

What actions are needed to address the legal constraints facing women and vulnerable groups in securing their land rights?

Developing and implementing a strategy to tackle the legal constraints that put women and vulnerable groups at greater risk of being disadvantaged in their land rights would help to overcome existing inequalities in access to – and control over – land as well as contribute to sustainable land use and sustainable development.

Background

Federal and regional legal provisions are intended to safeguard the land rights of women and other vulnerable groups. However, these people often remain disadvantaged when it comes to control over land. Complexities and inconsistencies in legal frameworks, as well as differences between formal legislative provisions and the customary rules and norms that are in practice, make it challenging to govern land disputes fairly, thereby creating tenure insecurity that disproportionately affects women and vulnerable groups. Identifying the obstacles and legal constraints faced by women and vulnerable groups when asserting their land rights and implementing a strategy to overcome them, will help achieve greater equity in access to and control over land.

Objectives and methodology

Primary and secondary data sources were used to identify the legal constraints and other challenges facing women and vulnerable groups in securing their land rights and this was then used to develop a strategy to address these. All data were collected in two woredas selected in each of the four regions of Ethiopia where the Land Investment for Transformation (LIFT) programme is active – Amhara, Oromia, Southern Nations, Nationalities, and Peoples' Region (SNNPR) and Tigray. Primary data were gathered from semi-structured interviews with 73 government officials and experts at federal, regional and woreda levels, while desk-based analysis and review of laws, land proclamations, previous research studies, court decisions and reports from land administration offices provided secondary data. Stakeholder meetings



with judges and prosecutors helped to evaluate how well they understood and implemented the relevant legal provisions and the impact of different understandings and interpretations of the provisions on women and vulnerable groups.

Research findings

Constraints affecting the rights of women and vulnerable groups were identified in 12 key areas (see box).

Areas where constraints affect the land rights of women and vulnerable groups

- Matrimonial property and joint titling
- Period of limitation
- Forgery and perjury of evidence
- Illegal loans and mortgages
- Review of judgment
- Enforcement of criminal law provisions
- Mediation
- Execution of court judgments
- Naming conventions for women
- Agency (representation and power of attorney)
- Guardian/tutor appointment and orphan children
- Donation and inheritance

Common themes

Throughout all 12 areas, a number of common themes were identified.

Inconsistent legal framework

Regional variations in the interpretation of legal frameworks, compounded by a persistent cultural bias that women should not hold land rights, can result in women being disadvantaged. In Tigray for instance, the law does not permit joint titling of land that belonged to one spouse before marriage, even if both spouses consent to it becoming marital property – meaning that women may have no right to land held by their husband in the event of his death, or if they divorce. However, this approach is consistent with civil law and does also protect women when they have their own individual land holding.

Amhara does allow conversion from a private holding to a joint holding, with consent of the spouse holding the right to the land, but this cannot be done as part of the second level land certification (SLLC) process. Instead, a separate application has to be made, adding another layer of bureaucracy, and requiring more time, effort and expense, thus acting as a disincentive to joint titling.

In Oromia and SNNPR, mandatory joint titling is practised, even in the face of objections from the

land rights holder. This contradicts the civil law that acknowledges that land holdings held individually prior to marriage should remain so unless agreed otherwise. However, the decision can be reversed by the courts, meaning that one party can lose the right to land that they believed they had in secure tenure.

The legal frameworks in all four regions also recognise some form of mediation in land disputes as a means of alternative dispute resolution. However, in Amhara and Tigray, mediation is not a mandatory step before filing a court case, but in Oromia and SNNPR it is.

Poor enforcement and regulation

Women and vulnerable groups are often regarded as weaker members of society. As such, they have fewer resources to influence decision-making or to pursue claims in court and defend their land rights. With women and vulnerable groups being the victims of the majority of the land offences committed in Ethiopia, the inadequate enforcement of criminal law provisions or laws around forgery and perjury relating to land documents, has a disproportionate impact on them. Even after achieving a court decision, women and vulnerable groups may find it hard to execute the judgement effectively.



In addition, a lack of regulation of the loans market opens them up to exploitation because they use their land as collateral for informal loans meaning that, should they be unable to repay what they have borrowed, they permanently surrender their land rights. This is something that the formally recognised SLLC related loan that has been introduced by LIFT aims to address.

Colliding of the law and customary practices

The federal and most regional land laws give access to 'family members' who depend on the land. However, women are more likely to move away from their family households when they marry and, in doing so, they are no longer recognised as a 'family member'. Women in Amhara experience further negative impacts as regional land law states that, to inherit land, a person must support the land rights holder for at least three consecutive years before their death. With women leaving their family households after marriage, they are unable to fulfil this obligation, excluding them from inheriting their family land.

Also, in some areas of Oromia and SNNPR, married women take their husband's name as their second name, rather than their father's name. This can create confusion should they need to prove their natural father's name in inheritance disputes.

Lack of awareness and inconsistent interpretation

Insufficient awareness of the law and their rights can also put women and vulnerable groups at risk of losing their land rights. Women and vulnerable groups make up a disproportionate number of claimants who have their land claims shut down following a 'period of limitation' defence by a land encroacher. These cases often arise because women and vulnerable groups may be less able to work their land themselves and so they rent out their land informally, without documentation proving a rental relationship. If they are not aware of the period of limitation defence, the encroacher can assert a right to remain on the land after the period of limitation passes. There are also inconsistent interpretations of the period of limitation that can again affect them disproportionately.

In addition, children are at risk of losing their land rights due to a period of limitation defence, if this is asserted before a child reaches the age of 18.

Women and vulnerable groups are also less aware of legal procedures such as the 'review of judgment' option that would allow them to challenge a court decision.

Recommendations

To tackle the issues identified, the strategy proposes a range of actions, depending on the specific challenge, with the overall intentions of:

- Closing gaps or clarifying ambiguities in the legal framework.
- Changing the practice and understanding of the way certain laws should be implemented.
- Promoting consistent understanding and interpretation of the legal framework by both public officials and private citizens.

Closing gaps

Strategic actions to close some of the gaps identified might include the following:

- Carrying out research to gather evidence on the inconsistency of the legislation and proposing amendments to the land laws to protect women's matrimonial land rights.
- Clarifying the law such that the period of limitation begins only after children reach the age of 18.
- Revising federal and regional laws to remove requirements that negatively affect women because of the impact of customary practices, such as leaving the family home after marriage.
- Making mediation optional in all four regions and clarifying the legal regime of mediation to avoid confusion with arbitration.
- Amending legal instruments to require women to use their father's name in all official legal and government documents.

Changing practice

Changing practice in many areas would benefit women and vulnerable groups. For instance:

- Allowing joint titling as part of the SLLC process, rather than as an extra step afterwards, would reduce bureaucracy.
- Regulating the loans market and opening up opportunities for access to credit to poorer landholders would protect them from loan sharks and improve awareness that land cannot be taken permanently as loan guarantee.
- Promoting more women members of land administration committees to the role of chairperson would help overcome the lack of influence women and vulnerable groups often have at this level.

- Introducing a house-to-house legal service would protect the rights of landholders with mobility constraints.

Promoting understanding

In almost all the key areas of constraint identified a greater number of awareness-raising activities would benefit women and vulnerable groups as follows:

- Help them understand their rights and the processes for securing and protecting those rights.
- Raise awareness of where challenges to their land rights might arise – for instance, the period of limitation or through forgery of documentation – and how to defend against such challenges, such as the use of the review of judgment.
- Increase awareness of the criminal consequences of land rights violations.
- Make communities aware of the importance of formal guardianship/tutor appointments and formal agency representation arrangements.
- Help reinforce the message of equal land rights for women and men.

However, awareness-raising and education are also necessary for judges, prosecutors and land administration offices to:

- Bring them up to date with the latest legal decisions.
- Make them aware of traditions that affect land rights claims, such as those relating to women using their husband's name as a surname.

Those mediating in land dispute cases should also be trained in land law, the protection of land rights and techniques of mediation.

Refining the strategy

Some of the strategy's recommended actions can be implemented in the short term, but others will need to be shared with stakeholders first, to build consensus and advocacy around them. The strategy can then be refined and a work plan and tracking system, including feasible goals with realistic timelines, developed.



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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: Abebe, A. & Rose, I. 2019. *Strategy to Address Legal Constraints of Women and Vulnerable Groups to Secure Their Land Rights*. Research was commissioned by LIFT but has been conducted by an independent consultant and does not necessarily reflect the views of LIFT or DFID.