

What barriers do orphan children face to registering their land rights, and how might these be overcome?

Understanding why orphan children fail to register land inherited from their deceased parents is essential to ensuring their rights are protected during the second-level land certification process. This study sets out to identify the challenges facing orphan children in securing their land rights and to propose strategies for overcoming them.

Background

In Ethiopia, orphan children in rural areas are entitled to inherit land from their deceased parents through their legally appointed guardians. The second level land certification (SLLC) process being implemented by the Land Investment for Transformation (LIFT) programme also explicitly recognises the rights of orphan children. If orphan children are not to be deprived of their land rights and the sustainable advantages associated with land ownership, it is essential to identify what barriers they face to securing and benefiting from these rights.

Moreover, to ensure that the rights of orphans are protected during land registration, the SLLC process must be supported by clear guidance that all stakeholders – local administrators, programme staff, guardians and orphans themselves – are familiar with and understand. With rural land laws varying in different regions of Ethiopia, regional guidance, as opposed to programme-level guidance, could facilitate a registration process that is more responsive to the needs of orphan children.

Methodology

A mixed-methods approach was taken to study eight woredas in four regions of Ethiopia (Oromia, Amhara, Southern Nations, Nationalities, and Peoples' Region [SNNPR] and Tigray). A desk-based review of laws relating to rural land inheritance rights of children was complemented by quantitative data collected via a household-level questionnaire survey covering 296



orphans and 291 guardians. Qualitative information was gathered through in-depth interviews with orphans, guardians and key stakeholders, focus group discussions with representatives of community-level actors, such as the local administration, and case studies.

Research findings

Some orphans are more vulnerable than others

All orphans, whether single (one parent deceased) or double (both parents deceased) face challenges to securing their inherited land. These include lack of awareness among orphans, complexity in guardian's formal appointment and enforcement of their responsibilities, intra-household dynamics, administrators failing to appreciate orphans' land use rights, and regional variations on children's inheritance rights. Lack of awareness of their rights and of the SLLC process was a particularly significant barrier highlighted by the study, and younger orphans were less aware than older orphans (67% of single orphans aged between 10 and 13 years were unaware of the land registration process, compared with 51% of those aged between 14 and 17 years). Some orphans lacked the documentation required to prove parental ownership of land, or were unaware of the size or boundaries of their holding.

Most single orphans (85%) remain with their surviving parent, but only 14% of orphan children reported that their surviving parent had allocated their deceased parent's share of jointly held land to them and registered it accordingly. Some parents attempt to register new spouses and new children as having a right to the land. Maternal orphans are affected more than paternal orphans, as men tend to remarry more often than women – 51% of the surviving fathers had remarried compared with 11% of the surviving mothers. Paternal orphans are vulnerable to violation of their land rights too. Women hold less power in communities, meaning that mothers are more vulnerable when asserting their children's

land rights. Guardian participation in public awareness events was low and thus they were not able to prepare in advance the required documents. Guardians and/or orphans were also less likely to be present during key stages of the land certification process.

Single orphans may be reluctant to pursue their right to land because they think it is disrespectful to their surviving parent.

“Single orphans think demanding a share of their deceased parent's land through the courts is perceived as disrespecting the surviving parent.”

Double orphans face other challenges:

- Double orphans may be taken in by relatives away from their kebele, or migrate to urban areas. Either way, they may miss out on the SLLC process.
- Legal nomination of a guardian is rare for double orphans; instead, families decide who becomes the child's guardian.
- Double orphans must have a court declaration of inheritance rights; this requires an orphan to have a formal guardian.
- The inheritance rights of double orphans may be disputed by older siblings who are more aware of their rights, or by relatives who try to take control of the land.

Guardians' attitudes can be equivocal

Formal guardianship is not common practice in LIFT project areas. Guardians of single orphans rarely apply for formal guardianship.

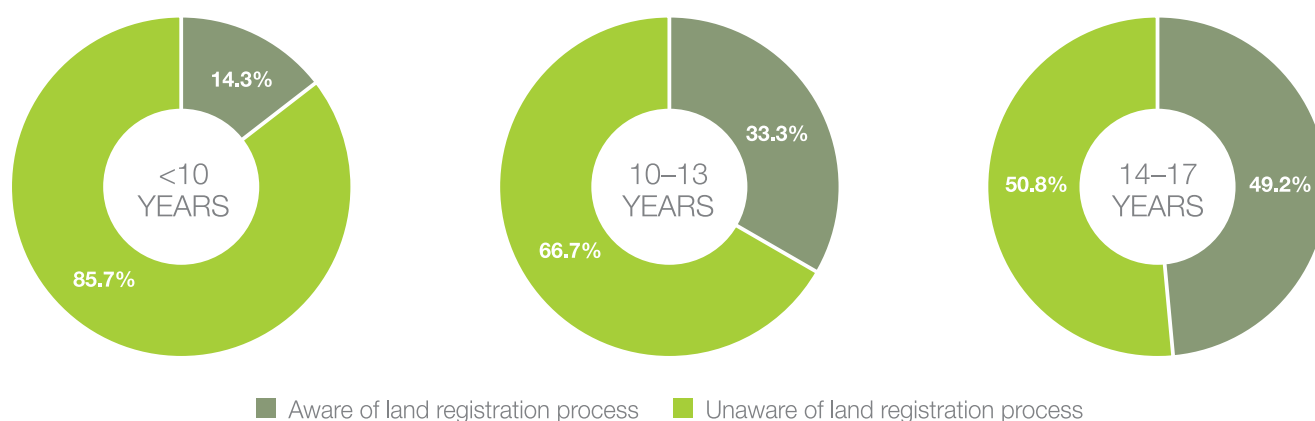


Figure 1. Proportion of single orphans, by age, who were aware or unaware of the land registration process.

“I see no reason for guardianship appointment as there are no claimants or dispute over the assets of my children.”

Some guardians fail to understand the reasons for a formal appointment, or may not grasp the benefits of land registration. About 40% of the guardians of double orphans failed to participate in the land registration process. Others may be unfamiliar with the duties and responsibilities of a guardian or lack detailed knowledge of the land in question, meaning they cannot ensure the orphan's inheritance rights are protected.

“Why should I transfer their mother's share now? I am feeding him, educating him and fulfilling all necessary requirements. We can talk about sharing their mother's parcel maybe when he gets married.”

Some guardians may even enter guardianship arrangements with the intention of gaining access to an orphan's assets, attempting to register an orphan's land in their own names. A lack of formal oversight of the behaviour and activities of guardians creates opportunities for abuse of orphans' rights.

Administrators fail to appreciate the importance of securing orphans' rights

Local administrators have an important role in upholding orphans' inheritance rights but often do not view orphans as important land claimants.

- Kebele Land Administration and Use Committees (KLAUC) do not seem motivated to ensure orphans secure their rights; they rarely make extra efforts to encourage orphans and their guardians to participate in the SLLC process or to help them understand the requirements.
- Local administrators fail to gather information about orphans before pre-demarcation activities begin.
- Organisations that could help safeguard orphans' wellbeing during land registration are not invited to take proactive roles, meaning there is no one to advocate in support of orphans' rights.
- Court decisions on land rights are often poorly enforced and orphans lack the voice and agency to assert their rights.

- Establishing guardianship appointment and orphans' inheritance take time and involve many offices.

Taken together, these factors mean that there is a risk that orphans' land rights might be violated.

Regional variations in land laws mean overarching guidance is less effective

SLLC Implementation Guidance Note (SIGN) 13.1, which deals with the adjudication of land parcels with deceased landholders, was issued by LIFT in 2016 to help address inconsistencies in the way land belonging to deceased holders is recorded. However, regional variations in land laws often supersede this guidance. For instance:

- SIGN 13.1 assumes that land can be held either privately or jointly by spouses in marriage but in Oromia and SNNPR, land is considered common property on marriage, unless specifically declared as private – this means land can be registered by a surviving spouse, without considering the children unless succession rights have been established by a court.
- In Tigray, the right to ownership of land belonging to a deceased landowner is not transferrable through inheritance if there are minor children in the household – only a right of use is transferred.

While SIGN 13.1 is helpful when the law does not specify how to proceed, or where it is unclear, orphans' land rights would be better protected if region-specific guidance were developed to take account of the local context.

Recommendations

All stakeholders are responsible for protecting the land rights of orphans.

Intervene before registration begins

A pre-demarcation implementation taskforce could complete the groundwork needed for the SLLC process to be successful. It could ensure that:

- Data about orphans are collected in advance, including the nature of orphanhood, guardianship status, inheritance cases, parcel size and nature of land acquisition.
- Local administrators are aware of orphans' rights, of the concerns of vulnerable groups and of what must be done to register their land.
- Guardians are aware of the upcoming land registration activities and update any necessary transactions.

Encourage greater collaboration

Strengthening collaboration between woreda steering committees, administration offices and land institutions would promote information sharing about orphans and their situations, and about progress with the SLLC process and challenges and successes around orphan registration cases.

Support guardians

Awareness-raising activities and education would help guardians understand their roles and responsibilities. Creating a mechanism for holding guardians accountable would ensure orphans' property rights are not violated.

Prioritise orphans and vulnerable groups

Providing the KLAUC with a comprehensive audit report by the pre-demarcation implementation taskforce would give it the information it requires to ensure that orphans' rights are respected during the SLLC; introducing an accountability system would discourage violations.

Help orphans understand their rights

Orphans must be empowered to assert and protect their rights; efforts should be made to make them more aware of their rights and where to seek help in pursuing land claims.

Improve service delivery

Making court and land administration processes more efficient and transparent, and less costly, would support the inheritance and land registration needs of orphan children.

Revise SIGN 13.1

SIGN 13.1 states that where deceased and surviving spouses held land jointly, the parcel is registered, and the certificate issued in the name of the surviving spouse. This creates problems for single orphans if their surviving parent fails to transfer their right to a share of the land. It is therefore recommended that joint holdings be registered in the surviving and deceased spouses' names (the latter marked as deceased) until heirs are established by the court; or to include a statement in the registration certificate saying that inheritance rights must be settled before any rights are transferred to a new spouse on remarriage, to protect orphans' rights.

If the parcel is held as the private holding of the deceased spouse, the parcel is registered and a certificate issued in the name of the surviving spouse, until heirs have been established by the court. However, the surviving spouse may then register the parcel under his/her or a new spouse's name without transferring land to the orphans. This is despite the surviving spouse having no legal right to do so. It is therefore recommended that privately owned land be registered in the deceased landholder's name (marked as deceased) until heirs are established by the court.

Identify particularly vulnerable orphans

All orphans are susceptible to violations of their property rights, but maternal and double orphans experience more violations. Committees involved in the SLLC process should identify these vulnerable groups and ensure their land rights are protected.

Region-specific guidance

Taking account of local contexts in region-specific guidance would ensure that the SLLC process is responsive to the needs of orphan children.



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About the Research Summary series

This series summarises key research by the UK Department for International Development (DFID)-funded Land Investment for Transformation (LIFT) programme. LIFT aims to improve the incomes of the rural poor in Ethiopia by securing the land rights of households through second level land certification (SLLC); improving rural land administration systems (RLAS); and increasing productivity by leveraging SLLC through a 'making markets work for the poor' (M4P) approach, in Oromia, Amhara, the Southern Nations, Nationalities, and Peoples' Region (SNNPR) and Tigray regions.

This summary is based on the following report: Abamela Consulting, 2018. *Strategy for Registering Orphan Children During SLLC*. Research was commissioned by LIFT but has been conducted by an independent consultant and does not necessarily reflect the views of LIFT or DFID.