially long period, with the corresponding profit.

Oromia is different in this case. Courts calculate the number of years and the products which the lender got and reduce this amount from the total loan, which is a good practice and is according to the unlawful enrichment provisions of the civil code. In Misraq Badawacho (SNNPR), the loan is given without interest. For instance, the person who took 20,000 ETB has to give rights to the lender to use some of his/her plots. He/she will lose control of the land until he/she can repay the loan.

VGs and women who have less access to cash are inclined to enter into such transactions to informally mortgage their land to get needed cash. When they are unable to repay the loan, they may give the land to another person who can give a larger loan through informal mortgage. Still the land will be in the hands of the second lender. They will apply the same thing for the future, which makes it very difficult for them to come out of this vicious cycle. When a dispute happens, it is resolved by local elders. Often, they will not take their dispute to courts and land administration institutions, because the transaction they made is not legal.

Although details differ, the pattern of illegal and informal mortgages, inconsistent with both federal and regional laws, persist. The cash-needy borrower suffers from potentially losing control of their land indefinitely, and unfairly because it is in exchange for small amounts of money. Since women and VGs tend to be more cash needy than the general population, this unregulated market affects them disproportionately. The (informal) mortgage loans may be for such basic needs such as school fees, or medical care. Women and VGs do not have any option, other than giving their land as collateral to obtain the cash, and then may not be able to raise the money to get back control of their land. In areas where there is little or no past (historic) land registration, it is easy for the lender to register the borrower's land in his/her own name.

Recommendations

1. Better regulation of the loan market and broadening the opportunities for access to credit in an open fashion, will reduce the unfair results of the unregulated informal market. By making the land law more flexible, the credit markets can be developed in a way that will not place the borrower unduly at risk. Collateralizing the holding right with regulations that prevent passing land permanently from the original land holder (borrower), is critical. This is what Amhara is implementing (see Article 19 of the Proclamation 252/2017), whereby if a borrower defaults, then the lender can take control of the land temporarily, rent out to a third party until the default balance is repaid, and then return the land to the original holder. This type of regulated collateralization will benefit women and VGs greatly because they are often in need of cash reserves. This regulation will reduce the risk of losing their land rights permanently under the informal market.
2. To regulate the informal credit market (improper mortgage agreements agreed to between individuals), the Oromia experience of valuing the economic benefit generated from the land, and then deducting it from the loan balance, is a best experience. It is also worth noting that when a loan agreement is totally overreaching with unfair terms, the law does provide some potential remedies, because such an agreement could be considered "unfair enrichment," which is regulated by the civil code.

Review of Judgment

The legal framework governing review of judgment (ROJ) consists of article 6 of the civil procedure code and certain judicial decisions issued by the Federal Supreme Court's cassation bench. Article 6 of the civil code essentially states that a party who disagrees with a decision from a lower court may appeal that decision to a higher court or seek a "review of judgment" from the same court which issued the unfavourable decision. The party may only seek a review of judgment (per Article 6 of the civil procedure code) if he/she chooses not to file a direct appeal (or if a direct appeal is not possible). On the other hand, the party can only obtain a review of judgment if he/she discovers a new and important matter (such as forgery, perjury or bribery) after the exercise of due diligence and not within his/her knowledge at the time original proceeding.

The English translation uses the term “such as” to make the list illustrative but not the Amharic version which makes the lists exhaustive. The English translation would be better to best achieve the objective of review of judgment. There is a difference of opinion among experts as to whether unintentional “mistakes” by the opposing party should qualify as a basis for a review of judgment. Another controversial point is whether those new and important matters should include mistakes of the land administration office or other government institutions; or is it only the forgery, perjury or bribery by the other party which could be considered.

These issues should be evaluated in an effort to balance the security of land tenure as reflected in an issued title on the one hand, versus being able to address past errors and injustices in order to protect VGs, on the other hand. Land is vital, and perjury, forgery, mistakes and bribery need to be removed from land administration. In general, the land administration laws could clarify the controversies over the review of judgment. Moreover, it is necessary to prove that had such matter been known at the time of giving of the judgment, it would have materially affected the substance of the decree. In addition, this application must be filed within one month of the ground of application having been discovered by the applicant.

These requirements present a fair high standard of proof for obtaining a ROJ where the underlying justification was forgery, perjury and bribery, circumstances which from all accounts negatively and disproportionately affect women and VGs. However, the Federal Supreme Court cassation bench in a series of important decisions loosened the strictness of the standard of review in the civil procedure code. Decisions given by the Federal Supreme Court cassation bench have equal status with proclamations, so this effectively changed the governing legal rules.16

1. The federal cassation bench, in its ruling found at Volume 6, file number 087521, decided that application for ROJ should be filed within one month from the time when the factual basis or grounds for the application is discovered. Moreover, this same decision stated that there was no time limit on when the new evidence can be discovered—as long as the ROJ application was made within one month of its discovery. In other words, if the new evidence (for example, evidence of forgery) was found 15 years after a party lost their case (or any number of years later), that party can still apply for ROJ to revisit the old case (as long as they file the application within one month of its discovery).17 Notwithstanding the clarification that no time limit exists on the discovery of evidence leading to a valid ROJ application, a few issues remain unclear, such as the burden of proof on showing that less than one month has lapsed since discovery of the new evidence. Also, one month is still short time during which to bring application after the discovery of new evidence.
2. Another decision, found in Volume 9, cassation file number 43821, decided that an application for review of judgment could be brought even in the circumstances when a direct appeal was taken.
3. In a decision found in Volume 15, cassation file number 91968, the cassation bench decided that criminal conviction of the person who gave the forgery evidence is not mandatory to bring application for review of judgment. Based on this, when a land administration office provides forged or false evidence to the court and the courts bases its decision on this false evidence, then it is possible to bring an application for review of judgment if there is additional evidence (perhaps new evidence from the same land administration office) nullifying the prior evidence. Under this decision, it is enough to bring the new evidence produced by the right institution and it is not necessary to prove the reason why that institution (official or expert) originally produced the first false document. This approach is supported by articles 403 and 405 of the criminal code, per the former provision (403), intent to obtain advantage or to injure is presumed in such kind of cases and there is no need to prove it. The latter provision (405) states that conviction or acquittal shall not exclude liability for damages and/or administrative penalties. In general, it is not mandatory to prove the criminality of such action to bring a case for review.
4. The decision in Volume 19, cassation file number 104028, ruled that even if a case was closed due to a period of limitation preliminary objection, a subsequent application for review of judgment could be brought if the other conditions (laid down in article 6) are fulfilled.

In general, despite the existence of the above legal frameworks, review of judgment is not widely understood and utilized for land cases. Parties tend to bring new arguments but not new evidence. In Amhara region, Jabi

[16] According to proclamation number 454/2005 of the federal courts re-amendment proclamation, lower courts shall take in to account decisions rendered by the cassation bench as though they are laws, for similar cases.
[17] In other words, there is no period of limitation for finding the new evidence. Article 6 of the procedure code says nothing about POL for review of judgment. Had this Cassation Bench decision not been issued, then article 1845 and 1678 of the civil code provisions (10 years POL) would have applied.

Woreda court, we heard there have been two reviews of judgment cases (not even related to land) in the past four years, and none in Baso Liben Woreda related to land as far as the memory of the judge is concerned.

Despite the liberalized rules from the cassation bench, some of the judges and prosecutors still said that in practice the standards to successfully obtain a review of judgment are still very strict without being aware of the liberalized article 6 of the Civil Code by the Federal Supreme Court Cassation bench. Judges are applying review of judgment in very limited and exceptional circumstances. For instance, despite the decision given by the Federal Supreme Court cassation bench saying that criminal conviction is not mandatory, some of the interviewees claimed it is still necessary (for example the President of the Tigray Regional Supreme Court, and some judges in Amhara). In Amhara, when prosecutors are asked to take cases for review of judgment, representing women and VGs, they require the land administration office to first take administrative disciplinary measures, despite already having the new evidence. Most land administration experts, prosecutors and some Judges did not have a copy of the relevant cassation bench decisions, while others have not read it and do not understand the new flexibility.

Unfortunately, forged evidence and false testimony from witnesses are introduced in land cases. Furthermore, land-related disputes are the root cause of a lot of criminal activity, including homicide and physical assault. The lack of clear information held by the land administration institutions contributes to this phenomenon. The land administration entities have been known to send conflicting evidence for the same parcel in different requests by the same court. In these cases, the court may request information from the zonal land administration officials, when evidences sent by the woreda contradict each other.

The land administration entities often hold public gatherings to collect evidence, but the quality of the information is dependent on the number of community members participating. The more people attending the public gatherings, the better the quality of the evidence. Those who attend the public gathering (especially the socioeconomic position of the participants) also matters. Committees are sometimes established to investigate land-related complaints, which may arise at conclusions opposing the evidence already given by the land administration office. In this case the new evidence is sufficient to allow review of judgment under the cassation decisions discussed above. However, as we noted above, some judges insist that a criminal conviction, for false or forged evidence in the original case, is a prerequisite. This shows that there is an awareness gap among judges about the relevant cassation bench decisions.

Another obstacle facing women and VGs is identifying and proving the forgery of evidence and perjury of the witness. Legal assistance is critical. Despite the potential benefit it should have for women and VGs, review of judgment is not benefiting these groups, because: (1) courts still (incorrectly) put very strict requirements to accept applications for review; (2) Women and VGs are not knowledgeable about the review of judgment option (which is often a cheaper and logistically easier option than a direct appeal, which will typically involve travel to more distant cities); (3) the difficulty of finding and proving the forgery, perjury and bribery. Evidence is influenced by the financial and social standing of the parties. Often the land administration committee members are men with whom women and VGs do not have the social ties or financial means to influence.

Recommendations

1. Clarify the criteria for enabling review of judgment for land cases in the land administration laws taking in to account the clarifications made by the Federal Supreme Court Cassation Bench in their different decisions.
2. Legal training on the cassation bench decisions for judges, prosecutors and land administration offices, and land rights holders.
3. Facilitate access to cassation bench decisions to judges, prosecutors and others.
4. Rollout the practice of good governance task team, found in some Woredas and functioning well.
5. Public education and awareness creation for women and VGs about how and when to apply for a review of judgment.
6. Give support and representation to women and VGs during court litigation and post-decision.
7. Improve the efficiency and transparency of the digital land information system to make forgery of documents more difficult.

Enforcement of Criminal Law Provisions

The intersection of criminal law and land rights violation is of much importance to women and VGs. It is estimated from interviewees that more than 60% of crimes committed in Ethiopia are related to land in one way or another, women and VGs being the victims of most of these crimes. It is not uncommon to hear that

land use rights infringements are accompanied by violence. There are some provisions of the criminal code (such as trespass laws) that are related to land use rights infringements, and some regions have sought to include criminal penalties in their land proclamation or regulations. For example, the Tigray land administration and use proclamation number 239/2014 under article 34 (and successive articles) makes the following acts a criminal offense: perjury and forgery of land holding certificate; not giving administrative decision in a reasonable period of time; and selling or buying land.

There are other more general criminal provisions that can be applied to cases involving land. For example, there are numerous provisions regarding the abuse of official government positions. Any public official, with the intent to obtain for himself (or another) an undue advantage or injure the right or interest of another: misuses his official position or the power proper to his office, whether by a positive act or by a culpable omission; or exceeds the power with which he is officially invested; or performs official acts when he is not, or is no longer, qualified to do so, especially in the case or in consequence of incompetence, suspension, transfer, removal from office or its cessation, commits a crime and it is punishable according to the gravity of the crime (Art. 407 of criminal code).

The above provision means that a civil servant who issues a land holding certificate for a person who has no right, or who nullifies illegally the land holding certificate already issued, or changes the land holding certificate of a women and VGs land holder, is criminally liable for these acts. Likewise, any public servant who, directly or indirectly, seeks, receives or exacts a promise of an advantage for himself or another, in consideration for the performance or omission of an act, in violation of the duties proper to his office, is punishable with simple imprisonment (Art. 408).

False testimony is another criminal act that arises in land administration cases and especially jeopardizes the interest and land use right of women and VGs. When someone infringes the land use rights of women and VGs and they bring the case before the court of law, the court may seek the witness testimony or documents by the experts of the concerned public entity. If these civil servants or experts intentionally give false information, the act is criminal and punishable by law. Most of the time women and VGs are victims of such kind of cases.

Crimes specifically against assets and property are covered starting from article 662 of the criminal code. For example, changing or destroying boundary demarcations of the land are crimes punishable by law and which, again, are often committed against women and VGs.

Article 712 of the criminal code contains a provision about usury, prohibiting anyone from exploiting another person's weak circumstances or dependency, material difficulties, or carelessness, inexperience, weak character or mind by: lending him money at a rate exceeding the official rate; or obtaining a promise or assignment of benefits in property in exchange for pecuniary or other consideration, which is in evident disproportion. These cases of usury and illegal overreaching often affect women and VG landholders. Women and VGs may offer their land rights as collateral, illegally, without the existence of a valid contract. Under this arrangement, they undertake to pay an interest which is much exaggerated. Sometimes they undertake to pay 100% interest rate annually. The above-cited provision of the criminal code makes such undertakings a crime and aims to protect the interest of those who are in a weaker position at the time of bargaining, mostly women and VGs.

In practice, these provisions of the criminal code are not always enforced properly in the four regional states covered by this study, although there are some instances (very few) where wrongdoers are brought to court and convicted. The reasons for not taking the criminal cases to the court include: (1) affected individuals (mostly women and VGs) do not properly file the criminal complaints with the police and justice offices[18] and once brought to police and justice, these institutions are reluctant to pursue criminal cases related to land. In addition to institutional weakness inhibiting the follow-up of these cases, it is also suspected by some respondents that corruption plays a role; (2) those who possess another person's land might have a counter possessory claim. They may say that the land belongs to them, in which case the act does not fulfil the mental element of a crime (meaning, in this case, the intent to consciously possess another person's land). If the person truly believes the land is his or her own, then even if his or her belief is factually wrong, he or she may lack the specific criminal intent required until the penal code. Therefore, when a person commits trespass or encroaches another person's land, he/she may raise the defence that the land belongs to him or her. In this

[18] Bringing a criminal complaint to the police and justice offices requires a lot of follow up, travel, and demands financial resources as well as physical capacity. This is very difficult for women and VGs. As a result, they opt to resolve the cases through mediation by local elders. This is especially common in SNNPR.

case, firstly, the true landholder should be identified by the court decision and it is after the civil court decision that the case could be brought before the court of law; (3) the justice offices do not emphasize/give priority to land cases. They lack financial and human resources; (4) as already noted, it is very difficult to prove the intention of the wrong doers and the mental element is vital in a criminal case. This is true not just of the illegal land possession example described above, but any criminal case. If there is doubt about the strength of the cases, prosecutors will often choose not to take it to court; (5) Officials who may be the criminally guilty party by denying woman and VGs their legitimate land rights may have changed positions and moved to another office or a different location. When this happens, prosecutors may also choose not to take the case to court.

In SNNPR criminal cases related to land are often resolved outside the formal legal process by local elders. These include removing boundary points, using livestock to destroy crops etc. For example, in two Woredas visited in SNNPR, people respected and relied upon the traditional dispute resolution process which has its own system to arbitrate criminal cases. Even cases started at court are sent back to the community for mediation/arbitration. Community arbitrators render decisions and decide on penalties, which the parties are obliged to respect. The elders make effective use of social isolation as a mechanism, and the wrongdoers are educated. Solving criminal issues by elders has advantages on the future relation of the parties. Socially, the arbitration made by local elders, especially on criminal cases, is very important and beneficial for women and VGs since they may not take the cases to the justice office because of capacity limitations.

Recommendations

1. Awareness creation to the public including kebele administration, KLACs, elders etc. about the applicable criminal liability for providing false evidence.
2. Directives from regional, zonal and federal level government offices to the justice institutions (justice, police and court) that criminal provisions must be applied in appropriate cases.
3. Increased monitoring of higher-level justice over woreda justice office on ongoing cases.

Mediation

Mediation of land conflicts can provide an important way to resolve disputes in a relatively quick and inexpensive way compared to the court system. It also may serve to prevent disputes from spiralling into potentially violent conflict. Mediation is one form of alternative dispute resolution (ADR) and can itself take different forms. However, the core characteristic of mediation is that one or more meditators facilitate discussions between the opposing parties and enable the parties themselves to reach a mutually satisfactory agreement. The mediators do not impose decisions on the parties, and thus mediation may or may not end in agreement. By contrast, in arbitration, another form of ADR, a decision is imposed by the arbiter (or arbiters) upon the parties.

Table 4: Mediation: the law and practice

Regions	Legal Framework	Who chooses mediators?	Who are mediators?	The practice in reality
Tigray	Not mandatory before bringing a court case	Parties	Predominantly male local elders	Lack of knowledge by women/VGs on procedure
Amhara	Not mandatory before bringing a court case	Parties	Predominantly male local elders	Lack of knowledge by women/VGs on procedure
Oromia	Mandatory. Distinction between mediation and arbitration blurred.	Parties. But Kebele selects in certain circumstances.	Predominantly male local elders	Mediators (Arbitrators) impose decisions (which may disadvantage women and VGs though it can be appealed)
SNNPR	The law is not clear but mandatory in practice before bringing a court case. Some blurring of distinction between mediation and arbitration.	In theory, the parties. But in practice, the KLAC influences the selection, or at least the pool from which mediators are chosen.	Predominantly male local elders	Mediators lack capacity and lack respect for women/VG rights. “Mediation” tends toward arbitration because “recommendations” of mediators are given to court.

In all four regions in the study, some form of mediation in land disputes is recognized by the legal framework and practice, though with significant differences among the regions (see Table 4). In two of the study regions, Amhara and Tigray, mediation is not a mandatory step which an aggrieved party (i.e. someone with a land right related complaint) must take before filing a court case. However, in Oromia and SNNPR, an aggrieved

party is required to attempt mediation before taking a land case to court. In SNNPR, the law is not clear as to whether mediation before taking a case to the court is mandatory or optional. But practically it is mandatory. A person cannot take his case directly to court without first trying mediation.

In addition, in Oromia the distinction between mediation and arbitration is blurred both in the law and in practice, with the "mediators" sometimes acting as arbitrators who impose decisions (albeit decisions which can be appealed). In SNNPR the mediators also tend to overstep the pure mediation by making recommendations to the court. As compared with the general population, women and VGs are affected in different ways by mediation, which offers both advantages and disadvantages depending on the governing legal framework and the way it is practiced on the ground. In short, mediation offers a lower cost opportunity and is a less burdensome alternative to court litigation. It is considered generally as a better option, especially for woman and VGs who often have fewer cash resources than opposing parties. On the other hand, if the mediators tend to follow discriminatory cultural norms, are ignorant of gender equity guarantees in the law, and then attempt or succeed in imposing these views, then women and VGs may be better off going straight to court. Below we will examine the prevailing situation in more detail and make recommendations.

As noted, mediation in Amhara and Tigray is not mandatory before taking a land case to court. In Amhara and Tigray, mediators tended to be fairly knowledgeable of the legal land framework and in many cases understood the context in the communities better than the judges. Consequently, mediation appeared a comparatively better option for women than formal court procedures. Relative to the general population, women and VGs are more constrained by their lack of capacity and resources to bring litigation cases and prove their case with the required evidentiary standards in a court of law. As a result, women and VGs risk losing their court cases unless supported by other organizations (such as legal clinics, pro bono lawyers, or justice office representation). One useful practice in Amhara is that the judges will ask the parties to try mediation, and if the parties do so, then the judge will follow up on the case and provide support. If the parties do not choose mediation, or fail to arrive at an agreement via mediation, then the court case will start, and the judge will ask the land administration office to send evidence, notwithstanding the existence of certificate.

We encountered various opinions in Amhara and Tigray regarding whether mediation should be made mandatory, from the perspective of whether it would be favourable or not to women and VGs:

1. It would be better to make mediation mandatory so that the stronger party (either in the sense of socially dominant or wealthier) will not intentionally ignore mediation to impose a heavier burden (financially) on the weaker party by taking the case to the court, which disproportionately impacts women and VG negatively. Parties with legitimate claims that should prevail may nevertheless be defeated in court because of the inability to produce sufficient or qualified evidence, and thereby lose confidence in the justice system, which is very dangerous. But if we make mediation mandatory, the mediators are better placed to know the truth of the situation on the ground and urge the parties towards a just agreement. We often heard the expression "something is better than nothing," and one common instance was in relation to mediation, which may be imperfect but better than the potential alternative, namely that women and VGs do not assert their claims at all because initiating a court case is too hard. Mediators should be chosen by the parties, and thus should protect women's and VGs' land rights during the mediation process, although it is noted that even mediators chosen by one party may be influenced by bribes given by the other party. The Kebele Administrator/Kebele Land Administration Expert should play a coordination role in the mediation process. In general, given the cost and burden of court litigation and the better understanding mediators have on the facts in the community, this viewpoint supports making mediation mandatory.
2. The contrary argument, against making mediation mandatory, is that the mediators chosen by women/VGs do not adequately represent their interests, and just introduce more delay and bureaucracy blocking the path to having a more just hearing of the dispute in court. For example, under a prior legal framework in Amhara mediation was in fact mandatory, but not successful. One problem was that mediators did not diligently and responsibly carry out their duties. Under an optional system, it is suggested that the mediators chosen by the parties are more likely to carry out their duties and this is more in keeping with the right of access to justice. This right should be based on the consent of disputant parties. If the parties have consent to take their cases to mediation, then this is an encouraging sign that mediation could be successful. Otherwise, the mediation is attempted merely to fulfil a formal requirement to take the case to the court, adding a layer of bureaucracy, and thus defeats the purpose.
3. The third line of argument emphasizes institutionalization of the process and capacity-building for the mediators, whether or not mediation is mandatory as pre-requisite to filing a suit. Mediation can be

institutionalized (presumably organized and supervised more closely by a government entity, such as the courts). Selecting mediators is not an easy task for women and VGs, in practice. If institutionalized, it will be easier to give training and support.

As stated above, mediation is not mandatory in Tigray, but complainants have an opportunity to take their cases to administrative bodies, if the case is considered administrative, rather than to a court. It is very difficult to differentiate administrative and non-administrative cases in practical terms. Nevertheless, if the complaint can be considered administrative, then the process begins at the KLAC, continues to the Woreda, then to Zone region and eventually to the president. It is possible to take cases decided as administrative to the court, but the reverse is not allowed. The process is too long which may create inconvenience for women and VGs.

In Oromia and SNNPR mediation is mandatory before taking a land case to court, and the mediators must present their report to the court. KLACs recommend the group of elders from whom the parties choose two mediators each. Recommendations of the mediators will be sent to the court with the stamp of the Kebele administration. In Oromia, the land proclamation (Article 16) and land regulations (Article 18), the processes of dispute settlement are detailed, but the concepts of arbitration and mediation are mixed:

- First application shall be submitted to the local Kebele Administration. The parties shall elect two arbitrary elders each. Chairpersons of arbitration elders are elected by the parties or by the arbitral elders. If arbiters or the chairperson are not selected in a timely manner by the parties, then they will be assigned by the local Kebele Administrator. The Kebele Administration to whom the application is lodged shall cause the arbitrary elders to produce the result of the arbitration within 15 days. The result of the arbitration shall be registered at the Kebele Administration, and a copy with an official seal shall be given to both parties.
- A party who has a complaint about the result of arbitrating elders has the right to file a case at the woreda court, attaching the result of the arbitration, within 30 days of when the arbitration result was registered by the Kebele Administration. The woreda court should not accept the lawsuit if the result given by the arbitration is not attached to the filing.
- The party dissatisfied by the decision given by the woreda court shall have the right to appeal to the high court.
- If the high court altered the decision rendered by the woreda court, the dissatisfied party may appeal to the Supreme Court.
- The decision given by the Supreme Court shall be the final.
- Notwithstanding the above provision, the parties shall have the right to resolve their cases in any form they agree upon.

In Oromia and SNNPR, we generally encountered the following two views about making mediation mandatory or optional:

1. One viewpoint argued that the legal regime should be changed to make mediation optional, rather than mandatory. These stakeholders argued that the Kebele and lower level institutions (KLAC and Elders) are complicated and culturally influenced, and unduly influence the mediation with these biases. In the mediation process, improper pressure is exerted by mediators on women and VGs as a result of cultural barriers and bribes also undercut the mediators' supposed neutrality. We heard these anecdotal information:

- "There are cases where mediators mediate between the parties such that the woman gets 0.2 hectare instead of getting half of their common holding (which is 1 hectare). There are also cases where mediators mediate to give 75 % of the whole land for the elder brother leaving the orphan child without land." [Misraq Badawacho Woreda, SNNPR Region].
- "There was a girl whose family members died. The mediators were not willing to give her family's land to her saying that how can a girl inherit land. She became landless for a long period of time. She went to school. Upon completing her studies, she took the case before the court which decided in her favor." [Misraq Badawacho Woreda, SNNPR Region].

Reflecting on this anecdotal information, the court process may be better in protecting the land rights of women and VGs. The court, in case of succession for instance, investigates thoroughly to whom the land belonged to and renders a decision based on facts. Women and VGs get their proper inheritance shares without discrimination whereas mediators can be influenced by cultural prejudice against women and VGs. The mediators are also reported by some respondents to take bribes. Although mediation may be easier for women and VGs because of fewer costs and not having to travel long distances to court, mediation needs to be

improved and thus should not be mandatory. For example, most of the time men are the ones involved in mediation that, in practice, pressures women to choose male mediators. This by itself is not a problem if the man stands to protect the land rights of women and VGs. The problem is when the man chosen by a woman or VG applies the patriarchal culture in the mediation process, which can be true most of the time in Oromia and SNNPR and affects the land rights of women. Judges and land administration entities do not transparently relate the mediators' recommendations to the parties, comprising an abuse of power by both the institutions and mediators. The fact that the mediators are making recommendations begins to make them decision-makers and arbiters rather than mediators. Compounding the problem, the mediators/elders are selected from the community and do not usually have knowledge of the legal system. However, the findings of the study suggested that there are occasions where they will hear witnesses and pass decisions, whereas their power is limited only to mediating between the parties so that the parties reach consensus.

Some respondents expressed a view that mediators rarely pressure a resolution favourable to the interest and benefit of women. Although in theory the parties choose the mediators, in practice they are established by the Kebele Administration (KA). As a result, influence by the KA is very high. Moreover, the aggrieved parties must pay certain fees and invite mediators out to get the paperwork properly stamped. Parties who want to take their case to the court may also become socially isolated if they refuse mediation. In practice, the mandatory mediation often frustrates the aggrieved party, wastes their energy, and ultimately may lead to their giving up their struggle to assert their rights.

2. The contrary opinion supports mandatory mediation, from the perspective of women and VGs, because it is cheaper and faster, and women who chose their mediators can benefit from effective advocacy. Bribery is present in the mediation context, but is present in court too, when witnesses are bribed to give false testimony. However, those supporting the current mandatory mediation in Oromia and SNNPR emphasize:

- Awareness for elders is very important especially on the law and gender;
- There should be an institution at the lower level which should be responsible for protecting the land rights of women and VGs land right protection (may be under attorney general office). This mediation should be free from influence from the KLAC. Local elders better mediate without the influence of KLACs.

However, local elders may be influenced by the culture. There are elders who say, "How can a woman hold land?" One case was also discovered where a woman whose husband had another son from another woman. The son took the land from his father's original wife. She took the case to the court. The court decided in her favor. But the community isolated the woman from social events because evicting her husband's son was viewed as culturally inappropriate. In general, the mediation process in Oromia and SNNPR is highly influenced by the customary system.

There are also other points that should be considered by the court when the parties bring their mediation result to the court.

1. Tutors of minors or other VGs should have special authorization from the court to conduct mediation on behalf of the minor, which is to best protect the land rights of OC and other VGs who cannot represent themselves;
2. The court should clearly state the results and terns of the mediation in their judgments. The practice is just to approve the mediation result by attaching the contract of mediation. This will help when the mediation contract is lost.
3. Before approving the mediation result, the court should ask openly the consent of the parties, separately if possible, in order to avoid mediation being conducted under undue influence, which affects especially women and other VGs.
4. The mediation result should be read prior to approval. Parties may not read the result and sometimes fraud occurs with respect to the terms of the mediation result.

Recommendations

In weighing the advantages and disadvantages of mandatory mediation, and analysing the opinions of stakeholders, we conclude that a regime of optional mediation is the better option to protect and advance the land rights of women and VGs. It is suggested that mediators apply discriminatory cultural norms which affect women and VGs disproportionately. This supports a case for better training to ensure that they do not overstep their authority or impose decisions.

We recommend that programmes be implemented to train mediators in both the substantive land law and techniques of mediation, even though it is optional, in order to protect the rights of women and VGs who do

opt for mediation. Institutionalization of such capacity-building should be undertaken by the court system or justice offices, with oversight and auditing of mediators' performance.

Therefore, in Amhara and Tigray, we recommend that the legal framework continue making mediation optional and in SNNPR and Oromia to change it from mandatory to optional. This would ensure that mediators are chosen by the parties (unlike the prior legal regime in Amhara where mediators were chosen by the government). Also, the legal framework should be clear that the role of the mediators does not involve imposing decisions.

In Oromia and SNNPR, in addition to making mediation optional, we recommend that the legal regime is clarified to avoid confusion with arbitration (both land proclamations contain language suggesting an arbitration process rather than mediation) so that mediators cannot force decisions upon the parties. In addition, procedures should be put in place such that mediators are indeed freely chosen, and pressure not imposed on parties to select the KA's or KLAC's preferences. In addition, especially in SNNPR, special effort must be made to train mediators in the law and the protections against gender discrimination that the law demands.

In all regions, we recommend the involvement of the women's affairs office and justice offices in capacity-building of mediators, and institutionalization of mechanisms for support, supervision and accountability of the mediation process. In addition, it may be advisable to set up a small fund—managed by an appropriate government entity (the justice offices, courts, or land administration agencies)—whereby modest expenses (such as transportation or a small per diem) could be provided to mediators for their services, which would counteract the problem experienced in the past where the mediators do not fulfil their obligations, which takes time and effort. However, it is important that these small fees would come from government, not from the parties, or else it would create potential for improper influence.

Execution of Court Judgments[19]

The federal as well as the regional rural land proclamations do not have specific provisions regulating the execution of decisions passed by the court over land claims. As a result, it is the 1953 civil procedure code of Ethiopia that applies to execution of land-related court decisions.

Once a decision is given by the court, the judgment creditor (prevailing party) must bring a separate legal action for the execution of the decision (Art. 370 of the civil procedure code). The prevailing party applies to the same court which issued the sentence to process its execution, listing the properties that will be used for the execution (Art. 378). There is a period of limitation after which execution of the court decision would be barred. Where an application to execute a decree, other than a decree granting an injunction, has been made, no order for the execution of such decree shall be made upon any fresh application submitted after the expiration of ten years from: the date of the decree sought to be executed; or where the decree or any subsequent order directs any payment of money or the delivery of any property to be made at a certain date or at recurring periods, the date of the default in making the payment or delivery in respect of which the applicant seeks to execute the decree (Art. 384).

Where an application for execution is accepted, a copy shall be served on the judgment-debtor (the losing party in the court case) together with a summons requiring him/her to appear before the court on a fixed date, with an opportunity to argue why the decree should not be executed. The court shall listen to any objections of the judgment-debtor and make such order as it deems fit (Art. 386). The court may order the arrest of the judgment-debtor if the court has reason to believe that he/she may leave the jurisdiction or avoid satisfying the judgment (Art. 387). The judgment-debtor could be detained in civil prison for a period not exceeding six months (Art. 389). He could be released any time when the decree is executed.

In a land case, the execution of the decision is normally made by the land administration offices (from region to Woreda as the case may be), Kebele administration, KLACs, police and others. The process is lengthy given the need, as described above, for a separate action to be brought. For instance, claims to land via succession can be lengthy, and if claims are asserted via the court, these can be resisted by Woreda Land Administration office staff for personal reasons. The losing party may resist compliance with the court decision and its execution. In all the four regions, after women and VGs obtain land rights via a favourable court decision, execution is very difficult (especially via the regional land administration bureau). The prevailing party is not able to obtain the land holding certificate (which the court decision ordered be issued) in a reasonable

[19] The Federal Supreme Court Cassation Bench (Volume 17, Cassation File Number 101070) decided that execution of court decisions on landholding issues is not about handing over the land to the judgment creditor but giving landholding certificate by his/her name.

period of time. In fact, the party is better able to obtain physical possession of the land following a favourable court decision but getting the land holding certificate is more difficult.

Due to being influenced by powerful actors, the Kebele level offices can in instances not comply with requests by women and VGs to send required evidence to the court during litigation. Moreover, it is very difficult in practice for women and VGs to obtain execution of court decision if they are not represented legally or have some other assistance. When they are assisted by the Justice Office, then execution is much easier, because the losing party fears the power which the government Justice Office has. When the judgment debtor is not willing to leave the land (as may happen in circumstances when this losing party feels strong in the cultural contest), then the Justice Order is able to have the police detain the judgment debtor and execute the decision accordingly.

In other cases, the court case may be decided, and execution made, but the encroaching party improperly possesses the land again. The aggrieved party may try to bring a civil action for the execution of the same case, but this is not possible. Once the case is executed, then they can bring a criminal action if the party possesses their holding illegally. There is gap in awareness on this procedure, even among experts. In Amhara (Jabi Tehnan Woreda), there was a case in which after execution, an individual again illegally possessed land belonging to VGs. That individual was sentenced to one year and two months in jail. In this case the court did not wait for the Justice office to bring criminal case. The court itself issued criminal judgment, relying on the previous civil file. This benefited women and VGs a lot since it somehow shortened the process.

The other problems that make execution of court decision difficult relates to procedural complications within the court itself, such as: (1) when the order given by the court is not full (when the order does not fully address the allegations of the party on one hand and the decisions given by the court on the other); (2) when the order is not clear; (3) when court decree is not sent to the responsible executing entity; (4) when the court bases its decision on the mediation result and orders execution, but underlying mediation result is not attached to the file; (5) involvement of sharia courts, such as in SNNPR where sharia courts make a land-related decision which is beyond courts' proper jurisdiction. The sharia court's jurisdiction is on family issues (divorce and the like) per Federal Courts of Sharia Consolidation Proclamation number 188/199. Under article 4(1(a), the sharia courts can rule on any question regarding marriage, divorce, maintenance, guardianship of minors and family relationships; provided that the marriage to which the question relates was performed, or the parties have consented to be adjudicated, in accordance with Islamic law. Express consent is required from the parties to be adjudicated under Islamic law. This provision is strengthened by the house of federation decision given in one case where it interpreted the constitutionality of the way the case was handled. This prominent case is known as Kedija Beshir's case. In its 2008 decision, found in volume 1 of journal of constitutional decisions, the federation said that express consent of the parties is required and the sharia court, before hearing the case, must ask the parties expressly whether they opt to be adjudicated by the sharia court or not.

Execution is very difficult not only for women and VGs but also for all prevailing parties. It is also difficult to detain those who do not comply with and execute the court decisions. The police who are ordered to detain such persons repeatedly say that the individual is absent (the judge said that the police is untruthful, by fearing the person). Those who are powerful (financially, socially or physically) do not comply with and execute decisions, and women and VGs, who are in a weak position are disproportionately negatively affected. There is resistance or non-cooperation at woreda level to issue land certificates in accordance with court decisions and resistance at the lower level (Kebele Administration and KLAC) to execute judgments, due to suspected improper powerful influences coming from judgment debtors; bribery/corruption, and less attention given for execution since there is no accountability for the delay/absence of such execution. Especially in SNNPR, there are court decisions in which execution is delayed for long periods, even decisions issued by the regional Supreme Court. A small number of respondents indicated they have suspicions that there are some cases in which administrators and KLACs were bribed by the judgment debtor.

As a result, they are reluctant to execute the decision given by the court. The region identified this gap as a serious problem. These delayed executions and post execution problems are of a criminal nature. Most of the courts do not issue criminal convictions against these individuals but rather wait for a criminal action to be lodged by the justice office.

In Oromia there is a better practice in this regard. The regional land administration and use regulation number 151/2012 under article [33(1) states that a person re occupying land which he/she lost through court decision will be criminally liable. This provision is practically implemented when individuals re-occupy, especially land belonging to women and VGs, after losing through court decision, and they are brought to court and convicted.

This is a good remedy for women and VGs for the problem they are facing after getting a favourable court decision.

In general, men and comparatively other powerful parties (financially, physically and socially) have better access to financial and resources as well as possess persuasive power. Women and VGs have a harder time executing judgments.

One contrary opinion was voiced by a SNNPR prosecutor. He said that once a decision is reached by the court, its execution is not a problem if the court is diligent. A party who is not willing to execute the decision will be detained and execution enforced. If the losing party creates a problem after execution, they will be convicted, and the sentence is serious. Once detained the elders can mediate for the release of the individuals. After mediation by the elders the party who was detained and released will stop disturbing the judgment creditor.

Recommendations

1. Increased legal aid to support women and VGs so that they will not be deterred from asserting court claims to their land use right because of the long process and the improper influence that opposing parties often use.
2. Pro-active court enforcement. Increased detention of those parties who refuse to comply with, or execute, court decisions. This would ease post-implementation problems faced by women and VGs.
3. Increased oversight from the regional level Justice Office over the woreda Justice Office, such that prosecutors are encouraged (and monitored) to bring criminal charges against those refusing to execute court decisions without good cause.
4. Increased representation of women in KLAC, KA, KLAC (perhaps through instituting minimum quotas)
5. Awareness creation about when to bring new court actions, actions for execution, or criminal actions in case of illegal possession or land encroachment.

Naming Conventions for Women

Culturally the way women are named after marriage may cause confusion in clarifying their land rights in inheritance, divorce, and disputes with other claimants to the same land.

The federal civil code, in article 36, stipulates that a person's surname (the second or family name) shall be the first name of his or her father. However, the civil code makes an exception for married woman. Under article 40 of the civil code, a married woman has a choice: she may keep her father's name as her surname or she may adopt the name of her husband as her surname.20

In most areas of the four study regions, married women retain their father's name as their surname. However, in certain areas of Oromia (such as Tolle Woreda) and in SNNPR (Kembata and Hadya communities), some married women adopt their husband's name as their surname. This creates problems when the woman's name appears on a landholding certificate with her husband's name as her surname, but on other government identification her name appears with her father's name as her surname. In SNNPR, this has led to serious problems later, and some women have tried to resist the practice. Yet they are under cultural pressure to take their husband's name.

When registration is conducted without the presence of women landholders, the community members who are in the field with the registration teams may not know the father's name of a married woman landholder because the wives moved from other localities to the new village because of marriage. Therefore, the registration teams are given the husband's name as the woman's surname especially in those woredas where SLLC is implemented without SDO support.

Use of the husband's name as a married woman's surname is common in other official contexts in the woman's new village and can be traced back to "adult education programmes" in which coordinators of the programme did not know the father's name of these women. Even during criminal investigations, women may tend to use their husband's name.

Use of the husband's name as a married woman's surname is common in Hadya culture, and was common in Misiraq Badawacho Woreda, Gegera Kebele (e.g. we saw a certificate issued to Anore Gidiso Tarye, the

[20] The English translation of the civil code uses the term "patronymic" to refer to a surname, whether it is one's father's name or, by choice, a married woman's husband's name. However patronymic by definition means the name of one's father or male ancestor. Therefore, to avoid confusion, we refer in this report to the woman's surname.

husband, and Tirtu Anore Gidiso, the wife). The practice is more common among Christians in the area. During succession (inheritance), these women faced difficulty in obtaining the land rights to which they are entitled because it may be difficult for them to prove that they are heirs of the deceased father. There are cases when they apply to get the heir certificate (part of the legal succession procedure), and their siblings oppose their application, claiming they are not the descendants of their deceased father. The siblings produce official documents showing their husband's last names to prove that they are not the deceased persons' daughter. In some cases, due to this confusion, the court may decide that she is not first level heir.

In essence, this situation creates an additional burden on women to prove their natural fathers' name at the time of succession and may inhibit them from correcting this mistake assumption and assert their rights.

Recommendations

1. Due to the confusion this practice has caused, the civil code should mandate use of a woman's father's name as her surname, even if she is married, on all official legal and government documents. Of course, the different cultural naming process can be respected in social settings but avoided in all official and legal contexts.
2. Training should be given to the land administration agencies and systematic land tenure registration teams to inform women that they should use only their father's name (for their surname) in the certification process. This should be integrated in to Public Awareness and Communication.
3. Judges and prosecutors in such woredas should be given awareness on the tradition and the challenges women face so that they will take additional steps to prove who the correct heirs are so as not to affect women who practice such kind of naming. This should be integrated in to Public Awareness and Communication.

Agency (Representation and Power of Attorney)

Agency refers to the practice whereby an individual grants another person the right, usually temporarily, to officially and legally represent them (usually for a particular purpose or transaction). In many contexts, this is also known as granting someone a "power of attorney." This is common when a person is not available, for example, to attend a meeting or sign a document because perhaps he/she cannot travel to the location where the meeting or event is being held.

The legal frameworks governing agency are governed by the federal civil code (article 2179 onward).

Table 5: Agency: the law and practice

No.	Region	Which institution's Power?	At what level?	Is it Mandatory?	
				For Litigation	For Registration/Management
1	Tigray	Justice	Woreda	Yes	Yes
2	Amhara	Attorney General	Woreda	Yes	Yes/No
3	Oromia	Justice	Woreda	Yes	Yes/No
4	SNNPR	Prosecutor	Woreda	Yes	Yes/No

According to this article, the authority to act on behalf of another may derive from the law or a contract. According to article 2199 of the same code, Agency is defined as a contract whereby a person, the agent, agrees with another person, the principal, to represent him and to perform on his behalf one or several legally binding acts.

Agency expressed in general terms shall only confer upon the agent authority to perform acts of management. (Art. 2204) Whereas special authority shall be required where the agent is called upon to perform acts other than acts of management. The agent may not without special authority alienate or mortgage real estate, invest capitals, sign bills of exchange, effect a settlement, consent to arbitration, make donations or bring or defend an action. (Art. 2205). With regard to form, authority may be conferred upon an agent either expressly or implied. Where the act to be performed by the agent is under the law to be made in a prescribed form, such form shall be complied with in conferring authority upon the agent (art. 2200). This implies that regarding land-related matters, the "agency" must be made in writing, since the power conferred to the agent on the land needs to be done in a special form.

There are many duties which the agent has in performing his agency obligations. Among them are two very important duties:

- The agent shall act with the strictest good faith towards his principal (Art. 2208)

- The agent shall exercise the same diligence as a bonus pater familias [basically a reasonableness standard] in carrying out the agency as long as he is entrusted therewith. He shall be liable for fraud and for defaults in the performance of his duties. (Art. 2211)

According to article 58 of the civil procedure code, it is only the spouse, brother, son, father or grand-father21 of someone who can appear and represent a person before the court of law (without compensation) on behalf of such parties. Agency other than court cases could be given to any person.

In practice, there are some experts who say that a formal and written agency contract must be authenticated and registered by the justice office for the delegation of authority to be valid. In Amhara, when the agency appears to be arranged in the best interest of the VGs, for instance in the registration of a landholding right, the land administration office does not insist on a formal agency contract and simply register the land in the name of the VGs with the presence of the agent. In general, in all the four regions, during registration and certification, formal representation is not mandatory because the land administration office can also register the land even in the absence of those informal representatives because the registration is conducted with the assistance of neighbouring landholders, KLAC members who can show the boundaries of plots and give information about landholders. This is what the WLAOs implement in practice which they believe protects the land rights of OC.

The agency contract authentication and registration are performed at Woreda level in all regions, which can be very difficult for the principal and agent to arrange. It was at the zonal level in SNNPR that agency contracts were registered but changed to Woreda prosecutor's office at this time.

In Amhara there is a good practice that when a person (or his agent) is not able to come to the Woreda, the Attorney General sends an expert to obtain the signature of such person. The office covers the Daily Subsistence Allowance for the expert. There is also a practice to provide the service at Kebele level similar to circuit bench which courts use (Baso Liben Woreda). Normally, the service fee is 20 birr when the service is given at Woreda level. When it is given at Kebele level, the service fee is 100 birr. VGs, if they are interested to pay this amount can get the service at Kebele level. The same good practice exists in Oromia where for those VGs, who are not able to come to the Woreda for the agency contract, the justice office has a mechanism of sending an expert at the area where these VGs live and get their signature. These practices are very important moves to protect the interests of VGs.

Awareness about the service of agency and how to appoint an agent is very minimal. Especially it is very low in rural Kebeles. It is comparatively better in Amhara and Tigray but very low in Oromia and SNNPR. In SNNPR it is only those landholders who live in America, South Africa, Addis Ababa and other big cities like Hawassa who represent other individuals for the administration of their land (including registration). Despite the awareness problem and the difficulty which VGs may face to go to the Woreda to get the service, the process of appointing an agent is not very difficult. A person who comes to the Woreda for the aforementioned service can finish the whole process within an hour.

The accessibility (or lack of it, at times, or the insistence on the formality) affects women and VGs disproportionately. These groups may not have the awareness about the service and the capacity (financially and physically) to travel to the area where the service is given and get the service. Because of this they opt to go for just informal agency. In this informal representation there are sometimes misleading activities. There are complaints in which the informal representative of a woman registered the land in his own name. Even after the formal agent is appointed, the agent commits perjury and registers the land in his own name, especially among close relatives. "In Misiraq Badawacho Woreda, Beshalo Kebelle of SNNPR, a female landholder gave agency to her son to register the land in her own name and administer the land in her interest. The son asked the land administration office to register the land in his own name. The land administration office told him that it is not possible. Being an agent, he may simply register the land in the name of his mother. The understanding is that once power of attorney is given agents take it as though they received the land through gift.

Recommendations

1. Awareness creation about the importance of agency appointment and its application is very vital. This could be integrated in the PAC to be made prior to demarcation. It should be one role of the FTL/SDO.

[21] Literally this provision is gender biased towards men even though it has been amended by the FDRE constitution. It is interpreted in courts in a gender sensitive way to include sisters, daughters, mothers, grandmothers.

2. The service should be accessible to VGs. The good practice found in Oromia and Amhara should be scaled up in Tigray and SNNPR. It is possible to establish circuit kind of bench is at Kebele level with social court for such representation and guardian appointment. The expert can go from the Woreda. For critical VGs, house to house service could be delivered.
3. Awareness on the criminal consequence of misusing agency responsibility should be created and subsequent accountability should be enforced

Tutor Appointment and Orphan Children

The law provides for various mechanisms to protect the interests of minor children22, as well as other persons who are not deemed capable of properly protecting their own interests (such as the very elderly, mentally ill, and extremely sick).

If the legal representative chosen to protect these interests—including land holding rights--does not fulfil her/his function well, or the system of representation breaks down for other reasons, then the land rights of such individuals, such OCs or other VGs, are negatively affected.

For minor children, the family code provides that the child's financial and property interests are protected by a "tutor" and the minor's care and education needs are taken care of by a "guardian." (These terms are often confused with another, but we are using the terms used in the widely accepted English translation of the family code). Table 6 provides a summary of the regional variation on the appointment of tutors for OC.

Table 4: Tutor Appointment: the law and practice

No.	Region	Which institution's Power?	At what level?	Is it Mandatory in Practice?	
				For Litigation	For SLLC Registration/land use Management
1	Tigray	Court	Woreda	Yes	Yes
2	Amhara	Court	Woreda	Yes	Yes/No
3	Oromia	Court	Woreda	Yes	Yes/No
4	SNNPR	Court	Woreda	Yes	No

During their marriage both parents jointly act as guardians and tutors of their minor children (Art.21, Family Code). In case of death, disability, unworthiness or removal of one of the parents, the one who remains shall alone exercise such functions. The mother shall exercise such functions where the father of the child is unknown (Art.220).

If the spouses divorce, they should agree on who will act as tutor and guardian of their children. If the spouses do not reach an agreement, the court shall decide. A surviving parent of a minor may, by his/her will, stipulate who shall be guardian or tutor of the child after his/her death. The surviving parent may also restrict the powers of the guardian or tutor or subject the exercise of such powers to specified conditions (Art. 222).

In the case of OC with no father and mother, and in the absence of any valid appointment made by the last surviving parent, the functions of guardian or tutor of the child shall devolve, by virtue of the law, on the following persons in this order: (a) ascendants of the child; (b) in their default, the brothers or sisters of the child who have attained majority; (c) in their default, the uncle or aunt of the child (Art. 225). Modification of such orders is possible with good cause by application to the court (Art. 226). If a child still remains without a guardian or tutor even after application of the above preferences, then the court can make such appointments as it deems appropriate (with a preference given to blood relatives). The tutor may be removed by the court, where it appears that he/she badly administers the property of the minor. As noted earlier, tutors may also be appointed for persons, other than minors, who are unable to protect their interests.

The proper practice of appointing tutors is not well known by the general public, especially among the elderly and those with health issues. Individuals go to the land administration office asserting they are legal tutors, but in fact they have not received the required court appointment.

In case of death of a land holder, OC will either be without the legally appointed tutor or, in the rare cases when a tutor is appointed, that person tends to infringe the land use rights of the OC. As a result, there should be one responsible entity which should apply for succession for the best interest of the child and other incapable persons, namely the Women and Children Affairs and Labour & Social Affairs offices. Awareness creation for tutor appointments by itself is not enough. Monitoring the performance of tutors, after their

[22] Minor children are those who are below 18 years old according to the family laws of the federal and regional states.

appointment, is critical. Institutions should be assigned to be responsible for this follow-up. The Women and Children Affairs Office and Labour and Social Affairs Office are weak in creating awareness on the need to help OCs to get the right Tutor/Guardian. It should be these two offices who can bring the case to the attention of the justice office if OC's right is abused by existing tutor and need to annul it.

When a surviving spouse does not have the capacity to support the child, the adult sibling of the child or any other relative may be appointed as tutor with the consent of the surviving spouse. The same principle may apply when both the husband and wife are not able to support the child and administer the properties there to. The problem is that certain tutors, after their appointment, use the land for their personal interest. In these cases, it is the role of the Justice Office to bring the case to the court. The Women and Children Affairs Office should also follow up such kind of cases. The practice has gaps. Challenging the misconduct of the tutors is not a difficult process, but there is not enough awareness among the experts, and therefore the financial and property interests of VGs, especially OCs, is at risk in all the regional states.

Not only do tutors often misappropriate revenue from the land of the true beneficiaries, they often even register in their own name the land which belongs to the minors or other VG. There are also cases in which siblings of OCs are unwilling to share the land which they inherited or received from their parents. The following are observed patterns:

1. Tutors are not sufficiently diligent and responsible to protect the land rights of minors. For instance, if a court case is required to protect the interest of the child (from a third party), the tutors do not usually bring such a suit.
2. When one of the parents of a child dies, the child often does not have the knowledge nor capacity to initiate the required legal steps to ask for succession (to claim inheritance rights). The land may stay in the name of the surviving parent. If the surviving parent marries another person, the land rights may be shared or transferred to the new spouse. The newly married couple may have children, further complicating and threatening the land rights of the child born from the first union. In general, the surviving parent may not protect the rights of children from a previous marriage. The child born from the second union can also request succession. Because of this informality, there is high risk for a minor child from the first union to lose his/her inheritance.
3. Once a person is appointed as tutor, s/he often take the products of the land for his or her own benefit. There is no institution responsible to follow-up on the conduct of tutors after their appointment. It is the Attorney General (Justice) which has the responsibility to bring criminal and civil actions against those who infringe their responsibility. There was one case in Amhara in which the brother of a minor, considering himself as a tutor, took the benefits of the land without supporting his minor sibling. In this case a non-relative came to Attorney General Office to complain. The Justice Office took the case to the court, and the court revoked the guardianship and appointed another person.

There is a practice in Amhara (Baso Liben Woreda) in which courts appoint tutors in their mobile bench. But those tutors do not automatically get a copy of the decision since it is not possible to take a photo copy machine to mobile bench areas. After the decision, those individuals are required to go to the Woreda to obtain a copy of their appointment. Tutors seldom do this. So, at this time the court declined to see such cases in their mobile benches. There are options to address this problem: (1) it is possible to send the document to the Kebeles and the Kebeles forward the decision to the concerned parties. (2) The court can send the decision to the prosecutor's office which will then send the document to their police officer in the Kebele. The police officer can forward or deliver the document to the concerned party.

What is special in Tigray is its proclamation about inheritance rights of minor children. The regional land proclamation stipulates that minors are not allowed to have holding certificate in their own name (instead, the certificate is issued in the name of deceased parent(s) until such time when minors attain majority age)23. Presumably this rule is meant to protect minors against unscrupulous tutors titling that land (improperly) in their own name. This approach is inconsistent with the federal land proclamation which clearly states any holder of rural land shall be given holding certificate in his/her name. A person can be a holder of rights and duties from the date of birth to date of death. However, a deceased person cannot be a holder of rights and responsibilities; therefore, registering land in the name of the deceased appears contrary to the law. Moreover, most interviewees said the practice more often harms the child's interest rather than helps.

[23] In Oromia a regulation stipulates that "during divorce the holding of the couples to be given to their children shall be registered by the name of the children. (Oromia regulation article 5(11).

In the case of multiple heirs, when the oldest attains majority of age and wishes to claim the land, it may prejudice his/her minor siblings and create confusion as to how to divide land rights among heirs.

Other regions typically list minor heirs and legal tutors on the title. If the deceased remains on the title, it creates problems for transactions or court representation on this land. For example, how can renting out be done? How can land rights infringement be defended? These and similar issues will not be practical if the regional law is implemented as it is. There are also unfair rules about losing land rights if the minor moves to another kebele/woreda for schooling. If minors move for regular/normal school, then they retain their existing land rights but may lose new rights from succession or donation that arise in their absence. If they move and enrol in "irregular"24 school program, then they will lose even their existing land rights. This unfair result flies in the face of international, regional and national legal instruments which aim to protect the right to education. As a result, the regional directive needs amendment. The majority of regional experts consulted agree on the irrationality of this provision. But some of them said that those who are attending irregular education might have other jobs as a civil servant or merchant. This is a weak argument. If they are civil servants or merchants, then their land can automatically be taken away based on other relevant provisions of the regional law. It should not be that irregular education which is the reason for taking away land rights. On the other hand, orphans who relocate to be with another family for support, whether in rural or urban areas, do not lose land holding right in the original kebele.

In Tigray, it is the social court which is empowered to authenticate adoption contracts. However, there are instances when false evidence is given (even for adoption of an individual who has already attained majority age) in order to improperly access land. This may affect some OCs or other landholders who might have the opportunity to get this land through re-allocation.

In SNNPR, during FLLC, rural land was registered in the name of the tutor instead of the minor, infringing the land rights of minors. This has its own negative effect on current registration and certification as the SLLC basis itself on the FLLC. The SLLC format clearly provides with appropriate space for registering the Orphan Children and guardian/ tutor. However, there is no formal tutor appointment in the region practically even though the regional family law requires tutor appointment in certain circumstances (see the legal explanation above). Awareness is severely absent about tutorship appointment, even at the Woreda land administration expert level. It is the family committee and local elders which assign guardians or tutors (brother, sister, uncle, neighbour) for Orphan Children, but it is not formally written and documented, leaving room for perjury. There is no legal expert at Woreda land administration and use office even structurally. This may contribute a lot for the understanding gap about how tutor must be appointed. The land administration does not request formal tutorship for land registration and management issues. To take the cases to the court, formal tutorship needs to be established. Informal tutors tend to use the land of the OCs for their personal benefit.
Even though every institution is responsible for the protection of the interest of minor children, this is not implemented. The justice office, in particular, needs to take action and responsibly. When the land rights of an OC are infringed by their tutor, the prosecutor can, for instance, bring the case to the attention of the court to nullify the tutor appointment. The judge in SNNPR told the study team that while he was a prosecutor in one of the Woredas, he came across a case in which a tutor, from an OC's paternal side, used the land belonging to the OC for his own personal benefit. He even changed and registered the child's land in his own name. The prosecutor took the case to the court for the annulment of the tutor's appointment. The court annulled the appointment and appointed another person from the OC's mother's family.

Recommendations

1. Revise the Tigray regional proclamation to allow the registration of land inherited by OC in their own name, with the name of the tutor appearing in the space provided.
2. Revise the Tigray regional proclamation to allow OCs to move to another area for irregular education without losing their land use right. If they are employed or are merchants, they can lose their land right based on other relevant provisions of the regional land law.
3. Raise awareness of Women and Children Affairs and Labour and Social Affairs Office how severe the problem is and the need to take up their role to create awareness and help OC to have a designated Tutor/Guardian to protect their interest including their land right.
4. Raise awareness of the WLAO to enforce official tutor/ guardian appointment evidence for the registration of OC. Integrate to its awareness process conducted prior to demarcation.

[24] Irregular school refers to night, weekend and distance educations.

5. The process of tutor appointment by the court should be simple and accessible. This process can be integrated into the mobile bench system of the courts where the parties can obtain the service near to their locality (and the mobile courts should be equipped with printers or portable copy machines, to issue the formal documents). As an alternative, the decision of the court can be sent to the Kebele or to the police officer in the kebele through the prosecutor's office so that the parties can collect the decision in the Kebele.
6. In case of death, there should be one responsible entity which should apply for succession for the best interest of the child. This could be either the Women and Children Affairs; and Labour & Social Affairs offices. Awareness creation for tutor appointments by itself is not enough. Monitoring the performance of tutors, after their appointment, is critical. Institutions (such as women and children affairs as well as social affairs) should be assigned to be responsible for this follow up.

Donation, Inheritance and Divorce

As already noted in the introduction, the legal framework in Ethiopia governing rural land law, like any other legal framework, consists of an inter-related network of different sources of authority (both legislative and judicial opinions), which must be interpreted together, rather than in isolation, in order to predict and understand the "answers" to legal questions.

The areas of donation and inheritance of the land holding right are two critical areas for women and VGs in which the land law proclamations (on both the federal and regional) leave certain gaps unaddressed:

Donations: Normally, grants may be made based on certain conditions which must be fulfilled, for the donation to be valid (or continue to be valid). However, this type of donation/contract is not specifically addressed by the land law.25 When disputes arise, most judges do not recognize such conditional provisions as valid when it comes to land rights by justifying that the land law does not talk about that type of donation contract. However, there are conditional donation contracts that are designed to help elderly people, who transfer their land rights under the condition that the grantee provide support and care during the grantor's old age. If the donation contract is not upheld by the judges, then elderly land holders are negatively affected. Given the growing number of elderly people who are left without close family support, the law should respect these conditions in the contract.26 In other words, the conditional contract provision which is recognized in the donation part of the civil code should be interpreted as applying to land donations, too. The donor/grantor and recipient donee/grantee should arguably be free to agree on mutually-beneficial conditions for the land holding rights, as they would be able to do for any type of other asset. If the donee fails to obey those conditions, the donor can terminate the contract of donation. In other contexts, the donor can institute a court claim within two years from the time which the support stopped or the breach of the contract comes to his/ her knowledge. Judges should apply these concepts to land holding rights.

Inheritance involves several critical issues for women. Collation, a legal principle applied in inheritance and succession, should be faithfully applied with respect to land holding rights. Collation essentially aims to protect the shares that each heir is entitled to from the deceased. In simple terms, if the deceased donated to one of his/her heirs while still alive, then that donation essentially "counts" as part of the inheritance due to the heir, when the deceased's estate is later divided up. It basically prevents an heir from receiving more than what he/she is entitled to, and depriving others of their share.27 Many courts do not apply the principle of collation to land rights in the four regional states in the study. One of the major reason is that the claimants do not ask the court for collation. For example, let's say a father has two parcels of equal size and two children, a son and daughter. A year before his death, he donates one of his two parcels to his son. A year later he dies, and his estate is supposed to be divided among his heirs. Applying the collation principle means that the parcel the son received before the father's death "counts" toward that son's inheritance share, and thus the daughter should receive the other parcel in succession. Ignoring the collation principle would mean the second parcel is divided between the son and daughter (and thus the son in total gets 1.5 parcels while the daughter just got the half parcel).

Most of the judges believe that collation should not apply for land cases because it is not found in the land proclamation of regional states. Other experts (including the authors of this report) believe this is incorrect and that judges should refer to the civil code provisions when the regional laws are silent. The federal and regional proclamations repeal only those laws which are in contradiction with them. For instance, article 20 of federal

[25] Article 2455 of the civil code stated that a donation may be made subject to a condition or charge.
[26] Danie W/Gebriel Ambaye and et'al, *May 2015*,
[27] Complete rules are found in section 1065 of the civil code.

land proclamation states that “No law, regulation, directive or practice shall, in so far as it is inconsistent with this Proclamation, be applicable with respect of matters provided for in this proclamation.” This means that laws (including the civil code) should apply as long as they are not in contradiction with the land laws. The applicability of the civil code should not affect the mandatory provisions of this law.

In general, the inheritance (succession) provisions of the civil code should apply for land cases as long as they are not in contradiction with the provisions of the land administration proclamations. However, in the federal and regional land laws, it is “family members” who have the right to succession (despite some differences regarding residency issues). But according to the civil code provisions, the following parties inherit: children of the deceased (art. 842), father and mother (art.843), grandparents (art. 845), and then great-grandparents (art. 847), in that order. These provisions of the civil code thus contradict the provisions of the land law, which does not define the order of the succession and also adds residency requirements or residency preferences. The land law proclamations also do not cover issues of disinheritance from succession.

“Family member” is an important term for both succession and donation. The federal land proclamation articles 5(2) and 8(5) stipulates that any person who is member of a peasant farmer, semi pastoralist and pastoralist family have the right to use rural land and may get rural land from his/ her family by donation or inheritance. Accordingly, any land holder shall have the right to transfer his/her rural land use right through inheritance or donation to members of his family (but not to others). “Family member” is defined under article 2(5) of the federal land administration and use proclamation as “any person who permanently lives with holder of holding right sharing the livelihood of the later”. Thus, there are two most important requirements for a person to be a “family member” of a land holder, under the federal law: (a) the person should permanently live with the land holder. The law is unclear as to what constitutes “permanently”. Is it enough for a person to live for weeks or months for a person to be considered as family member or is it mandatory for living years? For that matter a person will not live permanently with an individual since this person at some point will go to establish his/her own life; (b) the person should share the livelihood of the land holder, meaning the income generated from the land.

The Oromia regional proclamation has a different and somewhat more flexible definition for family members under article 2(16), namely “children of the land holder or dependents who do not have other income for their livelihood.” According to this definition there are two groups of family members: (a) children of the land holder; and 2) dependents who do not have other income. One important difference is that the family member need not continue to reside with the landholder—this is helpful especially for daughters who move away from the family household or village upon marriage. Because women tend, more than men, to move away from their home village and household in order to marry, the federal proclamation’s limitation of donation and inheritance (to family members living with the landholder) has a disproportionate negative impact on women. For this reason, we recommend that this aspect of Oromia’s definition of family member be adopted in other regions and in the federal proclamation.

The clause regarding “dependents who have no income” is unclear. One might presume that it could include spouses, but it is not interpreted as such. We recommend that it be interpreted as such (and explicitly clarified in new laws) – which would also help defeat any potential argument that a joint titling of private holding, by consent, is an impermissible de facto donation. It would also permit granting land holding rights by will to a spouse.

The term “family member” should not exclude completely those children who have moved away, as this disproportionately affects women more than men, given the prevailing cultural pattern that more women move to their husband’s village, than vice versa. Therefore, the rule in Oromia is recommended to be applied at the federal level (through a future amendment to the federal law proclamation) and in other regions, whereby all children are eligible to inherit, although children with no other source of income are given “inheritance priority” (see Article 9(2) of the Oromia land proclamation).

Related to the issue of residency, but in a different context, is the Tigray land law which provides that community members lose their land rights if they move away from the village (immediately, if they take on other work, or eventually after two years if they do not return to the village). There is an exception for women who move away to another rural area to marry. However, even with this exception (which is important) this rule still tends to discriminate against women because after divorcing it is more likely for a woman to move away from the village to seek support from relatives or friends in other areas or in the town.

The Oromia regional land proclamation, in Art. 6(13), states that a husband and wife upon divorce shall share their land holdings (that were registered in their name jointly and equally) in a way that takes into account the number of children that they will be raising after the divorce. This provision is important for women since they

are commonly expected to raise their children than their husbands. However, the question of “how” exactly the sharing proportions will be determined is unclear. The regulation is silent in this regard. As per the family laws, the parent who does not raise a child is duty bound to provide maintenance and the number of children is not taken into account in the division of the marital property. This inconsistency is normally resolved in favor of the land law. Nevertheless, the Oromia courts do not apply this provision explaining that the provision is unclear and the formula to use for partitioning of shares does not exist. Simply the matrimonial properties are divided equally among the ex-spouses.

Recommendations

The provisions of the civil code regarding transfer of the land holding rights should be relied upon to fill any gaps in the land laws. The civil code provisions concerning general contract, succession, and other transfer of property provisions should be given legal effect if they do not contradict with the mandatory provisions of land laws. Currently, judges are not often using such provisions for land and land related cases. The main reason is that judges and other legal personnel consider the land administration proclamation independent by its own. If there are outright contradictions, then the land administration law should be applied. When there is no contradiction, the civil code, family code as well as other laws should be used. Training and awareness creation for judges should be given to use different laws as a gap filling function for land related cases. In addition, greater legal weight should be accorded to the landholding certificate, especially SLLC. Other regions, in addition to Amhara, should include such provisions in their land laws.

Strategy to Address Legal Constraints of Women and VGs to Secure their Land Rights

No.	Identified gaps, risks, or constraints	Causes and Impacts	Suggested actions	Actors	Action Arena
1	**Matrimonial Property and Joint Titling**				
	FLLC recorded solely in the name of the husband (Tigray) or only has the photo of the husband (Oromia), when often it should have been jointly held.	Practice at the time of FLLC registration, in some areas (e.g. Tigray), named only the husband on the certificate. During SLLC, the burden of proof shifts to the non-recorded (or one with no photo) spouse, i.e. the wife, to prove her rights.	Review of rights clarification should be made to restitute compromised rights during LIFT SLLC. LIFT to reconsider SDO support to SLLC woredas completed without SDO. Institutionalize the SDO approach after LIFT. Make the name & photo of each joint holder mandatory to appear on the land certificate in the regional land laws	Land administration institutions from federal to Kebele, and Justice Offices. Good Governance Taskforce or other Taskforce mandated to see land right claims.	Region, woreda and Kebele
	Joint titling is not always allowed if the land belongs to only one of the spouses prior to marriage, even if both spouses give consent to make it a marital property (Tigray has its own justification for this). Oromia and SNNPR laws are not clear while Amhara explicitly permits.	Jointly titling land as marital property, even for land that belongs to one of the spouses before marriage, can be viewed as a de facto, or quasi, donation. Donation is normally not allowed to a spouse (e.g. only descendants and ascendants in Tigray)	If justified by further evidence-based research, both federal and regional land laws should be amended to clarify and explicitly permit joint titling, upon the consent of the spouses, of land rights acquired by either spouse prior to marriage (except Tigray). Awareness of, and advocacy for, these changes should be promoted via policy papers and public workshops, including providing draft amendments to legal instruments.	Appropriate federal and regional legislatures; federal and regional land administration institutions	Federal and region
	Mandatory joint titling of a private holding (i.e. acquired by one spouse prior to marriage) over the objection of the land rights holder (practiced in Oromia and SNNPR). However, courts may reverse the joint titling because of weak legal justification. Also, the practice creates undesired societal results--parents avoid donation; marriage may be sought (or avoided) as means to acquire (or retain) land rights.	Land administration entities in Oromia and SNNPR are practicing mandatory joint titling in systematic registration. This may be well-intentioned, aimed to address past discrimination against women. However, the risk of subsequent reversal of the joint title by courts creates a risk of “false assurance” on part of spouse (who may invest in the land and then lose it). Also, the practice creates undesired behavioural patterns regarding donation and skewed motivations for/against marriage	If justified by further evidence-based research, create awareness among regional and woreda land administration agencies that: (a) the practice has an extremely weak (or no) legal basis; (b) is being reversed by many judges; and (c) has unintended negative impacts. Advocate to discontinue the practice based on the above reasons.	Regional and Woreda land administration officials and experts	Region

No.	Identified gaps, risks, or constraints	Causes and Impacts	Suggested actions	Actors	Action Arena
	When spouses consent during SLLC registration to jointly title, some regions (e.g. Amhara) allow such registration, but only afterwards in a separate application and transaction. This adds a layer of bureaucratic procedure.	Adding an additional layer of bureaucracy acts as a disincentive to jointly title, because it requires more time, effort and thus cost.	Revise the practice during SLLC to allow joint tilting as part of the systematic registration. Review any regulations or legal impediments as may be needed.	Federal and regional experts	Regional law
	Disagreement among land administration officials within the same region, or even within the same office, about how to title a private holding acquired by a spouse before marriage (and thus what constitutes marital property in the context of land)	As noted earlier, consensus should be reached that joint titling shall be encouraged and facilitated when there is consent of both spouses, but not forced when there is an objection by a spouse who acquired the land before marriage.	Further discussion is needed to reach agreement, with potential amendment of legal instruments as noted earlier.	Land administration, justice, and court	Regional and Woreda level
	Persistent cultural bias that women should not hold land rights	Husbands attempt to register land without the knowledge of their wives, deny they are married when talking to land administration or registration teams, or falsify evidences including presenting a “false wife” during registration	Implementation of LIFT Audience Segmented Message for any land related public awareness activity and reinforce the message of equal land rights for women and men.	WLAO, SDO & other Legal Literacy Actors	Woreda and Kebele levels
2	**Period of Limitation**				
	Women and VGs are at risk of losing their land rights when land encroachers raise POL as a defence	POL being applied now are short	Conduct federal and /or regional level series of dialogue between Judges, Prosecutors and Land Administration officials of the different regions to reach consensus. Regions to disseminate agreed upon approaches and solutions to their respective and relevant offices.	Land administration institutions together with justice institutions	Federal and Region

No.	Identified gaps, risks, or constraints	Causes and Impacts	Suggested actions	Actors	Action Arena
	Insufficient awareness on POL and its consequences by landholders at the community level (and thus lack of documentation in cases of informal rentals)	Women and VGs are at a disproportionate risk of losing their land rights as they commonly rent out their land on an informal basis	More public awareness on POL and formalization of transactions, including rental contracts Legal Advice and service to those already affected. Women and Children Affairs and Labor and Social Affairs to have Legal Experts to provide expertise advise	Land Administration, Justice WCA, LSA	Region, Woreda, Kebele, Community
	Application of POL for minor children	Children sometimes lose their land rights when encroachers raise POL, even before they attain majority age	Clarify the law that the POL will run against children only after they attain the majority age of 18; Public Awareness	Land Administration, Justice WCA, LSA	Federal, Region, Woreda, Kebele
3	**Forgery and Perjury of Evidences**				
	Laws related to forgery and perjury of evidences are not enforced properly	Women and VGs are more affected because they have less resources to fight claims in court	Awareness of the criminal aspect of the act. Pro-active prosecution of criminal provisions on perjury and forgery	Justice, Police, Court and land administration	Federal, Regional, Woreda, kebele
	Lower level institutional support is weak.	Negatively affects women and VGs disproportionately, as they generally have weaker social connections and a weaker financial position to influence LAC and other decision-makers	V/KLAC should not be allowed to execute very high-level land administration functions (issuing landholding certificate, re-distribution and the like). Promote women V/KLAC members to the chairperson position (number of women members alone is not making a difference). Build capacity of female V/KLAC members	Land administration institutions and justice	Federal and Regional Level laws
	Forgery exists during land registration	Negatively affects women and VGs disproportionately, as they generally have weaker social connection and financial position to influence V/KLACs and other decision-makers	More PAC before SLLC or any land registration initiative especially for women and VGs to help them not to lose their land right because of forgery done during FLLC. Improve the efficiency and transparency of the digital land information system	Land administration PAC	Region, woreda and Kebele
4	**Illegal Loans and Mortgages**				
	Informal loans using land as collateral, which illegally results in borrowers	Women and VGs are disproportionately affected since they are often with no cash reserves and	Regulation of the loan market and broadening the opportunities for access to credit, based on land right collateralization in an open fashion	Federal and Regional Land administration	Federal and Region

No.	Identified gaps, risks, or constraints	Causes and Impacts	Suggested actions	Actors	Action Arena
	permanently surrendering land rights when there are payment defaults.	thus agree (as borrowers) to these informal loans, with harsh repayment conditions.	where the land right can be lost only temporarily upon default. The Amhara proclamation can be replicated as a good practice.	institutions together with Justice	
5	**Review of Judgment**				
	Women and VGs are often unaware about review of judgment, and thus fail to take advantage of this comparatively less expensive and easier procedure (versus a direct appeal)	Women and VGs fail to reverse unfair decisions because they are inhibited by cost or complexity to take a direct appeal (or lose an appeal because they do not diligently pursue the case). Using the Review of Judgment procedure could win more cases	Awareness, support, legal representation, rollout the practice of Good Governance Taskforce experience of better performing woredas from Amhara region.	Land Administration and Justice Offices	Kebele and Sub-Kebele level (during SLLC adjudication)
	Cassation Bench decisions which allows the Review of Judgment procedure are not fully known by judges, prosecutors and other experts	Review of Judgment not used procedurally as often as it should be.	Legal training on the Federal Cassation Bench decisions related to Review of Judgment. Facilitate access to cassation bench decisions for judges, prosecutors land administration offices, and land rights holders Clarify through the land administration and use laws.	Federal and regional Supreme Courts	Federal, region and Woreda
6	**Enforcement of Criminal Law Provisions**				
	Land right violations are often not diligently or vigorously prosecuted.	Women and VGs are disproportionately affected because they are often the aggrieved parties who are taken advantage of by socially and financially influential members of the community	Increase awareness of the general public on the criminal consequences. Strict application of criminal provisions. Increased oversight and close monitoring & evaluation.	Justice institutions (justice, police and court)	From Federal down to Woreda level
7	**Mediation**				
	Mediation is not clearly and uniformly applied per the law and in practice (often the practice and legal framework confuses mediation with arbitration, inappropriately	Women and VGs are generally more negatively affected by the over-reaching of mediators into decision-making because mediators are easily influenced by the party opposing	Mediation should be made optional, leaving the choice to the parties. However, mediators should be chosen by the parties and the legal framework must be clear that the role of the mediators does not involve imposing decisions.	Land Administration Courts	Region Woreda Potential Mediators

No.	Identified gaps, risks, or constraints	Causes and Impacts	Suggested actions	Actors	Action Arena
	giving decision-making powers to mediators, turning them into arbiters).	women and VGs, and/or the mediators are culturally biased. However, mediation, practiced correctly without over-reaching into decision-making, is useful for VGs and women since it reduces the effort and cost of litigation.	For Oromia and SNNPR, the legal regime should be clarified to avoid confusion with arbitration.	Regional Land Administration and Justice Bureau	Region
			For all regions, train community level mediators in the law and its protections against gender discrimination.	Land Administration & Justice Bureau	Region Woreda
			For all regions, promote involvement of the Women Affairs and Justice Offices in capacity-building of mediators, and institutionalization of mechanisms for support, supervision and accountability of the mediation process. Promote awareness of, and advocacy for, these changes, including providing draft amendments to legal instruments.	Women Affairs and Justice	Region Potential Mediators
8	**Execution of Court Judgments**				
	Execution of court decisions is very difficult for women and VGs after getting court decisions	Biased relations affecting objective decisions and actions	Provide increased legal services and support for women Promote pro-active court enforcement without waiting for the justice office to bring criminal actions Increased oversight from the regional level Justice Office over the woreda Justice Office	Land Administration, Court and Justice WCA and LSA for the representation	Region, Woreda
9	**Naming Convention for Married Women**				
	Married women, in some areas of Oromia and SNNPR, use their husband's name as their second name (surname), instead of their father's name	Using the husband's name as a married woman's surname creates confusion and an additional burden on women to prove their natural father in cases of inheritance, contributing to the loss of women's land right.	Amend relevant legal instruments to require women, whether married or not, to use their father's name in official documents (though married woman would still be able to use their husband's name as their second name in social settings); give training for the land administration agencies and systematic land tenure registration teams to register land with the maiden name for all women.	Regional legislatures (to amend relevant laws); Land Administration Directorate with its regional counter parts.	Region Woreda

No.	Identified gaps, risks, or constraints	Causes and Impacts	Suggested actions	Actors	Action Arena
			Promote awareness of, and advocacy for, these changes, including providing draft amendments to legal instruments.		
	During disputes women need to prove their natural father's name	This needs a lot of effort which is difficult for women and is a factor in women losing court cases.	Judges and prosecutors in such woredas should be provided training on the different naming traditions and the challenges women face so that they will take additional steps to ascertain the truth	Land Administration, Justice and courts	From region to Woreda
10	**Agency (Representation and Power of attorney)**				
	Agency is not being conducted formally.	Informal agents and others infringe the land rights of women and VGs	Provide public awareness and education to the community about the importance of Agency and how to correctly formalize it	Land Administration and Justice Office	Woreda, Kebele Sub kebele
	The service is often not accessible to landholders (though better in Amhara and Oromia)	Lack of official representation and the transfer of land rights to the wrong holder	Establish a Mobile bench at Kebele level with social courts and house-to-house service for landholders with critical mobility constraints.	Woreda Justice Office	Kebele level
	Those who misuse their power of agency are not criminally prosecuted.	Absence of deterrent effect	Provide public awareness and education on the criminal consequence of misusing their agency power. Enforce accountability once awareness is created.	Land Administration, Justice Office	Region Woreda
11	**Tutor Appointment and Orphan Children**				
	Tutor appointment is not being conducted formally.	Informal tutors and others infringe the land rights of OC	Promote public awareness and provide public education to the community about the importance of formal tutor appointment and how it should be done properly.	Justice Office WCA, LSA	Woreda Kebele
	In Tigray land inherited by minor child stays registered in the name of the deceased	Although well-intentioned, leaving land in the name of the deceased, makes it easier for others to infringe, harder to conduct transactions, and may cause confusion or conflict between heirs who attain majority at different times.	Revise the regional law to register land inherited by Orphan Children in their own name (and name of tutor may appear on an appropriate place on the document). Promote awareness, and advocacy for, these changes, including providing draft amendments to legal instruments.	Land administration and justice	Region

No.	Identified gaps, risks, or constraints	Causes and Impacts	Suggested actions	Actors	Action Arena
	In Tigray, landholders including minors cannot move to another area for irregular education, as they will lose land	Contradicts with the very right of education for all children	Revise the regional law to allow those children to move to another area without losing their land right, as long as there are no other reasons (such as employment in the civil service or being a merchant) to take away the land from them. Promote awareness, and advocacy for, these changes, including providing draft amendments to legal instruments.	Land administration and justice offices; regional government's executive branch	Region
12	**Donation and Inheritance**				
	"Family member" in federal framework and most regions (except Oromia) excludes those children who have moved away from their families. Donation and inheritance of land use rights are restricted to "Family Members," with a negative impact on women who have moved out due to marriage. Amhara's requirement of three consecutive years' support to the deceased, prior to death, negatively affects women	This disproportionately affects women more than men, given the prevailing cultural pattern that more women move to their husband's village Women usually leave their family household as a result of marriage, as thus have reduced opportunities to support the former family household. This provision may not have intended to exclude women from inheriting land, but it does have a negative impact on the inheritance rights of women.	The federal and regional land laws should be revised such that "Family member" should not exclude completely those children who have moved out from the family residence. Awareness, and advocacy for, these changes should be promoted via policy papers and public workshops. Amhara's requirement of three years' support to the deceased, prior to death, should be re-considered.	Legislatures; Land Administration and Justice Institutions	Federal Region
13	**Cross-Cutting: Correlation between Different Laws**				
	The land administration laws are often not interpreted in conjunction with other laws (family law, civil law, civil procedure law), or with the federal land law, creating inconsistencies	Inconsistent interpretation of land law creates unpredictability and reduced land tenure security, especially for women when certain protective provisions of the family law are not applied to land rights.	References to the different laws should be made. When contradiction appears, the relative authority of the laws must be evaluated (considering factors such as: federal vs. regional, general vs. specific, law vs. regulation, date of enactment, legislative intent, statutory vs. jurisprudence). Provide training and legal education for lower level judges and prosecutors	Regional supreme court	From region to Woreda

No.	Identified gaps, risks, or constraints	Causes and Impacts	Suggested actions	Actors	Action Arena
	Courts do not give sufficient weight to the landholding certificate	Negatively affects those who are not able to defend their right by producing other evidence, disproportionately affecting women and VGs	Include a provision in the land law, such as in Amhara, that gives more weight for the landholding certificate, especially for SLLC.	Land administration and justice	Region

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Annex One: Mechanisms for Enhancing Tracking and Reporting

No.	Identified gaps, risks, or constraints	Suggested actions	Actors	Action Area	Implement ation time by quarter
1	**Matrimonial Property and Joint Titling**				
	FLLC recorded solely in the name of the husband (Tigray) or has only the photo of the husband (Oromia), when often it should have been jointly titled.	Review of rights clarification should be made in order to restitute compromised rights during LIFT SLLC. LIFT to reconsider SDO support to SLLC woredas completed without SDO. Institutionalize the SDO approach after LIFT.	Land administration institutions from federal to Kebele, and Justice Offices. Good Governance Taskforce or other Taskforce mandated to see land right claims.	Region, woreda and Kebele	
		Make the name & photo of each joint holder mandatory to appear on the land certificate in the regional land laws			
	Joint titling is not always allowed if the land clearly belonged to only one of the spouses prior to marriage, even if both spouses give consent to make it marital property (e.g. in Tigray). Oromia and SNNPR laws are not clear, while Amhara explicitly permits.	If justified by further evidence-based research, both federal and regional land laws should be amended to clarify and explicitly permit joint titling, upon the consent of the spouses, of land rights acquired by either spouse prior to marriage (except Tigray.	Appropriate federal and regional legislatures; federal and regional land administration institutions	Federal and region	
		Awareness of, and advocacy for, these changes should be promoted via policy papers and public workshops, including providing draft amendments to legal instruments.			
	Mandatory joint titling of a private holding (i.e. acquired by one spouse prior to marriage) over the objection of the land rights holder (practiced in Oromia and SNNPR). However, courts may reverse the joint titling because of the weak legal justification. Also, the practice creates undesired societal results--parents avoid donation; marriage may be sought (or avoided) as means to acquire (or retain) land rights.	If justified by further evidence-based research, create awareness among regional and woreda land administration agencies that: (a) the practice has an extremely weak (or no) legal basis; (b) is being reversed by many judges; and (c) has unintended negative impacts. Advocate to discontinue the practice based on the above reasons.	Regional and Woreda land administration officials and experts	Region	
	When spouses consent during the SLLC systematic registration to jointly title, some regions (e.g. Amhara) allow such registration, but only afterwards in a separate application and transaction. This adds a layer of bureaucratic procedures.	Revise the practice during systematic SLLC registration to allow joint tilting as part of the systematic exercise. Review any regulations or legal impediments as may be needed.	Federal and regional experts	Regional law	
	Disagreement among land administration officials within the same region, or even within the same office, about how to title a private holding acquired by a spouse before marriage (and thus what constitutes marital property in context of land)	Further discussion is needed to reach agreement, with potential amendment of legal instruments as noted earlier.	Land administration, justice, and court	Regional and Woreda level	
	Persistent cultural bias that women should not hold land rights	Implementation of LIFT Audience Segmented Message for any land related public awareness activity and reinforce the message of equal land rights for women and men.	WLAO, SDO & other Legal Literacy Actors	Woreda and Kebele levels	
2	**Period of Limitation**				

No.	Identified gaps, risks, or constraints	Suggested actions	Actors	Action Area	Implement ation time by quarter
	Women and VGs are at risk of losing their land rights when land encroachers raise POL as a defence	Conduct federal and /or regional level series of dialogue between Judges, Prosecutors and Land Administration officials of the different regions to reach a consensus.	Land administration institutions together with justice institutions	Federal and Region	
		Regions to disseminate agreed upon approaches and solutions to their respective and relevant offices.			
	Insufficient awareness on POL and its consequences by landholders at the community level (and thus lack of documentation in cases of informal rentals)	More Public Awareness on POL and formalization of transactions, including rental contracts	Land Administration, Justice WCA, LSA	Region, Woreda, Kebele, Community	
		Legal Advice and service to those already affected.			
		Women and Children Affairs and Labour and Social Affairs to have Legal Experts to provide expertise advise			
	Application of POL for minor children	Clarify the law that the POL will run against children only after they attain the majority age of 18;	Land Administration, Justice WCA, LSA	Federal, Region, Woreda, Kebele	
		Public Awareness			
3	**Forgery and Perjury of Evidences**				
	Laws related to forgery and perjury of evidences are not enforced properly	Awareness on the criminal aspect of the act. Pro-active prosecution of criminal provisions on perjury and forgery	Justice, Police, Court and land administration	Federal, regional, Woreda, kebele	
	Lower level institutions are very weak and can be more susceptible to corruption.	LAC should not be allowed to execute very high-level land administration functions (like issuing landholding certificate, re-distribution and the like). Promote women LAC members to the Chairperson position (number of women members alone is not making a difference).	Land administration institutions and justice	Federal and Regional Level laws	
	Forgery exists during land registration	More PAC before SLLC or any land registration initiative especially for women and VGs to help them not to lose their land right as a result of forgery done during FLLC. Improve the efficiency and transparency of the digital land information system	Land administration PAC	Region, woreda and Kebele	
4	**Illegal Loans and Mortgages**				
	Informal loans using land as collateral, which illegally results in borrowers permanently surrendering land rights when there are payment defaults.	Regulation of the loan market and broadening the opportunities for access to credit, based on land right collateralization in an open fashion where the land right can be lost only temporarily upon default. The Amhara proclamation can be replicated as a best practice.	Federal and Regional Land administration institutions together with Justice	Federal and Region	
5	**Review of Judgment**				

No.	Identified gaps, risks, or constraints	Suggested actions	Actors	Action Area	Implement ation time by quarter
	Women and VGs are often not aware about review of judgment, and thus fail to take advantage of this comparatively less expensive and easier procedure (versus a direct appeal)	Awareness; support; legal representation; rollout the practice of Good Governance Taskforce experience of better performing woredas from Amhara region.	Land Administration and Justice	Kebele and Sub-Kebele level (during SLLC adjudication)	
	Cassation Bench decisions which allow the Review of Judgment procedure are not fully known by judges, prosecutors and other experts	Legal training on the Federal Cassation Bench decisions related to Review of Judgment.	Federal and regional Supreme Courts	Federal, region and Woreda	
		Facilitate access to cassation bench decisions for judges, prosecutors land administration offices, and land rights holders			
6	**Enforcement of Criminal Law Provisions**				
	Land right violations are often not diligently or vigorously prosecuted.	Awareness to the general public on the criminal consequences. Strict application of criminal provisions. Increased oversight and close monitoring & evaluation.	Justice institutions (justice, police and court)	From Federal down to Woreda level	
7	**Mediation**				
	Mediation is not clearly and uniformly applied per the law and in practice (often the practice and legal framework confuses mediation with arbitration, inappropriately giving decision-making powers to mediators, turning them into arbiters).	Mediation should be made optional, where mediators are chosen by the parties and the legal framework is clear that the role of the mediators does not involve imposing decisions.	Land Administration Entities; Courts	Region; Woreda; Potential Mediators	
		For Oromia and SNNPR, the legal regime should be clarified to avoid confusion with arbitration.	Regional Land Administration and Justice Bureau	Region	
		For all regions, train community level mediators in the law and its protections against gender discrimination.	Land Administration & Justice Bureau	Region; Woreda	
		For all regions, promote involvement of the Women Affairs and Justice Offices in capacity-building of mediators, and institutionalization of mechanisms for support, supervision and accountability of the mediation process.	Women Affairs and Justice	Region; Mediators	
		Promote awareness of, and advocacy for, these changes, including providing draft amendments to legal instruments.			
8	**Execution of Court Judgments**				
	Execution of court decisions is very difficult for women and VGs after getting court decisions	Provide increased legal services and support for women	Land Administration, Court and Justice	Region, Woreda	
		Promote pro-active court enforcement without waiting for the justice office to bring criminal actions	WCA and LSA for the representation		
		Increased oversight from the regional level Justice Office over the woreda Justice Office			
9	**Naming Convention for Married Women**				

No.	Identified gaps, risks, or constraints	Suggested actions	Actors	Action Area	Implement ation time by quarter
	Married women, in some areas of Oromia and SNNPR, use their husband's name as their second name (surname), instead of their father's name	Amend relevant legal instruments to require women, whether married or not, to use their father's name in official documents (though married woman would still be able to use their husband's name as their second name in social settings); give training for the land administration agencies and systematic land tenure registration teams to register land with the maiden name for all women.	Regional legislatures (to amend relevant laws); Land Administration Directorate with its regional counter parts.	Region	
		Promote awareness of, and advocacy for, these changes, including providing draft amendments to legal instruments.		Woreda	
	During dispute women need to prove their natural father's name	Judges and prosecutors in such woredas should be given provided training on the different naming traditions and the challenges women face so that they will take additional steps to ascertain the truth	Land Administration, Justice and courts	From region to Woreda	
10	**Agency (Representation and Power of attorney)**				
	Agency is not being conducted formally.	Provide public awareness and education to the community about the importance of Agency and how to correctly formalize it	Land Administration and Justice Office	Woreda, Kebele, Sub-kebele	
	The service is often not accessible to landholders (though better in Amhara and Oromia)	Establish a Mobile bench at Kebele level with social courts and house-to-house service for landholders with critical mobility constraints.	Woreda Justice office	Kebele level	
	Those who misuse their power of Agency are not criminally prosecuted, most of the time.	Provide public awareness and education on the criminal consequence of misusing their Agency power. Enforce accountability once awareness is created.	Land Administration, justice	Region Woreda	
11	**Tutor Appointment and Orphan Children**				
	Tutor appointment is not being conducted formally.	Promote public awareness and provide public education to the community about the importance of formal tutor appointment and how it should be done properly.	Justice Office, WCA, LSA	Woreda, Kebele	
	In Tigray land inherited by minor child stays registered in the name of the deceased	Revise the regional law to register land inherited by Orphan Children in their own name (and name of tutor may appear on an appropriate place on the document).	Land administration and justice	Region	
		Promote awareness, and advocacy for, these changes, including providing draft amendments to legal instruments.			
	In Tigray, landholders including minors cannot move to another area for irregular education, which otherwise they will lose land	Revise the regional law to allow those children to move to another area without losing their land right.	Land administration and justice offices; regional government's executive branch	Region	
		Promote awareness, and advocacy for, these changes, including providing draft amendments to legal instruments.			
12	**Donation and Inheritance**				

No.	Identified gaps, risks, or constraints	Suggested actions	Actors	Action Area	Implement ation time by quarter
	"Family member" in federal framework and most regions (except Oromia) excludes completely those children who have moved away from their families. Donation and inheritance of land use rights are restricted to "Family Members," with a negative impact on women who have moved out due to marriage. Amhara requirement of three consecutive years support to the deceased prior to death (for inheritance rights) negatively affects women, because women usually leave their family household as a result of marriage, with less opportunity to support their prior family household	The federal and regional land laws should be revised such that "Family member" should not exclude completely those children who have moved out from the family residence. The three years' support requirement should be reconsidered.	Legislatures; Land Administration and Justice Institutions Legislatures; Land Administration and Justice Institutions	Federal Region	
		Awareness, and advocacy for, these changes should be promoted via policy papers and public workshops.			
13	**Cross-Cutting: Correlation between Different Laws**				
	The land administration laws are often not interpreted in conjunction with other laws (family law, civil law, civil procedure law), or with the federal land law, creating inconsistencies	References to the different laws should be made. When contradiction appears, the relative authority of the laws must be evaluated (taking into account factors such as: federal vs. regional, general vs. specific, law vs. regulation, date of enactment, legislative intent, statutory vs. jurisprudence).	Regional supreme court	From region to Woreda	
		Provide training and legal education for lower level judges and prosecutors			
	Courts do not give sufficient weight to the landholding certificate	Include a provision in the land law, such as in Amhara, that gives more weight for the landholding certificate, especially for SLLC.	Land administration and justice	Region	

Annex Two: Semi-Structured Interview with Woreda Land Administration Office

1. **General**
   - Do you think there are vulnerable groups in securing their land rights?
   - What groups, in your opinion, should be considered vulnerable in the context of land rights?
   - Do you give support for women and VGs during land rights registration and litigation? If yes, what kind of legal support do you give? If no, why not?
2. **Period of Limitation (POL)**
   - What does the regional land law say about period of limitation with regard to land use right?
   - Is implementation of POL according to the law or there are some adjustments?
   - If there is some form of deviation/adjustment from the law,
     a) What are the deviations?
     b) What are the reasons?
   - Have you faced any difference of understanding between your bureau/office and how the court decided on Period of Limitation?
   - Have you faced any difference of understanding and translation among judges and prosecutors on POL?
   - If there is difference, what could possibly explain the deviation?
   - How does these differences of understanding and translation affect women ad VGs?
   - Is there any legal lacuna as far as period of limitation is concerned in relation land right security?
   - How does that affect women and VGs?
   - What can be done for those who lost land use right due to wrong interpretation of the POL (be it on purpose or due to misunderstanding)?
   - What is your suggestion on period of limitation in land use right:
     a) in general
     b) To woman and VGs in particular?
3. **Perjury and forgery of evidence**
   - What do the regional land law says about perjury and forgery of evidences with regard to land use right?
   - What is the experience in your region/woredas on perjury and forgery of evidences?
   - If there is perjury and forgery of evidences, what are the kind of perjury and forgery?
   - Who is behind these perjury and forgery?
   - What is the cause? What is the impact of the perjury and forgery of evidences?
   - Do you know someone who lost his or her court case due to these problems?
   - Are women and VGs lose their land use right due to perjury and forgery of evidences?
   - What has happened to those who produced perjury and forgery of evidences?
   - What does the slaw say on such offenses?
   - Has the law been applied? If not, why not?
   - What mechanisms are there to help landholders restore their land use right lost due to perjury and forgery of evidences?
   - What support can be made by who for women and VGs to restore their land use right lost due to perjury and forgery of evidences?
   - Do you have any experience of helping women and VGs to restore lost rights? If yes, what lesson can be leant for other woredas/regions?
   - What do you recommend preventing perjury and forgery of evidences in the future?
4. **Failure to repay loan**
   - Is there an experience of taking over land for unpaid loan?
   - What does the law say in taking over of land for execution of debt (unpaid loan)?
   - What has happened on those who go against the law?
   - What protection your office provided for those who lost their land for their inability to pay back their loan?
   - **If any experience, what lesson can be learnt for other woredas/regions?**
5. **Review of Judgment**
   - Do you know about a review of judgment?
   - Do you believe there is a significant of first level judgments that are incorrectly decided? If so, why – incorrect knowledge of the law, bias against the parties, other reasons?
   - What are the requirements for review of judgment?
   - Do you know the decisions of the Federal Supreme Court Cassation bench on review of judgment? Are they accessible for you?

- Do you see any gap on the legal provisions of review of judgment?
- Do you see any gap in implementing the legal provisions of review of judgment?
- What is your recommendation for such legal and execution gaps?

6. **Enforcement of the criminal law provisions/ Accountability of wrong doers**
   - What provisions exist in the Criminal Code in relation to land use right violations:
     a) In general
     b) For women and VGs?
   - What looks like the enforcement of these provisions as far as land rights infringement is concerned? Are these provisions enforced properly?
   - If no, what prevents from applying articles from the criminal code to criminalize land right violators?
   - Who must be blamed for the non-enforcement of these provisions?
   - What about the civil liability? Would civil damages be an effective deterrent, and would it be enforced any easier?
   - What is your suggestion to fully implement it to deter the actual and potential; wrong doers?
7. **Court Procedures**
   - Are arbitration and/or mediation mandatory or optional to take land right infringement cases to the court of law?
   - Which one is better to best protect the rights of women and VGs?
   - What, in your opinion, is the greatest obstacle to women/VG with regard to court procedures: for example, evidence production is very difficult? Burden to prove is very hard? Lack of accessible legal aid/counsel?
   - Are women and VGs well informed of dispute resolution process so that they will not lose procedures?
   - How do they be protected from misinformation and misleading with the intention of losing their case?
   - What does the law say on such intentions of misleading disputants knowing their position (e.g. low access to information)?
   - Is the law applied? If not, why not?
8. **Execution of Decisions**
   - Who is accountable for execution of decisions given by courts and other appropriate bodies?
   - Are decisions rendered executed properly and timely without delay?
   - If delays happen or execution is not done, at what level is it common?
   - Who are responsible for delayed or absence of execution?
   - Do you believe that women/VGs specifically are getting speedy execution of their cases? If no, why not?
   - What does the law say on those who delay execution on purpose (abuse of power)?
   - Does the law being applied? If not, why not? If yes, the lessons.
   - Do you know any dead case (a case with a final sentence), but not executed?
9. **Correlation between Laws**
   - Are there inconsistencies between Land Laws on the one hand and Family Law and Civil Code provisions, on the other hand, with respect to land inheritance, transferability, and marital property?
   - Do judges apply both laws case by case basis?
   - Which laws are beneficial for women?
   - If inconsistency, what are these inconsistencies? Why is the inconsistency happen?
   - What is your suggestion to overcome the inconsistencies existing between such laws?
   - How do you exactly register women married after land registration/allocation if the husband refuses to register on the basis of the Civil Code Procedure?
   - How do you register polygamous wives and how does that contradict or align with family law of the region?
10. **Naming of women**
    - What is the practice of women taking their husbands name in your woreda/region?
    - What does the law say about naming?
    - Did you register as per the law or the practice?
    - How does that affect women land right security in the future?
    - Is it the law or the practice beneficial for women? How?
    - Should we abide by the law or the practice?
    - What is the consequence of violating the law in terms of women's registration name?
    - If the law should be adhered and you registered according to the practice, how can you make the correction/updating of women's name?

- What is your recommendation to close the gap which exists between the law and the practice with regard to naming of women?

11. Representation (Power of Attorney)

- Who is the authority in your woreda/region to give official representation/delegation on land related matters?
- Where is the service provided? woreda or kebele level? If woreda level service is provided, how could the elderly and person with disability can access the service?
- Weaker landholders opt for informal representation due to distance or low awareness. Do you register/update land of such landholders via informal representatives?
- If no, what would happen to VGs representatives who have no official document showing their being representative?
- If yes (register without official document), what mechanism do you follow to protect land right security of VG with no officially representatives?
- What is your experience of representatives respecting their trust in such informality? Any experience of violating trust and your response- Lesson?
- What does the law say on those who violated trust of their informal representation?
- Has the law been applied? If not, why not?
- What do you recommend avoiding problems of violating trust Vis a Vis accessing the service?

12. Guardian Appointment

- Is formal guardian appointment practiced to acceptable level in your woreda/region? If not why not? (Reasons include - awareness, distance of service, intention of guardians etc.)
- What mechanism do you follow to protect land right security of orphan children when there is no officially appointed guardian?
- What is the extent of land taking over of orphan children by guardians due to informal guardianship arrangement?
- What does the law say on those failing their guardianship role in protecting Orphan Children land right?
- How does this (guardian grabbing of land) monitored, and orphan children land right be protected by the law?
- Who is mostly likely to try to infringe an orphan's rights, and who is most likely among extended family members, or among the community leaders, to help protect those rights?

13. Conclusion

- What are the most common challenges that you have observed in relation to women/ VGs land entitlement cases, particularly during court hearings?
- What do you recommend minimizing these challenges in the future?

Annex Three: Semi-Structured Interview for Judges

1. **General**
   - Do you think there are vulnerable groups in securing their land rights?
   - What groups, in your opinion, should be considered vulnerable in the context of land rights?
   - Do you give or help obtain support for women and VGs during litigation? If yes, what kind of legal support do you give? If no, why not?

2. **Period of Limitation (POL)**

   - What does the regional land law say about period of limitation with regard to land use right?
   - Is POL implementation according to the law or there are some adjustments?
   - What decisions do you give on period of limitation as far as land holding right is concerned?
   - If there is some form of deviation/adjustment from the law,

   a) What are the deviations?
   b) What are the reasons?

   - Have you faced any difference of understanding between you and your colleagues on Period of Limitation?
   - Have you faced any difference of understanding and translation among judges and prosecutors on POL?
   - If there is difference, what could possibly explain the deviation?
   - How does these differences of understanding and translation affect women ad VGs?
   - Do women and VGs often lose their land use right because of Period of Limitation?
   - Is there any legal lacuna as far as period of limitation is concerned in relation to the land use right of women and VGs?
   - How does that affect women and VGs?
   - What can be done for those who lost land use right due to wrong interpretation of the POL (be it on purpose or due to misunderstanding)?
   - What is your suggestion on period of limitation in land use right

   a) in general
   b) To woman and VGs in particular?

3. **Perjury and forgery of evidence**

   - What do the regional land law says about perjury and forgery of evidences with regard to land use right?
   - What is the experience in your region/woredas on perjury and forgery of evidences?
   - If there is perjury and forgery of evidences, what are the kind of perjury and forgery?
   - Who is behind these perjury and forgery?
   - What is the cause? What is the impact of the perjury and forgery of evidences?
   - Do you know someone who lost their court case due to these problems?
   - Are women and VGs lose their land use right due to perjury and forgery of evidences?
   - What has happened to those who produced perjury and forgery of evidences?
   - What does the law say on such offenses?
   - Has the law been applied? What decisions you give practically to this regard? If not, why not?
   - What mechanisms are there to help landholders restore their land use right lost due to perjury and forgery of evidences?
   - What support can be made by who for women and VGs to restore their land use right lost due to perjury and forgery of evidences?
   - Do you have any experience of helping women and VGs to restore lost rights? If yes, what lesson can be leant for other woredas/regions?
   - What do you recommend preventing perjury and forgery of evidences in the future?
   - What mechanisms do you follow to identify perjury and forgery of evidences?
   - Do you face a case whereby forceful annexation of a land which belongs to women or VGs after renting in or being a neighbouring holder?

4. **Failure to repay loan**

   - Do you face a case whereby taking over land for unpaid loan?
   - What does the law say in taking over of land as guarantee for unpaid loan?
   - What has happened on those who go against the law?
   - What protection do the court has for those who lost their land for their inability to pay back their loan?

- If any experience, what lesson can be learnt for other woredas/regions?
- What are the safeguards to regain their land rights after defaulting on a loan?

5. Review of Judgment

- Do you know about review of judgment?
- Do you believe there is a significant of first level judgments that are incorrectly decided? If so, why – incorrect knowledge of the law, bias against the parties, other reasons?
- What are the requirements for review of judgment? What are the decisions given by the federal Supreme Court cassation bench on this point?
- Do you apply review of judgment? Can you tell us the facts especially if related with women and VGs?
- Do you see any gap on the legal provisions of review of judgment? If yes, what are they?
- Do you see any gap in implementing the legal provisions of review of judgment? If yes, please state them?
- What is your recommendation for such legal and execution gaps?

6. Enforcement of the criminal law provisions/ Accountability of wrong doers

- What provisions exist in the Criminal Code in relation to land use right violations

a) In general
b) For women and VGs?

- What looks like the enforcement of these provisions as far as land rights infringement is concerned? Are these provisions enforced properly?
- Have you handled any criminal cases for land right infringement?
- If no, what prevents from applying articles from the criminal code to criminalize land right violators?
- Who must to be blamed for the non-enforcement of these provisions?
- What is your suggestion to fully implement it to deter the actual and potential; wrong doers?

7. Court Procedures

- Are arbitration and/or mediation mandatory or optional to take land right infringement cases to the court of law?
- Which one is better to best protect the rights of women and VGs?
- What, in your opinion, is the greatest obstacle to women/VG with regard to court procedures: for example, is the burden to proof very difficult? Is the lack of accessible legal aid/counsel? Information gap? Financial problem? Or list out if others?
- Are women and VGs well informed of dispute resolution process so that they will not lose procedures?
- How do they be protected from misinformation and misleading with the intention of losing their case?
- What does the law say on such intentions of misleading disputants knowing their position (e.g. low access to information)?
- Is the law applied? If not, why not?
- Are women and VGs able to present/produce evidences and persuade? If no, what are you doing to assist them?
- Do you have mobile benches (Circuit Benches) for land related cases? If yes, do the existence of this bench benefit women and VGs? If so, are their schedules adequately publicized?

8. Execution of Decisions

- Who is accountable for execution of decisions given by courts and other appropriate bodies?
- Are decisions rendered executed properly and timely without delay?
- If delays happen or execution is not done, at what level is it common?
- Who are responsible for delayed or absence of execution?
- If so, what are the reasons for such delays: lack of resources? Lack of capacity? Lack of procedural clarity? Just no desire to execute? Corruption?
- If no, who should be accountable for such delayed and improper execution of decision?
- Do you believe that women/VGs specifically are getting speedy execution of their cases? If no, why not? Is there any prejudice against women/VG in getting their sentences executed? Does execution require any resources on the part of the plaintiff?
- What does the law say on those who delay execution on purpose (abuse of power)?

- Does the law being applied? If not, why not? If yes, the lessons. Do you give sentence on those who delayed execution?
- Do you know any dead case (a case with a final sentence) but not executed?

9. Correlation between Laws

- Are there inconsistencies between Land Laws on the one hand and Family Law and Civil Code provisions, on the other hand, with respect to land inheritance, transferability, and marital property?
- Do you apply both laws case by case basis? Which laws are beneficial for women?
- If inconsistency, what are these inconsistencies? Why is the inconsistency happen?
- What is your suggestion to overcome the inconsistencies existing between such laws?
- How do you handle cases where suit is lodged by women who married after land registration/allocation if the husband refuses to share the land?
- How do you handle land related cases of polygamous wives and how does that contradict or align with family law of the region?

10. Naming of women

- What is the practice of naming found in your area?
- What do the law say about naming?
- Do you apply the law or the practice?
- How does that affect women land right security in the future?
- Is it the law or the practice which is beneficial for women? How?
- Should we abide by the law or the practice?
- What is the consequence of violating the law in terms of women's registration name?
- What is your recommendation to close the gap which exists between the law and the practice with regard to naming of women?

11. Representation (Power of Attorney)

- Who is the authority in your woreda/region to register and authenticate official representation/delegation on land related matters?
- Where the service is provided, woreda or kebele level?
- If woreda level service is provided, how could the elderly and person with disability can access the service?
- Weaker landholders opt for informal representation due to distance or low awareness, what could possibly face them?
- Do you give decisions of such landholders via informal representatives?
- If no, what would happen to VGs representatives who have no official document showing their being representative?
- If yes, what mechanism do you follow to protect land right security of VG with no legal representatives?
- What is your experience of representatives respecting their trust in such informality? Any experience of violating trust and your response- Lesson?
- What does the law say on those who violated trust of their informal representation?
- Has the law been applied? Do you give decision on them practically? If not, why not?

12. Guardian Appointment

- Is formal guardian appointment practiced to acceptable level in your woreda/region? If not, why not? (Reasons include - awareness, distance of service, intention of guardians etc.)
- Do you give decision practically on the appointment of guardian for orphan children?
- Do you have any mechanism that you follow when there is no officially appointed guardian for orphan children?
- What is the extent of land taking over of orphan children by guardians due to informal guardianship arrangement?
- What does the law say on those failing their guardianship role in protecting Orphan Children land right?
- How does this (guardian grabbing of land) monitored, and orphan children land right be protected by the law?
- Who is mostly likely to try to infringe an orphan's rights, and who is most likely among extended family members, or among the community leaders, to help protect those rights?

- Do the service of Guardian Appointment for Orphan Children accessible? Does it have sufficient resources? How can the service be improved?
- What is your role when there is no officially appointed guardian for orphan children?

13. Conclusion

- What are the most common challenges that you have observed in relation to women/ VGs land entitlement cases, particularly during court hearings?
- What do you recommend minimizing these challenges in the future?

Annex Four: Semi Structured Interview for Justice Office

1. **General**

- Do you think there are vulnerable groups in securing their land rights?
- What groups, in your opinion, should be considered vulnerable in the context of land rights?
- Do you give support for women and VGs during litigation? If yes, what kind of legal support do you give? If no, why not?
- Whom do you represent in court litigations?

2. **Period of Limitation (POL)**

- What does the regional land law say bout period of limitation with regard to land use right?
- Is implementation of POL according to the law or there are some adjustments?
- If there is some form of deviation/adjustment from the law,
    1. What are the deviations?
    2. What are the reasons?
- Have you faced any difference of understanding among judges and prosecutors on POL?
- If there is difference, what could possibly explain the deviation?
- How does these differences of understanding and translation affect women ad VGs?
- Is there any legal lacuna as far as period of limitation is concerned in relation land right security?
- How does that affect women and VGs?
- What can be done for those who lost land use right due to wrong interpretation of the POL (be it on purpose or due to misunderstanding)?
- What is your suggestion on period of limitation in land use right:
    1. In general
    2. To woman and VGs in particular?

3. **Perjury and forgery of evidence**

- What do the regional land law says about perjury and forgery of evidences with regard to land use right?
- What is the experience in your region/woredas on perjury and forgery of evidences?
- If there is perjury and forgery of evidences, what are the kind of perjury and forgery?
- Who is behind these perjury and forgery?
- What is the cause? What is the impact of the perjury and forgery of evidences?
- Do you know someone who lost their court case due to these problems?
- Are women and VGs lose their land use right due to perjury and forgery of evidences?
- What has happened to those who produced perjury and forgery of evidences?
- What does the law say on such offenses?
- Has the law been applied? If not, why not?
- What mechanisms are there to help landholders restore their land use right lost due to perjury and forgery of evidences?
- What support can be made by whom for women and VGs to restore their land use right lost due to perjury and forgery of evidences?
- Do you have any experience of helping women and VGs to restore lost rights? If yes, what lesson can be leant for other woredas/regions?
- What do you recommend preventing perjury and forgery of evidences in the future?5-

4. **Failure to repay loan**

- Is there an experience of taking over land for unpaid loan?
- What does the law say in taking over of land for the execution of debt for unpaid loan?
- What has happened on those who go against the law?
- What protection your office provided for those who lost their land for their inability to pay back their loan?
- If any experience, what lesson can be learnt for other woredas/regions?

5. **Review of Judgment**

- Do you know about review of judgment?

- Do you believe there is a significant of first level judgments that are incorrectly decided? If so, why – incorrect knowledge of the law, bias against the parties, improper influences by one of the parties, other reasons?
- What are the requirements for review of judgment?
- What are the decisions given by the federal Supreme Court cassation bench on this point?
- Do you state in your pleadings points of review of judgment?
- Can you tell us the facts especially if related with women and VGs?
- Do you see any gap on the legal provisions of review of judgment? If yes, what are they?
- Do you see any gap in implementing the legal provisions of review of judgment? If yes, please state them?

6. Enforcement of the criminal law provisions/ Accountability of wrong doers

- What provisions exist in the Criminal Code in relation to land use right violations
    a) In general
    b) For women and VGs?
- What looks like the enforcement of these provisions as far as land rights infringement is concerned? Are these provisions enforced property?
- If no, what prevents you from applying articles from the criminal code to criminalize land right violators?
- Who must to be blamed for the non-enforcement of these provisions?
- What is your suggestion to fully implement it to deter the actual and potential; wrong doers?
- What about the civil liability? Would civil damages be an effective deterrent, and would it be enforced any easier?
- What is your suggestion to fully implement it so as to deter the actual and potential; wrong doers?

7. Court Procedures

- Are arbitration and/or mediation mandatory or optional to take land right infringement cases to the court of law?
- Which one is better to best protect the rights of women and VGs?
- What, in your opinion, is the greatest obstacle to women/VG with regard to court procedures: for example, difficult to present evidences? Difficult to prove? Lack of accessible legal aid/counsel? Others?
- Are women and VGs well informed of dispute resolution process so that they will not lose procedures?
- How do they be protected from misinformation and misleading with the intention of losing their case?
- What does the law say on such intentions of misleading disputants knowing their position (e.g. low access to information)?
- Is the law applied? If not, why not?
- What is your institution's role to this regard?

8. Execution of Decisions

- Who is accountable for execution of decisions given by courts and other appropriate bodies?
- Are decisions rendered executed properly and timely without delay?
- If delays happen or execution is not done at all, at what level is it common?
- Who are responsible for delayed or absence of execution?
- Do you believe that women/VGs specifically are getting speedy execution of their cases? If no, why not?
- What does the law say on those who delay execution on purpose (abuse of power)?
- Does the law being applied? If not, why not? If yes, the lessons.
- Do you know any dead case (a case with a final sentence), but not executed?

9. Correlation between Laws

- Are there inconsistencies between Land Laws on the one hand and Family Law and Civil Code provisions, on the other hand, with respect to land inheritance, transferability, and marital property?
- Do you use all those laws in your pleadings? Do judges apply both laws case by case basis?
- Which laws are beneficial for women?
- If inconsistency, what are these inconsistencies? Why is the inconsistency happen?
- What is your suggestion to overcome the inconsistencies existing between such laws?

10. **Naming of women**

- What is the practice of women taking their husbands name in your woreda/region?
- What does the law say about naming?
- Do you implement cases of naming as per the law or the practice?
- How does that affect women land right security in the future?
- Is it the law or the practice beneficial for women? How?
- Should we abide by the law or the practice?
- What is the consequence of violating the law in terms of women's registration name?
- What is your recommendation to close the gap which exists between the law and the practice with regard to naming of women?

11. **Representation (Power of Attorney)**

- Who is the authority in your woreda/region to authenticate and register official representation/delegation on land related matters?
- Where is the service provided? woreda or kebele level?
- If woreda level service is provided, how could the elderly and person with disability can access the service?
- Weaker landholders opt for informal representation due to distance or low awareness, what can you do?
- What would happen to VGs representatives who have no official document showing their being representative?
- What mechanism do you follow to protect land right security of VG with no officially representatives?
- What does the law say on those who violated trust of their informal representation? What do you recommend avoiding problems of violating trust vis a vis accessing the service?
- Has the law been applied? If not, why not?
- What legal and practical gaps exist women and VGs give power of attorney?
- What are your suggestions to overcome these gaps?

12. **Guardian Appointment**

- Is formal guardian appointment practiced to acceptable level in your woreda/region? If not, why not? (Reasons include - awareness, distance of service, intention of guardians etc.)
- Do you take cases practically to the court of law for the appointment of guardian for orphan children? Can you initiate cases of such type by your own?
- Do you have any mechanism that you follow to protect land right security of orphan children when there is no officially appointed guardian for orphan children?
- What is the extent of land taking over of orphan children by guardians due to informal guardianship arrangement?
- What is the extent of land taking over of orphan children because of the absence of formally appointed guardians?
- What does the law say on those failing their guardianship role in protecting Orphan Children land right?
- How does this (guardian grabbing of land) monitored, and orphan children land right be protected by the law?
- Who is mostly likely to try to infringe an orphan's rights, and who is most likely among extended family members, or among the community leaders, to help protect those rights?
- Do the service of Guardian Appointment for Orphan Children accessible? Does it have sufficient resources? How can the service be improved?
- What is your role when there is no officially appointed guardian for orphan children?

13. **Conclusion**

- What are the most common challenges that you have observed in relation to women/ VGs land entitlement?
- What do you recommend minimizing these challenges in the future?

Annex Five: Semi-Structured Interview for CSO/NGO/EWLA

1. **General**
   - Do you think there are vulnerable groups in securing their land rights?
   - What groups, in your opinion, should be considered vulnerable in the context of land rights?
   - Do women/ VGs who face land right violation and violence come to your office for support/ protection? If yes, where did they get the information about your service?
   - Do you give support for women and VGs during litigation? If yes, what kind of legal support do you give? If no, why? What kind of protection or advice do you provide them?
   - What is the main obstacle for women/VG to successfully pursue their claims?
   - In what areas are you working for the land right protection of VGs and women?
2. **Period of Limitation (POL)**
   - Do have cases where by women and VGs lose their land use right because of POL?
   - Do you know any legal lacuna as far as POL is concerned in relation to the land use right of women and VGs? Your suggestion on this point.
3. **Failure to repay loan**
   - Is there an experience of taking over of land for unpaid loan? If any experience?
4. **Review of Judgment**
   - Do you know about review of judgment? What are the requirements for review of judgment?
   - Do you apply review of judgment in any case while performing your duties and responsibilities?
   - Do you see any gap on the legal provisions of review of judgment?
   - Do you see any gap in implementing the legal provisions of review of judgment?
   - What is your recommendation for such legal and execution gaps?
5. **Enforcement of the criminal law provisions/ Accountability of wrong doers**
   - What looks like the enforcement of criminal provisions as far as land rights infringement is concerned? Are these provisions enforced properly?
6. **Execution of Decisions**
   - Are decisions rendered by courts and other appropriate bodies executed properly and timely without delay?
   - If no, who should be accountable for such delayed and improper execution of decisions? Do you have experiences on this issue?
7. **Correlation between Laws**
   - Are there inconsistencies between Land Laws on the one hand and Family Law and Civil Code provisions, on the other hand, with respect to land inheritance, transferability, and marital property?
   - Do judges apply both laws case by case basis?
   - Which laws are beneficial for women?
   - What is your suggestion to overcome the inconsistencies existing between such laws?
8. **Representation (Power of Attorney)**
   - Do you have experiences on issues of power of attorney/representation? If yes, what are the issues affecting the land use right of women and VGs?
9. **Guardian Appointment**
   - Do you have experiences on guardian appointment? If yes, what are the issues affecting the land use right of Orphan children?
10. **Conclusion**
    - What are the most common challenges that you have observed in relation to women/ VGs land entitlement?
    - What do you recommend minimizing these challenges in the future?