

RANGELANDS

Women's land rights: Customary rules and formal laws in the pastoral areas of Ethiopia – complementary or in conflict?



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Research report no. 4

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Women's land rights: Customary rules and formal laws in the pastoral areas of Ethiopia – complementary or in conflict?

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EXECUTIVE SUMMARY

Land in Ethiopia is held by the state, who acts as a custodian for the Ethiopian people. Even though it is the state which controls land ownership, farmers and pastoralists are guaranteed a lifetime 'holding' right that provides rights to use the land, rent it out, donate, inherit and sharecrop it. Everything except sell and mortgage it. On paper and under existing formal laws, women have equal rights to men as far as use and control of and access to land is concerned. However, in pastoral areas, women's land rights are highly influenced by religious and customary systems and interpretations of these. Though women may have land rights recognized by formal state laws, such rights are meaningless unless they are socially recognized and effectively enforced. It is often the case that harmful customary practices and stereotypes of women and their positions and capabilities are still prevalent in different parts of Ethiopia, resulting in limitations in women in exercising their rights.

Studies considering women's land rights, including comparing between those provided under formal land laws on one hand and customary land laws on the other, are rare. The aim of this paper is to understand what land rights women have under formal and customary legal systems in pastoral areas in Ethiopia, how these are implemented and what their impact is, and to make recommendations for their convergence. It focuses on two pastoral regions of the country: Afar and Oromia national regional states.

The research revealed that there is a high disparity between what the law says and what is being practiced on the ground as far as women's land rights in pastoral areas are concerned. There are diverse differences between the customary and religious systems on the one hand and the formal state system on the other. Customary and religious systems are applied more often than state laws in relation to women's land rights as well as in conflict resolution. For example, in both Afar and Oromia regions (more specifically in Borana zone in Oromia), women can use grazing lands without limitation and discrimination. However, in Afar, women are prevented from accessing and using rural private holdings under customary norms and practices. On the other hand, in villagization areas, women are beginning to obtain private land holdings. Borana women pastoralists have relatively better land use rights compared to those in Afar.

Afar society in general is more patriarchal. Even though things are changing, women are still inferior to men in terms of use of and access to land. Polygamy is prevalent in the region, which can be encouraged by women themselves. Men tend to manage land. Customary and religious systems are applicable more than state laws even in homicide and other grave crimes as well as conflict resolution. Women have no power to resolve disputes except in certain exceptional circumstances. The Afar customary and religious systems highly discriminate against women in dispute settlements: their involvement is only indirect.

In Afar, women do not actively participate in land administration committees even though the law enshrines it. The Afar law has provisions on land transactions but they are not practiced. Land administration institutions are not strong enough to implement women's land rights. Women cannot inherit property either from their husband or families through the customary system. Even the religious system discriminates against women during inheritance. Land registration and certification is conducted in the region by taking into account the rights of women. Women have started to obtain private holdings from the government in villagization areas: 24% of the total landholders who received land through villagization are women. However, they lack capacities to work and manage the land and still have lower decision-making powers.

Unlike Afar, in Borana zone, Oromia, the state formal law and the customary system governs the land use rights of women. There is no religious system dominating land issues. Here, women have relatively equal status with their male counterparts: they have their own clear responsibilities according to custom. It is not possible to make transactions of matrimonial properties without the consent of the wife. In many places, women have their own private land. Women in the region participate directly and indirectly in the management of communal lands and also serve, in exceptional cases, as Abba Olla (abba means father and an Abba Olla is a type of customary leader). But there is discrimination for women as far as inheritance is concerned. There is no private or communal land registration in the study area. There is land enclosure conducted mostly by men. Polygamy is practiced but with the consent of former wives. Even land and other property transactions are conducted with the consent of the property owner's wife. The role of women in dispute settlement is dual, unlike in Afar.

In general, in both regions of the study area, there is no discrimination against women as far as communal land use is concerned. Rather, problems arise in relation to the inheritance of land, dispute settlements and in relation to other private household/individual properties. It is not an easy task to converge the formal and informal systems as far as land rights of women are concerned. Trying to replace the customary system with the formal system is not the solution. Legal pluralism is an option and is advantageous in the short term since it can give double or more avenues for land users, including women, to access their rights.

Both systems have their own pros and cons. As a result, the assignment of the government is to identify these in full. This report is a strong starting point. Recognition of the customary system is crucial but due concern should be given to protect the rights of women. Convergence of the customary and formal systems in the long run is a task for the government. For convergence of the two (or three) legal systems, legal empowerment and awareness for the whole community is very important: it is not only for women that legal awareness and empowerments should be given.

The research recommends a promulgation/enactment of pastoral land administration laws and consideration of their acknowledgment and incorporation of customary and religious (informal) laws. In many countries of West Africa, pastoral and/or rural 'codes' have been developed that bring together statutory, customary, religious and other laws under one umbrella and try to provide one overall guiding framework – this is something that Ethiopia could consider. In addition there is a need for awareness creation and legal empowerment of societies, enactment of family law (for Afar region in particular) by taking into account regional realities as well as the certification of private holdings including photographs of both the husband and wife/wives, integration of the customary and religious systems into criminal law, a mobile legal service and awareness-creation activities for pastoralist communities in general and for women in particular, a thorough study to understand the pros and cons of polygamy for women in particular and society in general, and a process of cultural mapping and monitoring. It is anticipated that the government will lead these activities.

ACRONYMS

CEDAW	Convention on the Elimination of all Forms of Discrimination against Women
FAO	Food and Agriculture Organization of the United Nations
ILRI	International Livestock Research Institute
SNNPR	Southern Nations, Nationalities, and Peoples' Region

CHAPTER ONE: INTRODUCTION

1.1 Background to the study

1.1.1 Pastoral women and land rights in pastoral areas

Ninety per cent of communal lands are unregistered in sub-Saharan Africa, which can be attributed to the low concern given to them by the legal systems of the countries (Byamugisha 2013). Protection of land rights takes place within a complex interconnected environment of constantly changing domestic institutions and organizations at the federal, state and local levels of society (Witten 2007). For the majority of people, land rights and their protection are central to life.

Public decision-making bodies tend to be dominated by men, but women's views are taken into account through different mechanisms. Though women are able to own property such as livestock and household goods and to use land for agriculture, the majority of property is held in the hands of men due to the practice of virilocal marriages and the need to keep property within the group or clan to ensure their strength. As such, even men cannot own land but rather only have the right to its use and/or access. The group or clan protects all members including women – often called clan wives – and in times of need redistribution of property such as livestock will be made to deficient group members (and indeed sometimes non-group members too). Though social, cultural and other changes have taken place, in many pastoral communities this still remains the norm.

Despite the highly productive nature of pastoral systems, governments continue to try to change these systems (both the land use and customary institutions). Sedentarization is encouraged and statutory individual land tenure promoted. However, as suggested above, only parts of rangeland systems are suitable for sedentarized livelihood systems such as agriculture. Those who try to maintain pastoral systems find it increasingly difficult due to fences being put up blocking migration routes and the resource-rich pieces of land being removed for the growing of crops. Where the titles for land have been given to groups (such as for ranches in Kenya), women have lost out as titles have been given to men. Alternatively, where women have been given titles, enforcement mechanisms for protecting women's rights may be weak leaving them vulnerable, and by taking such individual titles and rights this may mean that they lose their rights to the protection they used to receive from their group. At the same time the 'group' itself may be weakening in authority and capacity to defend its rights faced with a number of negative influencing forces and factors (indicated above). As such, and as Judy Odoko and Simon Levine (2009) nicely put it: they (women) are 'in danger of falling between two stools'.

From the gender perspective, laws have to be gender sensitive (Borras and Franco 2015). A pro-poor land policy is said to be one that at a minimum does not undermine, and at a maximum promotes the distinct right of women to their own land rights as farmers or rural labourers and as women.

Supporting women's land rights needs deep understanding of how women currently access land and the relationship between legal and social recognitions as well as the relationship between legal provisions and enforcement. Women's land rights can be recognized in terms of access and control in order to ensure security of rights.

1.2.2 Land in pastoral areas of Ethiopia

The right to ownership of rural and urban land as well as all natural resources is exclusively vested in the state and the peoples of Ethiopia – see section 2.5. Land must not be sold or exchanged privately. Individuals have land use rights, with limited ability to transact such rights. Private investors have rights to the use of land on the basis of payment arrangements established by law.

Land use rights can be inherited, donated, leased and rented but not mortgaged. Land use rights can be expropriated for public use with the advance payment of compensation. Farmers have the right to obtain land without payment. Ethiopian pastoralists have the right to free land for grazing and watering their livestock. Land lease, which is the form of land right given to investors, can legally be used as collateral for a bank loan.

Generally, the right to land as defined under the Federal Constitution (see section 2.5) may be considered to be akin to what is known as a ‘holding’ right, where the right holder has rights to the use of the land and to take the fruits of his labour or capital. This is recognized as private property where land is not subject to sale or other means of exchange and cannot be alienated in any way. On the other hand, it supports the state as the ‘custodian’ of land on behalf of the people of Ethiopia. The state can expropriate land for public purposes subject to payment of compensation commensurate to the value of the property on the land.

Pastoral societies depend upon relatively large territories of land to make the most productive use of a challenging physical environment that has temporally and spatially distributed resources highly influenced by biotic factors such as plant available moisture and nutrients. Only parts of this territory are suitable for agriculture due to limitations in water, soil nutrients/structure etc. Extensive livestock can make use of lesser quality parts of the territory where agricultural production is limited but require access to more productive areas at certain times of the year.

This type of land use is dependent upon a socio-cultural and institutional system that provides for flexibility of movement and use of resources (temporally and spatially distributed) based on relations of reciprocity that, amongst other things, provide a safety net in times of crises. The system also provides for multiple use of the rangeland, taking into account and providing protection for the needs of both primary users (livestock herders) and secondary users such as those who need to cut grass, hang beehives, collect highly lucrative gums and resins and, increasingly, plant some crops. It is generally believed that land belongs to a spiritual being or ‘god’ and customary institutions control access to resources and their use.

It is said that government land administration policies often contravene the age-old pastoral customary institutions (Reda 2014). Further, though the Ethiopian Rural Land Administration and Use Proclamation No. 456/2005 took good steps towards more secure land rights in general, it is criticized for many gaps and problems. Not least, it gives little attention to the administration and use of pastoralist lands. The proclamation was developed more with the highland areas of Ethiopia in mind, together with sedentarized farmers’ land use arrangements. In the past, rural land legislation has treated pastoral land synonymously with settled agricultural lands without seeking different instruments and provisions for securing pastoral land use rights. Securing pastoral land use rights requires serious investigation on the traditional modes of land use security, and dispute resolution needs fresh approaches that can accommodate new socio-economic developments (Bekure et al. 2006).

1.2 Statement of the problem

In Ethiopia, new forces and factors that have arisen in recent years have had an impact on pastoral land rights generally and more specifically pastoral women’s land rights – potentially driving certain types of land tenure and overriding or compromising others. These may include the increase in commercial investment or pushes by the government for increased crop farming in drylands and/or initiatives such as participatory rangeland management and village or district (woreda) land use planning or programs such as REDD+ (Reducing Emissions from Deforestation and Forest Degradation). The short- and long-term impacts of these changes both on women themselves and greater society,

of which they are a part, are not clear. For example, it has been found that the existing laws adequately recognize a woman's right to equality with respect to access to and control of property (including land) in Ethiopia. However, some suggest harmful customary practices and stereotypes of women are still prevalent and this continues to limit women's access in practice (Tura 2014). Women can be a highly marginalized group in society including in relation to accessing and controlling rural land. Moreover, often women do not have a customary right to inherit land from their family; and the control of land during marriage falls chiefly under the control of their husband.

The Government of Ethiopia has tried to protect the land use rights of women by enacting/promulgating different laws (including the adoption of international and regional instruments, the country's constitution, federal and regional land administration and use laws, and family laws) and establishing institutions for the implementation of those laws. Despite such a firm commitment by the government in recognizing a woman's right to possess and use rural lands, the customary laws and practices that can deny women's equality appear to be persistent in different communities of the country. Women are considered incapable of leading and are excluded from community activities by the traditional image that a woman's place is in the home or hut. In addition, there is a customary land tenure system (patrilineal inheritance and virilocal residence) which does not recognize women's individual land rights (Flintan et al. 2008). To the extent that women could legally inherit land, they often failed to do so due to socio-cultural constraints that preclude them from exercising their rights. Protection of land rights takes place within a complex interconnected environment of constantly changing domestic institutions and organizations at the federal, state and local levels of society (Witten 2007).

In order to improve pastoral women's rights to land in future, it is important to first gain a better understanding of the nuances and complexities described above – how pastoral women currently access land and resources; what do women need to improve their tenure security (perceived and proper); how can these needs be best fulfilled – through collective and/or individual tenure; what do women do with the rights and tenure security when they acquire them; and what is the impact of this on women themselves and the greater pastoral society. Even though there are studies on the customary land use rights of women, studies comparing the land use rights of women through formal land laws on one hand and customary laws on the other are rare.

1.3 Objectives of the study

The main objective of this study is to understand how pastoralist women access land and resources through both statutory and customary and/or religious laws and regulations and the points of convergence and divergence between these. The study examined and analysed formal and informal policies, programs, legal instruments and cultural practices that have an impact on women's access to and use of land and identified factors that constrain women from exercising their land use rights in four regional states of Ethiopia – Oromia, SNNPR (Southern Nations, Nationalities and Peoples' Region), Somali and Afar) and tried to identify mechanisms for the different laws to converge.

1.3.1 Specific objectives

To achieve its main objective, the study focused on:

1. Assessing pastoral women's rights to access, use, own and inherit land and how they exercise those rights (in different contexts) both through informal laws and rules and formal ones;
2. Identifying the institutional and other influences or forces that affect those rights (both positively and negatively);
3. Examining the opportunities for strengthening pastoral women's tenure in the local and national context;
4. Understanding the role of women in land-related dispute settlement processes;
5. Assessing the role of women in decision-making especially as far as communal land management is concerned; and

4. Understanding the titling process being conducted in pastoral and agropastoral areas for communal holdings and how women's land rights are approved through this.

The research project focused on the following key questions:

1. What are pastoral women's rights to access, use, own and inherit land, and how do they exercise those rights (in different contexts)?
2. What are the institutional and other influences or forces that affect those rights (both positively and negatively)?
3. What are the different degrees of tenure security that women experience? And at what point do pastoral women feel 'tenure secure'?
4. What is the impact of tenure security on how pastoral women use and invest in the land?
5. What are the opportunities for strengthening pastoral women's tenure in the local and national context?
6. Do women have equal rights to men to use the grazing land and rangeland for their pasture?
7. What is the role of women in land-related dispute settlement processes?
8. What is the role of women in decision-making especially as far as communal land management is concerned?
9. What is the impact of communal land as well as private holdings in communal land titling on women's land rights especially in Afar and Borana?

I.4 Methodology of the study

Within this context, this study was undertaken by the International Livestock Research Institute (ILRI) to better understand both customary rules and formal laws in relation to women's rights to land. It did this through first presenting the context in terms of a literature review including policy and legislation (as above) and then undertaking fieldwork in order to consider the application of these and how they interact – complement and/or conflict – with related customary rules, regulations and institutions.

Primary data was collected through key informant interviews and focus group discussions. In addition, documents were accessed from land administration offices at regional and woreda levels, as well as from courts. In Afar, research was undertaken in Chifra woreda and in Borana in Yabello woreda. Focus group discussions were carried out with government personnel (including representative from offices of environmental protection, rural land administration and use and women and children's affairs) and pastoralists/agropastoralists from the area including customary leaders. Key informant interviews were undertaken with judges, lecturers in land laws, pastoralist women and others. The data collected from the field was triangulated with the key informant interviews and secondary sources.

I.5 Significance of the study

It is anticipated that this study will show researchers, academics, students, judges and the government how pastoral women access land and resources through customary and formal land use systems and the divergences and potential convergences of the two.

This study is part of a larger study and set of case studies being undertaken in India, Tanzania and Ethiopia on pastoralist women's land rights. The different contexts will be considered including the presence of supporting and/or non-supporting policy and legislation, the strength and functionality of customary institutions and/or the collective nature of the society, the presence of awareness-raising projects and processes including those that support women to access certain types of rights, and other incentives for pastoral women to strengthen their tenure security.

I.6 Limitation of the study

Due to limited resources and time, the study remained general in scope, supported by more detailed analysis in Oromia (Borana) and Afar where a short period of fieldwork (one week in each) was carried out. As such, this is a good introduction to the issues but more detailed fieldwork, case studies and analysis which are also wider in scope would be beneficial. Due to the limited scope of this study the results are indicative and should not be taken as representative of each region and/or pastoral area as a whole.

Other limitations included a lack of written materials and research papers on customary and formal land use rights of pastoral women and a lack of documented governmental data on the research area.

I.7 This report

This report documents the results of the research including a literature review and fieldwork. It is presented in four chapters. The following chapter presents a literature review of studies and other documents focusing on pastoral women's land rights. Chapter three presents results of the fieldwork followed by accompanying discussions. The conclusions and recommendation are distilled in chapter four.



Women play a key role in the pastoralist production system (credit: Kelley Lynch/SaveChildrenUSA).

CHAPTER TWO: SOCIAL AND POLITICAL CONTEXT

2.1 What is customary land tenure?

Cotula (2007:10 in Qoricho 2011) describes customary land tenure systems as being naturally governed by customary law, which is defined as 'a body of (usually unwritten) rules finding its legitimacy in tradition, i.e. in its claim to have been applied for time immemorial'. He further notes that customary law regulates a wide variety of issues, e.g. family relations or property law. The notion of customary land tenure deals with the bodies of rules and institutions governing the way land and natural resources are held, managed, used and transacted traditionally. Cotula further suggests that tenure systems regulate the 'bundle of rights' existing over each piece of land, including operational rights (rights to access land, to cultivate it, to withdraw produce, etc.) and management rights (e.g. the right to allocate and transfer land).

2.2 Pastoral women's rights to land in pastoral areas of Ethiopia

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 polygamous marriages, widowhood and divorces (Deressa and Eversman, 2016).

Under customary law, women tend to have weaker rights, and it was found that the introduction of certain key legal provisions for strengthening women's rights that include the co-registration of spousal rights and the recognition of women's inheritance rights over land have had a direct impact on their social and economic empowerment (Romano 2013). In many communities, access to land resources is governed by both statutory and customary laws. Conflicts can exist between traditional norms and national laws, as is often the case when land rights are considered. Local norms as enforced by community members are most likely to prevail, particularly in rural areas. Access to and control over resources and benefits is determined by socio-cultural norms, which have significant impacts on gender relations (Woldetsenaye 2007). Despite their significant contribution to the economy, due to customary bias, women are prohibited from exercising their statutory land use rights (Bayu, 2015).

Ethiopian land law has many provisions which advocate for the equality of women with men as far as land use rights are concerned (e.g. Art.5, the right to access and use rural land; Art 6(4), joint titling of a land in the name of husband and wife if the land belongs to both) and is said to give clear opportunities for women to own and use land (Romano 2013). However even though on paper laws advocate for the equality of women with men, in practice these laws do not tend to be fully implemented (Deressa and Eversman 2016). Indeed, equal in law does not always mean equal in practice; as a result, practice often needs to be re-shuffled so that the latter can go hand in hand with the law (World Bank Group 2016).

Besides this, the inculcation of land certification in the law as well as the practice to this effect has positively affected rural women. Research made by Deressa and Eversman (2015) stated that the registration and certification of rural land, whether private or communal, is pivotal in the protection of land use rights of women, especially at a time of expropriation and payment of compensation for land holders in general. The following sections describe the provisions made at regional government level in Ethiopia under the umbrella of federal policy and legislation.

2.2.1 Oromia regional state

Based on the federal Rural Land Administration and Use Proclamation (No. 456/2005), Oromia regional state has its own rural land administration and use proclamation (No. 130/2007) and regulation (No. 151/2012) which govern land-related issues including women's land rights in pastoral and agropastoral areas, despite the fact that these laws contain provisions that govern more sedentary areas.

In Oromia, access to land for women is showing improvement in some parts of the region while it is subject to serious limitations in other areas due to customs that do not recognize women's rights to land. Access to land for women in polygamous marriages, particularly second and third wives, is restricted, and women face difficulties in accessing and using land as earlier dates of marriage tend to have priority over more recent ones in land rights according to local customs. The level of participation of women in land administration activities, such as land measurement and registration and land dispute settlement, is not significant. However, women's participation in decision-making on land use and administration at household level is improving as the law requires their consent in transferring land (Tesfaye et al. 2013).

There is a vast difference between the formal legislative provisions and the customary rules and norms that are used to govern land disputes. In the East Hararghe zone of Oromia region, it was found that local administrators failed to work closely with customary institutions and this contributed to a breakdown in the role that local institutions play in land dispute management. It is said that customary laws (which may refer to pastoralist areas or not) do not allow women to inherit land, and statutory laws have not yet challenged community customs and traditions (Woldetensaye 2007). Crewett et al. (2008) also argue that widows and divorced women do not have equal rights to those women in marriages. Upon divorce, women do not have access to marital land because the custom requires them to take only their clothes from the marital property (Woldetensaye 2007). Mekuria (2009) and Woldetensaye (2007) also argue that women are discriminated before religious and customary dispute resolution mechanisms when they submit disputes over land. Customary law remains the dominant and viable source of decision-making at the local level.

In Borana, information is discussed and exchanged at meetings (*cora*), often held under a sycamore fig tree. Only men are allowed to participate in these meetings; women may attend, but they may not actively participate. However, they can make their feelings and ideas known indirectly (Tefera et al. 2016).

2.2.2 Southern Nations, Nationalities and Peoples' Region

Based on the federal Rural Land Administration and Use Proclamation (No. 456/2005), SNNPR has its own rural land administration and use proclamation (No. 110/2007) with regulation no. 66/2007, which govern land related issues including women land rights in pastoral and agropastoral areas, despite the fact that these laws contain provisions that govern more sedentary areas.

In SNNPR, the influence of customary laws and practices on land use rights of women can be strong. Although SNNPR shares the land tenure and administration history of Ethiopia, its cultural diversity is more notable thereby creating more diverse and specific customary tenure arrangements than any other regional state in the country. Inheritance tends to be based on customary rules rather than formal laws. Some customs and ways of life which prohibit women to inherit property remain. In some parts of SNNPR if a wife has more children, she will have more portions of land allocated to her. If she has only one child, she will be given a smaller portion of land and advised to search for other means of income on her own. If she doesn't have any child, she will not be allocated any land.

Nowadays, however, some women are favoured by the law if they take the case to the court of law. But still here judges lack education or awareness on the full set of women's rights or pay more homage to custom than the formal law they are supposed to implement (Hawassa University 2016). Similarly, as Qoricho (2011) pointed out, generally, the modern law does not recognize any customary institutions and traditional practices, even though the latter have been practiced since time immemorial.

The Nyangatom society, located in South Omo zone (SNNPR), is a generation age-set system, embracing men and women alike. Decision-making processes in the Nyangatom community do not publicly involve women. In particular, issues related to rangeland and livestock management are considered to be the responsibility of men. Women can contribute their views privately and put forward any idea they believe is right, but the decision will be made by the elders. A woman married to a man from a particular age set automatically becomes a member of that age set herself. Women do not tend to participate in clan meetings, although there are some meetings that elders invite any member of the community to attend, including certain ritual ceremonies and annual festivals (Tefera et al. 2016).

The Mursi are also patriarchal in nature. However, decision-making is generally shared – while men make decisions regarding agricultural fields and the seasonal movement of cattle, women make decisions when it comes to planting, preparing, processing and storing food, and choosing foraging sites for collecting wild edible leaves that are essential for meeting everyday dietary needs. Although today women are allowed to attend some meeting sessions, the assembly and many other major decision-making meetings are highly dominated by male elders: it is assumed that women are represented by their husbands and by clan councillors, so their physical absence from meeting places is considered not to matter at all. Indeed, in general women are not involved in public decision-making processes and do not have authority in traditional governance structures (Tefera et al. 2016).

2.2.3 Afar regional state

In Afar, based on the federal Rural Land Administration and Use Proclamation (No. 456/2005), the region has its own rural land administration and use proclamation (No. 49/2009) with regulation 4/2011 which govern land related issues including women land rights in pastoral and agropastoral areas. Proclamation No. 49/2009 under its preamble states that the main aim of its promulgating is to secure the land holding right of women without any interference. The proclamation is divided into two sections, one for pure pastoralists and the other for semi-pastoralists. Under Art. 5 of the proclamation, pastoralist women have been given equal rights to men to use grazing land. The proclamation states that the grazing lands in the region are planned to be demarcated and communally registered and certified with the name of the locality users, and the certificate will be given to the user societies or their representatives (Art. 6). By default, women are included in this communal certificate. In the case of semi-pastoralists, husband and wife have equal rights to use their private holding(s). Further, it states that they cannot lose their private holding(s) which they have prior to the conclusion of marriage and as a result of the conclusion of marriage (Art. 9(7)). Women household heads also have the full right to use their land holdings. These rights are also applicable for those women whose husbands are not available in the area as a result of governmental services or are working in other areas: 'the residence of a spouse in other areas should not be a cause for the loss of the holding by the other spouse', Art. 9 (8 & 9).

In Afar, customary institutions generally disenfranchise certain vulnerable groups and tend to be gender insensitive. They fail to protect some of the crucial rights of women. This violates the constitutional rights of women to access land and defies one of the major principles of the regional land policy, which is protecting the land rights of women (Reda 2014). Pastoralist women can be marginalized twice from the rest of society: first as pastoralists and second as women. Pastoral women can be excluded from decision-making process both at the household and within the community. Often, they are the least to benefit from opportunities such as education, employment and ownership rights. As a result, pastoral women can be the most vulnerable groups of society in the social, economic and political spheres (Flintan et al. 2011). However, women are also active agents of change, and though their voices might not be so publically heard as much as men, in general they do have influence over decisionmaking processes (Flintan et al. 2011).

Afar society is organized according to extended families, lineages and clans that determine an individual's social relationships. Based on the custom of Afar, starting from their birth, the fate of Afar women is determined in order that priority is given not to individual rights but clan rights as a whole. Though in some places the practice is dying out, Afar women can be forced to marry their cousins (a culture called *absuma*), with priority being given to the father's sister's son. The preference for the father's line aims to create a strong linkage between two clans. This cultural ideology aims to keep access to natural resources and ownership rights of livestock within the clan and prevents the transfer of assets to other clans through marriage (Talachew and Habtewold 2008). In addition, the division of labour limits the women's access to outside information, limiting their interaction with the external environment. However, the establishment of the Women and Children Affairs Bureau in all woreda seems to be leading to a gradual behavioural change with regards to gender issues.

Except for the very few farm lands that are under private holdings, in Afar land and water resources are accessible for both men and women as part of the communal resource sharing system. As these resources are communal property, all members of the community have the right to access and use them without any discrimination. All members of the community including men, women, widows and the elderly use the land equally. But decision-making and management power resides with men. In principle, laws governing land issues in Afar are governed by the customary system. However, when the case concerns inheritance and divorce, Shari'a law¹ will handle the matter. In Afar there are mainly three instances in which women's land rights will be affected. These are inheritance, divorce and the passing of a partner (husband) (Ibid).

With regard to inheritance for children, inheritance issues in the region are governed by Shari'a law, which allocates one third to women and two thirds to men. Upon the death of a husband, the governing rule in place is the customary law, which allows the brother of the deceased or any other close relative to inherit the wife, which is to prevent the transfer of property to other clans through marriage and to ensure the woman gives more children to the clan before she passes or reaches menopause (Negassa et al. 2015).

In Afar, it is totally forbidden for a woman to be part of the customary system as a judge or as an elder, which is reflected in traditional Afar sayings, such as:

'In order to pass fair decision, never include women as a decision maker, particularly in murder cases.'

'You should consult with your wife and give due attention as to what she has to say, but never make a decision based on her advice.'

Even a woman cannot bring her case on her own. The position of women within the justice system is also found to be lower than the position of men, not only when they are plaintiffs but also as witnesses. Also, Afar women were not allowed to speak in front of customary leaders. Rather, one of the customary leaders is selected to go and hear what the woman or women are claiming or testifying, and then report back to the leaders. However, increasingly in the past 20 years, women are having a greater say: with the introduction of modern education to the region, women as well as men are being educated and gaining more knowledge of their rights. In the Amibara woreda of Afar, there are private plots due to allocations made following the disbanding of large government agricultural schemes, though these mainly benefited male-headed households (ibid).

2.2.4 Somali region

The Somali regional state has enacted Rural Lands Administration and Use Proclamation No. 128/2013. There is also a draft implementing regulation even though its adoption by the concerned body is not yet complete. The proclamation has divided land users of the region into two. These are pastoralists and agropastoralists. Under Art. 5(2) of the proclamation, it is stated that pastoralist women have equal rights to men to access and use grazing lands. Art. 9

1. Shari'a law is a religious law governing the interaction between Islamic religion followers.

and the following provisions of the proclamation declare the rights of agropastoralists, and in this section the rights of women are a copy of the Afar proclamation described above. Women who intend to be engaged in agricultural activities have the right to access and use farm and grazing lands. Husband and wife have equal rights to use their holdings. The private holding which any spouse had prior to the conclusion of marriage shall not be affected as a result of marriage. Moreover, women heading households shall have the full right of use over their land holdings. The death or separation of a spouse as a result of change of residence shall not cause the family to lose the rights of use on the land holding.

The customary land rights of women are similar. Women do not tend to be involved in decisions about resource use beyond what they might use on a daily basis (Tefera et al. 2016). Generally, it is pastoral men who make the major land use decisions, including where and when to take the livestock for grazing. This is not to say that women do not play a role – women are more likely to make decisions about resource use and collection in relation to resources such as edible and medicinal plants, firewood and materials for house construction or handicrafts. It has increasingly become the case that women play a key role in influencing land conversion to agriculture. Being concerned with household food security, women are keen to see food options diversified so they encourage the growing of grains and vegetables for household consumption, even though they are usually the ones given responsibility for looking after these thus increasing demands on their labour (Tefera et al. 2016). The role of pastoralists (men, women and youth) within the pastoral system is changing as new land uses are being introduced and new challenges and opportunities are arising – but how these roles will manifest themselves in future remains an unanswered question (ibid).

2.3 Looking at ‘the other side of the coin’

Customary rules have their own reasons for existence. It is stipulated in Food and Agricultural Organization (FAO) land tenure studies that traditional laws and religious laws often protect women and provide for wives, widows and female children through, for instance, land shares on inheritance. Under Islamic law, for example, daughters may receive half the land that sons receive on the death of their father. This is in effect their dowry to bring to a marriage. The sons on the other hand have the responsibility of providing for unmarried sisters and their mother and in theory require more land. Other religions or cultures have had similar traditional laws (FAO 2002).

The traditional system can be accessible in terms of location and the passing of timely decisions for women who will bring their case before the customary judges. Customary leaders live within the community and they see and hear unjust acts, know the context, understand the culture and claims of women and may be better placed – than often-detached external judges – to make decisions. Local leaders will talk to local stakeholders to better understand the situation, which formal judges will not do. Moreover, if a woman wants to bring her case to a formal court in a town or city, she may face challenges in affording the transportation or be worried about the length of time that it will take. Often women feel more comfortable talking to a customary leader that they know rather than a stranger in whose presence they might be shy or lack confidence. Moreover, the customary system gives faster responses than the modern system. As such, I argue that for the woman, it is better to go to the customary dispute resolution system rather than the government one.

2.4 Land rent and the right of vulnerable groups

Women, children, the elderly and disabled groups can be classified as vulnerable groups due to different factors. Vulnerable rural households in different parts of the country who are not able to cultivate their land by themselves often suffer from either losing their land or not securing adequate income from their land due to weak bargaining power and lack of institutional support.

In some regional states, such as Oromia, rural land holders in the highland areas are not allowed to rent out all their holdings, while in others, such as Amhara region, it is allowed. Such restrictions have implications for the vulnerable groups (Holden and Tefera 2008). Stein et al. (2012) find that women more than men are willing to rent out land as a

result of land registration and certification programs. In Ethiopia, household land certification increased participation in the leasing and amount of land rented out substantially (Deininger, Ali and Alemu 2011). Another study from Ethiopia found that female-headed households with access to formal land rights are more likely to engage in land rental activities as landlords than men (Holden et al. 2011). An earlier study indicated that this is because improved perceived tenure security has strengthened women's positions as landlords and contributed to an enhancing of their negotiating position in the land rental market (Holden and Bezabih 2009).

On the other hand, female landholders are afraid to give out land for rent or for sharecropping to non-relatives for fear of tenants dispossessing them. Certification is helping to remove this fear and broaden access to those seeking land to rent or sharecrop. According to Holden et al. (2011), female-headed households often lack male labour and oxen that are required for ploughing, so rent out their land. Women heading households rent land in a sharecropping arrangement to family or in-laws rather than pursue a cash rental arrangement with someone outside the family sphere (Holden and Bezabih 2009). Most land leasing or sharecropping transactions are informal and there is a tendency to influence female land holders and other vulnerable groups to enter sharecropping or land renting with relatives and neighbours (Holden and Bezabih 2009). Though these issues relate to highland areas and individual tenure, it is interesting to see how behaviours change in relation to different levels of perceived tenure security.

2.5 Ethiopia's commitment to international and national laws on women's rights and women's land rights more specifically

Table I summarizes Ethiopia's commitment to international, regional and national laws on women's rights in general and women's land rights in particular. As can be seen in this document, though commitment on paper is made, the implementation of these commitments in practice is inconsistent.

2.6 Institutions with overlapping mandates

There are formal state institutions established by the government to administer rural lands, including communally owned lands. These institutions are established from the federal to region and then to kebele (village) level. But the mandate of these formal state institutions sometime overlaps with the mandates of the customary system. For example, in some pastoral areas the kebele administration is giving out private lands for grazing (*kalo*) against the advice or priorities of the customary system. Moreover, both the formal administration and the customary system have powers to penalize criminals on land-related issues. However, the formal administration tends to take control on this, overriding the power of the customary institutions.

Table 1: Ethiopia's commitment to international, regional and national laws on women's rights and land rights

Hierarchy	Instrument Name	Women Land Rights it inculcated
International	Convention on the Elimination of all forms of Discriminations against Women	- Adopted in 1979 by the UN General Assembly; the Government of Ethiopia signed the convention in 1980 and ratified it in parliament in 1981. - It constitutes discrimination against women and sets up an agenda for planning and implementing national action to end such discrimination. - The convention defines the term 'discrimination against women' as 'any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field' (Art. 1). - Under the Convention, national states are under obligation to 'take all appropriate measures to eliminate discrimination against women (Art. 2(e)) and in particular shall ensure, on a basis of equality of men and women (Art. 16(1)): the same right to enter into marriage (Art. 16(1(a)); the same right freely to choose a spouse and to enter into marriage only with their free and full consent (Art. 16(1(b)); the same rights and responsibilities during marriage and at its dissolution (Art. 16(1(c)); the same rights and responsibilities as parents, irrespective of their marital status, in matters relating to their children; in all cases the interests of the children shall be paramount (Art. 16(1(d)); and the same rights for both spouses in respect of the ownership, acquisition, management, administration, enjoyment and disposition of property, whether free of charge or for a valuable consideration' (Art. 16(1(h))).
	Sustainable Development Goals for 2030	This Agenda of the Sustainable Development Goals (SDGs) for 2030 is a plan of action for people, planet and prosperity for the upcoming 15 years starting from 2015 which is an extension of the Millennium Development Goals. All countries and stakeholders including Ethiopia are duty bound to strictly implement the terms of this Agenda. The document includes the following points. - Mandatory joint registration, or economic incentives for joint registration; - Spousal consent prior to land transactions; - Equal rights for sons and daughters to inherit and for surviving spouses to receive an inheritance share; - Budgetary commitments of the government to strengthen equal rights for women control of land; - Where customary law is recognized in the legal and policy framework, women's land rights are protected; - Mandatory provisions for women's participation in the land management and administration institutions.

Hierarchy	Instrument Name	Women Land Rights it inculcated
African-wide regional instruments	African (Banjul) Charter on Human and People's Rights	• Adopted 27 June 1981 and entered into force 21 October 1986. Ethiopia ratified the charter on 15 June 1998. • All states shall 'ensure the elimination of every discrimination against women and also ensure the protection of the rights of the woman and the child as stipulated in international declarations and conventions' (Art. 18(3)). This discrimination includes discriminations that women sustain in obtaining, administering and transferring land-holding rights.
	The Protocol to the African Charter on Human and People's Rights on the Rights of Women (Maputo Protocol)	• Adopted 1 July 2003 and entered into force 25 November 2005. Ethiopia ratified the charter on 18 July 2018. • This protocol is enacted based on Art. 66 of the African Charter on Human and Peoples' Rights (as above) to provide for special protocols or agreements to supplement the provisions of the African Charter. • 'State parties shall prohibit and condemn all forms of harmful practices which negatively affect the human rights of women and which are contrary to recognized international standards' (Art. 5). These harmful practices may be those that affect the land use rights of women. • 'African governments should promote women's access to and control over productive resources such as land and guarantee their right to property,' Art. 19(c). • 'Right to Inheritance' guarantees the equal right of women to division of property upon divorce, and the right of widows to continue living in a matrimonial house (Art. 21).
	Solemn Declaration on Gender Equality in Africa	• Adopted July 2004 and entered into force the same year. Ethiopia also adopted it in 2004 at the time of the adoption of the declaration by state parties. • It reaffirms the commitment of African governments to the implementation of legislation to guarantee women's land, property and inheritance rights including their right to housing (Art. 7).

Hierarchy	Instrument Name	Women Land Rights it inculcated
	Agenda 2063	• Agenda 2063 is a continental blueprint for the coming 50 years adopted in 2013, which Ethiopia is committed to it as a member of African Union. This agenda has seven aspirations. • The agenda is all about sustainable development and the latter, in turn, is about social inclusion. Social inclusive development is unthinkable without the protection of the land use right of women. • 'The African woman will be fully empowered in all spheres, with equal social, political and economic rights, including the rights to own and inherit property, sign a contract, register and manage a business' (Aspiration 6(50)). Under this aspiration it is clearly and specifically inculcated that 'rural women will have access to productive assets, including land, credit, inputs and financial services' (Aspiration 6(50)). • It is planned to 'develop and implement affirmative policies and advocacy to ensure women's increased access to land and inputs, and ensure that at least 30% of agricultural financing are accessed by women' (Art. 72(e)).
National	The Federal Democratic Republic of Ethiopia Constitution	• According to Art. 9(4) of the Federal Democratic Republic of Ethiopia Constitution, all international agreements ratified by Ethiopia are an integral part of the law of the land. • It recognizes gender equality (Art. 25, 34, 35 and 40). • It accords women equal rights with men in regards to the use, transfer, administration and control over land (Art. 35 (7)). • Women enjoy equal treatment in the inheritance of property and the disposition of marital property (ibid). • It explicitly prohibits laws and customary practices that discriminate against women (Art. 35(4)). • 'Ethiopian pastoralists have the right to free land for grazing and cultivation as well as the right not to be displaced from their own lands,' (Art. 40(5)), thus protecting a woman's land use rights as a pastoralist specific

Hierarchy	Instrument Name	Women Land Rights it inculcated
	Rural Land Administration and Use Proclamation No. 456/2005	- Based on Art. 51 (5) of the Federal Democratic Republic of Ethiopia Constitution, the federal government shall enact laws for the utilization and conservation of land and other natural resources. And it is based on this that the federal government enacted this proclamation. 'Peasant farmers, semi-pastoralists and pastoralists whose livelihoods depends on agriculture, or who want to engage in agriculture, have the right to access land for free' (Art. 5). These aforementioned rights also refer to women. 'Women who want to engage in agriculture shall have the right to get and use rural land' (Art. 5(1(c))). 'Where land is jointly held by husband and wife or by other persons, the holding certificate shall be prepared in the name of all the joint holders' (Art. 6(4)). - All other provisions of the proclamation are equally applicable for women too
	Draft Federal Rural Land Administration and Use Proclamation	- It is a draft proclamation but will amend the above proclamation No. 456/2005 when promulgated. - It introduces the right of a spouse to obtain a rural land holding if the spouse has no other private holding or matrimonial joint holding with the co-spouse. The provision is intended to benefit wives who have no private individual holding as well as the joint matrimonial holding with their husbands. - When a rural land holding or use right is transferred through, lease, gift, succession, sharecropping, collateral, exchange, and consolidation, the consent of all joint holders is mandatory for the validity of the contract, if the land is the joint holding of spouses or other holders. This is intended to protect the land use right of women and other vulnerable groups. - It contains provisions for the registration of land holdings in polygamous marriages. - It has a provision that 'recognizes' the customary land administration laws, customary institutions, customary land management and use, and customary dispute resolution institutions and practices (on the understanding that they are in line with the country's constitution). - It specifically draws attention to protecting the rights of women and other vulnerable groups including in courts through representation, which should do more to protect women's land rights by, for example, applying special measures for them during settlement of rural land-related disputes.

Hierarchy	Instrument Name	Women Land Rights it inculcated
	Expropriation Proclamation No. 1161/2019	• The right of women is not expressly incorporated in these laws; what we can deduce generally is that they have the right to get compensation for their expropriated properties according to the rate enshrined in the law. • If the matrimonial land of spouses is expropriated, the compensation to be paid will be the common property of both of them. Even the concerned organ who is paying the compensation has to give the compensation for both of the spouses, not for one of them alone. This analysis is to protect the rights of women from gambler and free-rider husbands. However, there are still risks, for example, sometimes husbands may spend the money on something which the wife is not aware of after receiving the compensation money.
	Family Code (Law) of the Federal and Regional	• There is no major difference between the federal and regional family laws. • Both federal and regional family laws recognize the three types of marriages: customary, religious, and civil marriages (Art. 1 of the federal Family Code). • The various forms of marriage are equivalent. Marriage produces the same legal effects whatever the form according to which it has been celebrated (Art. 40 of the federal Family Law). • The pecuniary effects of marriage are enshrined under Art. 57 of the Family Law. Accordingly, the property which spouses possess on the day of their marriage or which they acquire after their marriage by succession or donation, shall remain their personal property. Property (or goods) being as defined under Art. 1126 of the 1960 Civil Code – this includes land and buildings. Property acquired by one of the spouses after marriage through exchange for property owned personally or with monies owned personally or derived from the sale of property owned personally shall also be personal property of such spouse where such acquisition has been made by (Art. 58 of the Family Code). • However, Art. 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. • The legal presumption is that all property shall be deemed to be common property even if registered in the name of one of the spouses unless such spouse proves that he is the sole owner thereof (Art. 63 of the Family Code). • Common properties of the spouses including land shall be administered conjointly by the spouses unless there is an agreement which empowers one of them to administer all or part of the common property.

Hierarchy	Instrument Name	Women Land Rights it inculcated
	Criminal Code of Ethiopia	The federal Criminal Code has a lot to do with the land use rights of women, crimes committed by public servants jeopardizing the land rights of women; false testimony, opinion or translation (Art. 407 and the following provisions), crimes against property (Art. 662 and the following); causing damage on the property of another including land with animals (Art. 685), possessing the land of another without just cause (Art. 686), changing or destroying boundary demarcations of the land holding are all included; usury (Art. 712) are all included in the criminal code which is very important specifically to protect the land rights of women
Regional Land Administration and Use Laws	Afar Rural Land Administration and Use Proclamation No. 49/2009	- The federal Rural Land Administration and Use Proclamation No. 456/2005 gives regional states authority to enact detailed laws (Art. 16 of proclamation No. 456/2005). - The regional proclamation under its preamble states that the main aim of promulgating the proclamation is to secure the land holding rights of women. - Pastoralist women have been given equal rights with men to use grazing land (Art. 5). - The proclamation states that the grazing lands in the region are planned to be demarcated, communally registered and certified with the name of the locality users, and the certificate will be given to the user societies or their representatives (Art. 6). By default, women are included in this communal certificate. - In the case of semi-pastoralists, 'husband and wife have equal rights to use their private holding(s)'. Further it states that they cannot 'lose their private holding(s) which they have prior to the conclusion of marriage and as a result of the conclusion of marriage' (Art. 9(7)). 'Women household heads have also the full right to use their land holdings'. These rights are also applicable for those women whose husbands are not available in the area as a result of governmental services or are working in other areas (Art. 9 (8 & 9)); 'the residence of a spouse in other areas should not be a cause for the loss of the holding by the other spouse'. 'If the land is the joint holding of spouses, the certificate shall be prepared in the names of both of them' (Art. 10(4)). Further, a certificate shall be given to female household heads in their name (Art. 10 (5)). The proclamation also states that semi-pastoralists have the right to rent out up to half of their holding without being displaced them from their holding. This right has been given to women land holders too. When the holding is a joint holding, the rent contract would be valid if and only if both the joint holders consented to the contract, and the same should be registered as well as authenticated by the concerned body (Art. 11 (3)).

Hierarchy	Instrument Name	Women Land Rights it inculcated
	Oromia Rural Land Administration and Use Proclamation No. 130/2007	• Women have equal rights with men to possess, use and administer rural lands (Art. 5(2)). • Depending on the number of children they take responsibility to raise, husband and wife upon divorce shall have the right to share the land holding that was registered equally in their names (Art. 6(13)). • ‘Husband and wife holding a common land holding shall be given a joint certificate of holding specifying both their names’. They can also independently hold a certificate for their private holdings (Art. 15 (8)). • ‘The use right of a husband or a wife, or both, shall not be affected due to change of their residential areas². When one of the spouses changes his residence, the other spouse will have the right to use the land. But the law is silent about the situation where there is a polygamous marriage. • Again, through such applications, though women’s access to land and property are given some
	SNINPR Rural Land Administration and Use Proclamation No. 110/2007	• ‘Ensuring women’s land holding rights is necessary for agricultural production and productivity and to speed up the environment development (preamble of the proclamation)’. • ‘Women who want to engage in agriculture have been given the right to acquire and use rural land’ (Art. 5(3)). • ‘A husband and wife have equal right of use of their common land holdings. They do not lose land that they held individually prior to marriage’. • Husband and wife can jointly or individually use the property or possessions which they held before their marriage. However, husband and wife are obliged to jointly use the rural land that they got after marriage through inheritance or other means. • Female household heads have full right of use of their land holdings, and women whose husbands are away, being engaged in government services or in any other activities, shall have the right to use rural lands. The family shall not lose the right of use to their holding in case of living in another area or due to death of their spouse. • ‘Where land is jointly held by husband and wife or by other persons, the holding certificate shall be prepared in the name of all the joint holders’ (Art. 6(4)). • ‘If the household head is a woman, she shall be given a land holding and use right certificate in her name’ (Art. 6(5)). • ‘A woman shall get a land use right certificate prepared in her name if her husband is found to be engaged in government services or in any other services’ (Art. 6(6)).

²Art. 12 of the 1960 Civil Code declared that every person is free to establish his residence wherever it is suitable for him and to change the place of such residence. Residence is defined under Art. No. 174 of the Civil Code as the place where a person normally resides.

Hierarchy	Instrument Name	Women Land Rights it inculcated
	Somali Regional State Rural Land Administration and Use Proclamation No. 128/2013	• 'Women pastoralists have equal rights with men to access and use grazing lands' (Art. 5(2)). • It also contains the rights of agropastoralists; • 'Women who intend to be engaged in agricultural activities have the right to access and use farm and grazing lands' (Art. 9). • Husband and wife have equal rights to use their holdings. The private holding which any spouse had prior to the conclusion of marriage shall not be affected as a result of marriage. Moreover, women heading households shall have the full right of use over their land holdings. The death or separation of a spouse as a result of change of residence shall not cause the family to lose the rights of use on the land holding.

CHAPTER THREE: RESULTS

3.1 The status of women's land rights in the customary system

3.1.1 Afar

Afar community has a customary system of governance. The community is also governed by Shari'a law, and there is less influence of the formal system (interview, School Dean, Semera University School of Law 2018). There were mixed opinions concerning women's rights to land in the customary system. The opinion of government personnel was that women are not allowed to access and use land and are considered to be 'inferior' to men (interview, Environmental Protection Rural Land Administration and Use Agency). They may not be allowed to make decisions and have little power in resolving disputes (interview, Law School Dean). There was also the opinion that Afar society was 'uneducated' and women were unable to claim their formal rights because custom prevented them from doing so (ibid). One aim of the Environmental Protection Rural Land Administration and Use Agency is to protect the interest and rights of women as far as land is concerned. It was said that women are claiming and getting land from the government and via succession – this was confirmed by the regional courts. A representative from the regional Women's and Children's Affairs Bureau said that the literacy of Afar women is significantly below that of men, though increasingly girl children are going to school. Indeed, a study by ILRI looking at education figures showed that the number of girls registered at school was close to equal in primary school though inequity increased as children got older (Flintan et al. 2018).

Changes in land management and use and the pastoralist system itself have created greater opportunities for women as individuals to access land. For example, with villagization schemes (where people are voluntarily moved to consolidated settlement areas, sometimes connected to a large-scale agricultural scheme such as sugar cane) women are accessing land in their own right with a land certificate (which has their name and photograph).

3.1.2 Oromia

In Borana, it was indicated by key informants that there was greater equality between men and women. A focal group discussion conducted with community male leaders in Gomelle *dheeda* (traditional grazing area), Doyo Dulecha said that women in the Borana zone of Oromia have relatively equal status with their male counterparts. Women have their responsibilities including care of weak animals which live around residential areas and contributing to crop farming. They have the power to decide, together with their husbands, about educational issues of their children. In the past, women were not allowed to attend schools as it was believed that it would lead to inappropriate behaviour, but this has now changed. In the past it was said that the husband makes the decision about selling livestock but now it is impossible for a husband to sell any property including livestock without the consent and decision of the wife: the wife has the power to decide on the type of animals to be sold and has the power to reject the proposal of the husband to sell any property. Women tend to look after money better than men: if a husband sells some properties he is expected and obliged to deposit the money with his wife.

3.2 Women's roles and participation in land use planning, certification and expropriation

3.2.1 Afar

The participation and role of women in land use planning, certification and expropriation is increasing. Previously, women were unable to participate in such activities. Once women reach 18 years of age they are entitled to land for their livelihood as per the Constitution. In pastoralist areas there is no limitation on the use of grazing land, and women can use equally to men. It was indicated by the woreda land administration office experts that land use planning had been undertaken recently with assistance from GIZ and that women participated in this.³

Private/individual land tends to be provided with compensation if appropriated; however, there is no compensation payment by government for communal lands. Men, let alone women, are not participating in the expropriation activities.

3.2.2 Oromia

In Gomelle *dheeda*, Oromia, (there are five *dheedas* in Borana) focus group discussions showed that there is no registration and certification of land for either individual or communal lands despite the need highlighted by customary leaders. It is because of the absence of registration that some disputes are developing. For example, a road is being constructed from Yabello town to Dembel Aba Chana kebele, for which land was expropriated without consultation with the community (men or women). Some compensation was paid for demolished houses but not for the land, and there was inconsistency in the amount paid. However, even though no compensation was paid for the land, in general the community is happy that the road was built.

3.3 Land administration committee membership

3.3.1 Afar

In Afar, 40% of committee members at the time of land distribution and 30% in the land administration committee⁴ at kebele and sub-kebele level are meant to be made up of women (Art. 20(4) of the regional proclamation). As to the regional Environmental Protection Land Administration and Use Agency, women's participation is not that much; you cannot find more than one woman in most committees. In recent times, however, the number of female committee members has been increasing due to, at least in part, awareness-creation activities conducted by the agency and its woreda offices.

3.3.2 Oromia

Focus group discussions made with customary leaders revealed that in the past, women in Borana zone were not participating in committees established by the government or within customary institutions. However, today, there are women who are actively participating in the management of communal lands. They bring cases to the leaders where a person is illegally using the communal lands including private enclosures mainly established by men. There are also some women customary leaders, serving as *Abba olla* (head of the olla or local area) – as in Gomelle *dheeda* –

3. This is likely to be the Chifra woreda participatory land use plan that GIZ and ILRI supported, and it is known by ILRI that women did indeed participate in the process.

4. Land Administration Committees are committees whose members are voluntarily chosen by the community whose responsibility is to administer land (especially by solving land related disputes amicably) at lower level.

though it was said that women are not able to become an *Abba dheeda*. Women interviewed said that their role and involvement in customary systems is very high and they have a strong influence on decisions made. It was said that they participate actively and freely in meetings such as elections.

Community members said that a land administration and use committee is established in each kebele. The committee has three male and two female members (though government officials argued that the committee is 12 members with two to three women) together with development agents, kebele administrators and local elders. However, though establishing the committee (including women) is a good move, it is not functional. This is mainly due to the fact that its establishment does not take into account the realities found in pastoral areas, where most pastoralists move from one place to another. As such it is very difficult for the members to meet regularly and discuss issues pertaining to, for example, their powers and responsibilities.

3.4 Land transactions

3.4.1 Afar

In farming areas, men and women are allowed to participate in land transactions. The Afar land laws allow landholders to rent half of their holding and to exchange without limitation. However, these provisions and limitations are not respected and the Environmental Protection Land Administration and Use Agency is not strong enough to implement these provisions. There is no expert who is assigned to register these transactions or contracts and there is no logging or listing of them. The regional Women and Children Affairs Bureau asserts that where farming land has been distributed as part of a villagization process, most distributed lands are not being (fully) utilized and there are no land rental contracts in these areas. Some contracts were found in Chifra woreda but these contracts are not fixed rent but rather are sharecropping for only one season. There is no input-sharing arrangement. The contract is solely concluded between the contract parties orally. There is no written contract and the woreda is not registering the contracts even though it has been given power to do so. Spouses' approval of the contracts is also not being sought out, though it was understood that no disputes have been raised on the subject.

At the time of dissolution, the law obliges spouses to divide their holdings in half if the size of it is not below one hectare. However, this is rarely implemented as divorce is very rare in the region. If there is divorce then it is the husband who is expected to leave the house. Moreover, should a husband die, the surviving woman spouse has the right to use the private land holding of the deceased until she gets another piece of land from the government and/or becomes a holder of the deceased's plot of land if there is no legal heir (though no case was found on this topic). Additionally, it was said that when a husband dies, the widow is expected to marry the brother of the deceased to ensure that the children are well taken care of.

As far as inheritance is concerned, the regional land administration laws give equal rights to women and men but regional and woreda courts said that this is not true in the customary and religious system. Here, women do not have equal rights with men to inheritance but rather it favours the husband. During divorce, property belongs to the man. However, women are entitled to keep their own private/individual property. Having said that, customarily there are not many land transitions and there is no divorce. The law was promulgated without taking into account the realities found in the region. Further, there is no family law for the region and family issues are governed by the 1960 civil code, which is itself patriarchal.

3.4.2 Oromia

Again in Borana, as most of the residents are pastoralists, land transactions are not an important issue. However, there are some limited transactions registered at the woreda office by land experts. Further, donation and land rent exist in the woreda, with two land rental contracts registered in the year of the research, with the contracting parties being men.

3.5 Land registration

3.5.1 Afar

With land in Afar mainly being held as common property, there is little registration of land. In some of the areas where pastoralists and other land users are more sedentarized, some first-level land holding certificates have been given with the name and photograph of both husband and wife. In pastoralist grazing areas, the plan is to give certificates by the name of the community. The USAID-supported LAND (Land Administration to Nurture Development) project in collaboration with the Ministry of Agriculture is attempting to demarcate and register the communal grazing land of Amibara woreda as a pilot, which if successful will be replicated in other areas. The plan is to give one certificate for the Amibara woreda community in the name of the community. As members of the community, women have the right to use the grazing land with men equally.

Amibara woreda has also seen a villagization program, with the regional state allocating land for both men and women pastoralists: 7,000 first-level land use holding certificates have been given. The certificate has a place for the husband and wife including a photograph of both. Of the 7,000 land holding certificates, 5,382 have been given to male-headed households and 1,695 to female-headed households. However, this is not without problems. For example, though the name of the husband and all wives are included on the certificate, the photographs of the wives are not there. Also, since the husband might have more than two wives, putting the photograph of all wives is difficult. Woreda experts said that it is possible for women to be separately registered for their own private plot if the husband consents.

Agropastoralists in Chifra woreda revealed that they have irrigable farmland along the river Mille. The area is called *Bolelie* farm area. The farm was started in the 1960s by Germans. Today, the farmers are cultivating maize, onions and tomatoes. Women play a prominent role in the cultivation process. Land holders have land holding certificates. If the land belongs to a husband and wife it is certified in both names, but only the photograph of the husband is posted on the certificate. Female-headed households are registered in their own right.

Women who live in polygamous marriages can get land in their own names – normally not more than one hectare. The villagization program has its own social infrastructure (like schools and clinics) and grazing land as well as agricultural land. The program is being implemented taking the rights of women into account. The woreda women and children affairs office also participated during the registration and certification program to protect the rights of women.

Children may also work in the field. Sharecropping arrangements are common, usually for one season. Since the government provides improved seeds for land holders, it is the responsibility of the land holder to provide the seeds to those working the land. Sharecropping contracts tend to be verbal and not written. As they tend to be for only one season, there are rarely disputes.

Interviews carried out with Chifra woreda land administration officers indicate that the land registration activities are being conducted in a participatory process, with a land administration committee set up and with whom consultations were carried out. The committee members share information with community members. It is after these processes that certification activities are conducted. The community, including women, are provided with awareness raising of their land-use rights. Adjudication activities were carried out looking at available evidence about who has been using the land for the past 15 to 20 years. Around 400 certificates were issued to Chifra woreda agropastoralists; it is not known how many of these were women. Respondents said that there is a well-known saying about the importance of land registration and certification:

‘A woman without a husband and a woman without uncertified land are similar.’

Indeed, in the absence of land holding certificates, there is no evidence to protect women from ‘encroachment’.

Seventy-six per cent of land holding certificates were allocated to male-headed households in the sampled data and 24% to female-headed households. This allocation to women is above the national average and could be due to good practice but also because there could be a greater proportion of female-headed households in areas such as Chifra due to male out-migration in order to find work.

In the customary system, a woman is considered to be an adult when she reaches 14 years of age, but in the formal system the age is 18. Others said that the age of marriage in the customary system is determined according to physical development: anyone, even below the age of 14, can conclude marriage if it is felt that they have developed enough physically. According to Shari'a law, any one above the age of 15 is considered an adult. These contradictions have affected the co-existence of the formal and informal systems.

Polygamy is allowed by the religious and customary systems. Any man can marry up to four wives if he has the physical, mental and financial capacity. Even though polygamy is not provided for under federal law, the regions have made accommodations for it – the husband is registered as head of households with one of his wives, and the other wives will be registered in their own names. Normally, wives get on and work together; however, this is not always the case and first wives can take advantage of younger, less powerful ones. Though such an arrangement of land registration may give the women more autonomy, a lot of women do not like it and would prefer to be registered with their husband because they then consider themselves to be better and more strongly protected.

Offices of women and children affairs in the region have their own legal experts who are expected to support women in the protection of their rights and the combating of harmful traditional practices. They sometimes work with the regional land administration and use institutions, justice and the Shari'a courts as well as free legal aid centres, such as that of the law department of Semera University. It would be beneficial to make such collaboration more regular: providing training on business development and economic empowerment, believing that if women can improve their economic status it will also improve their social status. When women are economically empowered they can claim their rights, and without such economic status it is impossible for women to claim equal status with men including in decision-making processes.

3.5.2 Oromia

Interviews conducted with the Dembel Aba Chana kebele administrator and the Yabello woreda focal group discussion made with land administration and use office experts and officials revealed that currently that there has been no formal registration of individual or communal land in the kebele and indeed across Gomolle *dheeda*. They added that such registration is needed to decrease land-related conflicts in the area. Increasingly, men in particular are enclosing lands for their private use influenced by regular losses of livestock to drought and are being allowed by local government to pay land use fees, securing their right to this land. It is believed that if there is land registration then this will be prevented. Also, because there is no land registration, no compensation is paid for communal lands when expropriated. Customarily, Oromia society helps women land holders to help women work together to cultivate their lands.

In Dembel Aba Chana kebele, land was taken for the construction of a road by the federal government. Compensation was paid for houses and private holdings, including to women, with an expropriation expert at woreda level. Female-headed household heads were paid the same compensation as that paid to male-household heads. The expropriation expert was a member of committees established for valuing land and other properties at the time of expropriation.

Sometimes, land holders claim about insufficient compensation and can discuss the issue with committee members. In the case of the road construction, no compensation was paid for land which was used for a camp for the construction workers, but when the road was finished the company gave the camp to the local community and it is now being used as a school. This kind of in-kind compensation payment is good practice. In the urban areas affected by the road construction, there was consultation with residents including women before expropriation, but this was not conducted in rural areas. Livestock were killed falling into holes dug for the construction of the road but no compensation payment was made.

In general, the federal government (Ethiopian Road Authority) has started paying compensation for private holdings and other properties (e.g. a house) found on such private holdings, but when projects are implemented by the regional government, payment of compensation for private properties (private holdings and houses) is very rare. There is no land use planning conducted in the Yabello woreda.

As in Afar regional state, in Borana, polygamy is customarily allowed, but polyandry, marrying more than one husband, is strictly forbidden by the customary system. Religious rules and systems rarely predominate. From the focal group discussion conducted with customary leaders and land administration experts and officials, it was found that some individuals married up to eight wives, wealth status of the husband being a key factor. One female respondent said that she is the fourth wife for her husband: all the previous wives consented to their husband marrying again. It is normal practice for a husband to ask the wives before marrying again (and indeed the wife may ask the husband to marry again). Without this permission under customary law additional marriages are forbidden. All the four wives live in separate places. A key incentive for the husband to marry additional wives is an increase in the number of cattle as a wife has limits on the number of cattle (and other resources) that she can manage and commonly she/they will ask her/their husband to marry another wife. More cattle mean the need for more wives. With Borana pastoralists, polygamy is concluded with the free and full consent of women and strengthens the social household/unit as a whole. Prohibiting and criminalizing polygamy without understanding the customary system is dangerous. It is recommended that a thorough study is undertaken to understand the pros and cons of polygamy for society in general and women in particular.

It is also common for girls to be married below the age of 18 despite this being against the law; however, this is changing due to continuous awareness-creation activities conducted by the government as well as customary leaders. Now every community member clearly knows that concluding marriage below the legal age is criminal, though it may still happen.

3.6 Land rights of women

3.6.1 Afar

Pastoral women have rights to access and use communal grazing lands. According to the customary system pastoralists including women can move from one zone to the other to graze their animals depending on negotiations and agreement between pastoralists. Women are part and parcel of this movement. Women are increasingly being part of decision-making processes about communal land management, which was unheard of in the past. Chifra woreda land administration and use office experts and officials confirmed this.

In the more sedentary areas agropastoral women's rights to land are also improving and women can inherit land and receive it as a gift or if issued by government (something very uncommon in the past). Today, around 2,000 women in the woreda have their own registered private land holdings issued by the government.

3.6.2 Oromia

A focal group discussion conducted with Borana customary leaders (Abba Madda and Abba Olla) and with Yabello woreda land administration and use office experts and officials revealed that women have equal rights to men as far as using grazing land is concerned. There is no restriction or difference in using the grazing land between men and women. They can equally move within and beyond their normal grazing areas – the latter being negotiated and agreed with neighbouring dheeda leaders. Failure to get this permission can result in a fine of five cattle, which are confiscated from the perpetrator and normally returned once the person has left the area. In recent years there has been agricultural land distributed (0.85 ha plots) and women have received almost half of the land distributed.

In polygamous marriages, all wives have their own clear private properties. When the husband concludes a marriage with a new wife, he is obliged to give her some cattle (usually between 4 and 16) redistributed from those held by his preceding wives. Until these cattle start reproducing themselves, she has the right to use the other wives' cattle. In addition to these cattle, she also receives cattle from her relatives (10-20 or more based on the number of cattle her relatives own).

Again, the man is not allowed to marry an additional wife without the consent of the former wife/wives. Increasing cattle numbers are a key reason for marrying again. Another reason to marry another is when the first (or preceding) wife is unable to deliver a son. Customarily it is only boys who are allowed to inherit properties. When the spouses do not have a son or sons there is the risk that the clan could take the property on the death of the husband and wife. If a first wife does not have a son and a second (or other) wife gives birth to a boy, she is obliged to give him to the first wife and the latter is obliged to raise him.

When the husband wants to sell the property, he is obliged to consult his wife/wives. There is a clear distinction between properties which each and every wife owns: each and every wife lives separately in a different place but their cattle live together. Even though their cattle live together, all wives can differentiate their own. Selling animal products, like milk, is in the sole hands of the woman: the husband cannot interfere in the marketing of these products.

According to customary leaders, the enclosure of communal land for private use is highly practiced these days and mostly by men. There are, however, some women who are enclosing communal lands for their private use – an interview with female pastoralists made in Harweyu kebele showed that the establishment of a private or communal enclosure or *kallo* is conducted with full consultation of community members including women. Nowadays, in some parts of the zone, individuals who have enclosed communal holdings for their private use are paying land use fees to the government, which legitimizes this land use. It would seem that the government has an intention to legalize their holding through certification in the future.

In Borana, where lands are traditionally held communally, the lands are administered by through the Geda system. In this customary system, women have equal rights and privileges to the grazing land without any discrimination. There is a clear division of work between women and men. Women are responsible for work around their home, like feeding and milking cows. Even livestock cannot be slaughtered without a woman's consent. Women have the power to decide which cow should be sold. This is enshrined under the customary system. Women also have a pivotal role in agricultural activities and in dispute resolution. When women get in between the conflicting parties at any time and in any dispute, the disputant parties are customarily obliged to stop their dispute. This shows that the customary system gives respect for women.

As far as decision-making processes on communal land management are concerned, it was said that women participate equally with their male counterparts: it is not possible to decide on the management of communal land without including women. As one woman described:

'I am a woman pastoralist. I am the second wife for my husband. My husband requested the consent of his first wife while concluding marriage with me. He as well as my relatives gave me a lot of cattle. I live separately from the first wife of my husband. The first wife does not have the right to ask for the cattle that I own or other properties that I have. These cattle are my separate property. My children will inherit my private properties alone. The husband sells cattle on a sharing basis. If he sells my cattle, his other wives do have the right to use the money together with me. The same principle applies when he sells his other wives' cattle. If he tries to sell cattle without respecting this sharing, I have the right to let my clan know the situation and the clan discusses the issue with him and the issue is resolved. Now I am becoming a member of a soap producers association and producing soap. There is no restriction by the customary system to take part in such economic activities.'

A woman can take a complaint to a meeting of the customary male leaders and the meeting will be stopped to hear her complaint and offer a solution if possible with the meeting resuming after this. This shows the great respect the customary system has for women. However, there are issues – for example, women cannot inherit property. The

customary system on inheritance is made on the basis that men are better able to protect the assets of the clan. Even though women do bring inheritance cases to the court of law or other institutions, it is nearly impossible to find any evidence of them: no one wants to be noted as a witness for a woman's inheritance case.

An interview with a Harweyu kebele woman pastoralist revealed that when a woman divorces, she cannot enter into another new marriage, whereas a man can. On marriage a woman becomes a member of her husband's clan and will remain so even after divorce. When someone asks a woman what her clan is she will say the clan of her divorced husband. When she gives birth to a new child from another man, the child uses the name of the former husband of the mother as his/her family name. The pastoralist woman explained the case as:

'I belong to my former husband; my child belongs to me; so my child belongs to my former husband too.'

3.7 Institutions affecting the rights of women

3.7.1 Afar

In Afar regional state, there are three separate, independent and mostly contradictory institutions on women's land rights: formal or state, religious and customary. Semera University School of Law provides a free legal service. However, in practical terms, the service of the school is limited to urban residents. Women pastoralists and agropastoralists are not able to access the service as it is difficult for them to travel there. Now other centres in Asaita, Awash and Abeala are opening. However, they are also limited to those that can access them.. The university is training law students so that they can themselves give the service in order to expand it. When the full-fledged service starts it will have its own positive role on land use right protection of pastoral women.

3.7.2 Oromia

Focal group discussants in Borana stressed that the customary system was highly and deeply implemented in past times. Nowadays things are changing and women are looking to the formal state structure to solve issues they have in relation to property including land. Women are not allowed to be Abba gEDA or Abba dheedha; however, some women are becoming kebele administrators, which gives women confidence to take their cases to the state legal structure.

Customary leaders argued that the formal/state system is very strong and harsh. The state law is not based on a win-win solution rather win-lose. They argue that the customary system is a win-win strategy. For instance, if a member of one clan commits a crime, it is the clan which is expected to bring sheep for the damaged clan to make reconciliation, after which the wrongdoer and the victim live together in peace without any resentment. It is not possible to solve homicide cases by the state law peacefully, but it is possible via the customary system. As a result, customary leaders plea to be allowed to continue using the customary system as far as dispute settlements and institutions are concerned. The focal group discussion conducted with women pastoralists also said that the customary system is better for the protection of their rights since it is cheap, friendly and very accessible to them. But they added that the state system should also be there in order to appeal on decisions rendered by the customary system if felt necessary.

3.8 Land-related dispute settlements

3.8.1 Afar

In Afar women do not participate in dispute resolution processes. According to custom, disputes are resolved by clan leaders, and women are not allowed to be clan leaders. According to the Dean of Semera University School of Law, it is only those women who have extraordinary influence in the community who can be mediators: even they

are not allowed to bring their cases to dispute resolution institutions directly on their own and they have to use representatives to do so such as their husbands, brothers or fathers. Further, they are not allowed to be witnesses in the same way that men are. Testimonies of two women witnesses equal a testimony of one man, i.e. if a woman can only be a witness if another woman joins her. It was said that this is because it is believed that a woman's ability to memorize things is lower than a man's. So, if they are two it can create a chance to cross-check their statement. But this does not mean that women do not have an influence on dispute resolution systems. The dean related a prominent Afar saying in this regard:

'Women decide primarily in their homes what male judges decide in courts.'

This suggests the indirect influence women have on dispute settlements: they influence those husbands who are judges. This indirect influence can be powerful, sometimes even more than more formal ways of influence.

Similarly, in the Afar customary system one of the disputant party may say the following to show the inferiority of women witnesses meaning that when a person is very sure that the other party is not able to present a witness, s/he may confidently say 'just bring one witness even a woman, then I can consider that I am defeated':

There is also another saying in the Afar customary system, which undermines the ability of women to solve disputes:

'Women are not excluded from decision-making, but it could not be given to them alone.'

However, these kinds of views are changing. Women can bring their cases to dispute settlement organs and they are also serving as members in these organs. For instance, in the region there is a committee established to resolve land-related conflicts. This committee has five members, one of whom is a woman. Others include the kebele administrator, elders, clan leaders, a woreda administrator and the agricultural office head. This is a good progress. The lesser weight given to women witnesses is also changing: there are women who are very strong and persuasive and solve more serious disputes than men.

Judges of the regional and woreda courts said that land disputes are resolved by either the kebele administrations or via the clan system. Even though the law gives the power to resolve land-related disputes to the court, this is not practically implemented and more often than not resolution relies on the customary system. The courts are looking only at urban land-related issues.

3.8.2 Oromia

According to a *Harweyu kebele woman pastoralist*, women are serving the community by being mediators. They have a dual role. First, they can resolve and decide cases together with their male counterparts. Second, they have an indirect and persuasive role and influence their husband, father, brother, son as well as their neighbours. In Oromia, the testimony of a woman in the customary system has equal weight to that of a man. Women also have a full right to bring their case to the customary system themselves. Women can be part of both the customary dispute system and the formal system. For instance, a dispute settlement committee in a kebele administration comprises 12 members, from which some seats are reserved for women, though in reality women rarely take up these positions. They bring their cases to the customary leaders first and then to the government administration. They bring boundary encroachment cases to the government administration in areas where there are private land holdings, but if the dispute is dissolution of marriage, for example, it will be solved by the customary system. Illegal settlement as well as illegal development of land (in rural areas) is brought to the formal state system. Polygamous and marriage issues tend to be solved by the customary system.

There are two kinds of marriage systems in these communities: Awedi and Keda'a. In the Awedi marriage system, getting the agreement of the woman is enough to conclude a marriage. After concluding a marriage, the husband is

obliged to send customary leaders to the families of the wife holding 20 items of clothes, soft drinks, sheep and cattle for arbitration. Sometimes the families of the women may not be keen about the marriage, in which case they have the right to cancel it. As far as the Keda'a marriage system is concerned, the man is expected to plea to the families of the woman for two to five years before the conclusion of the marriage. He has to follow the customary steps and should convince all her relatives. If a man denounces a marriage after the birth of a child, the woman cannot marry again and faces stigma and discrimination from the society.

Another issue is wife inheritance. When a husband dies, the brother of the deceased will marry the widow. If she does not want to marry the brother of the deceased, she has to leave all the properties they owned to the families of the deceased. As such, the only option is that she marries the brother of the deceased husband. Further, in a divorce if a woman does not bear a child and wants to divorce, she does not have the right to take her share of household properties. Only her clothes will be sent to her family.

Cases brought to the woreda court can include property disputes, inheritance and marriage disputes. Parties to such disputes are mostly town residents. Sometimes women request their share of land at the time of dissolution of a marriage. For instance, in 2019 two women made a plea to the court to have their share of land when they dissolved their marriage. The court decided the divorced couple should divide the land equally as well as the cattle and camels. But there are challenges to such a decision – if a woman marries again, she will take the land to a new husband, which is a taboo in the customary system and will likely cause a dispute. So it is difficult to implement such a decision and why the court advocates for mediation using the customary system. Even government institutions may not cooperate and support women since they know the consequences. As a result, blindly deciding by using formal laws is very hard and becomes a cause for disputes.

Land rental transactions are almost non-existent. Husbands tend to rent out their private holdings without the consent of their wives. Most of the time women do not participate in land rental transactions. No land rental cases are brought to the woreda court.

3.9 Can the formal and informal women's land rights systems converge?

3.9.1 Afar

It is not an easy task to converge the formal and informal systems for the land rights of women. Trying to replace the customary system with the formal system in a short time is not an ideal solution. The formal system has not been developed by taking into account the customary system. On the other hand, blindly following the customary system will affect the interests and rights of women.

Legal pluralism is also an option and is advantageous. The Afar regional agency as well as judges support legal pluralism since it can give double or more avenues for land users including women. Legal pluralism is also supported by the interviewees who participated in this study. Both systems have their own pros and cons, which the government should identify and look for mean for their convergence. Land holders will have an option about where to turn for legal assistance. Recognition of the customary system is crucial, though due concern should be given to protect the rights of women and human rights in general.

Converging the customary system with the formal one is a long-term option. First the formal laws have to be enacted by taking into account the customary and religious systems. The formal laws have to consider the realities and context found in the region. Discussion on this and a thorough investigation to this effect is very important. An inventory of the customary system is necessary to know the pros and cons of it on the land use rights of women.

For convergence of the two (or three) legal systems, legal empowerment and raising awareness for the whole community are very important. Women can be made aware of their formal land rights and obligations via different communication campaigns. It is when women in particular and the community in general are able to get legal information that they can have the ability to invoke their land rights. For this purpose, strengthening free legal aid service centres established under law schools would be important. Creating an enabling environment for women is the most important thing when developing new laws.



Pastoralist women usually access communal lands for livestock through their husbands (credit: Loris Palentini, MMC/ILRI).

CHAPTER FOUR: CONCLUSIONS AND RECOMMENDATIONS

4.1 Conclusions

Afar society in general is patriarchal, both customarily and religiously. In Afar, three systems govern women's land rights: customary, religious and formal state. In Afar, the majority of land is held communally and women can use grazing lands without limitation and discrimination. Even though things are changing, women are still inferior to men in terms of use of and access to land. Polygamy is prevalent in the region, which can be encouraged by women themselves. Men tend to manage land. Customary and religious systems are applicable more than state laws, even in homicide and other grave crimes as well as conflict resolution. Women have started obtaining their own private holdings from the government in villagization areas but still they have lower decision-making powers than men. They have no power to resolve disputes except in certain exceptional circumstances.

Women do not actively participate in land administration committees even though the law enshrines it. The Afar law has provisions on land transactions but they are not practiced. Even though private holdings can be given to women, this is not being implemented. Land administration institutions are not strong enough to implement women's land rights. Women cannot inherit property either from their husband or families through the customary system. Even the religious system discriminates against women during inheritance.

Land registration and certification is being conducted in the region taking into account the rights of women. Twenty-four per cent of the total land holders who have received land through villagization processes were women.

The Afar customary and religious systems highly discriminate against women in dispute settlements: their involvement is only indirect.

Unlike Afar, in Borana, Oromia, the state formal law and the customary system govern the land use rights of women. There is no religious system dominating land issues. Women have relatively equal status to their male counterparts. They have their own clear responsibilities according to custom. It is not possible to make transactions with matrimonial properties without the consent of the wife. Women have their own private land.

Women in Borana participate directly and indirectly in the management of communal lands and also serve, in exceptional cases, as *Abbaa Olla*. But there is discrimination for women as far as inheritance is concerned. There is no private or communal land registration in the study area. There is land enclosure, which is conducted mostly by men. Polygamy is practiced but with the full consent of former wives. Even land and other property transactions are conducted with the consent of the property owner's wife. The role of women in dispute settlement is dual, unlike in Afar.

In general, in both regions of the study area, there is no discrimination against women as far as communal land use is concerned. Problems arise in relation to inheritance of land, dispute settlement and other properties. It is not easy to converge the formal and informal systems as far as land rights of women are concerned. Trying to replace the customary system with the formal system is not a solution: legal pluralism is an option and is advantageous in the short term since it can give double or more avenues for dispute resolution for land users including women.

Both systems have their advantages and disadvantages, which the government needs to identify. Recognition of the customary system is crucial but due concern should be given to protecting the rights of women. Convergence of the systems is a long-term option for the government. For convergence of the two (or three) legal systems in the long term, legal empowerment and awareness for the whole community is very important. It is not only for women that legal awareness and empowerments should be given. Equally, it is very crucial for the whole community since the informal systems are found in the mind of every member of the community. Convergences of the formal and informal systems have to come by their own, in the long run.

4.2 Recommendations

Based on the findings of the research, the following recommendations are made:

- There is a significant gap between formal laws and the informal laws. Customary systems are more applicable than the formal laws. The formal law sits in a vacuum. Most of the provisions, though not all, of the regional land laws are meant for settled agriculturalists not for pastoralists: the laws are pastoralist blind. As a result, bringing pastoral land administration laws closer to the customary and religious systems by taking into account regional realities is very important.
- For the convergence of those different systems, awareness creation for women in particular and society in general, as well as legal empowerment of women, is crucial.
- Society in the Afar regional state is governed by the 1960 Civil Code of Ethiopia for family matters. This civil code is very patriarchal and affects women negatively. As a result, the enactment of family law for the region taking into account the regional realities should be conducted as soon as possible.
- In Afar regional state, even though the regional land agency claims that certification is conducted with the photograph of the husband and the wife, in reality only the photograph of the husband appears. Certification should include the photographs of both the husband and wife/wives.
- The customary system in both regions is more effective than the formal one in solving disputes and serious crimes. Integration of the customary and religious systems into criminal law is very important.
- Free legal services are being given for urban residents from legal service centres that are open in big towns within the region. These legal services should also be given to pastoralist residents with special emphasis on women. Mechanisms need to be devised to establish mobile legal aid services along with mobile awareness-creation activities that take into account the movement of pastoralists.
- Polygamy is a crime under the criminal law of Ethiopia but is highly practiced in rural areas including in the study areas, though with the consent of wives. Prohibiting and criminalizing polygamy without understanding the customary system and feelings of women is dangerous. A thorough study should be made to understand the pros and cons of polygamy for women in particular and society in general.
- Registration of communal and private lands in both regions should be conducted as far as possible since the absence of registration is the cause of land-related disputes, which often affect women more than other segments of society.
- Cultural mapping and monitoring to identify those cultures which are relevant for the development of societies and those which are against the rights of women should be made and then be promulgated in formal laws.

RESOURCES

5.1 Laws

- Afar National Regional State. 2009. *Afar rural land administration and use proclamation number 49/2009*. Semera. <http://extwprlegs1.fao.org/docs/pdf/eth152766.pdf>
- Afar National Regional State. 2011. *Afar rural land administration and use regulation number 4/2011*. Semera. <http://extwprlegs1.fao.org/docs/pdf/eth164826.pdf>
- Amhara Zikre Hig. 2006. *The revised Amhara National Regional State rural land administration and use proclamation, 133/2006, 11th year, No. 18*. Bahir Dar. <https://chilot.files.wordpress.com/2013/10/proclamation-no-133-2006-amahara-regionalstate-rural-land-administration-and-use.pdf>
- Benshangul Gumuz regional state. 2008. *Rural land administration and use proclamation number 85/2008*, Assossa. <http://extwprlegs1.fao.org/docs/pdf/eth165070.pdf>
- Debub Negarit Gazeta. 2007. *The southern Nations, Nationalities, and people's regional state rural land administration and utilization proclamation number 110/2007*, <http://extwprlegs1.fao.org/docs/pdf/eth164265.pdf>
- Debub Negarit Gazeta. 2007. *The Southern Nations, Nationalities, and people's regional state rural land administration and utilization regulation, number 66/2007*, <http://extwprlegs1.fao.org/docs/pdf/eth164260.pdf>
- Federal Negarit Gazetta of the Federal Democratic Republic of Ethiopia. 2000. *The Revised Family Code, Federal Negarit Gazetta Extra Ordinary Issue No. 1/2000. The Revised Family Code Proclamation No. 213/2000*. Addis Ababa 4th Day of July, 2000, <https://www.refworld.org/pdfid/4c0ccc052.pdf>
- Federal Negarit Gazetta of the Federal Democratic Republic of Ethiopia. 2004. *The criminal code of the Federal Democratic Republic of Ethiopia, Proclamation No. 414/2004*. <https://www.wipo.int/edocs/lexdocs/laws/en/et/et011en.pdf>
- Federal Negarit Gazeta of the Federal Democratic Republic of Ethiopia. 1995. *Constitution of the Federal Democratic Republic of Ethiopia*. Addis Ababa. <http://www.parliament.am/library/sahmanadrutyunner/etovpia.pdf>
- Federal Negarit Gazeta of the Federal Democratic Republic of Ethiopia. 2005. *Proclamation to provide for the Federal Democratic Republic of Ethiopia Rural Land Administration and Use Proclamation, Proclamation No. 456/2005*. Addis Ababa, <http://extwprlegs1.fao.org/docs/pdf/eth95459.pdf>
- Federal Negarit Gazeta of the Federal Democratic Republic of Ethiopia. 2019. *Proclamation to provide for the Federal Democratic Republic of Ethiopia Expropriation of Land holdings for Public Purposes, Payment of Compensation and Resettlement of Displaced People Proclamation. Proclamation No. 1161/2019* Addis Ababa, 25th year, No. 90. <https://chilot.wpcomstaging.com/wp-content/uploads/2020/04/Expropriation-of-Landholdings-for-Public-Purposes-Payments-of-Compensation-and-Resettlement-Proclamation-No.-1161-2019.pdf>
- Megelete Oromia. 2007. *Oromia rural land administration and use proclamation number 130/2007*. <http://extwprlegs1.fao.org/docs/pdf/eth104827.pdf>
- Megelete Oromia. 2012. *Oromia rural land administration and use regulation number 151/2012*. <http://extwprlegs1.fao.org/docs/pdf/eth164262.pdf>
- Negarit Gazeta. 1960. *The Civil Code of the Empire of Ethiopia, Proclamation No. 165/1960, gazette extraordinary. Year 19. Issue No. 2.*, https://www.ethioconstruction.net/sites/default/files/Law/Files/Civil%20Code%20%28English%29_0.pdf

5.2 Other documents

- Adoko, Judy, and Levine, S. 2008. Falling between two stools: How women's land rights are lost between state and customary law in Apac District, Northern Uganda. In *Women's Land Rights and Privatization in Eastern Africa*, edited by Birgit Englert and Elizabeth Daley, 101-20. Woodbridge, Suffolk; Rochester, NY: Boydell & Brewer, James Currey.
- Bayu, T.Y. 2015. Socio-cultural and policy related constraints to women's land right: A case study from Gamo Highland, SW Ethiopia. *Humanities and Social Sciences* 3(4):149-154. doi: 10.11648/j.hss.20150304.14 <http://www.sciencepublishinggroup.com/journal/paperinfo.aspx?journalid=208&doi=10.11648/j.hss.20150304.14>.
- Bekure, S., Mulatu, A., Abebe, G. and Roth, M. 2006. *Removing limitations of current Ethiopian rural land policy and land administration*. Paper presented at the workshop on land policies and legal empowerment of the poor, 2-3 November. Washington DC, USA: World Bank. <https://www.oicrf.org/documents/40950/43224/Removing+limitations+of+current+Ethiopianrural+land+policy+and+land+administration%281%29.pdf/9ad3d0bf-1310-721b-4941-f0b51a5f4371?t=1510175923676>
- Bezabih, M. and S. Holden. 2010. *The role of land certification in reducing gender gaps in productivity in rural Ethiopia*. Environment for Development Discussion Paper Series. DP 10-23,
- Borras Jr., S. M., Franco, J. C., Gómez, S., Kay, C. and Spoor, M. 2012. Land grabbing in Latin America and the Caribbean.' *Journal of Peasant Studies* 39(3-4): 845-872.
- Byamugisha, F. F. K. 2013. *Securing Africa's land for shared prosperity: A program to scale up reforms and investments*. Africa Development Forum Series; Washington, DC: Agence Française de Développement and the World Bank. World Bank. <https://openknowledge.worldbank.org/handle/10986/13837>
- Deninnger, K. D., Ali, A. and Alemu, T. 2011. 'Impacts of land certification on tenure security, investment and land market participation: Evidence from Ethiopia.' *Land Economics* 87:2.
- Deressa, N. and Eversman, B. 2016. *The role of land certification in securing women's land Rights in Beneshangul Gumuz region, Ethiopia: does legal pluralism serve their benefits?* Paper Prepared for the World Bank Conference on Land and Poverty, 14-18 March. Washington DC, USA: World Bank.
- FAO (Food and Agriculture Organization of the United Nations). 2002. *Gender and access to land*. Rome, Italy: Food and Agriculture Organization of the United Nations. <http://www.fao.org/3/a-y4308e.pdf>
- Flintan, F., Cullen, B. and Latosky, S. 2011. *Pastoral women's thoughts on change: Voices from Ethiopia*, Paper presented at the International Conference on the Future of Pastoralism 21-23 March, Addis Ababa, Ethiopia. (Available from <https://www.future-agricultures.org/wp-content/uploads/pdf-archive/Fiona%20Flintan.pdf>).
- Flintan, F., Demlie, S., Awol, M., Humed, Z., Belete, Y. and Lemma, H. 2008. *Study on women's property rights in Afar and Oromiya regions, Ethiopia*, USAID and CARE International.
- Flintan, F., Ebro, A., Gebremedhin, B., Wieland, B., Assefa, A. and Eba, B. 2018. *Pastoralist Community Development Project baseline survey – 2009 E.C. (2016/17)*. Addis Ababa: Unpublished report.
- Hawassa University .2016. *Assessment of the implementation of rural land laws in the Southern Nations, Nationalities and Peoples' Regional State*. Hawassa University in Association with the Natural Resources and Environmental Protection Agency of SNNPRS, the Justice Bureau of SNNPRS, the Supreme Court of SNNPRS. Supported by Land Administration to Nurture Development (USAID/LAND) Project. Hawassa, Ethiopia. Unpublished report.
- Holden, S.T. and T. Tefera. 2008. *From being property of men to becoming equal owners? Early impacts of land registration and certification on women in southern Ethiopia*. UN HABITAT, Kenya.
- Holden, S.T., Deininger, K. and Ghebru, H. 2011. *Can land registration and certification reduce land border conflicts?* Centre for Land Tenure Studies working paper 05/2011, Norwegian University of Life Sciences, Centre for Land Tenure Studies.
- Mekuria, B. 2009. Human rights approach to land rights in Ethiopia. In: Abdo, M. (ed). *Land Law and policy in Ethiopia since 1991: continuities and changes*. Ethiopian Business Law Series, Vol. III. Addis Ababa, Ethiopia: Addis Ababa University.
- Negassa, D., Gebretsion, S. and Dagneu, A. 2015. *An assessment report on customary natural resource management and governance system in Chifra and Amibara woredas of the Afar NRS, Ethiopia*. Land Administration to Nurture Development (LAND). Unpublished report.

- Qoricho, Y.T. 2011. *Women and land rights in rural Ethiopia: The case of Wolaita*. Thesis submitted for the degree: Master of Philosophy in Indigenous Studies. Faculty of Humanities, Social Sciences and Education, University of Tromsø, Norway.
- Reda, K.T. 2014. *Formal and informal land tenure systems in Afar region, Ethiopia: perceptions, attitudes and implications for land use disputes*. Unpublished report.
- Romano, C. 2013. *Land and Natural Resources Learning Initiative for Eastern and Southern Africa. Case Study Report: Strengthening women's access to land in Ethiopia*. Land and Natural Resources Tenure Security Learning Initiative for Eastern and Southern Africa. Unpublished report.
- Talachew, G. and Habtewold, S. 2008. *Customary dispute resolution in Afar society in grass roots justice in Ethiopia: the contribution of customary dispute resolution*. Unpublished report.
- Tefera, S., Beyene, C., Tekle, L., Eid, A., Olibui, O., LaTosky, S., Detona, M., Nigatu, A. and Flintan, F. 2016. *Pastoralists do plan! Community-led land use planning in the pastoral areas of Ethiopia*. Edited by: Fiona Flintan. Rome, Italy: International Land Coalition.
- Tesfaye, G., Getu, M., Tollosa, D., Kassim, S. and Wentzell, R. 2013. *Review of rural land laws And assessment of its implementation in the Oromia Regional State*. Haramaya University Land Tenure Center. Unpublished report.
- Tura, H.A. 2014. A woman's right to and control over rural land in Ethiopia: the law and the practice. *International Journal of Gender and Women's Studies* 2(2): 137–165.
- Witten, M.W. 2007. The protection of land rights in Ethiopia. *Africa Focus* 20(1–2): 153–184.
- Woldetensaye, A. 2007. *Women's access to and control overland in the current land administration system in two rural kebeles in Ada'a woreda of Oromia region*. A thesis submitted to the Institute of Gender Studies, Addis Ababa University in partial fulfilment of the requirement of Master of Arts in Gender Studies.
- World Bank Group. 2016. *Lessons from land administration projects: a review of project performance assessments*. IEG Category I Learning Product. World Bank Group.

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